



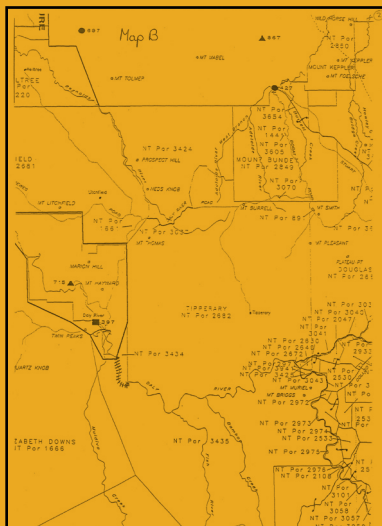
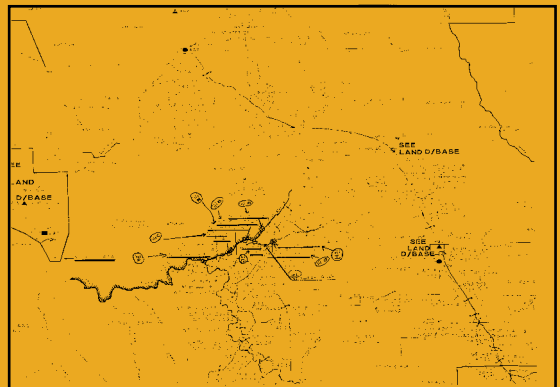
Aboriginal Land Rights (Northern Territory) Act 1976

Daly River Region Land Claim No. 172

Douglas/Daly River Region Land Claim No. 183

Daly River Region II Land Claim No. 235

Report of the Aboriginal Land Commissioner
to the Minister for Indigenous Australians
and to the Administrator of the Northern Territory



Daly River Region Land Claim No. 172

Douglas/Daly River Region Land Claim No. 183

Daly River Region II Land Claim No. 235

Report No. 79

Report of the Aboriginal Land Commissioner,
the Hon John Mansfield AM KC,
to the Minister for Indigenous Australians
and to the Administrator of the Northern Territory

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Australian Government

Office of the Aboriginal Land Commissioner

Telephone: (08) 7972 4111

Level 5, Jacana House, 39-41 Woods Street, DARWIN NT 0800

Email: AboriginalLandCommissioner@official.niaa.gov.au

GPO Box 9932 DARWIN NT 0801

8 June 2023

The Hon Linda Burney MP
Minister for Indigenous Australians
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

By email: MinisterBurney@ia.pm.gov.au

Dear Minister,

**RE: Daly River Land Claim (No. 172), Douglas/Daly River Region Land Claim (No. 183),
Daly River Region II Land Claim (No. 235)**

In accordance with section 50(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*, I present my report on this claim.

As required by the Act, I have sent a copy of this report to the Administrator of the Northern Territory.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John Mansfield', with a long horizontal flourish extending to the right.

The Hon John Mansfield AM KC
Aboriginal Land Commissioner



Australian Government

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Email: AboriginalLandCommissioner@official.niaa.gov.au

GPO Box 9932 DARWIN NT 0801

8 June 2023

The Hon Hugh Heggie PSM
Administrator of the Northern Territory
Office of the Administrator
14 The Esplanade
DARWIN NT 0800

By email: govhouse@nt.gov.au

Dear Administrator,

**RE: Daly River Land Claim (No. 172), Douglas/Daly River Region Land Claim (No. 183),
Daly River Region II Land Claim (No. 235)**

In accordance with section 50(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*,
I present my report on this claim.

As required by the Act, I have sent a copy of this report to the Minister for Indigenous Australians.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John Mansfield', with a long horizontal flourish extending to the right.

The Hon John Mansfield AM KC
Aboriginal Land Commissioner

WARNING

This report contains the names of Aboriginal people who are deceased.

Speaking aloud the name of a deceased Aboriginal person may cause offence and distress to some Aboriginal people.

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1. INTRODUCTION

1. This Report is made to the Minister for Indigenous Australians (the Minister) and to the Administrator of the Northern Territory (the Administrator) pursuant to section 50(1)(a)(ii) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the ALRA). The Report concerns an Inquiry undertaken by the Aboriginal Land Commissioner (the Commissioner) pursuant to section 50(1)(a)(i) of the ALRA into three applications made by or on behalf of Aboriginals claiming to be the traditional Aboriginal owners of certain areas of land being unalienated Crown land in the Northern Territory.
2. The first of these claims is the Daly River Region Land Claim, being the claim No. 172 in the register of applications held by the Office of the Aboriginal Land Commissioner. It was made by application on 29 May 1997. I shall call this claim the Daly River Region LC.
3. The second of these claims is the Douglas/Daly River Region Land Claim, being the claim No. 183 in the register of applications held by the Office of the Aboriginal Land Commissioner. It was made by application on 29 May 1997. I shall call this claim the Douglas/Daly River Region LC.
4. The third of these claims is the Daly River Region II Land Claim, being the claim No. 235 in the register of applications held by the Office of the Aboriginal Land Commissioner. It was made by application on 6 June 1997. I shall call this claim the Daly River Region II LC.
5. The three land claims were heard together for the purposes of the Daly River Region LC, Douglas/Daly River Region LC, Daly River Region II LC Inquiry with the support of the respective claimants, the Northern Land Council, the Northern Territory and the other persons or entities who or which participated in the Inquiry. I shall refer to them collectively as the land claims. They were heard together because they are over contiguous sections of the Daly River and related waterways.
6. The Daly River runs from its source roughly in a north easterly direction into the Timor Sea, inevitably by a meandering route. As it flows from its source, and at a point about level with Katherine and to the west of the Stuart Highway, the Fergusson River runs into the Daly River. Further upriver on the Fergusson River, it too is served by the Edith River. As the Daly River flows downriver (roughly north west), and at a point about level with Pine Creek, the Douglas River also flows into the Daly River. As one goes upriver on the Douglas River, it too is served by Hayes Creek running into the Douglas River from the north.
7. The land claims relate now only to the beds and banks of the Daly River from a point about 2-3 kilometres upriver from the Daly River Road/Port Keats (or Wagait) Road Crossing and then upriver beyond the junction with the Douglas River to the junction with the Fergusson River, and to the beds and banks of a section of the Douglas River and of Hayes Creek, and to the beds and banks of the Fergusson River.

8. There are three claimant groups seeking to establish that they are the traditional Aboriginal owners of the claim areas: the Wagiman people, the Labarganyan people, and the Kamu people.
9. It is useful to briefly recall the nature and purpose of the Inquiry.
10. Section 50(1)(a) of the ALRA requires me to ascertain whether the Aboriginals who have made a traditional land claim, or any other Aboriginals, are the traditional Aboriginal owners of the lands claimed, and to report my findings to the Minister and to the Administrator. Where I find that there are Aboriginals who are the traditional Aboriginal owners of the land, I am to make recommendations to the Minister for the granting of the land or any part of the land in accordance with section 11 or section 12 of the ALRA.
11. Section 50(3) of the ALRA provides:

In making a report in connexion with a traditional land claim a Commissioner shall have regard to the strength or otherwise of the traditional attachment by the claimants to the land claimed, and shall comment on each of the following matters:

 - (a) the number of Aboriginals with traditional attachments to the land claimed who would be advantaged, and the nature and extent of the advantage that would accrue to those Aboriginals, if the claim were acceded to either in whole or in part;
 - (b) the detriment to persons or communities including other Aboriginal groups that might result if the claim were acceded to either in whole or in part;
 - (c) the effect which acceding to the claim either in whole or in part would have on the existing or proposed patterns of land usage in the region; and
 - (d) where the claim relates to alienated Crown land—the cost of acquiring the interests of persons (other than the Crown) in the land concerned.
12. In this Report, I have set out the relevant details of each of the claims made on behalf of the separate groups of claimants in this Inquiry. There were several such groups: a circumstance which I have endeavoured to explain in depth. I have also described the process and procedure of the Inquiry and the evidence produced in support of each claim to traditional Aboriginal ownership of the claimed lands. I have made detailed findings which lead to my recommendations on that aspect.
13. The matter to be addressed by section 50(1)(a) of the ALRA was initially contentious. There was a laudatory process of progressive exchange of views and information between the Northern Land Council on behalf of the three claimant groups over the land claim areas, and the Northern Territory, including consultations between the anthropologists advising them. That led to the acknowledgment by the Northern Territory of the identification of the three claimant groups referred to above in respect of the claim areas as the relevant local descent groups. It is of course necessary to address the claims in terms of the definition of ‘traditional Aboriginal ownership’ in any event, but it will not require extensive analysis of the evidence.
14. There remains one matter to separately address in relation to the Daly River Region II LC, namely the direction in section 50(2B) of the ALRA limiting the circumstances in which the Commissioner may entertain a repeat land claim. That is also addressed below.

15. There was also evidence adduced by a range of interested persons, groups and entities who claimed that they might suffer detriment if the land claims were acceded to in whole or in part. I have reported on that potential detriment in accordance with section 50(3)(b), and on the matter referred to in section 50(3)(c). As some claimants gave evidence in response, about how the asserted detriment might be addressed, I have noted that evidence and made some observations about it.
16. It is, of course, clear that it is not the function of the Commissioner to make specific recommendations to the Minister on the topic of detriment. It is the function of the Minister, when determining whether to act on the recommendation of the Commissioner to make a grant of claimed land to the traditional Aboriginal owners, to weigh the detriment in its context. However, I have addressed each submission in a manner which I believe will be of assistance to the Minister.
17. I also note that the claim does not relate to alienated Crown land, so the matters to which section 50(3)(d) refers are not required to be addressed in this Report.
18. Subject to those comments, this Report, as required, contains my findings and recommendations in respect of the land claims.

2. THE CLAIM AREA, HISTORICAL BACKGROUND AND THE INQUIRY

2.1. THE CLAIM AREAS

19. I start first by describing the general area surrounding the land claims, and the claim areas themselves.
20. The claim areas are located in the wet-dry tropics of the Northern Territory, to the south of Darwin, within the Daly River Catchment. The Daly River is one of the largest river systems in northern Australia. Three significant limestone aquifers underlie the Daly River Catchment. These aquifers store monsoonal rains during the wet season (December-March) and then discharge this water into the Daly River and its tributaries through the dry season (April-November). The Daly River's waters are dominated by calcium and magnesium ions due to spring-fed flows from the aquifers. This is significant as the very low levels of nitrogen and phosphorous make the Daly River susceptible to pollution from fertilisers and erosion causing sediments to be deposited into aquatic ecosystems: see Anthropologist's Report of Jitendra Kumaraage dated 16 December 2020 (Anthropologist's Report) at [52]. It became Exhibit A1.
21. The land tenure in the vicinity of the middle reaches of the Daly River (to which the land claims relate) and adjacent to the Fergusson River are predominantly perpetual pastoral leases (PPLs) and include Tipperary, Douglas, Ooloo, Dorisvale, and Claravale Stations PPLs. Fish River Station is a Crown Lease Perpetual and is subject to a conservation covenant. The smaller portions of land adjacent to parts of the Daly River and Douglas River in the eastern parts of the claim areas are a mix of tenure types including freehold and Crown leasehold land.
22. The claim areas expressed in the original applications were as follows.
23. Daly River Region LC
 - (i) Beds and Banks of the Fergusson River

All that land in the Northern Territory of Australia being the beds and banks of the Fergusson River from the northern-most point of the western boundary of the Northern Territory Portion 4058, otherwise known as Yubulyawun Aboriginal Land Trust.

...
 - (ii) Beds and Banks of the Edith River

All that land in the Northern Territory of Australia being the beds and banks of the Edith River from the eastern-most point of the southern boundary of the Northern Territory Portion 3468 to where the Edith River meets the Fergusson River on the eastern side of the northern boundary of the Northern Territory Portion 4396.

...

(iii) Other land in the Mary River West Region

All that land in the Northern Territory being the Northern Territory Portions:

- (A) 2630
- (B) 2640
- (C) 3941
- (D) 2971
- (E) 3043
- (F) 3036
- (G) 2973
- (H) 2974
- (I) 2975
- (J) 2976
- (K) 2108
- (L) 3103
- (M) 3058
- (N) 3057
- (O) 3059
- (P) 3060
- (Q) 3061
- (R) 1190
- (S) 769
- (T) 4457
- (U) 3663
- (V) 4123

...

(iv) Beds and Banks of the Daly River

All that land in the Northern Territory of Australia being the beds and banks of the Daly River commencing at the northern-most point of the western boundary of Northern Territory Portion 2672 and extending to where the river meets the Fergusson River at the southern-most point of the western boundary of Northern Territory Portion 4396.

...

24. Douglas/Daly River Region LC

(i) Beds and Banks of Hayes Creek and Daly River

All that land in the Northern Territory of Australia being the beds and banks of Hayes Creek and of the Daly River from the north-eastern boundary of the Northern Territory Portion 3039 to the eastern boundary of Northern Territory Portion 3434.

...

(ii) Other land in the Douglas/Daly River region

All those areas of land in the Northern Territory of Australia being the Northern Territory Portions:

(A) 3039

(B) 3040

(C) 3041

(D) 3056

(E) 2967

(F) 2672

(G) 2933

(H) 2047

(I) 3282

...

25. Daly River Region II LC

(iii) Northern Territory Portions 672, 673 and 2394

All that land in the Northern Territory of Australia being Northern Territory Portions 672, 673 and 2394.

...

(iv) Beds and Banks of the Daly River

All that land in the Northern Territory being Northern Territory Portion 4303

...

(v) Beds and Banks of the Daly River

All that land in the Northern Territory of Australia being the beds and banks of the Daly River adjacent to Northern Territory Portion 3434.

...

26. As noted above, ultimately, it was only the claims over certain stretches of the beds and banks of the Daly River, the Fergusson River, and the Douglas River (extending into Hayes Creek) that were the subject of the land claims. The areas numbered (ii) and (iii) in the Daly River Region LC were not pursued in the Inquiry. In the case of the beds and banks of the Edith River, no evidence was adduced in support of that aspect as it had been the subject of a separate earlier claim. That is referred to in more detail at [55] below. In the case of the numbered allotments, that part of the claim is taken to have been finally disposed of by a determination of the then Commissioner under section 67A(7) of the ALRA of 16 May 2007. It may be assumed that the areas

in that part of the claim were not maintained as unalienated Crown land eligible to be claimed. The same outcome applies to the area numbered (ii) in the Douglas/Daly River Region LC which was the subject of determination of the Commissioner under section 67A(7) also made on 16 May 2007. It also applies to the area numbered (i) in the Daly River Region II LC, again by a determination of the Commissioner under section 67A(7) on 16 May 2007.

27. The physical sequence of the land claims, from the point nearest the Daly River Road/Port Keats Road crossing and then moving upriver along the Daly River is: first, the beds and banks of the Daly River as claimed in the areas numbered (i) and (ii) in the Daly River Region II LC. Second, from that point and further upriver, the bed and banks of the Daly River to the point where the Douglas River flows into it, and then extending up river along the Douglas River and into Hayes Creek are claimed in the area numbered (i) in the Daly River/Douglas River Region LC. Third, from the point where the Douglas River flows in to the Daly River, and extending up river on the Daly River to where the Fergusson River flows into it, the beds and banks of the Daly River are claimed as described in the area numbered (iv) in the Daly River Region LC, as well as the beds and banks of the Fergusson River extending up river from that point as described in the area numbered (ii) in the Daly River Region LC.
28. A map depicting that rather complex description is part of Exhibit A5 tendered by the Northern Land Council on behalf of the claimants. It is annexed to this Report as Annexure A. This is a clearer version of the maps provided in the originating applications, which are annexed at Annexures B-D.
29. I also note that the land claim areas are situated in general proximity to several other historical land claim areas which have been reported on by past Commissioners. These land claims are said to have some bearing on the issues in this Inquiry, and as such I return to them below.

2.2. HISTORICAL BACKGROUND TO THE DALY RIVER REGION, DOUGLAS/DALY RIVER REGION AND DALY RIVER REGION II LAND CLAIMS

30. The historical background to the claims is set out in some detail in the Anthropologists' Report of Sutton and Palmer (1980) tendered in, and Commissioner Toohey's Report for, the Daly River (Malak Malak) Land Claim No. 7 (Report No. 13, 12 March 1982); the History Report prepared by Anne McGrath (1983) for the Upper Daly Land Claim No. 32 (Upper Daly LC), the Anthropologists' Report of Chase and Meehan (1983) also tendered in that hearing and Commissioner Kearney's Report for the Upper Daly LC (Report No. 37, in 3 Volumes of 10 August 1989, 8 February 1990 and 22 March 1990); the Anthropologists' Report of Merlan and Rumey (1982) tendered in the hearing of the Jawoyn (Katherine Area) Land Claim No. 13 (and Report No. 27, 6 October 1987) and the submission of anthropologist Deborah Bird Rose to the Kamu/Malak Malak dispute inquiry (1993). All that material was regarded as relevant to, and significant to, the present land claims by the Anthropologist's Report.

31. The Anthropologist's Report prepared for the present land claims (as noted above, prepared by Jitendra Kumarage) concerning the claim areas spans the course of early contact and exploration to World War II and beyond. Given the voluminous amount of historical material in both the Anthropologist's Report and the material referred to in the preceding paragraph which he relied on, and the limited dispute between the claimants and the Northern Territory, I need only note the history of the claim areas briefly.
32. It is not disputed that the land claim areas and, more generally, the wider region surrounding the claim areas have seen significant historical disruption as a result of colonisation. Non-Aboriginal exploration and settlement of the region began in the 1860s, with the South Australian Government sending Colonel Finnis to survey land in the Northern Territory in 1864. It is a disruption which, on the evidentiary material, did not ultimately bring to an end the close and important relationship of each of the three claim groups. I conclude later in this Report that the relationship remains a strong and traditional relationship.
33. The late 19th century saw an increase in the uptake of pastoral leases in the Daly River region, and the discovery of gold in the Pine Creek and Yam Creek areas. This period saw an influx of a largely male, Chinese workforce and the beginning of relationships between Chinese men and Aboriginal women, as evidenced by the prevalence of Chinese names among Kamu claimants.
34. During this period there was increasing conflict between settlers and the local Aboriginal people. It is well documented, and a number of such events are noted in the Anthropologist's Report. Related features of the white settlement included the introduction of diseases and the introduction of some unhealthy foods. Anthropologist Deborah Bird Rose estimates that between 1880 and 1930, the Kamu population decreased by approximately 99 per cent due to violence, disease and malnutrition.
35. From about 1910 until the late 1960s Aboriginals were the main workforce on cattle stations in the Northern Territory. During World War II, in addition, many Aboriginals were required to live in Army settlements and were employed as a labour force by the Army.
36. A Catholic Mission was re-established on the Daly River in 1955 with the aim of providing boarding for children, and health, education, and religious instruction. Adults were encouraged to have outside employment and agriculture and pastoral projects were developed. The Daly River community, now known as Nauiyu, has become a major population centre and includes the St Francis Xavier School operated by the Catholic Church.
37. As I have noted above, the land claims were made in 1997. I now turn to their procedural history.

2.3. THE DALY RIVER REGION, DOUGLAS/DALY RIVER REGION AND DALY RIVER REGION II LAND CLAIMS INQUIRY

38. The procedural history of the applications and the Inquiry is extensive.
39. As I have noted above, the land claim applications for the Daly River Region LC and the Douglas/Daly River Region LC were made on 29 May 1997 and the land claim application for the Daly River Region II LC was made on 6 June 1997. From that time onward, the three land claims were mentioned at periodic land claim call overs.
40. As is the case with several land claims made during that period, the areas originally included in the claim were more extensive than have been pursued in this Inquiry. On 22 August 2000, the claimants in the Daly River Region LC withdrew Northern Territory Portion (NTP) 769 from the land claim area. On 19 April 2001, the claimants in the Daly River Region LC withdrew the areas of land specified in Item 5 of the Schedule to the “Railway Agreement”, those areas being various Crown leases perpetual vested in the Northern Territory Land Corporation.
41. As noted, on 16 May 2007, a number of areas of land within the land claims were finally disposed of by virtue of section 67A of the ALRA. Effectively, thereafter the land claims related to the ‘beds and banks’ of rivers.
42. The decision of the High Court in *Northern Territory v Arnhem Land Aboriginal Land Trust* (2008) 236 CLR 24; [2008] HCA 29 (*Blue Mud Bay case*), determined that the permission of the traditional Aboriginal owners is required to access intertidal waters overlying Aboriginal land granted under the ALRA to the low water mark. To that time, the rights of traditional Aboriginal owners to control access to those areas was not clear.
43. As was the case with these land claims and other land claims over the beds and banks of rivers and intertidal zones, both the Northern Land Council on behalf of the claimants and the Northern Territory indicated at periodic call overs that it was preferable for any inquiry to be deferred while negotiations were undertaken to explore overall resolution of the issues. The progress of those negotiations was periodically notified to the Commissioner. To date, those negotiations have not produced a long-term resolution.
44. On 19 May 2009, the Commissioner gave notice under section 67A(7) of the ALRA requiring the claimants to present their claim material in relation to the remaining areas subject to the land claims within 6 months. Following the decision of the Full Court of the Federal Court in *Huddleston v Aboriginal Land Commissioner* [2010] FCAFC 66; (2010) 184 FCA 551 given on 8 June 2010, those notices, in conjunction with notices in respect of 7 other land claims, were withdrawn on 29 June 2010. It is not necessary to further recount that process.
45. Ultimately, the land claims could not simply be deferred from time to time, having regard to the length of time from the *Blue Mud Bay* decision in 2008. On 16 December 2019, I issued a notice under section 67A(7) of the ALRA in respect of each of the land claims seeking the information and documentation necessary to progress the land claims to a hearing. Those notices specified a period of 6 months to

provide that material. At the request of the Northern Land Council on behalf of the claimants, that time was further extended. Within the extended period, the notices were complied with by the provision of the necessary material.

46. The primary claim materials, including the Anthropologist's Report, were lodged with my Office on 17 December 2020. That material included genealogies for the Labaganyan, Wagiman and Kamu claimants, Claimant Personal Particulars, a Site Register, Site and Dreamings Maps 1 and 2, and a Submission on the Status of Land Claimed.
47. On 5 February 2021, I gave to the claimants and to the Northern Territory, and to other potentially interested persons and entities, notice of an intention to commence an inquiry in respect of the land claims. The notice described the five separate areas to be subject to the Inquiry, all being beds and banks of rivers and creeks in the Daly River region. They are described above, but for completion I set out the relevant terms of the notices (using the numbering in the original applications):

Daly River Region LC

(i) Beds and Banks of the Fergusson River

All that land in the Northern Territory of Australia being the beds and banks of Fergusson River from the northern-most point of the western boundary of Northern Territory Portion 3468 to the eastern-most point of the southern boundary of Northern Territory Portion 4058, otherwise known as Yubulyawun Aboriginal Land Trust.

(iv) Beds and Banks of the Daly River

All that land in the Northern Territory of Australia being the beds and banks of the Daly River commencing at the northern-most point of the western boundary of Northern Territory Portion 2672 and extending to where the river meets the Fergusson River at the southern-most point of the western boundary of Northern Territory Portion 4396.

Douglas/Daly River Region LC

(i) Beds and Banks of Hayes Creek and the Daly River

All that land in the Northern Territory of Australia being the beds and banks of Hayes Creek and of the Daly River from the north-eastern boundary of Northern Territory Portion 3039 to the eastern boundary of Northern Territory Portion 3434.

48. There is there no mention of any part of the Douglas River. I observe that it is apparent on the supporting maps in the original application and adopted for the notice of the hearing and the submissions that the description of the Douglas/Daly River Region LC is intended to include the section of the Douglas River between the point where it flows into the Daly River and the point where the Hayes Creek flows into the Douglas River. The Submission on the Status of the Land Claimed, and the responsive submissions of the Northern Territory are consistent with that. All parties to the Inquiry proceeded on that basis. I regard that area as having been included in the original claim and throughout the hearing, and so capable of consideration in the Inquiry and in the recommendations in this Report.

Daly River Region II LC

(ii) Beds and Banks of the Daly River

All that land in the Northern Territory of Australia being Northern Territory Portion 4303.

(iii) Beds and Banks of the Daly River

All that land in the Northern Territory of Australia being the beds and banks of the Daly River adjacent to Northern Territory Portion 3434.

2.3.1. Detriment Submissions

49. Apart from the proper interest of the Northern Territory in the identification of the traditional Aboriginal owners, the persons and entities who responded were concerned with the matter of detriment.
50. Those who responded expressing an interest in relation to the matter of detriment were contacted to see whether they wanted to provide evidence and/or make submissions.
51. The detriment interests are referred to in detail when addressing that issue below. A list of those who gave notice of intention to participate in the Inquiry is also contained in Annexure E to this Report.

2.3.2. Process of Hearing on Traditional Ownership and Detriment

52. On 19 March 2021, Bowden McCormack, on behalf of Wagiman claimant Ms Mona Liddy, notified my Office that Ms Liddy wished to establish her interest in the claim and to dispute the claims of traditional Aboriginal ownership of other members of the claim group who purported to be Wagiman. Ms Liddy's argument was on the basis that the Huddleston family had falsely claimed through tribal adoption to be Wagiman and that the findings of the *Upper Daly Land Claim Report* were incorrect. Her claim to have a separate interest was withdrawn on 8 April 2021 and Ms Liddy maintained her involvement as part of the Wagiman claim group represented by the Northern Land Council.
53. The Inquiry commenced on 26 March 2021, and the primary claim materials referred to above were tendered in evidence without objection. Counsel for the claimants and the Northern Territory were present. Counsel for the following persons or entities claiming detriment were also present: the Northern Territory Cattleman's Association, the Northern Territory Farmer's Association (NTFA), the Tipperary Group of Stations (TGS), I & L Pty Ltd (I&L) as trustee for the Top End Land Unit Trust as a prospective purchaser of Claravale Station and Claravale Farm, and YK Australia Brother Pty Ltd as the owner/operator of Florina Station. The Amateur Fisherman's Association of the Northern Territory (AFANT) were also present as an interested party.
54. During the hearing the Northern Land Council indicated that the claimants wished to withdraw several areas contained in the originating application, specifically, parts of LC 172(i), part of LC 172(ii), and part of LC 172(iv). I requested an explanation for the withdrawal of those areas, having regard to the terms of section 50(1)(a)(i) of the ALRA, which requires the Commissioner to inquire into whether the claimants 'or any other Aboriginals' are the traditional Aboriginal owners of the claim areas.

55. On 3 June 2021 the Northern Land Council on behalf of the claimants wrote to explain that the areas the claimants no longer wished to pursue were all the subject of previous claims, namely the *Upper Daly Land Claim Report* or the *Jawoyn (Katherine Area) Land Claim Report*, which thereby engaged section 50(2B) of the ALRA as repeat land claim areas. In the period 15 to 17 December 2020, the Northern Land Council was instructed by the Kamu, Labarganyan and Wagiman claimants to withdraw the claims over those areas. That is consistent with the Claimants' Submissions on the Status of Land Claimed and it properly reflects the application of section 50(2B) of the ALRA.
56. Consequently, the claimed land in the Daly River Region LC excludes the portion of the banks of the Daly River from the southernmost point of the easternmost boundary of NTP 3435 to the easternmost point of the southern boundary of NTP 4058, and also does not include the left bank, i.e., generally the southern bank, of the Fergusson River.
57. Written detriment summaries from interested parties on detriment were received on 26 and 27 May 2021 and a detriment outline from the Northern Territory on 1 June 2021.
58. From mid-2021 to mid-2022, progress on the land claims (and other outstanding land claims) slowed due to the COVID-19 pandemic and several extensions were granted to both the Northern Land Council and Northern Territory in relation to their positions on traditional Aboriginal ownership.
59. On 27 June 2022 the Northern Territory wrote to my Office formally acknowledging the claims to traditional ownership over claim areas 172(i) and (iv), and 183(i) by the Kamu, Labarganyan and Wagiman groups.
60. On 4 August 2022 the Northern Territory again wrote to my Office formally acknowledging the claims to traditional ownership over claim areas 235(ii) and (iii) by the Kamu, Labarganyan and Wagiman groups.
61. The Northern Land Council, on behalf of claimants, lodged further traditional Aboriginal ownership evidence on 2 September 2022 by way of the Supplementary Anthropology Report of Jitendra Kumara dated 25 August 2022 (Exhibit A13) (Supplementary Anthropologist's Report) and the affidavits of Mr Michael Foster (Exhibit A14), Mr John Que Noy (Exhibit A15) and Ms Margaret Foster (Exhibit A16). That apparently reflects the material provided to the Northern Territory from time to time which enabled it to acknowledge that status of the claimants.

2.3.3. Section 50(2B) – Daly River Region II LC

62. During a call over on 2 March 2018, I was alerted to the fact that the whole of the area of the Daly River Region II LC in part (ii) relates to land which was also in the claimed area of the *Daly River (Malak Malak) Land Claim Report* and therefore already subject to an inquiry under the ALRA ('common land'). The hearing in respect of the common land did proceed in the Daly River (Malak Malak) Land Claim hearing but the report on that claim made no recommendation under section 50(1)(a)(ii) of the ALRA in relation to the common land.

63. Under section 50(2B) of the ALRA, in order for the Commissioner to perform, or continue to perform, functions under section 50(1)(a) in respect of an application in relation to land which has already been subject to inquiry, the necessary conditions are that the Commissioner finds:
- (a) at least one of the grounds set out in section 50(2B)(d)-(f) of the Act is made out; and
 - (b) that he or she is likely to find the claimants to be traditional Aboriginal owners of the common land.
64. The issue of the common land was not raised again until the commencement of the Inquiry, when it was proposed that should the Northern Territory concede the issue of traditional ownership, I might dispense with the formal requirements of a repeat claim application under section 50(2B) of the Act, as required by the 1994 Practice Directions, and consider the Northern Territory's concession as a relevant basis for finding that the circumstances meet the requirements of section 50(2B)(f) of the Act; that being any other ground upon which it appears to the Commissioner appropriate to perform, or continue to perform, that function. I indicated that I would be inclined to follow that course should the Northern Territory concede the issue of traditional ownership.
65. Given that the Northern Territory has acknowledged traditional Aboriginal ownership of the common land and has indicated that it does not oppose my functions being exercised in relation to the common area, I am satisfied that the circumstances warrant the use of section 50(2B)(f), thereby satisfying section 50(2B)(a). It is not contentious that I am likely to find the claimants to be traditional Aboriginal owners of the common land, thereby satisfying section 50(2B)(b). There is nothing in the *Daly River (Malak Malak) Land Claim Report*, which might indicate that it would be unfair or unreasonable to do so, and in particular I am not being asked to make any finding expressly inconsistent with anything in that Report.

3. TRADITIONAL ABORIGINAL OWNERSHIP

66. Although the traditional Aboriginal ownership of the claimed areas is not in issue, other than further clarification sought by the Northern Territory which I have detailed above, it is still incumbent on the Commissioner to address the matters referred to in sections 50(1)(a) and (3)(1) of the ALRA, including as to the strength of the traditional attachment of the claimants to the claimed land. The material relevant to this task in the Inquiry is the Anthropologist's Report (Exhibit A1), Claimants Personal Particulars produced by Mr Kumarage on behalf on the claimants (16 December 2020, Exhibit A2), Genealogies produced by Mr Kumarage on behalf on the claimants (16 December 2020, Exhibit A3), Site Register produced by Mr Kumarage on behalf on the claimants (16 December 2020, Exhibit A4), the Supplementary Anthropologist's Report (2 September 2022, Exhibit A13), the Submissions on Behalf of the Claimants on Traditional Aboriginal Ownership (Claimants' Traditional Aboriginal Ownership Submissions), and the affidavits of Mr Michael Foster (Exhibit A14), Mr John Que Noy (Exhibit A15) and Ms Margaret Foster (Exhibit A16).
67. Given that the Northern Territory accepted traditional ownership, my comments need not be extensive.
68. Section 50(1)(a)(i) of the ALRA prescribes that the functions of the Commissioner in respect of a traditional land claim are to 'ascertain whether those Aboriginals or any other Aboriginals are the traditional Aboriginal owners of the [claimed] land'. The definition of 'traditional Aboriginal owners' contained in section 3(1) of the ALRA requires that there be 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.
69. Each of these criteria, and their application in respect of the present claim, are now considered in turn.

3.1. A LOCAL DESCENT GROUP

70. As per Justice Toohey as Commissioner in the *Finniss River Land Claim (No. 39) Report No. 9* (22 May 1981) and adopted by the Federal Court in *Re Northern Land Council; Tibby Quall and Central Land Council v the Honourable Justice Olney, Aboriginal Land Commissioner and the Attorney-General of the Northern Territory* (1992) 34 FCR 470; [1992] FCA 69 (*NLC v Olney*), a 'local descent group' constitutes:
- ... a collection of people related by some principle of descent, possessing ties to land who may be recruited... on a principle of descent deemed relevant by the claimants.
71. The Court in *NLC v Olney* expanded on this position and added that while the principle of recruitment in operation must be some form of descent, it does not need to be interpreted only in a biological sense and that it may change over time due to the circumstances of the group: see [64]-[66].

72. That explanation of a ‘local descent group’ and its accompanying descent criteria has been applied in many subsequent Reports since that decision: see, e.g., *Ngaliwurru/Nungali (Fitzroy Pastoral Lease) Land Claim*; *Victoria River (Beds and Banks) Land Claim (Nos. 137 and 140) Report No. 47* (22 December 1993) (*Fitzroy/Victoria River Land Claim Report*) at [3.1] per Justice Gray as Commissioner; *Frances Well Land Claim (No. 64) Report No. 73* (16 June 2016) (*Frances Well Land Claim Report*) at [58]–[60]. It is once again apt for the present claim.

3.1.1. Principles of Descent

73. It is submitted by the claimants and accepted by the Northern Territory that there are three local descent groups: Labarganyan, Wagiman and Kamu. The Wagiman and Kamu local descent groups include all members of those language groups, while the Labarganyan local descent group are responsible for an individual estate within the Ngangiwumerrri language group’s territory. Language, as the Anthropologist’s Report explains, relates to a language-owning group, or to one’s ethnic identity, rather than to an ability to speak the language: see [3.2].
74. The principles of descent are described in the Anthropologist’s Report in Chapter 5 and at [9.2]. While each claimant group traces descent from a common ancestor or group of ancestors, the process of recruitment is not uniform across the three claimant groups. The Labarganyan and Kamu local descent groups have a patrilineal preference, where individuals are recruited through their father, though both groups allow other forms of recruitment. The Wagiman local descent group, however, have a cognatic structure, where individuals can be affiliated through either parent. In practice, membership of each of the three claim groups is based on a variety of factors, including patrilineal descent, cognatic descent, and adoption: see [5.5].

3.1.2. Labarganyan Local Descent Group

75. While the preferred principle of descent within the Labarganyan local descent group is patrilineal, the genealogies show members of the group recruited through both the patriline and matriline and by adoption in respect of both. The shift from strict patrilineal to cognatic forms of descent is said to be a response to the violence, depopulation and upheaval caused by colonisation and concern for the survival of the group: see Anthropologist’s Report at [6.2].
76. The Labarganyan local descent group is descended from the deceased apical ancestors Kundjing Kitjulyin *Djangala*, his son Jack Kunjawulung Nimit *Djabidjin* and the latter’s children who include Paddy Dapan Arriwur, Nipper Ginger/Jinga Karanyba, Nipper Byrnes Yijandan, Joe Morgan Wurdapul, Tommy Jamal and Dolly Nimanyuk/Mandilyang/Manyara (all deceased).
77. The descendants of Paddy Dapan Arriwur include senior Labarganyan claimants Bridget Anne ‘Minnie’ Kirkirtin Tjululuk, Terry Nimit and Phillipine Paliny: see Genealogies (Labarganyan Group: Sheet 1). Bridget Kikirtin’s daughter, Geraldine Angganmerr, follows her mother and is Labarganyan, as are Geraldine’s own two daughters. However, the children of Bridget’s sister Kathleen Minyinette Parry instead follow their father’s side and are not Labarganyan. Other descendants

of Paddy Dapan Arriwurr, such as Phillipine Paliny's children, follow both the matriline and patriline and are Labarganyan through Phillipine's fathers' father: see Genealogies (Labarganyan Group: Sheet 2).

78. The descendants of Nipper Ginger are the Byrnes family, made up of the children and descendants of Wagiman man Harold Byrnes, whose children were adopted by Nipper Ginger's daughter Lena Kunjarr (deceased), making them Labarganyan: see Genealogies (Labarganyan Group: Sheet 5). Lena Kunjarr was adopted by Nipper Ginger and was identified as Labarganyan in the Upper Daly LC Inquiry.
79. The status of Nipper Byrnes' descendants in Jack Daly's line has been questioned by some members of the Labarganyan group, though senior members of the group gave evidence during the Upper Daly LC Inquiry that Jack Daly was Labarganyan through adoption: see Anthropologist's Report at [245]-[246]. Of Jack Daly's children, only the children of his three sons John, Errol and Ray Daly are considered Labarganyan, despite other members of the Labarganyan local descent group following the matriline.
80. Dolly Nimanyuk's descendants are all considered members of the Labarganyan local descent group. Her son, Long Harry Kilimirri, explained during the Upper Daly LC Inquiry that he and his siblings followed their mother as their father was deceased.
81. As explained in the Anthropologist's Report at [5.5], adoption is a recognised form of descent within the Labarganyan local descent group as is seen in the descendants of Paddy Dapan Arriwurr, Tommy Jamal, Nipper Ginger, Nipper Byrnes and Dolly Nimanyuk: see Genealogies (Labarganyan Group: Sheets 2, 4, 5, 6 and 7). This is of particular significance for the descendants of Tommy Jamal and his wife Minnie Ulbandi Ngulpandi who did not have any children of their own but adopted Daisy Bell Nigarr, Billy Malbiyan, Nellie Kanderr, Skipper Wala, George Wanirr, Robyn Humble Miriyn and Mary Nayerri. Daisy Bell Nigarr and Nellie Kanderr are considered Labarganyan and form part of the claimant group along with Daisy Bell's three children.
82. The evidence shows a clear link between the claimants and their ancestors based on the principle of descent described above, albeit in varying ways. Further, it is clear from the evidence that this is accepted amongst the claimants themselves: see, e.g., Anthropologist's Report at [231]. I am therefore satisfied that, as has been accepted by the Northern Territory, the Labarganyan constitute a 'local descent group' for the purposes of the ALRA.

3.1.3. Wagiman Local Descent Group

83. Recruitment within the Wagiman local descent group is effectively cognatic, with adoption constituting an accepted form of recruitment: see Anthropologist's Report at [7.2]. The Genealogies show the Wagiman local descent group stemming from ancestors Yitengbara Jim and Kunbirinyan Kitty, Billy Jariyn, Andiman Dolly and Nim Karaynba, Yawalmin Jeannie, Friday Ngabalanggit, Polly Djarrwuk, Nganunyuman and Nimuliyn, Barrngan Annie, and Yijangjuda and Naphitjan (all deceased).

84. Yitjengbara Jim and Kunbirinyan Kitty's daughter, Yawalin Jeannie, had a daughter, Wujinma Dolly, who married George Jabulgari Huddleston Snr, who was born Mudbara before being adopted into Wagiman. Their children George Jabulgari "Jubul" Huddleston Jnr and Teresa Muggleton Bandison are now the most senior and knowledgeable members of the Wagiman group: see Anthropologist's Report at [274]. Recruitment to Wagiman within the Huddleston family is both matrilineal and patrilineal.
85. Billy Jariyn had 7 children with Kilayi Maggie (deceased), one child with a Wagiman woman whose name is unknown (deceased) and adopted Elsie Kitjula Talbot (deceased). Of Billy Jariyn's 6 children who had children of their own, including adopted daughter Elsie Kitjula Talbot, 5 of those were daughters who took Wagiman through their father and whose own children then took Wagiman through their mothers: see Genealogies (Wagiman Group: Sheet 2).
86. The descendants of Elsie Kitjula Talbot have been recognised as having the requisite spiritual affiliations and knowledge and were included in the Wagiman claim group in the Upper Daly (Repeat) Land Claim No. 128 (Upper Daly (Repeat) LC) and the Pine Creek native title claim, where they have been recognised as traditional Aboriginal owners. The Talbot family descendants are extensive and include the Allia, Manolis, Weedon, McDowell, Duggan, McKenzie, Henning, Pollard, Richies, Mitchell and Tyson families through a combination of matrilineal and patrilineal descent: see Genealogies (Wagiman Group: Sheet 3).
87. The descendants of Kojolo Peter Liddy (deceased) (son of Andiman Dolly and Nim Karaynba) and his wife Kartpul Dolly (deceased) include the children and descendants of Palampal Don Liddy, Jululuk Lena Hammer, Ibulburin Jessie, Kumbitbita Clara and Murgayan Doris. The Genealogies support the cognatic descent model described in the Anthropologist's Report: see Genealogies (Wagiman Group: Sheet 4).
88. Andiman Dolly and Nim Karaynba were also the parents of Wanajirri Fred Muggleton (deceased), who had children with two women, one of whom is Teresa Muggleton Bandison. The descendants of Wanajirri Fred Muggleton and his sister Connie Potts form part of the Wagiman claim group: see Genealogies (Wagiman Group: Sheet 5).
89. The Huddleston and Banderson families, amongst others, stem from George Jabulgari Huddleston Snr and Wujinma Dolly (both deceased). Their son Paddy Benburr Huddleston (deceased) and his daughter Daphne Katinyan Huddleston were key witnesses in the Upper Daly LC. Daphne Katinyan Huddleston is now a senior member of the Wagiman group and the Huddleston family make up a large portion of the Wagiman claim group: see Genealogies (Wagiman Group: Sheet 6).
90. The links to the surviving generations of the Graham and Noakes families to deceased ancestor Polly Djarrwuk are described in the Anthropologist's Report at [278] and are supported by the Genealogies: see Genealogies (Wagiman Group: Sheet 7).
91. The descendants of Nganunyuman and Nimulyn (both deceased) include members of the Liddy, Griffin, Jones and Bonato families through cognatic descent: see Genealogies (Wagiman Group: Sheet 8). Hector Wumbulgari Wilson (deceased), the grandson of Nganunyuman and Nimulyn, gave extensive traditional ownership evidence during the Upper Daly LC.

92. Barrngan Annie (deceased) was identified as a Wagiman ancestor during the Fitzmaurice River Region Land Claim (No. 189) Inquiry and the Pine Creek native title claim. Her descendants, who are primarily members of the Liddy family, were not included in the Upper Daly LC but were then included in the Wagiman claim group in the Upper Daly (Repeat) LC.
93. The final family in the Wagiman local descent group are the descendants of Yijangjuda and Naphitjan (deceased). They had four children (all deceased), with the descendants of their daughter Yijang Judy being the only surviving family members that identify as Wagiman: see Genealogies (Wagiman Group: Sheet 10).
94. I am satisfied that the Wagiman constitute a local descent group within the meaning of the ALRA.

3.1.4. Kamu Local Descent Group

95. The Kamu local descent group is descended from sisters Madjaga Kitty Pan Quee and Maudie Ngurundajin (both deceased). There is a preference for group affiliation to follow the patriline within the Kamu local descent group, however, recruitment to the group is cognatic in practice and today many Kamu claim their affiliation through their mother: see Anthropologist's Report at [8.5]; Affidavit of Mr Foster at [12].
96. Madjaga Kitty Pan Quee and Maudie Ngurundajin were the daughters of Kamu woman Karrayelwa (deceased). The Storer/Foster family is descended from Madjaga Kitty Pan Quee's daughter Yuru Marjorie Foster/Storer (deceased) and includes the Campbell, Bonson, Sambono, Williams, White, Stubbs, Barker and Bryce families: see Genealogies (Kamu Group: Sheet 2).
97. The Que Noy family is descended from Madjaga Kitty Pan Quee's daughter Joan Adelaide and her husband Albert Que Noy (both deceased). Their children were Arthur Que Noy and Joyce Pan Quee (both deceased), whose own children are now the senior members of the Que Noy family: see Genealogies (Kamu Group: Sheet 3).
98. The descendants of Maudie Ngurundajin are accepted as Kamu though are not included in the claim group.
99. I am satisfied that the Kamu constitute a local descent group within the meaning of the ALRA.

3.2. COMMON SPIRITUAL AFFILIATION AND PRIMARY SPIRITUAL RESPONSIBILITY

100. Once it is established that each of the claim groups are local descent groups for the purposes of the ALRA, the next task of the Commissioner in respect of traditional Aboriginal ownership is to identify whether any of the claim groups can be said to have 'common spiritual affiliations, being affiliations that place the group under a primary spiritual responsibility for that site and for the land' as per the first criterion of the definition of 'traditional Aboriginal owners' contained in section 3(1) of the ALRA.

101. It is well recognised that this definition does not require sites to be located within the claim areas specified and that common spiritual affiliations and primary spiritual responsibility may be established by demonstrating a connection between nearby sites and the land subject to claim: see, e.g., *Fitzroy/Victoria River Land Claim Report* at [4.1]; *Frances Well Land Claim Report* at [126]–[132].
102. The material relevant to this exercise is contained in Chapter 9 of the Anthropologist’s Report and the affidavits of Mr Foster, Mr Que Noy and Ms Foster, as well as the Site Register.
103. It is accepted by the Northern Territory that the three claim groups have common spiritual affiliations with the relevant sites and it is therefore only necessary to briefly describe the evidence.

3.2.1. Labarganyan claim group

104. The Labarganyan local descent group has its primary interests in areas southwest of the Daly River. Their country extends from about the Chilling Creek/Daly River junction in the west to past the Fish River junction in the east. Labarganyan people also claim spiritual affiliation to some sites north of the Chilling Creek/Daly River junction jointly with members of the Kamu group. Similarly, they claim joint primary spiritual responsibility for some sites east of Fish River with the Wagiman claimants: see Anthropologist’s Report at [48].
105. Primary spiritual affiliations and responsibilities of the Labarganyan group in relation to the claim area were demonstrated in the Upper Daly LC where then Commissioner Justice Kearney found them to be traditional owners for part of the claim area: see *Upper Daly Land Claim Report* at [67]. In that land claim, Labarganyan witnesses described their responsibility to care for Labarganyan sites to ensure they are not damaged.
106. Many of the Labarganyan Dreamings mentioned in the Upper Daly LC do not affect the areas subject to these land claims. However, there are a number that were identified in the Anthropologist’s Report as important to discuss.
107. The *Awalangirr* (Little Barramundi) Dreaming travels down Chilling Creek from Jumunde (Site 24 on Site and Dreamings Map 1: Land Claims No. 235(ii)&(iii), 183(i) & Part of 172(iv)) to Chiliny Crossing (Site 15) and Chiliny (Site 13). *Detjirri* (Site 21), a spring and creek, is associated with the *Detjirri* (Urine) story. The *Wumirr* (Boil) Dreaming site (Site 22) is located nearby. *Diwinjirrim* (Site 18) is a shared Kamu site, which is associated with the Shooting Star Dreaming. *Jawuku* (Male Kangaroo), *Amalipirr* (Female Kangaroo), Crocodile, Emu and *Mambirr* (Baby) are all Labarganyan Dreamings with associated sites located in and around the claim areas.
108. *Mirritjarra* (Old Blind Man) Dreaming is significant and is responsible for the creation of many features of Labarganyan country. Some sites associated with this Dreaming are shared between the Labarganyan and Wagiman groups.
109. The Labarganyan believe that *Phalmikurru* (Mermaid) live in rivers in Labarganyan country and are said to be particularly dangerous for young boys if they do not perform rituals and protocols when visiting sites: see Anthropologist’s Report at [356]–[357].

110. The Anthropologist's Report in Chapter 9 provides further indicators of the Labarganyan's primary spiritual responsibility in respect of the claim areas. These include a detailed knowledge of the sites and associated mythology on their country and the rituals and protocols that must be performed when entering country, for example, calling out to old people, head wetting and avoiding certain areas: see Anthropologist's Report at [9.3.1.2]. This knowledge and the rituals performed to ensure safety of visitors, along with practises undertaken to protect sites, is passed down from generation to generation.
111. As has been accepted by the Northern Territory during the course of the Inquiry, and in accordance with the evidence described above, I consider the Labarganyan claimants to have primary spiritual responsibilities over parts of the claim areas relevant to them.

3.2.2. Wagiman claim group

112. The Wagiman claim group have interests on the southern side of the Daly River from a point east of the Fish River junction to the Douglas River junction, both sides of the Douglas River and Hayes Creek, and both sides of the Daly River upstream from the Douglas River/Daly River junction. Their interests also extend south to the Fergusson River: see Anthropologist's Report at [49].
113. All members of the Wagiman group have common affiliation to all Wagiman sites. The claim materials indicate that the majority of sites in and around claim areas 172(i) and 172(iv) fall within the responsibility of the Wagiman group, though some sites across the claim areas are shared with Labarganyan and Kamu people. This is particularly the case within claim area 183(i). For example, both the Wagiman and Labarganyan claimants have identified the section of the Daly River between Jeboom (Site 34) and the Fish River/Daly River junction as being shared country.
114. Water has a substantial spiritual, cultural and economic significance for each of the claim groups and the Daly, Douglas, Fergusson and Fish Rivers and their tributaries and creeks are the sources of many food species and species of cultural value. Older claimants from each of the groups remember travelling alongside the Daly River and relying on the river for food and water, and many claimants continue to camp, fish and socialise along the riverbanks where possible: see Anthropologist's Report at [5.3]. Dreaming tracks frequently follow water ways and numerous sacred sites are located along the rivers.
115. The Daly River, Douglas River and adjacent billabongs and creeks contain a number of sites connected with the *Jagutj* (Rainbow Serpent) Dreaming, which the Wagiman believe created many of the water ways and much of the landscape: see, e.g., Anthropologist's Report at [366]. The Anthropologist's Report at [364] details the *Jagutj* Dreaming track moving west from sites in the Douglas Hot Springs areas, downstream along the Douglas River and along the Daly River.
116. Walangambi (Site 55), located within claim area 172(iv), is recorded in the Site Register at p 9 as holding particular significance as an intersection of the *Jagutj*, *Nguwarrmin Dugulgul* (Kangaroo) and *Jinminy* (Bat) Dreamings. At Tjuwalyn (Site 38), *Jagutj* intersects with a number of other Dreamings including Women's

ceremony, *Karingal* (Star), *Yunumburrgu* (Red Kangaroo), *Nganmurrugu* (Black Kangaroo) and *Karrkalyn* (Chicken Hawk), making the site ceremonially significant: see Anthropologist's Report at [365].

117. Other Dreamings and associations with sites can be found in the Anthropologist's Report at pp 106-110. It is not necessary to set them all out.
118. Primary spiritual responsibility is demonstrated by Wagiman claimants by performing rituals, passing on knowledge and caring for sites and country. In the Anthropologist's Report, senior Wagiman members, Jabul Huddleston at [384] and Lenny Liddy (deceased) at [385]-[387], give examples of calling out to spirits in Wagiman and wetting the heads of visitors and newcomers to ensure their safety and to ensure they catch fish.
119. I find that the Wagiman claimants have primary spiritual responsibilities over parts of the claim areas relevant to them.

3.2.3. Kamu claim group

120. Kamu country is located upstream of the Daly River Crossing, mainly on the northern side of the Daly River adjacent to the TGS PPLs and on both the east and west banks of the Daly River from about the Daly River Crossing to the Chilling Creek junction. Kamu and Labarganyan have joint primary spiritual responsibility for some sites, particularly in the Mount Nancar area: see Anthropologist's Report at [47].
121. Previous land claim inquiries have elicited little Kamu knowledge of sites and Dreamings in Kamu country because they had not been identified as claimants as a group. However, Kamu people claim sites between the Daly Crossing and Chilling Creek in the Nauiyu to Mount Nancar area and Kamu people do not differentiate between different parts of Kamu country. Kamu peoples' affiliation to Kamu sites are common affiliations regardless of their Dreamings or where they are located.
122. The *Boenngoe* (Dingo) Dreaming is a significant ancestral Dreaming for Kamu people, who believe that the *Boenngoe* is their kin. The *Boenngoe* is said to have given birth at the foot of the hill known as Durk Koen, from where her pups spread across Kamu country and turned into Kamu people. In his affidavit at [11], Mr Foster describes being told this Dreaming by his elders and how he now shares this knowledge with younger generations. Similarly, Mr Que Noy in his affidavit at [36]-[38] details the *Boenngoe* and Chicken Hawk Dreaming, as told to him by Tall Nanna, about how *Boenngoe* got his black paws from rubbing them with ash from the fire. It is said that fires on Kamu country are *Boenngoe* and Chicken Hawk working together to find food. *Boenngoe* protects Kamu people when they are on country and several Kamu members have recounted interactions with *Boenngoe*: see, e.g., Affidavit of Mr Foster at [19]-[22]; Affidavit of Ms Foster at [17].
123. The importance of water detailed above is shared by Kamu people. Kamu people believe that the Rainbow Serpent created all the waterways and that the birds and animals found on Kamu country came out of the Rainbow Serpent's stomach: see affidavit of Mr Que Noy at [42]-[43]. Pulali (also known as Deji-pulele) (Site 11)

is associated with this Dreaming and is noted in the Site Register as being shared with the Labarganyan group.

124. There are also a number of dangerous, or ‘poison’, sites on Kamu country. One of those, Jebenyi, is said to be a headache site that if disturbed will cause the disturber such great pain that it can cause death. Pelweni (Site 12) and Durk Koen are both associated with the Diarrhoea Dreaming. It is believed that touching the water which runs down the rocks at either site causes illness and is therefore avoided by Kamu people. However, Durk Koen is also a sacred burial site and many Kamu ancestors have been buried there under the banyan trees: see Affidavit of Mr Que Noy at [40].
125. Kamu people have passed knowledge of sites and Dreamings through forebearers such as Madjaga Kitty Pan Quee down to younger members of the group. Kitty’s grandson, Mr Que Noy, describes in his affidavit at [56]-[57] his responsibility to pass knowledge onto the next generation and to take younger Kamu men through law, as was done by older men for him.
126. All Kamu people are responsible for protecting Kamu country and for ensuring that correct protocols are adhered to. In her affidavit at [33]-[35], Ms Foster details singing out to spirits when entering country and wetting newcomers to let the spirits know who is entering country to keep them safe. She also describes the way herself and other Kamu people work to protect Kamu country: see [52]-[56]. This includes checking on and cleaning up country, working with the Northern Land Council and the Aboriginal Areas Protection Authority to register and signpost sacred sites and trying to establish a ranger program to undertake weed and fire management on Kamu country.
127. Some Malak Malak people assert interests in parts of the Daly River Region II LC area 235(ii), however, they are unable to do so by reference to any sacred sites in the vicinity. The evidence, as detailed above, is therefore that it is Kamu who have primary spiritual responsibility for the relevant claim areas.

3.3. RIGHTS TO FORAGE

128. The second criterion for the establishment of traditional Aboriginal ownership as per the definition contained in section 3(1) of the ALRA requires a finding that the claimants ‘are entitled by Aboriginal traditional to forage as of right over that land’.
129. It is accepted by the Northern Territory and clear on the evidence that this criterion is satisfied in respect of all three claim groups, and therefore the reference to supporting material can be brief.
130. As the claim areas consist of the beds and banks of several rivers and creeks, access to the claim areas is seasonal and is generally restricted or inaccessible during the wet season. However, during the dry season each of the claimant groups regularly access the claim areas for fishing, hunting and gathering: see, e.g., Anthropologist’s Report at [440], [452] and [459].
131. The Anthropologist’s Report detailed the rights of the Labarganyan and Wagiman claim groups to fish, hunt and gather in the claim areas and stated that permission would be required for other people or groups to access either group’s respective sites

and resources: see Anthropologist's Report at [439] and [457]. The Supplementary Anthropologist's Report at p 11 noted that the Kamu claimants' own access to the claim areas and Kamu sites has been made harder due to the difficulty in accessing Tipperary Station. However, each of the abovementioned affidavits made by Kamu claimants highlight their right to forage and their ability to grant or deny permission to non-Kamu people to hunt or forage on their country: see, e.g., Affidavit of Mr Que Noy at [62].

132. It is clear from the evidence that each of the three claim groups possess rights to forage over the claim area, in the sense required by section 3(1)(b) of the ALRA and the definition of traditional owners contained therein.

3.4. STRENGTH OF ATTACHMENT

133. Section 50(3) of the ALRA requires a consideration of the strength or otherwise of the traditional attachment by the claimants to the land claimed.
134. As I accepted in the *Woolner/Mary River Region Land Claim (No. 192) Report No. 75* (8 December 2021) at [136], a strong traditional attachment is not a requirement to making a recommendation for a grant of land under the ALRA. Despite this, I am statutorily required to consider the claim groups' strength of attachment to the claim areas in order to assist the Minister to make an informed decision in relation to this Report.
135. The task in section 50(3) is essentially subjective. However, guiding factors in determining strength of attachment have been adopted by past Commissioners and include living in or around the claim area; spiritual connections; economic benefit from the land; ceremonial life; the degree to which traditional spiritual affiliation to various sites is still meaningful to the claimants; the extent to which the claimants access the claimed lands from time to time; the nature of the use of the claimed land; and the strength of the traditional life of the claimants generally: see, e.g., *Daly River (Malak Malak) Land Claim Report* at [183]; *Fitzroy/Victoria River Land Claim Report* at [5.1]–[5.7].
136. Usually, the evidence relevant to section 50(3) emerges in the course of the claimants' oral evidence in support of their claim. However, the Anthropologist's Report demonstrates a strong sense of attachment to the claim areas, and I accept the claimants' submission at [10.3] that, in the absence of oral evidence, it is still clear that the claim group has a significant attachment to the land subject to claim. This is furthered by the Northern Territory's acceptance that the claimants are the traditional Aboriginal owners of the claimed areas.
137. As is described in the Anthropologist's Report and the affidavits of Mr Foster, Mr Que Noy and Ms Foster, the claimants and their ancestors have both a historical and contemporary association with the claim areas and the broader areas over which each of the local descent groups claim to be the traditional Aboriginal owners through living, working and visiting in and near the claim areas. Claimants have, for example, worked on Tipperary, Claravale, Douglas, Ooloo and Fish River Stations and many claimants have lived on-country in places such as Pine Creek, Kybrook Farm, Daly River, Peppimenarti and Palumpa, as well as at camps established and maintained by the claimants. For claimants who are unable to live on-country, many visit the

claim areas regularly to camp, forage and pass on knowledge about country: see, e.g., Affidavit of Mr Que Noy at [24].

138. Many of the senior claimants have a demonstrated history of formal representation for their groups through, for example, the establishment of ranger programs and participation in sacred site surveys, which have resulted in numerous sites in and around the claim areas being recorded by the Aboriginal Areas Protection Authority and the Northern Land Council: see, e.g., the Anthropologist's Report at [406]. These roles are continuing manifestations of traditional attachment to the claim areas.
139. Each of the claimant groups have maintained a strong spiritual connection to the claim areas. The claimants demonstrate this by continuing to observe traditional rules in relation to sites, such as head wetting and maintenance of gender protocols; conducting ceremonies at or in the vicinity of the claim areas; the continuing of totemic naming practices; knowledge of and belief in conception stories; retaining of rights to grant or refuse access to the claim areas; and passing on knowledge to younger generations through regular site visits when possible.
140. In addition to the above, I consider each of the claim groups recognition as traditional Aboriginal owners external to this Inquiry process, such as in the Upper Daly LC and the Northern Land Council inquiry into the Kamu/Malak Malak dispute, an indicator of a strong attachment to the areas subject to claim.
141. In accordance with the approaches of past Commissioners and the evidence and submissions in this claim, I find that the claimants have demonstrated a strong attachment to the claimed areas. This has been accepted by the Northern Territory.

3.5. ADVANTAGE OF A GRANT

142. Section 50(3)(a) of the ALRA also requires the Commissioner, when reporting to the Minister, to comment on the number of Aboriginals with 'traditional attachments' to the land claimed who would be advantaged, and the nature and extent of that advantage that would accrue to those Aboriginals, if the claims were acceded to either in whole or in part.
143. The Claimants' Submissions at [11.2] and the Genealogies indicate that there are approximately 600 Aboriginal persons with traditional attachments to the claim areas across the Daly River Region, Douglas/Daly River Region and the Daly River Region II LCs. It is also said at [11.2] that there are likely to be other Aboriginal persons with traditional attachments outside of those specified in the claim group, including:
 - (a) Non-claimants affiliated with a claimant group/s by more distant genealogical connections;
 - (b) Non-claimants connected to the claim areas through place of birth or Dreaming affiliation;
 - (c) Non-claimants whose own country neighbours or is near the claim areas;
 - (d) Non-claimants who are entitled to forage in the claim areas pursuant to Aboriginal tradition;

- (e) Non-claimants with a strong historical link to the claim areas, perhaps through living or working on stations near the claim areas, or through affiliation to the Mission at Daly River; and
- (f) Non-claimants who are married to or are children of the claimants.

144. The claimants and other persons referred to above would clearly be advantaged by a grant in these claims, in that they would be able to enjoy the rights vested in traditional owners under the ALRA, as well as having recourse to the land for purposes both spiritual and practical. They would gain security of title and a higher degree of control over the area, including the protection of sacred sites, environmental management and potential employment opportunities.
145. It was submitted at [11.5] of the Claimant's Traditional Aboriginal Ownership Submissions that a grant of land would afford formal and significant recognition of the claimants' strong and meaningful relationship to country.

3.6. OTHER MATTERS FOR COMMENT

146. As the land claims the subject of this report do not relate to alienated Crown land, section 50(3)(d) of the ALRA is not applicable.
147. Similarly, the claimants did not make any submissions in relation to section 50(4) of the ALRA and therefore there is no need for me to comment.

3.7. FORMAL FINDINGS AND RECOMMENDATION

148. I conclude that the Labarganyan, Wagiman and Kamu claimants are local descent groups in the sense required by the ALRA.
149. I also conclude that the Labarganyan, Wagiman and Kamu groups are the traditional Aboriginal owners of the claim areas, having common spiritual affiliations to sites on the land which place those groups under a primary spiritual responsibility for those sites and that land.
150. Each of the Labarganyan, Wagiman and Kamu groups are entitled to forage as of right over that land.
151. I accordingly recommend to the Minister that the areas of Crown land the subject of this Inquiry, and as identified at paragraphs [47]-[48] and [56], should be granted to a Land Trust or Land Trusts for the benefit of the Aboriginals who I have found to be traditional Aboriginal owners of that land. To avoid any uncertainty, that land is (excluding the part that [56] excludes):

Daly River Region LC

(i) Beds and Banks of the Fergusson River

All that land in the Northern Territory of Australia being the beds and banks of Fergusson River from the northern-most point of the western boundary of Northern Territory Portion 3468 to the eastern-most point of the southern boundary of Northern Territory Portion 4058, otherwise known as Yubulyawun Aboriginal Land Trust.

(iv) Beds and Banks of the Daly River

All that land in the Northern Territory of Australia being the beds and banks of the Daly River commencing at the northern-most point of the western boundary of Northern Territory Portion 2672 and extending to where the river meets the Fergusson River at the southern-most point of the western boundary of Northern Territory Portion 4396.

Douglas/Daly River Region LC

(i) Beds and Banks of Hayes Creek and the Daly River

All that land in the Northern Territory of Australia being the beds and banks of Hayes Creek and of the Daly River from the north-eastern boundary of Northern Territory Portion 3039 to the eastern boundary of Northern Territory Portion 3434.

Daly River Region II LC

(ii) Beds and Banks of the Daly River

All that land in the Northern Territory of Australia being Northern Territory Portion 4303.

(iii) Beds and Banks of the Daly River

All that land in the Northern Territory of Australia being the beds and banks of the Daly River adjacent to Northern Territory Portion 3434.

152. A complete list of the members of the Labarganyan, Wagiman and Kamu claimants is annexed to this Report as Annexure F.

4. DETRIMENT AND PATTERNS OF LAND USAGE

153. Section 50(3)(b) of the ALRA requires the Commissioner when reporting to the Minister and to the Administrator to comment on the detriment to persons or communities including other Aboriginal groups that might result if the claim were acceded to either in whole or in part. Section 50(3)(c) similarly requires the Commissioner to comment on the effect which acceding to the claim either in whole or in part would have on existing patterns of land usage in the region. This section of the Report addresses those matters.
154. While some of the detriment asserted is specific to a particular land claim area, much of it is general in nature and covers each of the claim areas. Therefore, I will address detriment for each of the claim areas together and specify as required.
155. In relation to the willingness of claimants to negotiate access arrangements, I adopt my approach from the *Woolner/Mary River Region Land Claim Report* that:
- traditional Aboriginal owners are not to be assumed to be resistant to accommodating or diminishing asserted detriment, including by agreement making on reasonable terms. There is obviously scope for different perspectives on what is or may be reasonable. There is no reason, in the absence of specific evidence, to expect the traditional owners of the claimed land in this claim to be resistant to such arrangements.

4.1. FISHING

156. Many submissions in respect of fishing were received in this Inquiry. These can be broadly characterised as falling into two categories: recreational fishing and commercial fishing.

4.1.1. Recreational Fishing

157. The principal submissions on the subject of detriment which might be occasioned to recreational fishers were received from AFANT and the Northern Territory, both through written submissions and other evidence. AFANT's evidence, aside from its written submissions, included statements from Mr David Ciaravolo, Chief Executive Officer of AFANT, Mr Warren de With, president of AFANT and proprietor of Rod and Rifle Tackleworld store in Katherine, Mr Kevin Thomas, owner of Angler & Camping World store in Darwin, Ms Ashlee King, a resident of Girraween and a fisher, Ms Megan Brown, an AFANT member and a fisher, and Ms Paige Watteau, a resident of Howard Springs and a fisher.
158. There were a significant number of assertions as to social detriment primarily due to the potential disruption to recreational fishing in the claim areas that might result from a grant and subsequent closure of access to those areas by the traditional owners. Social detriment raised in each of the statements included loss of access to unique and relatively safe fishing spots and the impact on locals' quality of life.
159. Several statements raised the remoteness of fishing spots within the claim areas and the special equipment, such as flatbottomed boats, required to access them. Mr de With gave evidence of the high degree of planning and preparation that is required to

access some of the claim areas (Transcript 9 February 2022 p 94), which meant that some of the fishing spots discussed are only visited by more “adventurous types”.

160. The statements of Mr Ciaravolo and Mr de With both posited the issue of ‘cumulative’ detriment of the loss of fishing areas with adjacent camping in the region due to limited access to other sites that can only be accessed via private land.
161. As with other land claims, the topic of permits was raised in the submissions of both the Northern Territory and AFANT. It is not necessary for me to recount in detail the content of these submissions, but common themes included uncertainty surrounding the willingness of claimants to agree to a permit system, the terms of a permit system if one were to be introduced and the possible length of an agreement. In his statement, Mr Ciaravolo proposed that detriment could be resolved by reaching an agreement before a grant of land, comprised of either a long-term access agreement or a free or low-cost permit system (Exhibit R3 at [44]).
162. In response, the claimants, in their Submissions on Detriment and Patterns of Land Use (Claimants Detriment Submissions) contended that given the small numbers of recreational fishers who access the area, the potential detriment is not significant [50] but that any detriment that did exist could be resolved by the grant of permits via the Northern Land Council’s Permit Management System [72].
163. One recreational fisher, Mr Kevin Thomas, verbally accepted during the course of the hearings that a permit system similar to that proposed by the Northern Land Council would likely satisfy their concerns (Transcript 9 February 2022 p 84). Mr Ciaravolo also gave evidence that of the people he spoke to who fished the area, they would be willing to obtain permits to access the claim areas if it was easy to do (Transcript 9 February 2022 p 120).
164. Given the relatively small number of recreational fishers who access the claim area, the Minister might conclude that any detriment to recreational fishers would not be significant if the claimed areas were to be granted to the traditional Aboriginal owners. In addition, if the Minister is disposed to grant the land claimed, the detriment to recreational fishers by potentially losing access to the claim area for fishing might be seen to be appropriately accommodated if there is in place (as the Northern Land Council proposes) an easily accessible and sensible permit system for recreational fishers within the general area of the Northern Territory for which the Northern Land Council is responsible.

4.1.2. Commercial Fishing

165. Submissions in respect of detriment that might be occasioned to commercial fishing interests in the claim areas were received from the Northern Territory, including through Mr William Bowman, Program Leader, Wildstock Fisheries, Department of Industry, Tourism and Trade.
166. Commercial fishing within the claim areas is minimal, with harvest numbers in 2020/2021 reaching only 113 (Transcript 8 February 2022 p 54), and is limited to the Aquarium Fishery, which is a designated area of almost all the water in the Northern Territory out into the Timor Sea. The sole licensed operator within the fishery since

2016, Aquagreen, did not make a submission on detriment. The Northern Territory submitted that there are specialised and difficult to find species found in the claim areas, however, it was not suggested that these species are found only in the claim areas: see Northern Territory Detriment Submissions at [22].

167. In the circumstances, the Minister might well conclude that no detriment of much significance would be occasioned to the interests of commercial fishers in relation to the claim areas should a grant be made by the Minister.
168. For the detriment that may exist, Mr Bowman and the Northern Territory accepted that it would be substantially alleviated through access arrangements: see Northern Territory Detriment Submissions at [23]; Transcript 8 February 2022 p 56. In any event, the very limited commercial interests in relation to the claim areas could readily be met by the traditional Aboriginal owners making such access arrangements for them as the traditional owners choose to negotiate. In the *Report on Review of Detriment: Aboriginal land claims recommended for grant but not yet finalised*, provided to the Minister on 24 December 2018 (the Detriment Report), I observed that “it is reasonable to expect that there would be payment for commercial use of privately-owned Aboriginal land, even where commercial users do not currently pay for the use of the relevant Crown land” [6.2.37].

4.1.3. Fisheries Management

169. Only part of the Daly River Region LC, namely the area specified as Land Claim No. 172(i), is within a Fish Management Zone, where possession limits, size limits, personal limits and vessel limits exist for some types of fish caught within the zone (Transcript 8 February 2022 p 39). No submissions on detriment were made in relation to the Fish Management Zone. The Minister can confidently conclude that there is no relevant detriment in this respect which might impeded the grant of the claim areas by reason of any Fisheries Management concerns.

4.2. PASTORAL INTERESTS

170. There are several pastoral interests which abut the claim areas. These are Fergusson River Station (owned by I&L and located adjacent to Land Claim 172(i)), Douglas West, Tipperary East and Tipperary West Stations (run as an integrated operation and owned by TGS and located adjacent to Land Claims 183(i) and 235(ii)), Claravale Station and Claravale Farm (owned by Top End Pastoral Company (TEPC) and located adjacent to Land Claim 172(i)). Fergusson River Station is operated pursuant to a Crown Perpetual Lease, while Douglas West, Tipperary East, Tipperary West and Claravale stations are operated under pastoral leases governed by the *Pastoral Land Act 1992* (NT) (*Pastoral Land Act*).
171. Evidence of a more general nature was also received from Mr Luis Jose Casimiro de Rocha, Executive Director of the Rangelands Division at the Department of Environment and Natural Resources at the Northern Territory Government, in the form of a statement dated 17 September 2021 and oral evidence given on 10 February 2022.

172. Despite indicating an initial intention to be involved as detriment parties in the land claims, neither the Northern Territory Cattlemen's Association nor YK Australia Brother Pty Ltd as the owner/operator of Florina Station provided submissions pertaining to detriment.

4.2.1. Pastoral Operations

173. There were several submissions regarding detriment that might be occasioned to pastoralists' commercial operations. I&L, TGS and TEPC utilise the claim areas in similar ways, and as such there were many areas of common concern, principally in relation to loss of access to Crown land adjacent to the respective leases should a grant be made. Such concerns included loss of rights in respect of water usage and access pursuant to the *Water Act 1992* (NT) (*Water Act*), biosecurity concerns as a result of the inability to manage feral animals and weeds, and financial costs of erecting fencing to prevent the need for unauthorised stock retrieval. The latter was said by all parties to constitute significant detriment as the flood-prone nature of the claim areas would require that fences be frequently replaced.

174. Both TEPC and I&L made submissions regarding the intended movement of cattle across the Daly River Region LC area 172(i) (that being the Fergusson River) between Claravale and Fergusson River Stations. Movement across the river was said to be crucial to agistment opportunities that if lost would result in additional mustering and transportation costs to move the cattle between stations: see, e.g., Submission on Detriment Filed by TEPC (TEPC Detriment Submission) at [9]; Submission on Detriment filed by I&L (I&L Detriment Submission) at [25]. I&L also submitted that the loss of access would significantly reduce the economic feasibility of agistment, if not eliminate it. However, during cross-examination it was made clear that owners of the two stations have not proceeded to make any agistment arrangements following notice of the land claims (Transcript 10 February 2022 p 220).

175. I will address the common concerns of pastoralists in turn.

176. Firstly, as to the common assertion of loss of access to water, the claimants accepted that restriction of current rights of water usage under the *Water Act* is a relevant detriment within the meaning of the ALRA, and that such detriment would be significant. However, the claimants submitted that any loss of access to surface water could be ameliorated by the availability of ground water: Claimants Detriment Submissions at [102]. The claimant's submission relied on the statement of Mr Paul Burke, Chief Executive Officer of the NTFA, who gave evidence that agricultural and water research feasibility studies have assessed development of the Douglas Daly region through the use of ground water as economically viable: Exhibit R10 at [10]-[13].

177. During the hearing Mr David Connolly, General Manager of TGS, confirmed that TGS have 19 bores, which have been upgraded during his management (Transcript 4 March 2022 p 5). However, Mr Connolly made it clear that 19 bores cannot water 45,000 head of cattle and that loss of access to surface water without drilling additional bores would result in the need to destock a significant portion of TGS's cattle (Transcript 4 March 2022 pp 8-9). Both TGS and I&L provided cost estimates for the drilling of new bores, though neither provided any detailed evidence or quotes to support the amounts suggested.

178. Notwithstanding the availability of ground water, the claimants indicated willingness to negotiate arrangements to facilitate the continuation of existing access to surface water on reasonable terms.
179. Secondly, similar financial concerns arose in respect of needs for fencing. Financial detriment may result for pastoral operators should the need arise to build fences between the beds and banks of rivers within the claim areas and land that is subject to pastoral operations. As with that for drilling additional bores, the cost estimates for fencing ranged between those who gave evidence and none were able to provide a quote or detailed basis for their estimates. It is therefore difficult to determine the extent of possible financial detriment. However, the claimants are, on the evidence, willing to negotiate agreements such that fencing is not required.
180. Thirdly, the issue of weed and feral animal management which relies on access to adjoining Crown land is somewhat less straight forward. It was clarified in the course of the hearing that there is no obligation under the *Pastoral Land Act* for lessees to undertake biosecurity activities, though it is generally a condition of the leases themselves. Nevertheless, it remains that the land upon which these activities take place often includes unalienated Crown land adjacent to pastoral leases, and that as such, it is not clear that there is an explicit legal basis upon which such access is founded. However, again, the claimants are willing to allow for these activities to continue to be carried out via appropriate access agreements.
181. Turning now to the movement of cattle across Daly River Region LC 172(i). As I noted above, TEPC and I&L have not pursued an agistment arrangement in the face of the claim. However both asserted financial detriment in the situation that they are unable to carry out their planned agistment. In response, the claimants submitted that movement of cattle across the claim area for this purpose is commercial in nature and as such is prohibited by the Northern Territory's Usage of Vacant Crown Land Policy. They also submitted that the 'corrosive' effect of crossing cattle over the claim area would be an offence under section 13 of the *Water Act*, that being altering the beds and banks of a waterway without permission: Claimants Detriment Submissions at [116]. I do not need to finally decide the question of legality of this type of movement of cattle. The claimants again indicated readiness to negotiate an agreement to authorise the use of the claim area for this purpose.
182. The potential impediments to the routine operations of pastoral lessees is clearly a significant detriment if it were the case that all access to the present claim areas were to come to an end. Access to what is presently unalienated Crown land is commonplace for access to the river water, and for the biological control of weeds, and any obligation to fence the waterways at the top of the banks of the rivers would be expensive and require persistent and expensive maintenance. Given the claimants willingness to negotiate, the Minister might require to be satisfied that appropriate access arrangements are in place (with the Northern Land Council on behalf of the traditional owners), or alternatively to be satisfied that such an agreement would be reached with the traditional owners upon appropriate terms once the claim areas were granted. In the Detriment Report at section 6.7 these matters are discussed in some detail. The Minister might be influenced by the proposal then put forward by the Northern Land Council in respect of routine pastoral activities for the grant of a permanent licence to pastoral lease holders to avoid or minimise the detriment to

them: see at sections 6.7.18 to 6.7.20. Such a proposal, if implemented, would clearly protect pastoral lease holders from impairment to routine pastoral activities. The benefits of pastoral activities flowing from transfer of cattle across the (presently) unalienated Crown land is not so clear. The entitlement of the pastoral lessee to engage in such activities is not clear. It has not yet been exercised. It has some clear potentially detrimental consequences to the relevant waterway. The Minister, in respect of that proposed activity, might consider that it is a matter best left to the traditional owners after a grant of the claim areas to negotiate such access/passage rights as they determine. After any grant, there is no reason to think that they would not approach such an issue with sensible commercial and environmental considerations as they consider appropriate.

4.2.2. Diversification Activities

183. TEPC made submissions in respect of financial detriment arising from any limitations on the generation of alternative sources of income by pastoralists: see TEPC Detriment Submission at [9]. Such activities, which in the matter at hand are tourism initiatives, can be termed ‘pastoral diversification’.
184. Addressing the question of legal entitlement, the assertion that TEPC would suffer detriment through an inability to access unalienated Crown land for diversification purposes necessitates an examination of whether any rights to do so are in fact held. This is relevant to the question of whether any detriment, in the meaning of section 50(3) of the ALRA, arises: see e.g., *Woolner / Mary River Region Land Claim Report* [287]–[290]; *Warnarrwarnarr-Barranyi (Borrooloola No. 2) Land Claim (No. 30) Report No. 49* (March 1996) at [6.1.1]–[6.1.7] per Justice Gray as Commissioner.
185. TEPC operate Claravale Station pursuant to a pastoral lease governed by the *Pastoral Land Act*. It was contended that detriment would be occasioned to TEPC as a result of the impact of its plans to run Claravale Station and Claravale Farm as a tourist destination. However, section 85A(1) of that Act provides that a permit must be acquired for use of a pastoral lease that is a ‘non-pastoral purpose’.
186. During the course of the hearing it became clear that TEPC does not yet hold a permit or license to operate the properties for a ‘non-pastoral purpose’ (Transcript 10 March 2022 p 205).
187. Therefore, I do not find that any detriment would be suffered by TEPC in relation to diversification activities if the land were to be granted as TEPC has no present right to undertake the activities they are referring to. Of course, it is possible for TEPC to identify the potential loss of opportunity as a detriment, but if so it is speculative detriment only and one which the Minister might consider should not provide any reason for declining to grant the land to its traditional Aboriginal owners. Otherwise, it might be thought that the ALRA prioritises speculative commercial activities over the interests of the traditional owners; it clearly does not do so. In any case, the claimants have indicated their willingness to consider negotiating an agreement with TEPC to use the claim area for such a purpose following a grant of land. That would recognise their traditional ownership and empower them to decide whether and on what terms such an activity might be carried out.

4.2.3. Lifestyle Detriment

188. Finally, I must consider the detriment to be occasioned to members of the families and staff of pastoral operators in relation to recreational activities engaged in by them on Crown land abutting the pastoral leases. I&L, TGS and TEPC gave significant weight to this point in their submissions.
189. In particular, it was said that the claim areas are a key tool for recruitment of staff and that access to the claim areas for recreational activities, such as fishing, boating and camping, are necessary to ensure the 'health and wellbeing' of station occupants due to the remote locations: see Joint Statement of Michael Simmich and Clayton Coleman at [37].
190. This was emphasised again in the Reply Submissions on Detriment Filed by I&L (I&L Detriment Reply Submissions) and Reply Submissions on Detriment Filed by the Tipperary Group of Stations (TGS Detriment Reply Submissions), and to a lesser extent the Submission in Reply for Top End Pastoral Company (TEPC Detriment Reply Submissions). Both I&L and TGS made submissions, at [31] and [41] respectively, that non-water based recreational activities such as bird watching and camping are not substitutes for the loss of amenity that would be occasioned if recreational access to the claim areas was lost, as proposed in the Claimants' Detriment Submissions at [120].
191. TEPC submitted that the connection to water, and presumably to the claim areas, felt by the claimants is similarly felt by the occupants of TEPC stations and that to curtail access to the claim area would thus result in what could be described as spiritual detriment: see TEPC Detriment Reply Submissions at [4]. This submission ignores the beneficial purpose of the ALRA, which is to facilitate the grant of unalienated Crown land to its traditional owners. As I found in the Detriment Report, to accept that claims of detriment in such circumstances would mean that the interests of those asserting detriment should displace the recommendations of the Commissioner that a grant of land should be made to the traditional owners. This approach amounts to little more than to reflect the attitude of many of the first European settlers.
192. The *Crown Lands Act 1992* (NT) permits use of Crown land by the public for 'low impact activities' which, as the Northern Territory noted, includes most recreational activities: Northern Territory Detriment Submissions at [37]. It can therefore be said that detriment would be occasioned to the family members and staff (and their guests) of pastoral lessees if they could no longer camp, boat or fish from the beds and banks of the claim areas should the lands be granted to a land trust and access to them prevented by the traditional owners. However, the claimants have indicated their willingness to enter into agreements so that these activities may continue: Claimants' Detriment Submissions at [121]. The Minister might therefore consider that any detriment in this area will be addressed, probably in conjunction with the arrangement for continuance of the normal pastoral activities.

4.3. TOURISM

193. Submissions and evidence in relation to tourism in the claim areas were received from the Northern Territory, including from Ms Valerie Smith, Acting Executive Director Industry Development, Tourism NT, Department of Industry Tourism and Trade, and from one tourism operator. The Northern Territory also made submissions relating to fishing tour operators (FTOs) and conservations areas. I will first address the concerns of tourism operators, then those submissions pertaining to FTOs and conservation areas.
194. Though the Northern Territory Detriment Submissions at [9] noted 25 tourism operators which may have an interest in the claim areas, submissions in relation to tourism were only received from Mount Nancar Wilderness Retreat (operated by Mr Peter Hollowood and located on NTP 4711, which abuts Daly River Region II LC area 235(ii)). Mr Hollowood's principal concern was any impact to his business as a result of an inability for tourists to access the claim area upon which his business relies. Mr Hollowood gave evidence that his business is largely dependent on access to the claim area, with the river being the 'primary attraction' within the district (Transcript 8 February 2022 p 66). He further submitted that access to the claim area is required for domestic use as his house sits on the boundary of LC 235(ii) (Transcript 8 February 2022 p 63).
195. As is Mr Hollowood's current practise, he must use the claim area in order to access the river for personal or tourism purposes. However, Mr Hollowood did not provide any evidence of an agreement or licence with the Northern Territory, without which strictly speaking he has no legal entitlement to use the claim area for commercial purposes. I have addressed the issue of legal entitlement above at [184].
196. Additionally, during the hearing Mr Hollowood gave evidence of an informal arrangement between himself and the Parks and Wildlife Commission for access to the Daly River (Mount Nancar) Conservation Area for caretaker services (Transcript 8 February 2022 p 65). Mr Hollowood did not provide any evidence in support of this agreement. The Minister might consider that the type of business operation conducted by Mr Hollowood is the type about which the traditional Aboriginal owners should have a say. If his business involved access to and use of the claim areas, or some of them, the Minister might therefore consider it appropriate to leave it to the traditional Aboriginal owners (or the Northern Land Council on their behalf up to the time of any grant of the claim areas) to negotiate about the terms for such access with Mr Hollowood. There is nothing to suggest that they would not adopt a reasonable attitude in such negotiations.
197. I now turn to FTOs.
198. In his witness statement, Mr Bowman claimed that FTO activity occurs in claim areas for each of the three subject land claims: 172(iv), 183(i) and 235(ii)&(iii): Exhibit NT6 at [26]. However, it became apparent in the course of the hearing that no FTOs have operated in the claim areas since 2019, when one FTO held a licence for the claim areas (Transcript 8 February 2022 p 48). Though this does not mean that FTOs will not operate in the claim areas in the future, the Northern Territory submitted that the claim areas do not reflect a significant proportion of the commercial recreational fishing industry in the Northern Territory: see Northern Territory Detriment Submissions at [20].

199. In relation to possible future FTOs in the claim areas. I accept the claimant's submission that potential loss or restriction of future use of the claim areas for fishing tour activity does not constitute detriment. The preclusion of the rights of traditional owners to accommodate speculative future commercial use of the claim areas is not consistent with the purpose the ALRA.
200. I now turn to the Conservation Areas.
201. The Daly River (Mount Nancar) Conservation Area and the Douglas River / Daly River Esplanade Conservation Area are adjacent to the claim areas and are used as informal camping areas by visitors. It was submitted by the Northern Territory that due to the small number of visitors to the Conservation Areas, access arrangements would alleviate any detriment, but that a permit system may take away from the sense of adventure sought by some visitors: see Northern Territory Detriment Submissions at [14]. I note that visitors wishing to camp at the Douglas River / Daly River Esplanade Conservation Area must currently book online through the Northern Territory Parks Booking System and pay a fee. I cannot make out any difference to the visitors' experience if a similar permission was sought through the Northern Land Council's Permit Management System, once it is in force.
202. In response to each of the claimed detriments above, the claimants submitted that they are open to negotiating access arrangements for tourism businesses in the region: see Claimants Detriment Submissions at [187].
203. In those circumstances, the Minister might consider that any such detriment caused by a grant of the claim areas, such as for Mount Nancar Wilderness Retreat, would be alleviated through access arrangements with the claimants either under such a permit system or through direct negotiation.

4.4. MINERAL AND PETROLEUM TITLES

204. The Northern Territory provided statements relating to effects on mineral and petroleum titles in the claim areas, respectively by Ms Denise Turnbull, Director Mineral Titles in the Department of Industry, Trade and Tourism, and Ms Christine Cakebread, Director Petroleum Tenure in the Energy Development Branch of the Department of Industry, Trade, and Tourism. The statements asserted detriment on the grounds that if the land was granted, any future applications for a grant of mineral titles, petroleum interests or pipeline licences would be subject to the provisions under Part IV of the ALRA.
205. In its detriment submissions, however, the Northern Territory stated that, consistent with prevailing approaches taken by Commissioners, statutory compliance is not to be regarded as detriment and therefore no detriment is alleged in respect of mineral and petroleum titles. That is, the obligation to follow a prescribed statutory procedure is not itself a relevant detriment.
206. However, I do note that there are a number of existing petroleum interests and a single mineral title in or adjacent to the claim areas.

207. A summary of detriment was also received from the APA Group, the operator, manager and part owner of the Bonaparte Gas Pipeline, which runs through Daly River Region II LC 235(ii), as well as a statement from Mr Henry Dupal, Manager of Operation and Maintenance Northern Territory for the APA Group. However, in its submission dated 7 October 2022, the APA Group disclaimed any detriment previously asserted due to an existing agreement pursuant to section 11A of the ALRA between a partially owned subsidiary of the APA Group and the Northern Land Council and other parties.
208. Accordingly, I do not consider that there is any relevant detriment. APA and the Northern Land Council have already agreed on the necessary access for the current activities of APA. In the event of a grant of the claimed areas, Part IV of the ALRA will then govern the outcome of any future application for an exploration licence or for a mining interest.

4.5. WATER GAUGES

209. Evidence in relation to water management was received from Ms Amy Dysart, Executive Director in the Water Resources Division of the Department of Environment, Parks and Water Security. Ms Dysart asserted that detriment would be suffered by the Department should contractors not be able to access the area for water monitoring, as well as for maintenance of related infrastructure.
210. The Northern Territory's submission made it clear that despite there being a substantial number of current and historic water gauging stations in the claim areas, section 20 of the *Water Act* authorised the Controller of Water Resources to enter and remain on vacant land for water investigation, including the construction and maintenance of gauging stations. As such, the only effect of a grant of Aboriginal land in the claim areas is that the Controller will need to give written notice to the claimants for these actions. That is a minimal detriment. Subject to that procedure, access will be available for that purpose of the *Water Act*.
211. Therefore, I do not consider that there is any significant detriment in relation to water gauges, such as might trouble the Minister in the decision whether to make a grant of the claim areas.

4.6. ROADS

212. Two crossings were raised in the Northern Territory's Detriment Submissions and in various detriment statements. They are Beeboom Crossing and Douglas River Crossing, both of which are within the area of the Douglas/Daly River Region LC area 183(i) and are accessible only by private roads. Beeboom Crossing is accessible through TGS properties to the north and through Fish River Station to the south. Douglas River Crossing is accessible through TGS properties to the north and through private roads and tracks to the south.
213. Under sections 11(3) and 12(3) of the ALRA, a "road over which the public has right of way" must be excluded from grant. The question at hand, therefore, is whether the public have right of way over the crossings.

214. In their Detriment Submissions, the claimants gave three primary reasons as to why the crossings are not roads over which the public has right of way. Firstly, at [153], that the right conferred by section 79 of the *Pastoral Land Act* extends only to the water itself and not to crossings used to access the water. Secondly, at [154], that the requirement to obtain permission from TGS or Fish River Station to enter their properties is inconsistent with a public right of way. Thirdly, at [158]-[159], that the proportion of commercial use compared to public use of the crossings indicates that the crossings are not public in nature. I will address each of these in turn.
215. Beginning with section 79 of the *Pastoral Land Act*, the claimants submitted that the right conferred by the section, that being access to waterways on or surrounded by pastoral land and land within the prescribed distance of those waters, extends only to the water and not to the crossings. The Northern Territory, in its Reply Submissions on Detriment, submitted that the claimants' reading of section 79 of the *Pastoral Land Act* is unnecessarily narrow and that when considering the purpose of the section, it must be accepted as including access in order to reach the water. It is my opinion that this is the common sense reading of the section.
216. Turning now to the claimant's argument regarding permission, the requirement to seek permission was discussed in the course of the hearing and Mr David Connolly, General Manager of TGS, gave evidence that anyone wanting to access Beeboom Crossing must first seek permission from TGS to enter their property and must then sign in upon arrival at the station compound before proceeding to the crossing (Transcript 4 March 2022 p 14). In cross-examination Mr Connolly confirmed that permission is not always granted and that TGS retains the power to deny access (Transcript 4 March 2022 p 15). It can be inferred that the same access requests are required for anyone wanting to pass through TGS properties to access Douglas River Crossing.
217. TGS later clarified that permission is rarely refused and only when there is well-founded belief that a person intends to go elsewhere on TGS other than Beeboom Crossing or the road used to access it: see TGS Detriment Reply Submissions at [14].
218. As to the submission that a greater percentage of pastoral/commercial usage compared to public use indicates that the public has no right of way, in my view it is irrelevant what proportion of the crossing's users are members of the public if the right exists.
219. In considering whether the right exists, I note the definition submitted by TGS of a road that is "open to or used by the public", being a term that is analogous with the road over which the public has right of way: see TGS Detriment Reply Submissions at [5]-[7]. The definition from *Chellingworth v Territory Insurance Office* (1984) 70 FLR 22 found that a road may be "open to or used by the public" whether it is a dedicated public road or is privately owned and despite whether or not it is physically open, in that there are no gates or barriers obstructing public entrance. In short, a road may still be one over which the public have right of way even when the road is privately owned and is accessible only via private property, and when the 'road' has gates at certain points. Of course there is no logical corollary that all private roads, or roads with gate closures, are thereby roads over which the public has right of way. The argument by the Northern Territory was not put that way.

220. Section 11 of the ALRA provides the power for the Minister (subject to procedural prescriptions) to determine in writing that a grant of land recommended by the Commissioner be made to a Land Trust on behalf of the traditional Aboriginal owners. Section 11(3) says that the term 'land' in the section does not include any land 'over which the public has a right of way'. Section 12 complements that step by providing for the Governor-General to make the grant of the land. Section 12(3) provides that such a deed of grant must identify and exclude any land of which there is a road over which the public has a right of way.
221. On the evidence, I do not consider that the two road crossings are roads over which the public has a right of way. It is clear enough that the public do not have a right of access to them across the TGS leased area. The public are not entitled as a right to cross the pastoral lease areas held by TGS. No term of the relevant pastoral leases was suggested as providing such a right. The conduct of TGS as retaining the entitlement to check and on occasion to prevent users or proposed users to cross its leases areas to access the crossings does not support such a right.
222. *Chellingworth v Territory Insurance Office* says, such a right may exist even where it involves opening and closing gates, but the formulation there for eligibility is a little wider than the expression in the ALRA. However, the relevant area is the actual crossing of what is presently unalienated Crown land, not the crossing of the TGS leased area. Once TGS permits crossing its leased area, as it more or less routinely does, the public when they get to the particular claim areas where the two crossings exist do have the 'right' to traverse the river crossings, but only in the same way as they presently have access to and the 'right' to use unalienated Crown land generally to the extent that such access exists. It has never been suggested that such a 'right' should of itself be an impediment to the grant of unalienated Crown land to its traditional Aboriginal owners under the ALRA.
223. Consequently, I consider that any decision by the Minister to grant the claimed areas on the recommendation made in this Report need not exclude the two crossings identified.
224. It is now the case that TGS 'maintains' the crossings at its own expense and no doubt for its own purposes. The public who are permitted (without a formal right) to use the roadway on the pastoral lease area benefit from that. But, as the public have no right of way over the pastoral land, in the absence of evidence that prior to the lease the public had access to the crossings via a roadway which then traversed the river at those two crossing points, I do not consider that, on the evidence, there is a public right of way over those crossings beyond the existence of the public 'right' to use and enjoy unalienated Crown land generally.
225. That does not mean that there will be no circumstances in which a relevant detriment might be shown by the removal of a commonly exercised passage across Aboriginal land, but that was not the basis of the present contention. In the event that the Minister decides to grant the claimed areas, including the two crossings, clearly there will be a significant detriment to those pastoralists who routinely use them for pastoral purposes. I have noted that detriment claim above. The Minister may consider, at the time of deciding whether to make a grant of the claimed areas, that subject to appropriate controls over river usage for ecological purposes, the pastoral

lease holders should negotiate with the traditional Aboriginal owners (or the Northern Land Council before any such grant) to secure the right to use the two crossings, and at that time the Minister might also consider whether that access might expressly include members of the public who are permitted to traverse the pastoral lease areas on the internal roads of those lease areas.

4.7. AGRICULTURAL INTERESTS

226. The NTFA gave evidence relating to the effects of a grant of Aboriginal land on the Douglas Daly Stage II Development (DDS II), a proposed agricultural and horticultural development strategy in the claim areas. The primary concern was in respect of financial detriment arising out of the inability to carry out the strategy. Central to the success of the strategy is access to water and the development of a new road network linking properties along the Douglas and Daly Rivers, including a stretch from Ooloo Road to the Edith Farm Road area and crossing the Fergusson River at Flat Rock, which is within Daly River Region LC area 172(i).
227. NTFA in its written submissions of 21 September 2022 (NTFA Detriment Submissions) argued at [19] that a grant of land relating to Daly River Region LC area 172(i) without accommodation being made for the proposed road network places the DDS II at risk. However, Mr Paul Burke, Chief Executive Officer of the NTFA, gave evidence that the NTFA and other proponents of the DDS II were aware of the land claims when they began work on the strategy and that the plans were progressed with the knowledge that the land claims would be adjudicated on (Transcript 10 February 2022 pp 235-236).
228. Though it is likely that a grant of land would cause detriment to the execution of the DDS II, Mr Burke gave evidence that the NTFA was ready, willing and able to engage with traditional owners as required (Transcript 10 February 2022 p 238) and the claimants have indicated that any detriment could be accommodated by agreement: Claimants Detriment Submissions at [140]. In those circumstances, it may be appropriate for the Minister to take the view that either the Northern Land Council on behalf of the traditional owners up to the time of any grant, or the traditional owners through the Land Trust, would be likely to reach agreement on the term on which the DDS II would be able to proceed, so that any real detriment would be addressed in an appropriate way.

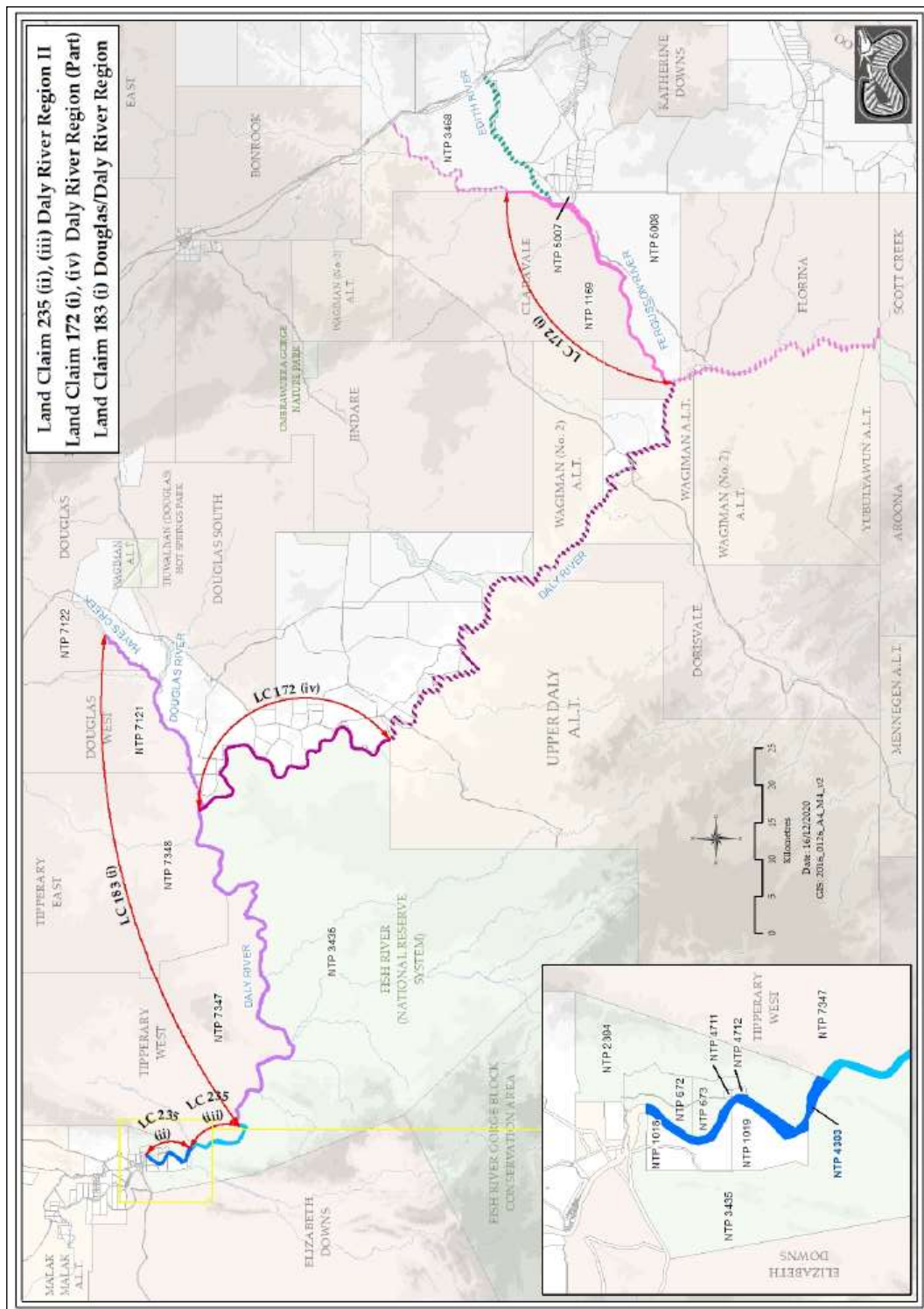
4.8. EXISTING AND PROPOSED PATTERNS OF LAND USAGE

229. As noted earlier in this report, the topic as to the effect which acceding to the claims either in whole or in part would have on the existing or proposed patterns of land usage in the region is prescribed as a relevant topic, distinct from detriment, by section 50(3)(c) of the ALRA. There was no real focus on the concept of land usage, as it is used there. With the exception of pastoral land usage – where that usage might be significantly impaired or altered if holders of pastoral leases cannot access the beds and banks of the watercourses in the claim areas – it was not said that the claim areas would be put to different existing usage than if the land claims were not acceded to.

5. CONCLUSION

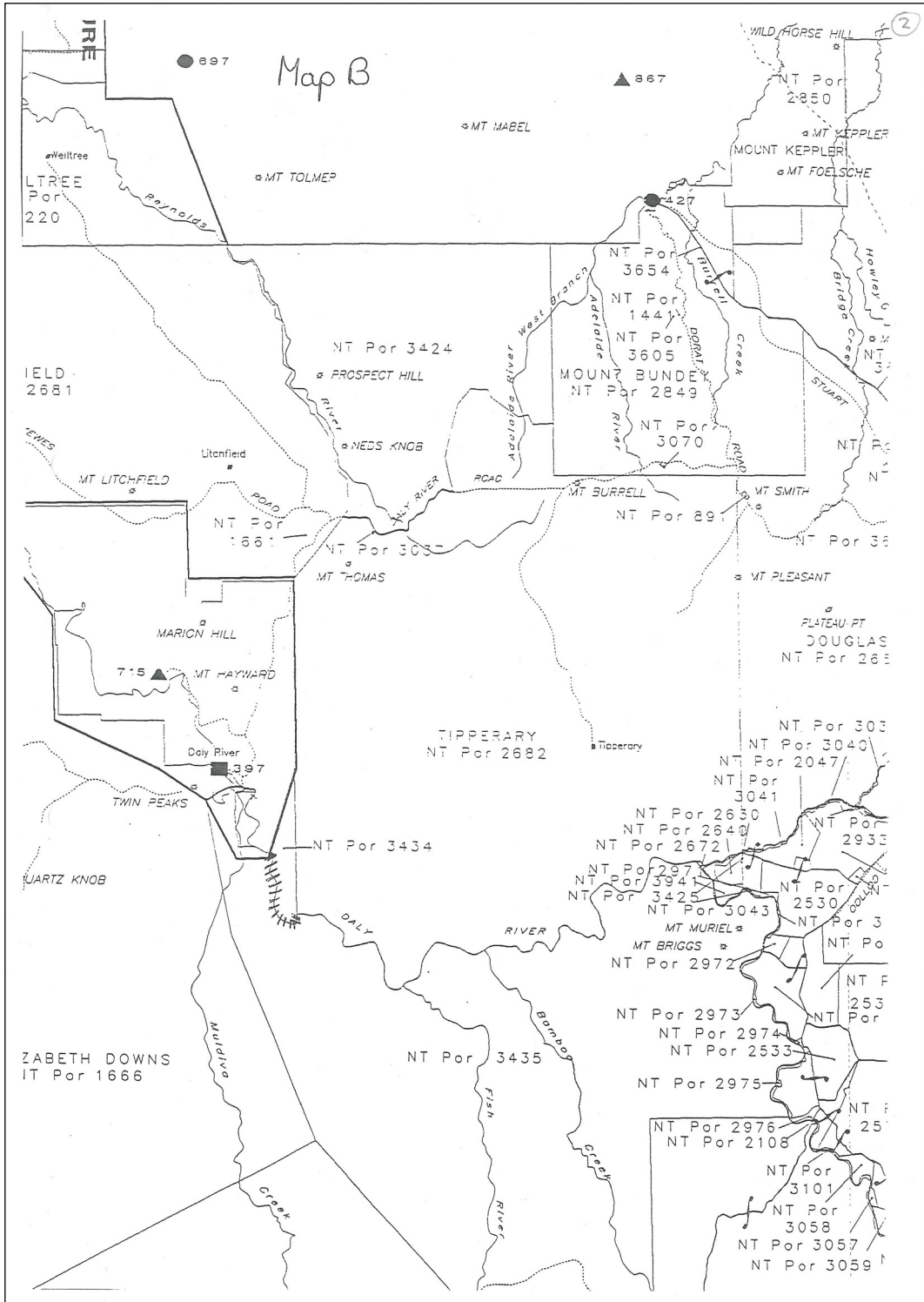
230. In accordance with my functions under section 50 of the ALRA, I have given my findings earlier in this Report that the Labarganyan, Wagiman and Kamu claimants are the traditional Aboriginal owners of the claim areas.
231. The evidence shows that each of the claim groups constitutes a local descent group within the meaning of the ALRA. That is, each of the claim groups has common spiritual affiliations to sites on the land that place that group under a primary spiritual responsibility for the relevant sites and land. Each of the claim groups is also entitled by Aboriginal tradition to forage as of right over that land.
232. For these reasons, I recommend that the whole of the land claimed in each of the Daly River Region LC, Douglas/Daly River Region LC and Daly River Region II LC, described at [47]-[48] and [56] in this Report, be granted to a Land Trust or Land Trusts in accordance with sections 11 and 12 of the ALRA, for the benefit of the Aboriginal people entitled by Aboriginal tradition to the use or occupation of those areas of land. A list of those persons is contained at Annexure F (Group A, Group B and Group C) to this Report. It is not intended to be an exhaustive or static list: that is a matter for the Northern Land Council.
233. Pursuant to sections 50(3) and 50(3)(a) of the ALRA, I have had regard to and commented upon the strength of the traditional attachment of the claimants to the land claimed as well as the number of Aboriginal people who might benefit from the Daly River Region LC, Douglas/Daly River Region LC and Daly River Region II LC being acceded to. On the evidence, it is beyond doubt that that attachment, having survived a difficult set of historical circumstances, remains strong. There are also a significant number of other Aboriginal persons who would be advantaged by a grant of land.
234. I have also commented upon submissions relating to sections 50(3)(b) and 50(3)(c), that is, matters of detriment and effects on patterns of land usage. In accordance with established principles, it is for the Minister to consider those matters in deciding whether to make a grant of land trust as a result of this report.
235. For the sake of completeness, I again note that there is no need for me to comment upon sections 50(3)(d) and 50(4) in respect of either of these claims.

ANNEXURE A: MAP OF DALY RIVER REGION LC; DOUGLAS/DALY RIVER REGION LC; AND DALY RIVER REGION II LC FROM EXHIBIT A5



Source: Northern Land Council

ANNEXURE D: MAP B OF DALY RIVER REGION II LC 235 FROM ORIGINATING APPLICATION



Source: Northern Land Council

ANNEXURE E: PROCEDURAL MATTERS

1. Legal representatives

Party	Name
For the claimants:	Ms M Hunt (Northern Land Council)
For the Northern Territory:	Ms K Gatis (Solicitor for the Northern Territory)

2. Anthropologists

Party	Name
For the claimants:	Mr Jitendra Kumarage
For the Northern Territory:	Mr Paul Burke

3. Notices of Interest

Individual, Group or Entity	Date Received
Remote Area Tree Services Pty Ltd	16 February 2021
Northern Territory Government	8 March 2021
Ms Cassie McDonough	11 March 2021
Ms Paige Watteau	12 March 2021
Mr Peter Hollowood (Mount Nancar Wilderness Retreat)	14 March 2021
J Ah Toy Pty Ltd	16 March 2021
Mr Edward Cheong Ah Toy	16 March 2021
Mr Karl Barz	17 March 2021
Ms Savannah Smith	17 March 2021
Mr Andrian Koenan (Wooliana Tourist Park)	17 March 2021
Northern Territory Cattlemen's Association	18 March 2021
Northern Territory Farmer's Association	18 March 2021
Tipperary Group of Stations	18 March 2021
Amateur Fishermen's Association of the Northern Territory	19 March 2021
Ms Aleyshia McGrigor	19 March 2021
Ms Ashlee King	19 March 2021
Mr Stephen and Ms Briarly Bennett	19 March 2021
Mr Brett Gontscharow	19 March 2021
Ms Brooke Keogh	19 March 2021

Individual, Group or Entity	Date Received
Mr Clinton Ayton	19 March 2021
Ms Georgia Ayton	19 March 2021
Mr Greg Keogh	19 March 2021
Ms Jacquie Corrick	19 March 2021
Ms Jade McGowan	19 March 2021
Ms Jakie Canniford	19 March 2021
Mr Jordan Van Haaren	19 March 2021
Ms Josephine Coleman	19 March 2021
Ms Kaylee Festing	19 March 2021
Mr Mathew Weir	19 March 2021
Mr Thomas Blundell	19 March 2021
Top End Pastoral Company	19 March 2021
YK Australia Brother Pty Ltd	19 March 2021
I & L Pty Ltd	19 March 2021
Mr Ben Kendall	20 March 2021
Mr Jay Corrick	20 March 2021
APA Group	5 August 2021

4. List of witnesses

Interest	Name (Position, Organisation)
Detriment:	Mr Luis Jose Casimiro Da Rocha (Executive Director, Rangelands Division, Department of Environment, Parks and Water Security, Northern Territory Government)
	Mr William McCann Bowman (Program Leader, Wildstock Fisheries, Department of Industry, Tourism and Trade, Northern Territory Government)
	Ms Sharon Jones (Executive Director, Crown Land Estate, Department of Infrastructure, Planning and Logistics, Northern Territory Government)
	Mr David Ciaravolo (Chief Executive Officer, Amateur Fisherman’s Association of the Northern Territory)
	Mr Warren de With (President, Amateur Fisherman’s Association of the Northern Territory)
	Mr Kevin Thomas (Compleat Angler & Camping World)
	Ms Laura Hoare (Director, I & L Pty Ltd)
	Mr Paul Burke (Chief Executive Officer, Northern Territory Farmer’s Association)
	Mr David Connolly (General Manager, Tipperary Group of Stations)
	Mr Michael Ernest Simmich (Director, Top End Pastoral Company)
	Mr Clayton John Coleman (Director, Top End Pastoral Company)

Interest	Name (Position, Organisation)
	Mr Peter Hollowood (Mount Nancar Wilderness Retreat)
	Ms Sharon McAnelly (Northern Land Council)
	Mr Greg Keogh
	Ms Josephine Coleman

5. Exhibits

Exhibit Ref. Tendering party

A	Tendered on behalf of the claimants
NT	Tendered on behalf of the Northern Territory
R	Tendered on behalf of persons or entities claiming detriment

Access to exhibits marked 'R' is restricted by direction of the Aboriginal Land Commissioner

Exhibit No.	Restricted	Title of exhibit
A1	R	Anthropologist's Report prepared on behalf of the Claimants by Jitendra Kumarage, 12 December 2020
A2	R	Claimant's Personal Particulars prepared on behalf of the Claimants by Jitendra Kumarage, 12 December 2020
A3	R	Genealogies prepared on behalf of the Claimants by Jitendra Kumarage, 12 December 2020
A4	R	Site Register prepared on behalf of the Claimants by Jitendra Kumarage, 12 December 2020
A5		Letter from the Northern Land Council dated 3 June 2021 regarding withdrawal of LC 172 areas
A6		Document entitled 'Fishing on the Daly River'
A7		Northern Land Council Map entitled 'Aboriginal Intertidal Waters Access Map NT' dated 24 November 2021
A8		Statement of Sharon McAnelly dated 11 October 2021
A9		Document headed 'Blue Mud Bay Registration'
A10		Map entitled 'Aboriginal Intertidal Waters Access Map – Port Keats'
A11		Document entitled 'Weeds Management Act: Compliance Policy December 2021'
A12		Document entitled 'Usage of Vacant Crown Land Policy'
A13	R	Supplementary Anthropologist's Report prepared on behalf of the Claimants by Jitendra Kumarage, 25 August 2022
A14	R	Affidavit of Michael Foster dated 29 August 2022
A15	R	Affidavit of John Que Noy dated 31 August 2022
A16	R	Affidavit of Margaret Foster dated 1 September 2022

Exhibit No.	Restricted	Title of exhibit
NT1		Three maps showing indicative boundary in relation in LC 172(i), sheet 1 of 3, sheet 2 of 3 and sheet 3 of 3
NT2		Four sheets of paper headed 'Indicative Boundaries in relation to Land Claim 172(iv)'
NT3		Set of six sheets headed 'Indicative Boundaries in relation to Land Claim 183(i)'
NT4		Set of three sheets headed 'Indicative Boundaries in relation to Land Claims 235(ii) and (iii)'
MFI NT5 Ex. NT5		Statement of agreed facts concerning the statements of Sally Ann Egan and Valerie Smith
NT6		Statement of William McCann Bowman dated 20 September 2021 excluding paragraphs [16]-[17] and [23]-[24]
NT7		Statement of Amy Dysart dated 20 September 2021
NT8		Statement of Denise Monica Turnbull dated 20 September 2021
NT9		Statement of Christine Lara Cakebread dated 20 September 2021
NT10		Statement of Valerie Smith dated 20 September 2021
NT11		Statement of Luis Jose Casimiro Da Rocha dated 17 September 2021
NT12		Statement of Sally Ann Egan dated 20 September 2021
NT13		Map Described as 'Douglas River / Daly River Esplanade Conservation Area Land Claim 172 (iv) and Land Claim 183(i)'
NT14		Document entitled 'Survey of Recreational Fishing in the Northern Territory 2009-10'
NT15		Extract from a business record of the Northern Territory Government headed 'Total Days Fished NT Resident by Fishing Region by Subregion GP September 2021'
NT16		Statement of Sharon Jones dated 25 February 2022
R1		Statement of Kevin Thomas dated 20 September 2021
R2		Statement of Warren de With dated 20 September 2021
R3		Statement of David Ciaravolo dated 20 September 2021
R4		Statement of Paige Watteau dated 20 September 2021
R5		Statement of Megan Brown dated 20 September 2021
R6		Statement of Ashlee King dated 20 September 2021
R7		Statement of Michael Ernest Simmich and Clayton John Coleman dated 20 September 2021
R8	R	Statement of Laura Hoare dated 20 September 2021
R9		Statement of Henry Dupal dated 3 September 2021
R10		Statement of Paul Burke dated 22 September 2021

Exhibit No.	Restricted	Title of exhibit
R11		Two letters from Peter Hollowood to the Aboriginal Land Commissioner undated and dated 3 September 2021
R12		Pages of transcript of 4 June 2021 containing evidence of Greg Keogh, and two one-page documents dated 30 March and 19 May from Greg Keogh, and letter of Jeffery Reeves dated 25 May 2021
R13		Statement of David Connolly dated 7 September 2021
R14		Second Joint Statement of Michael Simmich and Clayton Coleman dated 19 February 2022

ANNEXURE F: LIST OF CLAIMANTS

Labarganyan – Group A

Names of Claimants

Kitjuliyn Kundjing (deceased)
Najiri (deceased)
Karenba (deceased)
Jack Nimit Kunjawulung (deceased)
Kunbuk (deceased)
Kunbuk (2) (deceased)
Djawat (deceased)
Djabidjin (deceased)
Djabidjin (2) (deceased)
Sambo Aijimbu Atjamu (deceased)
Maggie Paliny (deceased)
Paddy Arriwur Dapan (deceased)
Tommy Jamal (deceased)
Nipper/Jinga Karanyba Ginger (deceased)
Nipper Yijandan/Nipper Maru/Cook Kunining Byrnes (deceased)
Dolly Mandilyanh/Manyara Nimanyuk (deceased)
Munder (deceased)
Peter Kunyi Kundjing (deceased)
Dandy/Dandi (deceased)
Joe Wurdapul/Wardapu Morgan (deceased)
Jabarda (deceased)
Patrick Wayne Hector Tarputa Karnini (deceased)
Bridget Anne “Minnie” Tjululuk Kikirtin
Kathleen Minyonette Parry (deceased)
Elizabeth (deceased)
Daisy Bell Nigarr (deceased)
Nellie Kanderr (deceased)
Lena Mitjimara-Tjululuk Kunjarr (deceased)
Lily Belyengiyn (deceased)
Names of Claimants
William “Shotgun” Marranja
Jack Jeranginji Daly (deceased)
Angus Yigarritpa Barney (deceased)
Violet Tjululuk (deceased)
Long Harry Kilimirri (deceased)
Daisy Nora (deceased)

Darryl Kilimirri (deceased)
Roderick Jabungan Barney
Terry John Nimit
Phillipine Paliny
Thomas Durmugam (deceased)
Ignatius Tjamulk (deceased)
Geraldine Angganmerr
Mark Jamal Casey
Robert Jamal
Bernadette Jadda Kuntjirriyan
Josephine Byrnes
Rosemary Byrnes
Dennis Kunbuk Byrnes
Ian Dapan Byrnes
Desmond Daly
Erica Daly
Zoe Daly
Megan Daly
Damien Daly
Ryan Daly
Senita Daly
Hayden Kilimirri Long/Daly
Louise Paliyn Marranja
Tyson Cronin
Tamina Cronin
Tanisha Cronin
Sonny Ah Fat
Lauwanna Marranja
Harold Marranja Miriam Byrnes
Joanne Warawitj Byrnes
Matthias Byrnes
Sharon Angganmer Daly
Grace Yilimu Daly
Lana Nanayan Daly
John Kundeng Daly
Dawn Nganmuying Daly
Errol Daly
Ray Atjambu Daly
Nadine Mary Miriwen Daly
Jeffery “Long Harry” Dalamana/Kamwuy Long

Loretta Nyaramba Marranja
Jacqueline Nabrijen Marranja
Olivia Wanjirr Marranja
Leif Alindurru Marranja
Liam Karisamar Marranja
Sabrina Nimanyuk Barney
Kelly Ann Paliny Barney
Valma Sailor
Darren Karnini Nimit Sambono
Olivia Bianamu
Chantelle Bianamu
Marlyse Bianamu
Bradley Bianamu
Fiona Cooper
Janine Cooper
Maxine Daniels
Liam Daniels
Carmelita Yawalminy Parry
Teresita Diyini Parry
Jamie Lee Bamulying Parry
Names of Claimants
Delwyn Byrnes
Tarian Byrnes
Sherona Byrnes
Magdalen Byrnes
Gavin Lippo

Anderson Singar
Dandy Singar
Dion Minggan
Shenaya Bigfoot
Nickeisha Kerinauja
Rodney/Gregory Marranja
Chrisseda Daly/Wood
Leroy Daly
Vanessa Daly
Gabriel Daly (deceased)
Jack Daly
Jasmine Daly
Mariah Daly
Letitia Npimanyuk Marranja/Daly
Regan Daly
Montanna
Darryl Marranja
Kelis Parry
Brent Mullins
Travis Mullins
Brian Mullins
Patrick Miller
Leneisha Miller
Terry Miller
Rikayne Marranja

Wagiman – Group B

Names of Claimants

Jim Yitjengbara (deceased)
Father of Polly Djarrawuk (deceased)
Nellie (deceased)
Billy Jariyn (deceased)
Jimmy Kuwarawul (deceased)
Dolly Andiman (deceased)
Nim Karaynba (deceased)
Friday Ngabalanggit (deceased)
Jeannie Yawalmin (deceased)
Polly Djarrawuk (deceased)
Dandi (deceased)
Deborah (deceased)
Nganunyumman (deceased)
Nimuliyn (deceased)
Maudie Amaji (deceased)
Annie Barrngan (deceased)
Naphitjan (deceased)
Yijangjuda (deceased)
Jundakiyn (deceased)
Elsie Kitjula Talbot (deceased)
Ruby Jingaya Cadell (deceased)
Douglas Milguyari Jack (deceased)
Lizzie Amurrdak (deceased)
Lulu Talptalngali Martin (deceased)
Sampson Kilimari (deceased)
Lily Palurma (deceased)
Kitty Gamber (deceased)
Toby (deceased)
Peter Kojolo Liddy (deceased)
Dolly Kartpul (deceased)
Lewin Maranyigari (deceased)
Fred Wananjirri Muggleton (deceased)
Lucy Kalay (deceased)
Connie Potts (deceased)
Names of Claimants
Paddy Wuliarmo (deceased)
Dolly Wujinma Huddleston (deceased)
George Snr Jabulgari Huddleston (deceased)
Pearl Green (deceased)
Frank Ijandan (deceased)
Mick Yiganjawuyn Bradshaw (deceased)
Billy Hunt (deceased)
Nellie Kinpirrinyan (deceased)
Malangkul (deceased)
Tommy Kidurndu (deceased)
Polly Yijang (deceased)
Nellie Barnyjang (deceased)
Judy Yijang (deceased)
Biddy Baringali Cadell (deceased)
Bobby Ijandan Cadell (deceased)
Harold Kiblinyan Byrnes
Michael Raymond (deceased)
Lindsay Raymond
Oliver Raymond (deceased)
Rankin Liddy
Banjo Banderson
Charles Peter Talbot
Lawrence Talbot
Emmanuel Eugene Talbot
Geraldine McDowall (Talbot) (deceased)
Keith Talbot (deceased)
Kevin Talbot (deceased)
Vernon Talbot
Margaret Henning
Annette Pollard
Loretta Tyson
Brian Talbot
Teddy Karaynpa Liddy (deceased)
Don Palampal Liddy (deceased)
Lena Jululuk Hammer (deceased)
Jessie Ibulburin (deceased)
Clara Kumbitbita
Doris Murgayan (deceased)
Willie Kunjarlum Ooloo (deceased)
Veronica Joyce Milera (deceased)
Fred (Freddy) Beru Muggleton
Arthur Yiwaryirima Muggleton
Keith Geli Muggleton (deceased)
Yvonne Minmiyan Muggleton
Josephine Muggleton

Rosalind Wowo Garling
Robert Kumbitjika Huddleston (deceased)
Paddy Snr Benburr Huddleston (deceased)
Mick Baybay Huddleston (deceased)
Theresa Muyuwa Bandison/Muggleton
George Jnr Jabulgari “Jabul” Huddleston
Joe Huddleston (deceased)
Names of Claimants
Nellie Janungman/Amana Huddleston
(deceased)
Harold Ashley Graham (deceased)
Eilena May Graham/Noake (deceased)
Don Jambiyin
Mabel Karnay
Hector Wumbulgari Wilson (deceased)
Tody Liddy (deceased)
Violet Ngalma (deceased)
Helen Imorratpa Liddy (deceased)
Lennie Gappuya Liddy (deceased)
Jasper (deceased)
Billy Julwada Riley (deceased)
George Mundeng Allen (deceased)
John Bull (deceased)
Paddy Bull (deceased)
Joshua Cadell
Christine Angganmerr Martin
Norma Kararing McMahon
Leona Turner (Talbot)
Peter Talbot
Danny Talbot
Linton Talbot
Phillip Gary Talbot
Edward Eugene Talbot
Daphne Joy Allia
Trevor John Talbot
James Frances Talbot
Robert Charles Talbot
Daniel Carl Talbot
Pamela Ann Talbot
Jennifer Joan Talbot
Emmanuel Eugene Jnr Talbot
Teresa Weedon
Marilyn Talbot
Names of Claimants

Dennis McDowall
Marcia McDowall
Michael Talbot
Lynette Duggan
Joy Talbot
Sandra Talbot
William Talbot
Donna Lee McKenzie
Ann Margaret Henning
Charles Pollard
Charlene Pollard
John Pollard
Jody Lee Pollard
Tanya Richies
Samantha Mitchell
William Mitchell
Troy Mitchell
Delene Tyson
Leanne Tyson
Tony Kumayi Liddy (deceased)
Terry Longmirr Liddy (deceased)
Pamela Nyamulyin Liddy
Tommy Liddy (deceased)
Doreen Binbiditj Liddy
Ruby Jinggaya Liddy
Monda Nugala Liddy
Anthony Mun-gun Hammer
Sandra Ngulbandi Hammer
Eileen Mayiyin Corrigan (deceased)
Bessie Mulmul Corrigan
Arthur Bugun Corrigan (deceased)
Lawrence Wurngit Corrigan
Basil Lapfir Corrigan (deceased)
Andrew Jumunji McMahon
John McMahon (deceased)
Names of Claimants
Elizabeth Malmal Sullivan
Christopher Kunbuk Liddy
David Nurramurr Noakes
Greshima Kungkubu Noakes
Susan Juma Noakes
Jennet Madjingara Noakes
Natasha Churrwuk Noakes
Genevieve Liddy

Eric Kentish
Louise Corpus
Walter Griffin
Petina Rose Jones
Primo John Bonato
Anthony James Bonato
Kevin Dande Noakes
Tanya Marrara Noakes
Kenny Darrwarritj Liddy (deceased)
Colin Pindiying Liddy
Maria Amatji Liddy (deceased)
Kyle Milera
Nadine Milera
Edna Barnes
Kalisha Muggleton
Shakima Muggleton
Sophie Muggleton
Jordan Muggleton
Michelle Garling
Marcia Garling
John John Garling
Sahud Garling (deceased)
Camille Huddleston
Eddie Huddleston
Brian Huddleston
Names of Claimants
Wilma Huddleston
Mercia Huddleston
Victor Jimigurru Huddleston (deceased)
Leanne Majiwan Morgan
Mary Anne Morgan

Jonison Bradshaw
Jackie McDonald
Coraline Sandra Huddleston
Paddy Jnr Huddleston (deceased)
Georgina Huddleston (deceased)
Gracie Imuljingin Huddleston (deceased)
Daphne Katinyan Huddleston
Veronica Huddleston
Clayton Huddleston
Rhiannon Huddleston
Dennis Widpinyungu Gayaso
Mona Ngunurr Banderson (deceased)
Gladys Banderson (deceased)
Josephine Ningmarriya Banderson
Verona Yalyimpu Huddleston
Reggie Kayja Huddleston
Patrick Kalabara Huddleston
Brenda Ngulgurdi Huddleston
Wendy Nugunyuk Huddleston
George (3) Mamuyuk Huddleston (deceased)
Leanne Majiwan Huddleston (deceased)
Doris Margayan Huddleston
Jeffery Kapuya Yates
Cedric Jatparr Huddleston
Noni George Igondongbu Huddleston
Sean Graham/Melville
Adrian Graham/Melville
Sheneka Graham/Melville
Patricia Neday Noakes
Evelyn Wulingi Noakes

Kamu – Group C

Names of Claimants

Yilyerra (deceased)	Janelle Anderson
Karrayelwa (deceased)	Ashley Anderson
Jimmy Pubara Bayki (deceased)	Jodi
Kalpiritj (deceased)	Warren Stevens
Angumi (deceased)	Sean Mitchell
Ngarlayi (deceased)	Jennifer Sambono
Itparu (deceased)	Brenton McMasters
Kitty Madjaga Pan Quee (deceased)	Kelvin Demaso
Maudie Ngurundajin (deceased)	Marjorie Jnr Foster
Marjorie Yuru Foster (deceased)	Taylah Campbell
Johnny Pan Quee (deceased)	Michaela Campbell
Joan Karrayelwa Adelaide (deceased)	Kesley Campbell
Elsie Ajibak O'Brien (deceased)	Lakita Campbell
John O'Sullivan (deceased)	Brendan Campbell
Francis Storer	Ross Campbell
Kenny Storer (deceased)	Ellie Campbell
Maxine Storer	Lillie Bonson
Lynette Anderson	Pearl Bonson
Raymond Foster	Ruby Bonson
Michael (Mickey) Foster	Rose Bonson
Barry Foster	John Bonson
Tammy White	Rockford
Margaret Foster	Troy O'Sullivan (deceased)
Ronald Foster (deceased)	Marissa Wombo
Rhonda Foster	Joyce Pan Quee
Arthur Que Noy (deceased)	Daughter of John Tapau
Joyce Pan Quee (deceased)	Son of John Tapau
John Francis	Mathew Storer
Mathew Storer	Dimitri Michael Jnr Foster
Jonathon Storer	Joshua Roberts
Bernadette Wombo	Skye Roberts
Kitty Storer/Wombo	Arnold Sambono
Michael Storer	Margot Stewart
William Kaye	William Foster
Names of Claimants	Bredan Foster
Donna Campbell	Michael Foster
Dorothy Campbell	Curtley Foster
Brendan Campbell	Desmond Rowe
Diedre Campbell	Steven White
Ross Campbell	Lana White
John Bonson	Carl White

David Stubbs
Peter Stubbs
Lenny Bublitz
Jayd Salzgeber
Lyndon Pearce
Michelle Pearce
Gavin Foster
Donna Foster
George Braker
Sean Barker
Ned Barker
Patrick Barker
Marley Bryce
Tammy Bryce
Belinda Bryce

Julie Bryce
John Que Noy
Zennas Que Noy
James Que Noy
Danielle Que Noy
Chris O'Sullivan/Que Noy
Names of Claimants
Clinton Campbell
Cyanara Campbell
Maxine Campbell
Tori Campbell
Brittany Campbell
Leon Campbell
Rhys Campbell
Chloe Campbell

