

12. Getting land back

The Land Rights Act 1983 'ignores many of the fundamental recommendations of the Keane Committee Report which in itself was inadequate and fell far short of reasonable Aboriginal expectations for just and equitable treatment by the Government,'

Once again Aboriginal people are left with only scraps.'

Kevin Cook, Chairperson, Interim Land Council, 9 June 1983
(NSWALC website 'Our History')

By 9 June 1983, when the Interim Land Council met for the first time, the day before the Land Rights Act was proclaimed, Aboriginal people had been forced to come to terms with the compromised Act.¹ The difficulties and challenges they then went through to set up the land council structures, described in Chapter 9, were undertaken so they could push the Act to make it work as well as possible given its shortcomings. The test for the land rights activists would be how much land it enabled to pass directly into Aboriginal control.

The restriction on what types of land were available for claim was severe, even at the drafting stage. 'Unoccupied Crown land' was expected to be minimal in the state which had been colonised longest and had had a range of ways to alienate land, including the declaration of national parks and other recreation reserves, all of which put the land they were on out of reach of any claim. The goal of the right-wing Labor members in parliament had been to restrict the land available for claim even further and they had done so by the amendment that to be claimable, any such Crown land had to be 'not needed or likely to be needed' for any possible future 'essential' public purpose, however fanciful that might turn out to be.

But in the Act had been confirmation that land which could be successfully claimed would be held in the form of title for which Aboriginal people had been calling for over 150 years – for communal inalienable freehold title. This provision held all over the state. In New South Wales, however, after a terrible drought in the 1890s which exposed widespread overstocking by the grazing industry, the Western Lands Act² had declared that land in the western half of the state could be held only in leasehold, protected by covenants which allowed the government to enforce conservation measures. These Western

¹ *Aboriginal Land Rights Act 1983* (NSW).

² *Western Lands Act 1901* (NSW).

Lands Leases were often perpetual leases and had in reality offered very little real environmental protection. Yet they were not freehold and so the Aboriginal title – if any were granted – would have been noticeably more secure.

The expectation that land claims would yield little land was the basis for the attention given in the Act to the establishment of a perpetuating funding mechanism to enable the purchase of land on the open market. Making a link between the state tax on freehold land and the rights of Aboriginal people to purchase land was a powerful symbolic statement of the fundamental nature of Aboriginal ownership of land. It was also to prove – in an unexpected outcome for both the government and the land councils – to be a substantial source of funds, which was far higher than had been allocated to the Commonwealth Aboriginal Land Fund Commission for purchasing land in the Northern Territory and elsewhere.

In general, the NSW government was clearly not expecting the claims process to deliver much land anywhere in the state. The government, however, had not counted on the inventiveness or the tenacity of Aboriginal people at grassroots and community levels to claim their rights.

This chapter looks at the two ways to gain land: by claim and by purchase. Both had unexpected successes but also deeply frustrating failures. The two areas where claims were made covered here were the Gandangara Local Land Council area in south-western Sydney and the Western Region on the Darling River and the far west of NSW. It was also the Western Region where the purchasing process was most successful, which was a direct result of the effective working of the regional land council. This was to have a very limited life: the regional councils were effectively abolished by the Greiner Government's amendments in 1990 – to be discussed in Chapter 15. This chapter looks at how they worked during the brief early years of the Act.

Claiming land

In the Gandangara Land Council area, along one of the most densely populated and industrial areas of the oldest city in the country, the idea that there would be any land to claim at all was ludicrous. But even the land rights purchase fund was unlikely to be of much use, because city land prices were so high, as the Gandangara members were acutely aware.

Robyn: We had a problem with land prices in the city too.

Janny: We couldn't even buy a bit of land with the money we got into the local land council. We couldn't do much with it at all. That's why we put it into an

investment fund and we waited until we had a couple of allocations and we had enough to purchase a property. But we did a lot of research into how to claim land. Oh yes... we rang Cookie once again!

Judy: Cookie had an answer for it – he sent her down to the Land Claims Unit in the Department of Lands. See Cookie's responsible for everything! Janny always called him 'Mirrors' – cause he was always saying, 'I'll look into it!'

Janny: He did this time too – he said to me: 'Just go down and knock on the door of Colin Clague and just tell him "Colin, Cookie sent me".' Colin wasn't even expecting me. He said, 'What are you here for?' I said, 'I want you to show me how to distinguish Crown land'.³

I think they thought at the Land Claims Unit that it was going to be a one-day thing but I was backwards and forwards, every week. Imagine the shock of me landing on their door! I still remember their reaction that first day: 'Oh there's no-one here Aboriginal but we are going to put on a trainee'!!

I remember telling Cookie, and he was killing himself laughing! That was their reaction. 'Oh, there's no-one here Aboriginal'. I felt like saying, 'Well, I can bloody see that. But we are thinking about putting on a trainee'. I don't know if that ever happened. Anyway, I went home with all this knowledge from the claims department. Photocopies of all these maps. Bring them home and sit there and work out. You had to know what to look for.

Judy: Yeah, she had maps everywhere. You should have seen the bloody place, it was full of maps. Janny did it all, nobody else. Just with the help of 'Mirrors'. Janny just claimed everything!

Janny: Whatever was Crown land, I claimed it!

Judy: Anything that didn't have a house on it, she claimed it.

Janny: I thought well, if we get something out of it, we'll get something. If we don't, we don't.

Kevin: But Janny got a *huge* amount of land. When they were showing me the maps I'm thinking Jesus! If they can get that that's millions and millions of dollars. And there was a rubbish dump they were trying to claim... and they said, 'No, we can't give you that, but we can give you this...'. You know, they negotiated a deal through.

³ Colin Clague, a staff member of the NSW Lands Department, was well known to Kevin. He was the husband of Joyce Clague (nee Mercy) an Aboriginal activist from the North Coast of NSW, had once been a student at Tranby and had for many years been a senior figure in the NSW Labor Party.

Robyn: That's the only way to do it! There's always got to be an educational component to everything you do.

Kevin: And that brings in the politics. If there's no politics in education then it dies.

One of the strengths of the 1983 Land Rights Act was that it had not identified particular criteria for claimants in the claiming of land. It had also been a weakness that the Preamble which did recognise the broad bases of Aboriginal goals, had not been carried through in the legislation itself. However, Aboriginal people had watched the narrow definition of 'Traditional Owners' used in the Northern Territory Land Claims Court hearings to exclude claimants who clearly had a strong and enduring affiliation to land. So NSW people reasoned sensibly that in their state, where so much land had been put out of reach of any claims and where so many Aboriginal people had been relocated and displaced from their traditional lands for many reasons over 200 years, it was going to be difficult to establish an interest in terms of 'traditional ownership' to the fragments of remaining claimable land.

The NSW Land Rights Act had reflected these concerns only in its preamble, where it had referred to the fact that 'land is of spiritual, social, cultural and economic importance to Aborigines'. However, the only issue was whether or not the land was indeed 'claimable' under the Act. It meant that Aboriginal people did not have to prove either traditional ownership or historical association or economic need. They just had to prove that the land was 'claimable' in the terms of the Act.

The broad approach to recognising the legitimate interests of Aboriginal people in a heavily colonised state was however lost on most of the public servants with whom Aboriginal people had to deal. As the Gandangara women recall, they faced repeated challenges as they tried to claim land.

Robyn: And they used to come out, like from the Department of Housing, and say: 'But there's no Aboriginal sites on it'.

We had to tell them: 'Well, there hasn't *got* to be!'

Judy: The Department of Housing were bloody rife on that, weren't they, they were always saying it! 'What do you want all this land for?', they'd say. We'd have to say:

'Because its our *right* to claim it!'

Robyn: How many times did we have to say it?

'We can claim it! Its *vacant* Crown land.'

‘We can *claim* it. It hasn’t got to be a site!’



Figure 12.1: Demonstration to stop the rubbish dumping at Lucas Heights in a continuing process of getting land back after Janny Ely’s Gandangara claims. Urban land gains have been under constant pressure from sale or encroachments like residential development and waste disposal. This is a 2000 demonstration – but the process of claiming and protecting the land has been ongoing.

Courtesy Judy Chester family collection.

The eventual success of the claims put in by Gandangara was unusual – the rate of processing claims has continued to be best described as ‘glacial’. Figures were very difficult to obtain in the early years, but even by 2009, when more than 20,000 claims had been lodged, over half were still awaiting determination. Of the 10,000 which had been determined, more than 5000 – over half – have been refused. Only about a third of those 10,000 determined claims have been granted, that is, a success rate to date of only one sixth of those submitted.⁴

While this may have resulted from a lack of preparedness among public servants in the Lands Department and elsewhere, it was widely suspected by Aboriginal people that in fact the government was simply reluctant to fulfil its obligations to pass land over to Aboriginal people. This reluctance was seen as the cause of the delays. Government reluctance became very obvious when the largest

⁴ NSW Aboriginal Land Council figures, 2009, <www.alc.org.au/about-nswalc/our-history.aspx> accessed 13 January 2013.

claim in the state was organised in 1984 by the Western Regional Land Council over a block near the Darling River at Winbar. Peter Thompson was acting as an adviser to the Western Regional Council and William Bates was a member of the Interim Land Council and the regional council.

Peter Thompson: It's 23,000 hectares. We knew this bit of vacant Crown land was there when the Land Rights Act came in.

The property had been earmarked for a nature reserve in 1970s. But it was surrounded by other leases, and all the cockies around it kicked up a big fuss. They all said, 'We don't want bloody National Parks and Wildlife owning next to us! The government should do what they've done with previous expired leases and cut it up for neighbours to build up their blocks!', blah, blah, blah. So they stopped the nature reserve proposal going ahead but they didn't get around to doing the carve up before the Land Rights Act came in. I think we saw it advertised for carve up for additional holdings and that's when we lodged the claim.

So Winbar Land Council was set up as another one where people didn't live, because we knew we were going to try and get this bit of land. The people who had ties with that land lived mostly at Bourke or Wilcannia or even further up and down the Darling River, so to give it to Bourke would have been unfair and to give it to Wilcannia would be unfair too. So there was a logical reason to set up that as another non-residential land council to claim the title to that big area of land.

So that's how the claim got started and then it took a long time to go through court, so then the government changed the act in '86!

William Bates takes up the story: Yeah! Labor done that in 1986! The same crowd that introduced the Act!

They'd brought in the inalienable freehold title in the Western Division in the '83 Act. All the rest of the land out there in the Western Division is Western Lands Leases. But all the land we got in land claims was inalienable freehold.

Now we'd claimed Winbar, and I've got all the documents from that... and tapes... even the stuff when we were doing the archaeological surveys...

But then they repealed those certain sections of the Act.

We was bang in the middle of that land claim in Winbar! So we appealed it in the court! John Terry did that case. And it was still goin'.

Then the Premier, Barry Unsworth – well ‘Gunsworth’ as we call him – when he knew he was going to lose that election in 1988 to Greiner, he turned around and said, ‘Well that section of the Act has already been repealed. We’ll give you the land, it’ll be in leasehold, it’ll be a Western Lands Lease’.

And we went along to the court ... Henrietta Dean from the State Land Council, and John Terry for us, the Far West Regional and the barrister... We appealed, and we told them that we was only going to accept what it was *at the time of the claim*, that is it had to be inalienable freehold.

Well, Bang, we got it!

Its still owned as inalienable freehold! But unfortunately for the local land councils, its still owned in the name of the State Land Council ... it never got transferred.

Peter Thompson was skeptical: That’s what the Winbar case proved – the Labor government in 1986 went to parliament and amended the Land Rights Act, to try and stop Winbar being granted, because it was too big.

Buying land back

While claims had a low completion and even lower success rate, the purchase of land was dogged by the high prices of land across NSW, not only in urban areas but wherever land was demonstrated to be productive. While the amount of income the land councils received from 7.5 per cent of Land Tax was substantial, half of that had to be reserved each year for a capital fund, to allow continued funding following the sunset clause ended the allocation after 15 years. This left 3.75 per cent of Land Tax each year to be distributed. If it went directly to local land councils, it meant dividing up the funds that came in each year between as many as 113 locals. If each local decided to have an office, employ staff and run a car, this amount would rapidly be dissipated.

Most often, each land council not only faced such running costs but had suddenly become the only organisation in an impoverished community where many people faced urgent financial demands. Requests to fund medical costs or pay for funerals were difficult to resist, while calls for aid to meet rent payments or pay fines were almost as hard to refuse. On top of these demands – which were not legitimate expenditure in the terms of the Act but which were understandable in community terms – there were examples of fraud and negligence, in which individuals were able to pocket funds themselves or channel jobs and other advantages to allies and relations. Such problems make the decisions of organisations like Gandangara even more striking – their

refusals to use the land rights fund for salaries and on office infrastructure were not just sound management – they were in fact heroic restraint! In the far west, the Western Regional Land Council did the same. No-one was paid a salary, the locals took a minimum amount and almost all the money was pooled in a land fund.

Given high land prices, the possibilities of buying a whole block of land in any local area was slim, even before the calls for help which were so hard to knock back. The only real way to buy back significant amounts of land was going to be if regional land councils could be used to pool the annual funds from all the locals in their area. This would allow them to accumulate enough for a property in one area for one local land council and then, when more funds had accumulated, to buy another property for another local. This required a high degree not just of planning and negotiation but of trust. Whose land was to be purchased first? Would the last local land councils on the list have any confidence that the regional land council would eventually get round to giving them a fair turn? Did they trust their fellow local land councils enough to wait till their turn came? In this situation, the benefit of a regional council was that it was made up of people well known in each local land council area, who were each living close at hand and had to face daily the responsibilities of the regional council decisions. Unlike the old Lands Trust, these regional councils were not remote and they were not peopled with unfamiliar faces from distant parts of the state. They were all from just down the road, more or less.

In this section, Barbara and Kevin talk about their observations and experiences with regional land councils, then we turn to William Bates talking about the Western Regional Land Council and their strategies for buying land back.

The regionals: Collaborative planning

Kevin: I think what really impressed me about the regional land councils, the way it was set up. ... It was set up primarily to get land. But it also enabled the region to come together to say, and tell people, what problems they had in their locals, and their region. And that was important too.

We had the Sydney region doing things on a regional basis. Not as much I would've liked, but they were doing things. We'd say, 'X' amount of dollars, and if there was any over it would go to one land council so that they could do something with it. Say there was one land council setting up an oyster lease, we could give them extra money to be able to do that. It took away from the money that could've gone to the other land councils, but then the next time it'd be someone else's turn.

Barbara: In the west of the state, people had been moved around by government, so they had established long-term relationships with people in the areas they had been moved into. Say between the River people, the Paakantji and the easterly desert mob, the Ngiyampaa, who had been shifted over to Menindee on the Darling in the 1930s and then the Ngiyampaa later had moved back into the central west.

So, people were used to and related to each other. It was a big region. But they were able to negotiate without any trouble at all, about how the money into the region would be spent. Everybody agreed that we'd buy properties that came on the market, to acquire a land base. And that we'd try and ensure that if we bought a property in the north, that we'd buy the next one in the south, or in the middle. So people agreed to that. There was a lot of money going into the region, and it was shared on that understanding. And we were able to spend big blocks of money to acquire property.

Now where that didn't happen, and I think what's happening to a large extent now, is that when you get a much smaller amount of money, that you can't do much more than employ a couple of people and buy a car and run an office, you don't actually have the potential to think more broadly about spending \$3,000,000 on a property. So I think that's what's limiting things now. Hopefully people will go back to this idea of thinking regionally. The government departments should be dealing with supporting and housing and all those other things. Housing in particular was always a contentious issue for us. We didn't want anything to do with it at all. Just like the land council must deal with land, the government departments have other responsibilities to people in the state and they should fulfill those.

Kevin: Out in Wilcannia they never had any problems with that. They just didn't have the overhead expenses. And you know William was the banker... [laughter] ... Yeah honestly, he'd ring up and want to talk about interest rates! I can remember William ringing up and saying: 'Look, we've got all this money...'. I said: 'You put it into IBDs.⁵ You have to go to the bank and say: "I want so much interest"'. And I found out for him how much interest we were getting at Tranby on our money.

He was wheeling and dealing in a matter of seconds... you know, 'Chung!' and he had the best sort of deal. He was just incredible how he worked so quickly about money.

William: Oh yeah! We used to be experts on buying commercial bills: we made enough money to buy all the plant and stock on Weinteriga and I think we bought some on Auley too, and Appin. We'd buy mainly 30 day ones – 'Bills'

5 Interest Bearing Deposits.

they used to call 'em – because interest rates were high in those days. We made lots of money out of that so we could pay over \$100,000 for all the plant and stock at Weinteriga.

The Commonwealth Bank got that way, when it was run out, if we was late, the staff'd run over and get us to sign the documents because if you catch the morning or the afternoon markets, whichever had the highest interest, those 30 day ones used to be the highest interest ones. Used to be 30 days, 60 days and 90 days. And they'd deposit the money straight into your account, that was the secure thing about it. It'd go straight into your account, the minute you sign the document, but you weren't allowed to touch the money for that 30 days. So it was probably one of the most securest ways...

Kevin: Yeah, and so that was really good... that people who'd never dealt in that field, got to be the experts. They'd ring up a bank and say, 'Oh the other bank's giving X amount of interest' so, if that was right, then the first bank'd come up to that level. So it gave a lot of skills to the region. And if they were getting into enterprises, the regional council could make sure there wouldn't be two enterprises in the one region, competing with each other.

So the regionals could do all of those sort of things... So that when the regions went, that whole dynamics left too. The regionals would mean you had people with experience coming together with people with not so much experience. They'd sit down and they'd say: 'Oh you're doing this, what happened to you?' So all the time, people were learning off one another. And you'd bring in experts to your regional meetings, that could teach you, or tell you things you wanted to know, and then you could take that advice if you wanted to use it, or chew it over. If you wanted to use it you could use it. If you didn't, well you didn't have to.

So that's what I thought the region was for. And then the locals. Well, locals are nothing now, are they? These days [2005] the locals have got no say in what happens, the state's got the all say, its top heavy. Originally, what we had wanted was for the state to meet only about three or four times a year, just to make the policies, so the regions and the locals could enact them. And just to give the money out, say here's the money and see you later, Jack!

William: To look at what we used the money for, I'll start from the top:

We'd claimed Winbar of course, and we ended up with that in freehold, inalienable freehold at the time of the claim. There's 56,000 acres. The land at Tibooburra was 24,000 acres – its called Mokely paddock I think. Then there's about 300 acres on the eastern side of the river between Tilpa and Wilcannia. There's Weinteriga which is 86,846 acres and 46 km of river frontage.

There's Appin station at Menindee. Its got 22 km river frontage and I think about 62,000 acres. It's around the size of Winbar, I think. Then there's Auley station at Balranald, that's about 4000 acres, with 5 km river frontage in it...

When the Greiner Government brought in the amendments in 1990, they just took everything the regional land councils had... and the regions had been the only ones that was saving the money really, the only ones that was doing things. We used to pool the money out home way, and so we was able to buy land.

Gees imagine the acreage we could have had today! We'd have been like Sir Kidney Sidman,⁶ as Barbara used to call him! The locals would have all had a property by now, every one of them. But when they got those amendments through, it just took away everything the regional land council owned and left it with nothing. They're just a skeleton advisory committee today that no-one listens to anyway.

The saddest thing, and its still happening today, they're mainly concentrating on houses instead of on land. Through claims and purchase, we achieved over a quarter of a million acres round Wilcannia... The western region.



Figure 12.2: Weinteriga Opening: ceremony marking the purchase of Weinteriga by the Western Regional Land Council. Tree carved in celebration – covered in Aboriginal flag until official opening.

Courtesy Heather Goodall.

⁶ This was a local joke about Sir Sidney Kidman, an Australian pastoralist who controlled huge tracts of land in the Northern Territory, Queensland and north-western NSW.



Figure 12.3: Crowd begins to gather round carved tree to hear speeches for official opening.

Courtesy Heather Goodall.



Figure 12.4: Tree carving unveiled.

Courtesy Heather Goodall.

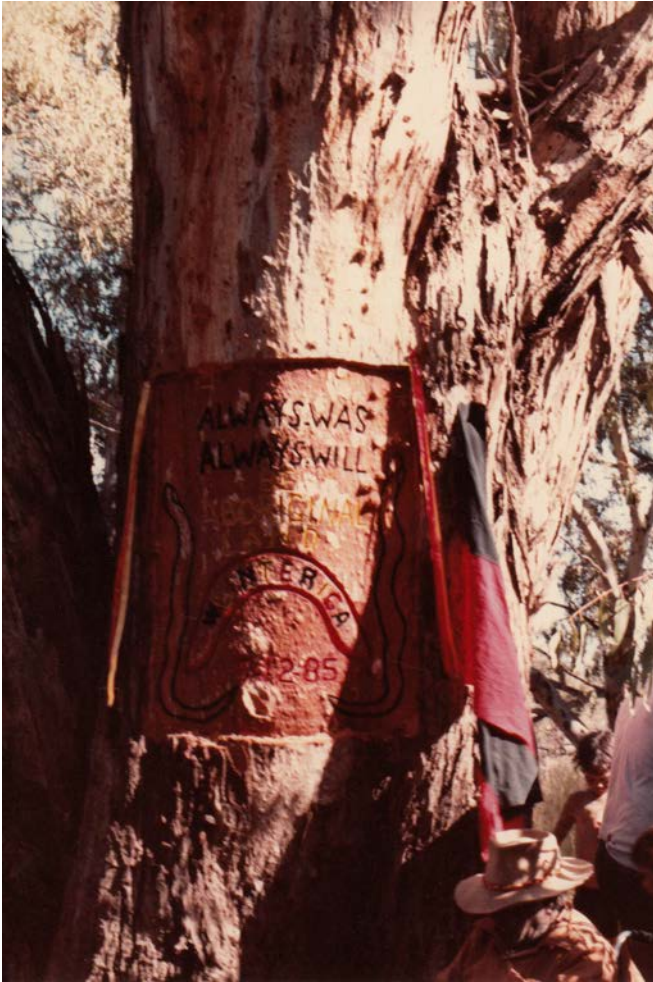


Figure 12.5: Close up – carving is traditional form of marking places as sacred and significant.

Courtesy Heather Goodall.

One of the frustrations for land rights activists was that the Select Committee's Report had recommended that a parallel Act to allow Aboriginal people to manage Aboriginal heritage should have been introduced with the Land Rights Act. This was not incorporated into the 1983 Bill and although there was a Task Force established to move towards its later creation, on which William Bates sat and contributed heavily, the Heritage Act never came into being.

Kevin: The other Act that never came in was the Heritage Act. We had pushed very strongly for that. We wanted a dual thing so that the Land Rights Act and the Heritage Act should work in tandem.

Barbara Flick: I think that would set principles, guidelines. We'd made a list of things and that was circulated. So if there was going to be heritage legislation, we said it must include these things. We had a list of the completely protected sites – which allowed for people being excluded from particular areas in protection of fauna and flora. But our plan was that the Heritage Act should be focused on joint management.

Kevin: And on intellectual property ... We've always pushed for that. That's what was especially happening in the regions – when regions were allowed to be involved.

Barbara: See people were still all involved in negotiations with National Parks. Both the far western people and the north-western mob were really interested in and involved in that issue. In the first instance the national parks and heritage issue was almost thrown out of the ballpark for us on the Interim Land Council. It was identified as something that we shouldn't be worried about! As if it had nothing to do with us!

But we always *had* identified national parks as being part of our right to claim or to help manage. So we always wanted an involvement with it that would be negotiated.

William Bates explained why he and the people in the western region felt it was so important to have a Heritage Act.

William: Its important because it's about having Aboriginal ownership recognised!

What really stirred me up was that National Parks would have Advisory Committees on their parks in our area. And you'd go to these meetings with them and they'd put these files down in front of us and they'd say, 'This is what we recommend ... and we expect you to agree with it' ...

So they just wanted us to rubber stamp it!

And I said, 'Go away, what do you think we are?'

And one of them run out the door crying one morning in Canberra. But I said, 'We need a chance to read through them', and they'd say, 'Your insulting me!'

Well we'd say, 'Stiff Shit! If we have to insult you to get it through your thick head, well fine'.

We were having some of these conversations around Mungo Lady⁷ at the time... We were trying to get her remains returned back to Mungo, as well as them other skeletal remains they found there at the time that's a lot older.

We talked in them days I think about keeping places, we talked about putting one there at Mungo, building it into the side of one of the hills, not on the sand dunes, but back near the park quarters. We wanted to be able to control heritage, and everything else that came with it.

They'd say, 'Why should you take them remains and artefacts?'

And we'd say, 'They're ours, give em back!'

'Oh', they'd say, 'We have to look after them!'

All of a sudden after 200 years we're not capable of looking after anything!

Tibooburra's got a keeping place up there. Mutawintji we're still messin' around, but we're hoping to start doing something there, like building a keeping place or something like that there. We are just making the decision that we need to make and then we can go ahead and do it, because with the rent we get, there's no problems with financing it to do it and that.

There's a lot of interest in it there at Mutawintji. We've got buses. If I can get these guides to sit down and start taking it a bit more seriously and talk about it, we could get a coach and take tourists around the country, with camping trailers and things like that...

Well then the Labor Party got voted out in '88 and Greiner was in, taking apart the Land Rights Act.

But his Environment Minister Tim Moore first introduced the National Parks Hand Over Bill, after he'd been to the Northern Territory. We threw it back at him and said, 'You've got to be joking!'

And he said, 'Well give us a hand to polish it up'.

And it amazes me that it took a Liberal minister to do that!

Cause Chris Hartcher got hold of it and he didn't want to have anything to do with it. And it was in limbo there until Tim Moore come along with a Bill and they flew us out, they run around the region with an Aero Commander, it come to Wilcannia and picked us up, and Auntie Dorrie and Auntie Tibby, and he had the cameras there and said: 'We're going to give you Mutawintji back!' And we

⁷ The ancient remains of a woman found at Lake Mungo, who had been buried with ceremony involving decoration with ochre, as well as cremation. Widely dubbed 'Mungo Woman' by the media, she is referred to here more respectfully by William Bates as 'Mungo Lady'.

looked at the Bill and said, 'Not with this you won't!' [laughter] ... But the good thing is it took ages and ages, we worked on it slowly and for a long time, and now its probably the best Act, the best Aboriginal ownership Act in the world! Not that its perfect! But I mean – it's workable! You've still got that thing, with National Parks, it's like a disease if you like, or a culture. They just don't seem to want to acknowledge Aboriginal ownership. We're for everlastingly fighting with them, and they're still trying to pull the wool over our eyes. We're still in the middle of a battle with them at the moment, but if it's not one thing its another.

Kevin: If the Heritage Act was in, that would override the National Parks and Wildlife Act,⁸ that's what we wanted it to do.

William: Actually we might start bringing it up again, cause the way they're changing things around again now, there's no reason why you couldn't revive that and start the campaign up again. 'Cause National Parks are useless...

Reflecting on the Land Rights Act post-1983

Barbara: I think that at the same time that all this political activity was happening on the ground, there was the old Land Trust structures in place. And I think it's important that that'd be acknowledged by history that there were certainly difficulties between the views of both of those groups. The NSW Land Council, before the legislation, was firmly of the view that people on the ground, in the communities, understood what they wanted in terms of land. And really it was about land in those days. And that the Lands Trust wasn't seen as representative. It looked like it was doing a lot of deals with government without consulting with people. And I think that they in fact were isolated from a lot of the communities. And their resistance was a major thing that needs to be acknowledged. And I think that we had some difficult times in trying to resolve those differences. I don't think we ever did.

Kevin: Well we knew that. But now, years and years later, some of the same people who worked for the Lands Trust are now members of the NSW Land Council and in very senior positions. Now, it's good in a way that they've come on board and are looking after the land councils now. Because I don't think they ever wanted to consult when they were on the Lands Trust. If they had done that, people would have seen no use in setting up the land council! Because of the way the Act was structured, the Lands Trust then, it was doing no good for Aboriginal people.

⁸ *National Parks and Wildlife Act 1974* (NSW).

I think we should look at the Act, not the people, but the Act. And that's what we were fighting – we were fighting that Act, not the Aboriginal people involved in it.

Barbara: Well I don't know whether I can agree fully with those comments. But I think that they had enough power to make things fairly difficult from time to time. And I think there were even compromises that we made during the negotiations and it worried me then and it still worries me how much legislation changes the political environment in which you work. When you're struggling for change or struggling to win back land – we were all being driven by a passion about land and about country, about history and about relationships. But when the legislation came into place, I think it was moving very quickly back into becoming a bureaucracy that the government was much more comfortable with. But I felt it moved away from the people – even though we tried really hard to stop that from happening.

For one thing, we tried to limit the role of the State Land Council, right from the beginning, to ensure that people, local land councils and regional land councils, had the money to buy back the land or acquire land, and to control the State Land Council.

But somehow or other it started to shift back to a lot of central management and control. And I'm still sad about that. And although I think it would have been much harder to maintain the local and regional control, I think that would have been well worth the effort.

I think it's the nature of the beast. We tried to resist it. I remember meeting at Dubbo *after* the legislation, in the Council Chambers. One of the things that made the organisation powerful *before* the legislation was that we were out in the bush with people, we weren't sitting under fluorescent lamps. We were down the South Coast, we were out in the far west, we were up in the north-west. But I think legislation does something to Murrumbidgee. You know, sitting under the fluorescent lights affects us somehow. And when you're trying to meet government requirements and reporting requirements, sometimes it takes away the focus of what you set out to achieve.

Kevin: I think we've always said that the easiest part of the struggle is before legislation comes into being. Because you can go out and say and do nearly anything that you want before it comes in – and that's what we did. We said: 'These are the wishes of the people' and we didn't go away from that. But when the legislation came into being, it wasn't what we wanted, it was far short of it.

It was a compromise. But it was the only thing that we were going to get.

And people said that they wanted to go with it. You'd see people crying and saying, 'I want to be buried on my land'. And they were saying, 'We want land rights, we want to get that land so we can be buried out there. We don't want to be buried on someone else's land'.

And so that carried the day.

Barbara: Before the legislation we met out at the farm. But when we were the Interim Land Council, we met at the Town Hall. Because the farm had burnt down. I think it's got to be said that Kevin's leadership at that time was crucial for a lot of things happening. There were a lot of people on the ground that wanted things to happen, but the catalyst was Kevin and his connections, and his passion for the struggle for land. And those of us that worked in the region were able to bring, I think, a more structured approach to that.

But if there had been no Kevin Cook at that stage, or no base, which was Tranby College, with all of the things that that brings with it, there wasn't any way in which any of these things could have been articulated. So on the one hand you had bush people being able to talk about land and land acquisition, and on the other hand you had an organisation and a person, that was Kevin Cook, who already had access to the political environment in the state at that time. Whether it was through the trade unions with all of those contacts, or through the politicians, and mainly on the Left.

So those things were present at the time and it didn't seem to me that there was anybody else. Even with the Lands Trust there wasn't enough confidence in those people, one, to understand what was happening on the ground and the wishes of the people, and two, to be able to articulate that to politicians or to other political organisations in the state. And Kevin's willingness to go and sit on the riverbank and travel to Menindee, or go down the South Coast. And that's where he was from so he already had a lot of that trust people had, and their relationship with the people up the North Coast enabled that to happen. But old people would see that.

Kevin: I think in the end, people have got something, you know.

But I think we should never have given away inalienable freehold title. We should never have given that away. Because whatever lands are sold, you'll never get back. People are not going to buy lands unless they're going to make a profit out of it. And so they're making a profit out of you, and you're prostituting yourself. So I don't think you should sell land.