

Introduction

Referral to Committee

- 1.1 This is the report of the inquiry by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs ('the Committee') into the recommendations of the report *Building on Land Rights for the Next Generation: The Review of the Aboriginal Land Rights (Northern Territory) Act 1976* by John Reeves QC ('the Reeves Report' or 'the Report').
- 1.2 The inquiry was referred to the Committee on 10 December 1998 by the Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon John Herron ('the Minister'). A copy of the terms of reference is at page xiv.

Conduct of the Inquiry

- 1.3 The Committee advertised the inquiry in late January 1999 in the national and the Northern Territory ('the Territory') press and distributed an information sheet throughout the Territory. The Committee also advertised the inquiry on radio in eight languages through the Top End Aboriginal Bush Broadcasting Association and the Central Australian Aboriginal Media Association.
- 1.4 Seventy two submissions were received from a range of individuals, Aboriginal and private sector organisations, Commonwealth and Territory

agencies and academics.¹ A list of the submissions received by the Committee is at Appendix A. A list of other documents of relevance to the inquiry that were formally received by the Committee ('exhibits') is at Appendix B.

- 1.5 The Committee held a number of public hearings and meetings for its inquiry. The Committee was very keen to hear first hand the views of individual Aboriginal people on the Reeves Report. For this reason, the Committee visited as many communities in the Territory as it could in the time available. The Committee also spoke with representative agencies, industry bodies, academics and other interested individuals in Canberra, Darwin, Alice Springs, Tennant Creek and Katherine. Details of the Committee's visits to Aboriginal communities and a list of organisations and individuals who gave evidence can be found at Appendix C.
- 1.6 The Committee recorded the discussions held at each hearing and meeting. Where necessary, the Committee used interpreters at the meetings. Transcripts of everything that was said in English and interpreted into English at each meeting as well as copies of the majority of submissions can be found on the Committee's internet home page.²
- 1.7 An electronic copy of this report can also be found on the Committee's home page.

Scope of the Report

Chapter Outline

- 1.8 This chapter outlines the contents of the report and describes the core principles that guided the Committee as it considered its recommendations. The second chapter sets the context for the rest of the report. It begins by outlining the significant features of the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Land Rights Act' or 'the Act') and the contents of the Reeves Report. As the Land Rights Act does not operate in isolation, the chapter also provides a snapshot of other Commonwealth and Territory legislation and agencies that directly impact on the operation of the Land Rights Act. Finally, the chapter places the

1 To be consistent with the phraseology of the *Aboriginal Land Rights (Northern Territory) Act 1976* and the Reeves Report, this report refers to 'Aboriginal' people rather than to 'indigenous' people.

2 At www.aph.gov.au/house/committee/atsia/index.htm

Land Rights Act in its broader context, describing the social and economic status of Aboriginal people within the Territory.

- 1.9 Chapters three to eight address the dot points in the Committee's terms of reference. Each chapter describes the relevant sections of the Land Rights Act as they currently stand, then outlines the appropriate recommendations of the Reeves Report before detailing the reaction to those recommendations. Finally, each chapter concludes with the Committee's findings and recommendations.
- 1.10 The Committee was conscious that its role was not to duplicate the Reeves inquiry and, accordingly, has stuck as closely as possible to its own terms of reference. However, evidence was received on issues in the Reeves Report that were strictly beyond the Committee's terms of reference. The Committee resolved to consider these issues to avoid ignoring or 'wasting' the evidence. Chapter nine examines this evidence.
- 1.11 In the concluding chapter, the Committee outlines its visions for the role of the Land Rights Act in the new millennium.

Comment on the Reeves Report

- 1.12 There has been considerable public debate as well as evidence presented to the Committee alleging shortcomings in Mr Reeves' evidence collecting methods, and that he strayed beyond his terms of reference.
- 1.13 The Committee does not believe that its involvement in this aspect of the particular debate will lead to improvements to the Land Rights Act. Accordingly, with one exception, the Committee resolved to limit its commentary on the Reeves Report to remarks about its recommendations.
- 1.14 The exception concerns general criticisms about the length and complexity of the Reeves Report. The Committee believes that its sheer size and structure daunted most people – particularly those for whom English is a second language. In reality, the Reeves Report is inaccessible to many of those most affected by its findings – Aboriginal people in the Territory. The result is that few people grasp the detail of Reeves' recommendations. This, in turn, hindered the Committee's own inquiry.

Video of Recommendations

- 1.15 In response to concerns about the accessibility of the Reeves Report, the Committee determined that this report would be as short as possible and easily readable.

- 1.16 The Committee has also produced a short video to complement the report. The video outlines the Committee's inquiry process and its major recommendations. This is one of the first times a Commonwealth parliamentary committee has used this medium to record and publicise its recommendations.

Other Related Activity

Senate Inquiry

- 1.17 As the Committee was conducting its inquiry, the Senate's Finance and Public Administration Legislation Committee was conducting an inquiry into the Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 2) 1999.
- 1.18 The main purpose of the Bill is to excise approximately four hectares of land (known as the Elliott stockyards and dip) from a grant made to the Gurungu Land Trust under the Land Rights Act in 1991. While it is agreed that the stockyards and dip were always intended to be excluded from the land grant, debate has revolved around compensation for the excision and processes to ameliorate the impact of the operations of the stockyard.
- 1.19 The Senate Committee tabled its report in mid August 1999. The main report supported the Bill, while a minority report argued that the Bill should not proceed and a supplementary report withheld judgement.³

House of Representatives Inquiry

- 1.20 Another parliamentary inquiry being conducted at the same time as this inquiry is the House of Representatives Standing Committee on Family and Community Affairs' review of indigenous health.
- 1.21 The Family and Community Affairs Committee was taking evidence in the Northern Territory at the same time as this Committee, but is not expected to table a report until later in the year.

³ Senate Finance and Public Administration Legislation Committee, *Consideration of Legislation Referred to the Committee, Provisions of the Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 2) 1999*, August 1999.

Commonwealth Grants Commission Legislation

- 1.22 The Committee expects the Commonwealth Grants Commission Amendment Bill 1999 to be passed by the Commonwealth Parliament as this report is tabled. The Bill allows the Commonwealth Grants Commission to report on the distribution of funding for meeting the needs of Aboriginal and Torres Strait Islander people. When the Bill is enacted, the Commission will be able to use its expertise in assessing the relative needs of different communities in relation to Australia's indigenous people. The aim of the Bill is to improve the situation of indigenous communities by ensuring that an independent assessment of their need for services is undertaken.

Competition Policy Review

- 1.23 The National Competition Policy Review of Part IV of the Land Rights Act was also being conducted while the Committee was undertaking this inquiry. The purpose of the review, undertaken by the National Institute of Economic and Industry Research, was to review the mining provisions of the Act in accordance with National Competition Policy guidelines.
- 1.24 The Review had not been finalised at the time the Committee tabled this report. However, Members took evidence from the author of the report, Dr Ian Manning, on the broad findings of the Review at the Committee's final public hearing in June 1999.

Core Principles

- 1.25 When reviewing the evidence, the Committee focused its deliberations by agreeing to core principles or values. The Committee used these core principles to shape its recommendations.⁴ The principles are referred to throughout the report and are explained below.

Rights to Land Preserved

- 1.26 There should be no diminution of Aboriginal rights under the Land Rights Act. Title should remain inalienable and held by traditional Aboriginal owners through land trusts for estates in fee simple. Land use decisions

4 In much the same way, Justice Woodward explained the main principles of the report of the Aboriginal Land Rights Commission. See Aboriginal Land Rights Commission 1974, *Second Report* (Justice Woodward, Commissioner), AGPS, Canberra, pp. 9-11.

should also be made with the informed consent of traditional Aboriginal owners in accordance with Aboriginal tradition. Thus, traditional Aboriginal owners (if any) of the land in question should understand the nature and purpose of any land use proposals and as a group give their consent. In addition, any other Aboriginal community or group that may be affected by land use decisions should also be consulted and have adequate opportunity to express its view.⁵ As one person told the Committee:

Changes to the land rights act must come from Aboriginal people and there must be a consensus for change from Aboriginal people.⁶

- 1.27 Aboriginal people should have the right to manage their land in accordance with Aboriginal tradition and should be able to participate in all levels of decision making. In an economic context, any legislation should facilitate rather than hinder the economic development of Aboriginal land according to the wishes of Aboriginal people.

Self Reliance

- 1.28 Aboriginal people should have the same rights and opportunities to make decisions about their lives as non Aboriginal Australians. They should have equal rights and responsibilities as citizens. Accordingly, Aboriginal people should have as much autonomy as possible in running their own affairs. Traditional Aboriginal decision making methods should be respected. Similarly, Aboriginal people should be free to associate and organise in ways that they see fit. They should also be free to make their own mistakes. As was forcefully put to the Committee at Kalkarindji by one person:

Let us manage our own lives, our destinies, our aspirations and our future. It is our future.⁷

Need for Constructive Partnerships

- 1.29 It is desirable for all parties concerned to establish constructive partnerships between Aboriginal people and governments and between Aboriginal and non Aboriginal people.

5 For example, see s. 19(5), s. 23(3).

6 Eileen Hoosan (Chair), Alice Springs Regional Council, Aboriginal and Torres Strait Islander Commission (ATSIC), Transcripts, Darwin, p. 94.

7 Jeanie Herbert, Transcripts, Kalkarindji, p. 297.

1.30 A cooperative approach will allow a focus on the attainment of mutual benefits, trust and compromise. The Committee fully supports the observation in the Reeves Report that such a partnership is needed to end the costly and socially divisive retaliatory attacks between the Territory Government and the Central and Northern Land Councils.⁸ A cooperative approach will also require people to be forward looking, rather than reacting to past behaviour. Most people the Committee spoke with were only too keen to look forward, as one resident of Daguragu explained:

We do not want this thing to go backwards. We want to look to the future instead of the past.⁹

1.31 While goodwill and trust cannot be legislated into existence, statutes can be used to facilitate cooperative approaches and negotiated agreements. As a first step, the Committee suggests project teams be established to consult and advise on the recommendations in this report.

Mutual Rights and Obligations

1.32 There should be a balance between individual rights and community obligations. All Australians should have the same rights and opportunities. People should also respect the rights of others including, specifically, the rights of Aboriginal people to land granted under the Land Rights Act. All Australians should expect to have to account for their use of public funds.

Retain Flexibility in the Land Rights Act

1.33 Amendments to the Land Rights Act should allow it to remain sufficiently flexible to meet changing circumstances. One of the strengths of the Land Rights Act is that its provisions are adaptable enough to allow for changing needs and processes. Amendments to the Land Rights Act should be enabling rather than prescriptive – facilitating processes rather than determining outcomes. This will allow Aboriginal people maximum control of their destiny. Flexibility will also become more important as the focus of Aboriginal land owners shifts from land claims to land management.

8 John Reeves QC 1998, *Building on Land Rights for the Next Generation: The Review of the Aboriginal Land Rights (Northern Territory) Act 1976*, AGPS, Canberra, pp. 71-72.

9 Matthew Walker, *Transcripts, Kalkarindji*, p. 305.

Consultation with Aboriginal People

- 1.34 As already indicated, the Committee believes that it is very important that Aboriginal people are involved in any decisions to change the Land Rights Act. The Committee feels so strongly about this issue that it wishes to express the sentiment within a recommendation.

Recommendation 1

- 1.35 **The *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') not be amended without:**
- **traditional Aboriginal owners in the Northern Territory first understanding the nature and purpose of any amendments and as a group giving their consent; and**
 - **any Aboriginal communities or groups that may be affected having been consulted and given adequate opportunity to express their views.**
- 1.36 In a number of places in its report, the Committee indicates that project teams should be established to flesh out the recommendations and consider their implementation. The key feature is to involve local Aboriginal people – it is, after all, their Act, their land and their future.
- 1.37 The need for consultation, which is made explicit in some recommendations, can be taken to apply implicitly for the other recommendations. The Committee is mindful that this may lead to yet another round of consultations about amending the Land Rights Act. Accordingly, the Committee wishes to indicate a priority for the implementation of its recommendations. The Committee proposes the use of project teams to ensure adequate consultation about its recommendations before any legislation to amend the Land Rights Act is introduced into Parliament.
- 1.38 The Committee believes that, when and where specifically appropriate, the project teams should include representatives from the Commonwealth and Northern Territory governments and draw on the expertise of the Aboriginal Land Commissioner.

Recommendation 2

1.39 The Minister for Aboriginal and Torres Strait Islander Affairs (‘the Minister’) establish project teams to consult and advise on the Committee’s recommendations.

The number and membership of project teams should be decided by agreement between the Minister and the land councils. There is an understanding by the Committee that the Northern Territory Government will be involved in project team negotiations when and where specifically appropriate. The Minister shall be the final arbiter in the event of any dispute regarding the composition of such project teams.

Project teams should address the Committee’s recommendations in the following order of priority:

- **those recommendations concerning the delegation of land council powers and the establishment of new land councils;**
- **those recommendations concerning the mining provisions (Part IV) of the Act;**
- **the recommendation to review the method of disbursing 'areas affected money' within each area affected by mining;**
- **those recommendations concerning the permit system; and then**
- **the Committee’s other recommendations.**

Project teams should establish timetables for their consultation processes. The timetables and memberships of the project teams should be made publicly available.

Any recommendations for amendments to the Act from the project teams should be subject to recommendation 1.

- 1.40 The Committee also acknowledges that there will be a cost associated with the operations of the project teams.

Recommendation 3

- 1.41 **The Minister for Aboriginal and Torres Strait Islander Affairs provide additional funding to allow the project teams, as outlined in recommendation 2, to perform their tasks.**
- 1.42 Before recommending any amendments to the Land Rights Act, the report sets out the legislative and social context in which the Land Rights Act operates.