

SMALLER LAND COUNCILS: VALUE FOR MONEY?

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Introduction

A key recommendation of the Reeves Review is the fragmentation of the existing large land council structure into smaller regional land councils (RLCs). This recommendation is by no means new and has previously been flagged by Coombs (1980), Rowland (1980) and the Industry Commission (1991). Altman (1983) also advocated an examination of the potential of smaller land councils to permit greater input and understanding by traditional owners in negotiations with mining companies. This proposal was advanced under an umbrella of the existing land council structure as a two-tiered model in which the two large land councils fulfilled the role of regional co-operation, maintaining staff with expertise that could be used by smaller bodies, and as the administrative and funding sources of small councils (Altman 1983: 107).

Notwithstanding the logic and policy rationale of previous advocates of a structure of smaller land councils, the Reeves Review is essentially the first time a reviewer has constructed a regional profile of smaller land councils Territory-wide. So we have a map and reference points from which to gather data and to analyze that data (refer to maps at *Attachments A – Northern Land Council (NLC) area & Attachment B – Central Land Council (CLC) area*).

This paper examines the regions/administrative units proposed by John Reeves QC and assesses the likelihood of Regional Land Councils (RLC) to adequately perform their functions within the financial resources recommended by Reeves. These resources are estimated at \$400,000 per annum for each RLC and are based on the current size and operations of the two island based Tiwi and Anindilyakwa Land Councils. This paper aims to demonstrate that to substantiate the allocation of administrative funding to each RLC based on the size and operations of the two smaller land councils is flawed as there are not only significant differences between the island land councils both geographically and in the functional requirements of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act), but also the Review's recommendations confer additional, rather than fewer, functions upon land councils.

The paper concludes by noting that 'decision-making' regionalisation, as opposed to 'administrative' regionalisation, offers a solution to address many of the operational aspects of the Land Rights Act that appear to have concerned Mr Reeves. It suggests that 'decision-making' regionalisation provides a more cost-effective approach, offering economies of scale and provides that resources can be potentially directed to social and economic betterment rather than being consumed by administration.

Methodological problems in comparing the financial aspects of the two regimes

This paper is essentially about estimating the administrative monies and resources required to implement the Reeves recommendations. It is premised on the acceptance of the Reeves recommendation that the payment to Aboriginal interests in the Northern Territory of mining royalty equivalents (MREs) derived from Aboriginal land should continue. However, it is evident that given the additional functions conferred on the Northern Territory Aboriginal Council (NTAC) and the 18 RLCs, and with the prospect that NTAC would fulfill the functional operations of ATSIC, it becomes apparent that the recommendations address much wider issues and have significant implications for institutions outside of those included within the current land rights framework. If implemented, these proposals would have far-reaching implications for all indigenous land councils, associations and incorporated bodies in the NT, as well as, significant implications for Commonwealth and Northern Territory Government (NTG) agencies that deliver programs to indigenous people.

Reeves *suggests* that almost all current indigenous programs (Commonwealth and NTG) could be directed to NTAC. Based on estimates of these programs NTAC's annual budget would range between \$448-738 million (This amount does not include the separate appropriation for land claims, NTRB funding currently at about \$4 million, gate monies or negotiated or up front royalties). However, Reeves does not detail any administrative arrangements for the delivery of programs and we are left to ponder how a potentially enormous bureaucracy such as NTAC with functional responsibility encompassing those of the current land councils, ATSIC and indigenous programs of the NTG could adequately administer such responsibility on a mere \$2 million per annum and \$400,000 to each RLC. Of particular concern is that there is no explicit statement that ATSIC should be absolved of its role in the NT, rather it is simply implied. There has been no examination made of the operations of ATSIC nor was this ever intended, nor was there a specific term of reference to do so.

It becomes evident that in undertaking a comparative analysis of the cost-benefits of the Reeves recommendations with the current regime it is very difficult to establish exactly what regimes are being compared due to the lack of detail in the former. Hence given the lack of explicit recommendations and the lack of details contained in the Reeves Review, this analysis is limited to a comparison specifically within the boundaries of the functions of the current Land Rights framework.

The current model

Under the current regime there are four Land Councils each of which is funded by way of sub-section 64(1) of the Land Rights Act. That is the 40% of the MREs for Land Council administrative purposes. Additional funding may be approved by the Minister pursuant to sub-section 64(7).

Table 1 outlines the total allocation to the four Land Councils for the four financial years 1994/95 to 1997/98.

Table 1

Year	Sub-s64(1)	Sub-s64(7)	Total
1994/95	11,481,297	5,684,799	17,166,096
1995/96	10,602,283	8,637,902	19,240,885
1996/97	12,106,412	1,081,489	13,187,901
1997/98	13,049,471	2,844,644	15,894,115

Source: ABR

The four Land Councils have operated with a total average allocation of \$16.4 million for those four years. There are currently 229 staff employed by the four land councils which perform the operations of the Land Rights Act at an average cost of \$80,000 per staff capita¹.

The Reeves model – financial aspects

While maintaining the concept that MREs be disbursed to Aboriginal organisations, Reeves recommends the restructuring of institutions that facilitate the distribution of MREs under the Land Rights Act. Essentially, the current land council structure is abolished and administration of the Aboriginals Benefit Reserve (ABR) by ATSIC is replaced by a new regime. Reeves proposes the creation of an institution called the Northern Territory Aboriginal Council (NTAC) which has functional responsibilities similar to that of ATSIC, incorporates the current ABR secretariat, functions to facilitate the finalisation of the land claim process, plus a role of 'overseeing' the proposed 18 Regional Land Councils and political advocacy for Aboriginal people in the Northern Territory.

NTAC will be funded by several sources. ATSIC will fund NTAC to undertake Native Title Representative Body (NTRB) functions, a special appropriation will be provided by the Commonwealth (although as yet unquantified) to complete the land claims process across the Territory and \$2 million are allocated from MRE's for NTAC staff, maintenance and overheads. Reeves also *suggests* that funding for indigenous programs in the NT, currently undertaken by ATSIC and the NTG could be directed through NTAC. Reeves also recommends that the net flow of negotiated royalties and other income, e.g. gate receipts and licence fees, will be required to be passed to NTAC for crediting in the respective RLC account. These monies will be expendable by each RLC, but only on purposes satisfying criteria set down by NTAC. Reeves argues that this system should ensure that all monies generated under the Act are dedicated to purposes of economic and social advancement for Aboriginal people, as assessed by NTAC (Reeves 1998: 609-10).

¹ This estimate is calculated on estimates provided by the NLC and tested against the total administrative costs of the four land councils per staff capita. The estimate, per capita, includes salaries, capital and running costs.

Reeves proposes that the Royalty Associations will cease receiving ‘areas affected’ monies, or any other distributions pursuant to s.35 of the Act. The existing assets and liabilities of the Royalty Associations will be taken over and rationalised, if necessary, by NTAC. This, it is argued, will be consistent with NTAC's role as the central Aboriginal investment body. Compensation for ‘areas affected’ will be undertaken in future by NTAC on a case-by-case basis, through the RLCs. Each RLC will therefore effectively fill the role, in relation to 'areas affected' monies, that was previously undertaken by the Royalty Associations without any statutory guarantees that MREs will be paid. Since each RLC will be subject to the usual accountability and reporting requirements of a Commonwealth Statutory Authority, this will ensure a more purposeful, accountable and transparent application of these monies than has occurred in the past.

Critique of the Reeves’ Regional Land Council funding model

The Reeves model is premised on a contingency that by increasing the number of Land Councils and by allocating similar amounts as those received annually by the Tiwi and Anindilyakwa Land Councils, that savings against current administrative costs can be achieved. As Reeves (1998: 612) states “*Each RLC will be about the same size as the present Tiwi and Anindilyakwa Land Council whose administrative costs are about \$400,000 annually*”. The administration of 18 RLCs will therefore cost about \$7.2 million, annually. However, simplistic suggestions that smaller land councils can operate and function on about \$400,000 per annum are unfounded and fail to appreciate the geographical, logistic and functional diversity within the proposed model (refer to *Attachment C* for a comparison of the proposed regions).

By comparison with the other mainland regions, the Tiwi and Anindilyakwa Land Councils are unique:

- Both are islands with easily identified borders;
- Both have relatively homogenous social, cultural and language groupings (at least compared to the proposed mainland regions); and
- Both are comparatively very small regions thereby offering administrative and logistic efficiencies.

Notably the land base of both regions is entirely Aboriginal freehold, granted by way of statute when the Land Rights Act was enacted in January 1977. It has therefore not been necessary for the TLC and ALC to be consumed in the land claim process throughout their respective histories.

Furthermore, there has been comparatively little mining exploration activity on the Tiwi islands and Groote Eylandt in recent years. Of the 561 Exploration Licence Applications active on Aboriginal land in the NT, only one is located on the Tiwi Islands and five on Groote Eylandt. By comparison with the large land councils the two smaller ones have not needed to commit significant proportions of their budgets to the administration of the mining provisions of the Land Rights Act.

What resources will be required by RLCs

What is evident from the Reeves recommendations is that there is no discernible modification of land council functions and there is an actual increase in functions rather than a decrease.

- There are no identifiable specific recommendations for modification of functions prescribed in Section 23 of the Land Rights Act. Indeed Reeves states that the RLCs will perform almost all of the functions in Section 23 with a few exceptions. All of these exceptions, for example the land claim process, will be pursued by NTAC;
- Although it is recommended that the operations of Part IV (ABR function) are radically overhauled and functional responsibility is transferred from ATSIC to NTAC, the functional activities are arguably enhanced. For example, RLCs are required to 'apply' to NTAC for an allocation of administrative monies and 'area affected' monies. This establishes an assessment regime which would require additional staff resources. Under the current regime, the proportion of disbursements of ss64(1) (administrative monies) and ss64(3) (areas affected monies) are prescribed by legislation and are automatically transferred from the ABR to the Land Councils, and in respect to areas affected monies, later transferred to the relevant Royalty Association.
- Although Reeves recommends some modification to the mining provisions these provisions remain potentially staff resource intensive and will require significant input and decision-making by Aboriginal residents and RLC staff. As Reeves comments "a decision to allow a large mining project to proceed may involve many meetings with all the Aboriginal people of the region" (Reeves 1998: 210).

At the same time additional functions are conferred to NTAC and the RLCs. NTAC will have an overseeing role of the RLCs and, as noted previously, could assume responsibilities currently undertaken by ATSIC. In respect to the additional functions of RLCs these include, but are not limited to:

- To hold land in trust;
- To co-ordinate and assist the implementation of social and economic programs of NTAC, the NTG and the Commonwealth;
- To encourage young Aboriginal people to acquire skills; and
- To identify skills shortages, infrastructure needs, economic opportunities and fund-raising prospects.

In order to undertake these functions Reeves provides few details and there is no detailed assessment of the staff resources required to perform the functions. Reeves (1998: 595) simply notes that the structure of each RLC will consist of :

- Membership;
- Board of Directors;
- CEO, and
- Staff.

Members: Based on the current total membership(s) of the four land councils of 228 (TLC 48, ALC 19, NLC 78, CLC 83) it is conceivable that up to 30 members would comprise each land council. This would effectively double the current membership and potentially double the running costs when compared to the current regime.

Board of Directors: Reeves (1998: 596) does not specify the size of each Board of Directors but states that the membership of the RLC should decide the number of directors and how they should be chosen. If there were to be seven directors on each board there would be 126 directors Territory-wide.

CEO: Reeves does provide some detail in respect to the CEO who will be responsible to the Board. He suggests that the person would have qualifications similar for Community Clerks under the *Local Government Act* (NT).

A notable omission in the model is a chairperson. It is unclear whether this is intentional or an oversight. It could be reasonably sustained that a chairperson is an essential authority within a land council structure given its inherent representative nature and the need to have a spokesperson on day-to-day local and political, rather than administrative, issues.

Other staffing requirements

Financial staff - It is important to note that the functional responsibilities of land councils are not limited to the Land Rights Act. Under both the current regime and that proposed by Reeves, land councils are Commonwealth Statutory Authorities and are therefore subject to the reporting and auditing provisions of *Commonwealth Authorities and Companies Act 1997* (CAAC Act). Each land council is, and would continue to be, required to produce financial statements prescribed by the legislation, annual reports which will be tabled in the Commonwealth Parliament, and to produce a corporate plan. Section 14 of CAAC requires directors of Commonwealth authorities to prepare estimates which must be passed to the responsible minister. These are functions that cannot be avoided and therefore require staff resources to fulfil them.

Besides these prescribed functional responsibilities there would be a need for financial expertise to monitor internal budgets, income from NTAC and resource development, investments with NTAC, prepare applications to NTAC for funds, and generally to develop sound financial management practices and policies within the RLC.

Mining and Resource specialists - Given that a key principle of the Reeves recommendations is that of local decision-making in respect to resource development issues, it follows that RLCs should be adequately resourced with expertise to make informed decisions. The type of specialist required might vary due to the geographical situation. For example, RLCs in Central Australia may require pastoral expertise while those in the coastal regions may focus on fisheries and pearling. Arguably, such expertise may only be required periodically and consultants could be used.

However, in respect to the administration of the mining provisions of the Land Rights Act it is evident that it would be necessary to have both specialist and administrative permanent staff. It is also evident that the application of these provisions will consume more resources in some regions compared to others. Statistics provided by the NT Department of Mines and Energy show that 40% of all active Exploration Licence Applications (ELA) on Aboriginal Land in the NT are located in the Tanami Regional Land Council area. In order to administer the mining provisions efficiently and to address issues arising from the mines currently in operation in the Tanami region a small to medium size unit would be required. Small units would also be required in most other regions. By contrast in regions such as the Tiwi islands, where there is only one current ELA, administrative operations of the mining provisions could be undertaken within its current staffing structure.

Legal staff - Potentially legal services could be outsourced. However it may prove to be more cost effective to employ a lawyer in house. Furthermore, one would suspect that a lawyer would be required by the CEO of these small Statutory Authorities in order to provide day to day advice in respect to the many legal issues that arise under the Land Rights Act. Given the remoteness of some of the RLCs an in-house lawyer may be an imperative to get quick and efficient responses on legal issues.

Anthropologist – there are a number of reasons an in-house anthropologist would be essential in each RLC under the Reeves proposal. Firstly, it would be required to establish and maintain a register of residents. The dynamics of mobility of Aboriginal people in the NT suggest that this would be an intensive ongoing task. An anthropologist would also be required to assist the RLC to categorize how local tradition is to be understood. It would also be necessary to provide advice to NTAC and the local RLC on matters pertaining to land claims, community living areas, native title claims and other related issues.

Administrative support – a wide range of administrative support functions would be required for each RLC. This support would include arranging meetings of the land council and the directors, assisting with co-ordinating meetings of residents to discuss resource development and mining issues, and co-ordinating other meetings. Administrative support would also be required for salary and recruitment processes, general correspondence, research, IT matters, procurement requirements of the land council, contract administration, accommodation matters etc etc.

Delivery of Economic and Social Advancement Program – As noted earlier in this paper there is a lack of detail on how these programs would be delivered and it is therefore difficult to estimate the resources required to undertake these functions. The functions are of course very similar to those performed by ATSIC although not exclusively. There are currently 164 permanent and 15 temporary staff working in ATSIC in the Northern Territory (ATSIC 1998: 201, 204). It is estimated that if NTAC were to receive NTG funding also, that the staff resources currently administering those programs would be double that of the ATSIC NT structure.

Estimating the cost of RLCs

Given the diversity of geographical location and functional operations of each of the RLCs an estimate of staff resources to meet the operational requirements of the Land Rights Act can be gauged ranging from the current Tiwi Land Council size of four staff to possibly 20 (this of course does not include staff required for the delivery of Economic and Social advancement programs. However, as there are additional functions conferred to RLCs generally, plus the addition of a layer of administration by NTAC, one would expect that additional resources would in fact be required by the TLC. Sutton (1999: 10) suggests that the average staff required for a RLC would be 14. This is based on the average size of the two small land councils so that 18 RLCs would have a notional total staff of 252. Based on a per capita staff cost of \$80,000 the total operating cost of the 18 RLCs would be \$20.2 million annually.

A more detailed and rigorous assessment of the administrative requirements of an RLC has been undertaken by the NLC. The NLC have identified that a minimum requirement to operate a RLC is 11 staff. Based on current prescribed salary rates and conditions it is estimated that in salaries alone a base amount of \$610,341 would be necessary. A further \$307,000 would be required for running costs. This assessment is reasonably conservative and notes that administrative running costs are calculated only on a 1:2 basis when compared to salaries. These costs do not take into account costs associated with the administration of the Board of Directors, meetings of the RLC, a chairperson nor new accommodation requirements to house the proposed RLCs in some regions. They are essentially the absolute bottom line and do not analyze geographical and functional diversity across the NT. Nevertheless, these estimates suggest that resources in excess of \$1 million would be required for each RLC to operate.

Besides the costs of the RLCs, those of NTAC need to be taken into consideration. As noted previously it is unclear as to the extent of NTACs operations and functional responsibility. Sutton (1999: 10) has commented that it is hard to imagine that NTAC itself would not require a substantial staff of at least 100, given that its proposed responsibilities would be extended into areas of economic and social development currently performed by other agencies. Based on a staffing level of 100 and the staff per capita as quoted above, additional administrative monies of \$8 million would be required to finance NTAC's operations annually.

The NLC also provide details on the administration costs of NTAC which appear reasonably conservative. Nevertheless the aggregated estimates for administration costs of the 18 RLCs and NTAC total in excess of \$40 million which is more than the current income of the ABR.

Other Costs

There will of course be other costs associated with implementation and government will accrue further costs in relation to the administration, monitoring and accountability. All 19 statutory authorities will be caught under the CAAC Act and will be subject to Parliamentary and Committee scrutiny. There will be nineteen, rather than four, sets of estimates, financial statements, annual reports and corporate plans.

Although there is a windfall to ATSIC in respect to ABR administration costs, which will be absorbed by NTAC, ATSIC will be required to provide the special appropriation for land claims specified by Reeves, as well as potentially funding additional requirements of the Aboriginal Land Commissioner. Under the Reeves recommendations additional functions are placed on the Aboriginal Land Commissioner which include resolution of disputes over RLCs boundaries, and possibly to act like an appellant jurisdiction for review of decisions by NTAC.

For industry there will be the additional burden, in many instances, to negotiate with more than one RLC over land use issues. Taking mineral exploration as an example, ELAs may cross the boundaries of two, three or even four RLC areas. From the statistics provided from the NT Department of Mines and Energy there are currently 70 ELAs that overlap.

Further costs to government might arise in respect to just terms compensation. From a very simplistic economic perspective, and based solely on the valuation of the land held by Aboriginal Land Trusts, a base line figure can be identified in Reeves at around \$84 million (Reeves 1998: 560)². This valuation does not take into account special value to the owner(s) nor solatium³. There are also questions of just terms compensation in respect to the transfer of Royalty Association assets to RLCs and the extinguishment of native title over land trust land.

Alternative models

² Based on the actual distribution of Aboriginal land between the CLC and NLC areas. Reeves notes that an average value per km² of Aboriginal land can be estimated (using the pastoral land values) of \$154 per square kilometre, yielding a total value for 545,718 km² of Aboriginal land of \$84million in 1997.

³ Solatium is a compensation term which can be applied in the valuation of property. Hyam (1995: 264) describes it as a “sum of money or other compensation given to a person to make up for loss or inconvenience” and more specifically in law “a sum of money paid over and above the actual damages as solace for injured feelings”.

Notably there is a general recognition that Land Councils should be able to decentralise some of their activities. As Toohey (1984) noted one solution would be to create more councils. However, in his assessment he commented that while land claims and mining negotiations are still in progress, there is a need for organisations of sufficient size to provide resources for preparing those claims. Unnecessary duplication of activities and an increase in administrative costs may be in the end counter-productive. There are strong arguments against too much fragmentation of Land Councils (Toohey 1984: 48).

Nevertheless, in recognition of the need for a form of decentralisation, Toohey recommended:

The establishment of regional committees of Land Councils with wide ranging powers of decision-making in regard to Aboriginal land in the region of each committee including the identification of traditional owners and the giving or withholding of consent in any matter in connection with land held by a land trust (Toohey 1984: 53).

Martin's report on the proposed North East Arnhem Ringgitj Land Council made several recommendations to the Minister for Aboriginal and Torres Strait Islander Affairs regarding regionalisation of 'decision-making'. He recommended that the Minister should be empowered under the Act to "establish RLCs of the existing Land Councils" and that "there should be some capacity to devolve some or all of the functions and powers of Land Councils under sections such as 23, 35 and 40 to Regional Councils" (Martin 1994: 84).

The NLC notes that it supports the spirit of Martin's recommendations with the exception of the concept of the Minister having the power to create the regional councils and determine their powers (NLC 1997: 198). The NLC's concept of regionalisation, as approved by the Full Council, is that regionalisation is the devolution of decision-making power with regard to Aboriginal land to the region, in a flexible and regionally appropriate manner and time. This does not necessarily imply the devolution of the administrative functions (for example, budget control management and professional staff) to the control of Regional Councils, nor does it imply that each regional office will have a full complement of professional staff. The overarching concept is that making decisions over land is the basis of a Land Council, and it is the power to make those decisions which should be devolved to the regional level (see Reeves 1998: 205).

Indeed both the NLC and CLC recognise the need for a form of decentralisation and have taken measures towards evolving forms of regional decision making entities. The NLC and CLC currently have an administrative presence in most regions or are anticipating a presence when funds become available. The regionalisation process is limited not only by financial resources but also in the ability of the Land Councils to delegate powers to regional committees. If the Land Rights Act were amended to provide for the Full Council to delegate powers to these committees, and the financial resources were made available, regional committees or councils, under the umbrella of the two large land councils, could be established which address the concerns of the need for local decision-making, and maintain economies of scale and expertise in land council administration.

By comparison with the Reeves model this would be a more cost effective solution to provide for local decision making . Most administrative costs of decentralisation are already in-built into the large Land Councils budgets. For example, the existing Regional Services budget in the NLC region is \$1.27 million for the seven regions within its jurisdiction. Although further costs would be inevitable for the full implementation of the regionalisation program they would be dramatically less of a drain on ABR resources than the implementation of the Reeves recommendations.

Summary

- The rationale that all RLCs across the NT can operate effectively on \$400,000 per annum based on the current size and operations of the two island based Tiwi and Anindilyakwa Land Councils is flawed. This is because there is significant geographical, logistic and functional requirement differences between the island land councils and those of the proposed mainland RLCs;
- By comparison with the current regime, additional functions are conferred upon RLCs and NTAC which will require additional resources;
- ‘Decision-making’ regionalisation, as opposed to ‘administrative’ regionalisation, provides for a more cost-effective regime, offering economies of scale and provides that resources can be potentially directed to social and economic betterment rather than being consumed by administration;
- If the Reeves recommendations were to be implemented there is the potential that the current stream of mining royalty equivalents (currently about \$35 million per annum) could be expended in administration costs to the 18 RLCs and NTAC alone.

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