

House of Representatives Committee Inquiry into the Reeves Report

2 March 1999

Opening Statement

On behalf of the Northern Territory Government, may I welcome you - Mr Chairman - and members of your Committee to the Territory's Parliament House.

My name is Neville Jones and I am the Director of the Office of Aboriginal Development.

With me today are:

- Mr Tim Joyce, Senior Policy Adviser, Department of Chief Minister; and
- Mr Bob Adams, Assistant Secretary, Policy and Community Relations, Department of Mines and Energy.

With your permission, I would like to read an opening statement for the record and naturally, we are then prepared to answer questions and discuss any issues the Committee chooses within the limits of our authority.

Firstly, I need to make it clear that the Territory Government is yet to reach a firm position in face of each of the many findings, conclusions and recommendations reached by Mr Reeves. While it is true there was a Parliamentary debate on the issue of the Reeves Report in October 1998, a detailed analysis of these many findings, conclusions and recommendations is yet to be considered by Government.

This Hearing is taking place some 10 days before the closing period for submissions. It is my understanding the Committee appreciates the breadth of the issues to be considered and anticipates that an extension of the lodgement period will be sought. While we are busy with a submission, it is likely that it will only be in a preliminary form by 12 March and Government endorsement will not be able to be obtained until after that date.

The three of us have had extensive involvement in matters emanating from the *Land Rights Act* over many years and each were instrumental in preparing the Government's submissions to Mr Reeves' inquiry.

What I would like to do, is to make a general statement about the Reeves Report and then offer some comments according to each of the Terms of Reference provided to the Committee. Following that, as I have already said, we will

do our best to answer questions and proffer advice if it is sought.

In its Submissions to Mr Reeves, the Territory said:

The *Land Rights Act* has been a powerful influence in shaping the cultural, economic and political landscape for a generation of Territorians. At its most fundamental level, the Act has redressed the imbalance in land ownership between Aboriginal Territorians and the other people of the Territory. The Act has ensured that official recognition is given to cultural and religious beliefs of Aboriginal Territorians. For over two decades, the development of the Territory, including development on land not owned by Aboriginal interests, has accommodated the special relationships Aboriginal Territorians have with their sacred sites.

...

Aboriginal land rights is an intensely political issue in the Northern Territory and will always be so being a process that is not 'owned' by the Territory community. This review of the Act must go beyond a notion of 'fine tuning' - the Act needs to be re-examined in the context of the future social, economic and constitutional development of the Northern Territory.

At a later stage in his inquiry, Mr Reeves sought a further definitive statement on the Territory's attitude to the *Land Rights Act*. That response was:

The Northern Territory Government recognises as a fundamental principle the traditional affiliation and attachment of Aboriginal Territorians have to their land. The *Aboriginal Land Rights (Northern Territory) Act 1976* serves to recognise and reinforce the

Aboriginal rights and interests in land. The Northern Territory Government recognises the need for land administration processes that properly take account of the traditional Aboriginal interests in land.

The Territory notes, however, that the Act emanates from an inquiry conducted in 1974, before the creation of the separate self governing body politic of the Northern Territory, and in which no consideration was given to the future economic, social and cultural development of Northern Territory society generally.

The Territory was concerned to see that the Act was amended to accommodate the future needs and aspirations of the Territory community as a whole. The recommendation of Mr Reeves to insert a preamble or purposes clause is strongly supported.

Mr Reeves premises his report with the following statement:

... it is aimed at the next generation of Aboriginal Territorians - the young people living in settlements, on outstations and in towns in the Northern Territory. They will soon inherit vast areas of Aboriginal land in the Northern Territory, and a strong vibrant culture. However they will also inherit profound and deepening social and economic problems. The reforms I have proposed will maintain and strengthen their long-term security with respect to their culture and their traditional lands, and offer them the opportunity to achieve better social and economic outcomes than their parents have been able to.

I turn now to the Terms of Reference to the Committee.

The proposed system of Regional Land Councils including: the extent to which they would provide a greater level of self-management for Aboriginal people, and the role of traditional owners in decision making in relation to Aboriginal land under that system.

The Territory's submission quoted Justice Woodward who conducted the Aboriginal Land Rights Commission in 1973-74 (with an appropriate warning as to context):

The next step will be a fresh assertion of personal and community identity by Aborigines. This will come because they will have a secure territorial base and control over their own lives. They will be able to regulate for themselves their contacts with the dominant outside society and come to terms with it in their own way and at their own pace.

The *Land Rights Act*, in section 21, provides for the establishment of new land councils. This provision has been used twice; in respect of the Tiwi and Anindilyakwa Land Councils. There have been a number of other applications which, for a number of reasons - and some not so clear - have either been rejected or ignored.

These expressions of independence - if I can call these applications that - stem primarily from two reasons:

- dissatisfaction with a major Land Council; or

- the maturing of a regional representative organisation.

Section 25 of the *Land Rights Act* provides a duty of [a] “Land Council to attempt conciliation of disputes”. Both the Central and Northern Land Council have acknowledged in academic literature prior to the Reeves Inquiry the volume of their effort in resolving disputes.

Justice Toohey in his 1983 review of the Act (*Seven Years On*) looked at these issues and made a several comments and recommendations about the regionalisation of Land Councils and restructuring Land Trusts as land councils. Toohey’s recommendations were not picked up by the Governments of the day.

The Territory’s submissions to Reeves simply called for a positive view to be taken of the existing section 21 and that Commonwealth assistance be made available to traditional owner groups seeking ministerial approval to establish new land councils. The provision has always been there, why construe these movements as ‘divide and conquer’ as if the provision does not exist?

Reeves has proposed a system of 18 Regional Land Councils oversighted by a Northern Territory Aboriginal Council.

The Territory has several reactions to this proposal:

- the proposed boundaries of the Regional Land Councils reflect the current regions utilised by the Northern and Central Land Councils;
- to a large extent, the proposed boundaries accommodate the existing separate land council movements;
- the proposal will empower local decision making by traditional owners;
- under the Reeves' proposal, Aboriginal people will need to make an informed choice based on residence and affiliation as to which Regional Land Council they will opt to join; and
- there may be practical difficulties in developing a Regional Land Council in some areas where there is not an emergent regional group.

The proposed structure and functions of the Northern Territory Aboriginal Council

The Territory had always envisaged an evolutionary process for the formation of regional land councils and that collectively they would maintain some form of central body or congress. Such a body would be a resource for specialised services and undoubtedly would act politically on behalf of the constituent groups.

The recommendation for such a Council is predicated on the recommendation to establish the Regional Land Council system. Such a regime would require a representative body in certain scenarios to provide strategic oversight and expertise to the regional operations. Much has been made of publicly that the proposed Council would be appointed by the Commonwealth and Territory Governments but there has been a failure by those opponents to this recommendation to point out that Reeves' proposal is a transitional arrangement.

The Territory would likely support in principle the NT Aboriginal Council but notes there is a degree of opposition from at least the Tiwi Land Council and certain other groups desirous of establishing as Land Councils. This opposition is based on a premise of loss of autonomy compared with being approved as a land council under the existing provisions of the Act.

The proposed modifications to the mining provisions of the Land Rights Act including the continuing role of government in the administration of these provisions

As Reeves acknowledges in his report, no one is satisfied with the mining provisions of the *Land Rights Act*. Despite the 1987 amendments, the existing provisions do not work as effectively as they could. They retard economic growth and provide only limited economic benefits to Aboriginal land holders and to the Territory generally.

Mining requires exploration effort - despite some improvement in recent years, Aboriginal land is explored at a lesser rate than non Aboriginal land. Of all exploration licences actually granted, 72% have been off Aboriginal land. Exploration expenditure, since 1991-92, has been some four times greater on non Aboriginal land.

The Territory in its submissions outlined three alternatives:

- remove the veto provisions from the Act;
- implement a regime equivalent to that provided by the *Native Title Act*; or
- amend the existing provisions to tighten the time frames, reduce the opportunities for the continual extension of negotiation periods, more rapid access to arbitration and

the quicker application of the veto provisions where Aboriginal people are opposed to exploration and mining on social and cultural grounds. In short, reduce the economic transaction costs emanating from the existing provisions of Part IV of the Act.

In the Territory's view, the third alternative would bring about workable processes. The reforms proposed by Reeves are far more radical. While acknowledging that Reeves was proposing reforms that he believed would provide incentives for more rational negotiating behaviour and empowerment of traditional Aboriginal owners, the Territory is concerned they may lead to undesirable 'dutch auction' situation. Reeves acknowledges the principle of Crown ownership of minerals, but his recommendations to reduce the Territory Government's role to a passive one ignores the responsibility of the Crown oversight of the orderly development of mineral resources in the community's interest.

The proposed changes to the operations of the Aboriginal Benefits reserve including the distribution of monies from the Reserve

The Territory notes that the ABR has a requirement to make available a proportion of its revenue for the benefit of Aboriginal Territorians generally. But there is no requirement to maintain and invest reserves. The Territory is of the view that the purpose of royalty equivalent payments is confused, that problems exist with the incorporation and accountability of the recipient associations, and that the ABR requires a more commercial focus. Individual payments are the source of tension in communities and do nothing for the well being or long term benefit of Aboriginal people as a whole. These views are echoed in Reeves' findings and the Territory agrees in principle with many of the recommendations that he makes.

Proposals concerning access to Aboriginal land including the removal of the permit system and access to such land by the Northern Territory Government

Of the many recommendations made by Reeves, the removal of the permit system has been the most widely misunderstood and subject to scaremongering. His recommendations included an overhaul of the *Trespass Act* as well as other measures empowering Aboriginal groups. This recommendation seems to be rooted in an underlying

philosophy adopted by Reeves to break down the oppositional culture he noted and to bring about a sense of partnership between the Territory's peoples.

While the Territory does not have a final position on this matter, it appreciates the direction Reeves was heading but notes that many Aboriginal people may not support such changes.

The other aspect of Reeves' recommendations that have been subject to biased public comment, are those pertaining to access to Aboriginal land by the Northern Territory Government. Reeves did not recommend, nor did the Territory argue for, an unfettered right to compulsorily acquire Aboriginal land.

It is generally accepted that no persons' land should be compulsorily acquired except in those limited circumstances arising when it is in the public interest or for essential public purposes. There is no necessity or desire on the part of the Territory to acquire the root title to Aboriginal land, just an interest commensurate with the purpose. Again, the Committee's attention is brought to the recommendations of Justice Toohey in his 1983 review.

The recommendations in the Reeves Report for each acquisition to be authorised by specific legislation and access by Regional Land Councils to documents and advice

held by the Territory are clearly aimed at transparency and accountability. The Territory contends the requirements for public scrutiny and protection of Aboriginal interests can be addressed in other ways and alternatives will be provided in due course.

The proposed application of Territory laws to Aboriginal land

The Territory made extensive submissions on this issue and it appears that, in the main, Mr Reeves has accepted the arguments for change and the need for legislative certainty. The concepts underpinning the Reeves recommendations are therefore supported in principle although the Territory may have some concerns with the specific wording of the recommendations. In due course, the Territory will be ready to provide assistance to the Commonwealth in drafting appropriate amendments to the *Land Rights Act*.

In conclusion Mr Chairman, a review of the *Land Rights Act* was overdue by about 14 years - the anomalies and rigidity that Justice Woodward warned against in 1974 had crept in. Mr Reeves has made a searching examination of the operations of the Act and has proposed comprehensive reforms. Some people regard these reform measures as too radical. However, the Act was radical in 1976 and it would be unduly conservative to argue that it does not need modernising twenty three years later.