COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Reference: Reeves report on the Aboriginal Land Rights (Northern Territory) Act

TUESDAY, 2 MARCH 1999

DARWIN

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STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Tuesday, 2 March 1999

Members: Mr Lieberman *(Chair)*, Mrs Draper, Mr Haase, Ms Hoare, Mr Katter, Mr Lloyd, Mr Melham, Mr Quick, Mr Snowdon and Mr Wakelin

Members in attendance: Mrs Draper, Mr Haase, Ms Hoare, Mr Lieberman, Mr Lloyd, Mr Melham, Mr Quick, Mr Snowdon and Mr Wakelin

Terms of reference for the inquiry:

The Committee shall inquire into and report on the views of people who have an interest in the possible implementation of recommendations made in the Reeves Report. In particular the Committee will seek views on:

(1) the proposed system of Regional Land Councils, including

(a) the extent to which they would provide a greater level of self-management for Aboriginal people, and

(b) the role of traditional owners in decision making in relation to Aboriginal land under that system;

(2) the proposed structure and functions of the Northern Territory Aboriginal Council;

(3) the proposed changes to the operations of the Aboriginals Benefit Reserve including the distribution of monies from the Reserve;

(4) the proposed modifications to the mining provisions of the Act including the continuing role of government in the administration of these provisions;

(5) proposals concerning access to Aboriginal land including the removal of the permit system and access to such land by the Northern Territory government; and

(6) the proposed application of Northern Territory laws to Aboriginal land.

The Committee shall make recommendations on any desirable changes to the proposals made in the Reeves report in the light of the views obtained.

WITNESSES

Committee met at 1.53 p.m.

CHAIR—Thank you very much colleagues, and ladies and gentlemen. I now open the public hearing of this committee and in doing so I welcome everybody to the hearing on the recommendations of the Reeves report on Aboriginal land rights. Before we go further, I want to record how much we, the committee and our staff, appreciated the splendid welcome that was given to us from the Larakia people. We appreciated the warm welcome and the messages of good will they gave us after their performance.

As you will all know, the Minister for Aboriginal and Torres Strait Islander Affairs, Senator John Herron, has asked the committee to seek people's views about recommendations in the Reeves report. The minister has also indicated that we can suggest changes to the recommendations in the Reeves report, so we have a very wide brief. Members of the committee are starting this inquiry with open minds. We want to talk to all interested people—Aboriginal and non-Aboriginal—in a spirit of cooperation, and we hope we will learn from you all over the next few months and achieve a worthwhile report for all of you.

We want to consult as widely as possible. We are all very conscious of the need to hear the views of the people in the more remote communities, and for this reason we are planning to visit a number of regions and centres through the Northern Territory over the next few months. We plan to present our findings to parliament in August this year.

We begin today by taking evidence from the Northern Territory government. Other witnesses will be giving evidence and submissions to us through the day. The hearing is open to the public and a transcript of what is said will be made available. If you would like further details about the inquiry or the transcripts please ask any of the committee staff here at the hearing.

With these remarks, I thank my colleagues for travelling here today from different parts of Australia. The names of all the members are in front of them so that ladies and gentlemen in the public gallery can note them. You will be aware that the members of the committee represent all the political parties in the House of Representatives, so we are well represented today and we look forward to our task.

[1.57 p.m.]

ADAMS, Mr Robert Lindsay, Assistant Secretary, Resource Policy and Legislation, Northern Territory Government

JONES, Mr Neville Lyndsay, Director, Office of Aboriginal Development, Northern Territory Government

JOYCE, Mr Tim, Senior Policy Adviser, Northern Territory Government

CHAIR—Welcome gentlemen. There is a formal matter that all committees put into the public record. I will now read it. Although the committee does not require you to speak under oath, you should understand that these hearings are legal proceedings of parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Before members ask questions, do you have an opening statement that you would like to make?

Mr Jones—Yes, Mr Chairman. Firstly, on behalf of the Northern Territory government I welcome you and members of your committee to the Territory's Parliament House. I will read an opening statement for the record. Naturally, we are then prepared to answer questions and discuss issues 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 that 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 the government.

This hearing is taking place some 10 days before the closing period for submissions. It is my understanding that the committee appreciates the breadth of the issues to be considered and anticipates that an extension of the lodgment period will be sought. We are busy on a submission, but it is likely to be only in a preliminary form by 12 March, and government endorsement will not be able to be obtained until after that date. Having made those comments, you are not exactly hearing from a set of lame ducks. The three of us have had extensive involvement in matters emanating from the land rights act over many years, and each of us was instrumental in preparing the government's submission to the Reeves inquiry.

I will 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, we will do our best to answer questions and proffer any advice that is sought.

In its submission 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 of land ownership between Aboriginal Territorians and the other peoples 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 rejoinder submissions from various departments and sought from the Territory 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 Aboriginal Territorians have to their land. The Aboriginal Land Rights (Northern Territory) Act 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 and 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 a purposes clause is strongly supported. Mr Reeves premises his report with the statement that:

. . . 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 will now turn to the terms of reference of the committee. I will not read the heading but, concerning the proposed system of regional land councils' self-management and decision

making, in the Territory's submission we quoted Justice Woodward, who conducted the Aboriginal Land Rights Commission in 1973-74, and our submission did carry the appropriate warning as to the context. I quote again:

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.

In the land rights act, 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 variety of reasons—and some not so clear—have either been rejected or ignored.

These expressions of independence, if I may term those applications, stem primarily from two reasons: firstly, dissatisfaction with a major land council; and, secondly, the maturing of a regional representative organisation. Section 25 of the land rights act provides a duty for a

land council to attempt conciliation of disputes. Both the central and northern land councils have acknowledged in academic literature, prior to the Reeves inquiry, the volume of their efforts in resolving disputes.

Justice Toohey, in his 1983 review of the act, looked at these issues and made several comments and recommendations about the regionalisation of land councils and the restructuring of 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 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, so why construe these movements as some form of 'divide and conquer' as if the provision never existed?

The Territory's submissions to Reeves simply called for a positive view to be taken of section 21 and that Commonwealth assistance be made available to traditional owner groups seeking ministerial approval of established new land councils. The provision has always been there, so why construe these movements as some form of divide and conquer as if the provision never existed. 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. Firstly, we note that the proposed boundaries of the regional land councils reflect the current regions utilised by the Northern and Central Land Councils. Secondly, to a large extent proposed boundaries accommodate the existing separate land council movements. Thirdly, the proposals will empower local decision making by traditional owners. Fourthly, 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, finally, there may be practical difficulties in developing a regional land council in some areas where there is not an emergent regional group.

Turning to 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 those constituent groups.

The recommendation for such a council is predicated on the recommendations concerning 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 publicly of the proposed council being appointed by the Commonwealth and Territory governments. There has been a failure by those opponents to this recommendation to point out that Reeves's proposal is a transitional arrangement.

The Northern Territory would likely support, in principle, the Northern Territory Aboriginal Council but notes the degree of opposition from at least the Tiwi Land Council and certain other groups desirous of establishment 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.

I turn to the terms of reference dealing with mining. As Reeves acknowledges in his report, no-one is satisfied with the mining provisions of the land rights act. Despite the 1987 amendments, existing provisions do not work as effectively as they could. In the Territory's view they retard economic growth and provide only limited economic benefits to Aboriginal land holders and to the Territory generally. Mining requires exploration effort and, 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 per cent have been off Aboriginal land. Exploration expenditure since 1991-92 has been running at some four times greater on non-Aboriginal land.

The Territory in its submissions to Reeves outlined three options: 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 and give more rapid access to arbitration and the quicker application of veto provisions where Aboriginal people are opposed to exploration of 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 option 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 negotiation behaviour and empowerment of traditional owners, the Territory is concerned that these proposals may lead to an undesirable dutch auction system.

Reeves acknowledges the principle of Crown ownership of minerals but his recommendations to reduce the Northern 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.

Turning to the Aboriginal benefits reserve and the distribution of monies from the reserve, the Territory notes that the Aboriginal benefit reserve has a requirement to make available a proportion of its revenue for the benefit of Aboriginal Territorians generally. 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 incorporation and accountability of the recipient associations and that the reserve requires a more commercial focus. Individual payments are the source of tension in communities and do little for the wellbeing or long-term benefit of Aboriginal people as a whole. These views are echoed in Reeves's findings and the Territory agrees in principle with many of the recommendations that he makes.

Turning to the term of reference dealing with access to Aboriginal land, the permit system and access to land by Territory government, of the many recommendations made by Reeves, the removal of the permit system has been the most widely misunderstood and subject to mischievous 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 what he perceived to be an oppositional culture 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 in but notes that many Aboriginal people may not support such changes.

The other aspect of Reeves's recommendations that have been subject to what I consider to be scandalous 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 person's 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, of an interest in the land, 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.

Turning to the final terms of reference, the 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 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 23 years later.

CHAIR—Thank you, Mr Jones. I have just a couple of formal things. Would you be prepared to table the submission you read from?

Mr Jones—Yes.

CHAIR—Is it the wish of the committee that the submission tabled by Mr Neville Jones on behalf of the Northern Territory government be accepted as evidence to the inquiry and authorised for publication? There being no objection, it is so ordered.

I noted that the government will be putting a more detailed submission in to the Reeves report. Can we just formalise that and get an understanding of it? The committee would appreciate it if it were possible for the government, and anyone else who wishes to do this,

to make a submission as soon as possible—and I appreciate the time problems. The submission should deal with each recommendation of the Reeves report—for or against. If it is for, argue the reasons why; if it is against, argue the reasons against. If it is suggesting a modification, put that forward with the reasons and arguments for. I say that because it is a very extensive report and the public is very interested in the proceedings. It will be, I think, more efficient if we can do it.

Mr Jones—That would be our approach. In order to obtain instructions from the government through the cabinet process, we envisage that that document would be exactly that. It would discuss our submissions, Reeves's findings, pros and cons, alternatives, with options to be considered by the cabinet. And we would think then that our actual submission to you would be in almost identical format.

CHAIR—That would be very helpful. Can I just set the broad landscape, particularly with your knowledge and expertise in the Northern Territory. How many Aboriginal people reside in the Northern Territory?

Mr Jones—Approximately 48,000, 28.6 per cent of the population, with in excess of 60 per cent of those living in rural or remote areas.

CHAIR—Could you give an overview of the position regarding the wellbeing of those people in the Northern Territory?

Mr Jones—There is no doubt that, in comparison with the balance of the Territory community, they experience significant social and economic disadvantages.

CHAIR—Could you describe those?

Mr Jones—I will just refer to a document I have here. If the committee would wish it, we can get you whatever data we have on education levels, health standards and what have you. But in the submission that we gave to Reeves, and it was in the consideration of the economic development on Aboriginal land, we pointed to a great imbalance between employment and unemployment in the labour force or out of the labour force and demonstrated that, using a principle known as economic burden ratios—that is, basically the number of people employed and how many people they have got to support with them—Aboriginal people are disadvantaged not only compared to non-indigenous people in the Northern Territory but also to all other people in Australia.

CHAIR—Have you got some general comments about the health of Aboriginal people in the Northern Territory compared with other people in the Northern Territory?

Mr Jones—All health indicators are decidedly less.

CHAIR—Decidedly less.

Mr Jones—Yes, in almost every category.

Mr QUICK—Worse than third world countries?

Mr Jones—I do not like using that expression, Mr Quick. I could not quote you figures to say exactly how the Northern Territory Aboriginal people stand up against a country like Rwanda or anywhere else. I would not be prepared to do so.

Mr SNOWDON—It is true to say that the land rights act does not have as one of its functions education, employment or health, does it?

Mr Jones—No, it does not.

Mr SNOWDON—They are the responsibilities of government, are they not?

Mr Jones—They are a responsibility of government except to the extent that it is a function of land councils to assist the Aboriginal owners with the management and development of their lands.

CHAIR—We will come back to that. On the up-to-date statistics on health, education, unemployment and other indicators, would the government be able to give us an up-to-date statement of those at the time when it lodges its further submission?

Mr Jones—Yes.

CHAIR—The land the subject of this inquiry, which is at the moment administered by four land councils, represents a substantial part of the land mass of the Northern Territory, I understand. Could you indicate the percentage that the land represents of the land mass of the Northern Territory?

Mr Jones—Land granted as Aboriginal land and land claimed is approaching 54 per cent of the Northern Territory.

CHAIR—Land granted?

Mr Jones—And claimed; they have put the two figures together. If you want a more precise figure, we have got the December figures. The granted Aboriginal land is 566,592 square kilometres or 42.09 per cent of the Territory. Land under claim is a further 152,386 square kilometres or 11.32 per cent of the Territory. The total figures then are 718,978 square kilometres or 53.41 per cent.

Mr SNOWDON—Mr Jones, what proportion of the Northern Territory is under pastoral lease?

CHAIR—Hang on. I will give you the call shortly.

Are you able to tell us the proportion of coastline of the Northern Territory—

Mr Jones—Approximately 84 per cent of the coastline is adjacent to Aboriginal land.

CHAIR—And those lands you mentioned are administered by the four land councils.

Mr Jones—Yes.

CHAIR—With a variety of other arrangements pertaining to them.

Mr Jones—Yes.

CHAIR—Right. Can I just ask you to paint a thumbnail sketch—I will ask the government, if it would, in its submission to give us a more detailed sketch—of the other organisations, statutory, local government or otherwise, having some jurisdiction over this land other than the land council.

Mr Jones—We need to be careful about using the words 'jurisdiction over lands', but, of the other organisations that operate and have an impact on life in Aboriginal lands, the most obvious ones are the ATSIC regional councils, of which there are seven in the Northern Territory. Following on from that we then come to the local governing arrangements. I will have to confirm the precise numbers, but there are something in the order of about 56 recognised local governing bodies. I will have to check this, but about 32 are known as community government councils incorporated under the Northern Territory (Local Government) Act. The others are either incorporated as corporations under the Commonwealth Councils and Associations Act or some may well be associations under the normal Northern Territory associations incorporation legislation and, as part of the local government financial assistance regime, they become recognised as local government authorities.

CHAIR—When you give your detailed submission—I would not expect you to do it now—will you be able to identify the particular organisations, for example the name of the local government authority, existing in the Northern Territory having some jurisdiction over parts of the land included in the four land councils' jurisdiction?

Mr Jones—Yes. To add to the thumbnail sketch, if you look at the lands under the jurisdiction of the Tiwi Land Council, you have three incorporated local governments, plus a further organisation recognised for local government purposes, just in those two islands.

CHAIR—Take that as an example. Who would be responsible for making a decision as to the use of the land in that area? Say someone wanted to construct a private dwelling, a house: how would you get a decision to build a house on that land? Who would you have to go to and ask?

Mr Jones—Each Aboriginal community would have a range of different organisations and varying relationships. Most communities would have some form of an Aboriginal housing association. On a place like Tiwi, the relationship concerning housing would be a fairly close one. In other communities, say in relation to the Northern Land Council, it would not be so close.

One of the things that the Northern Territory government has long done is work with communities and the land councils to develop what is known as serviced land availability plans, which are, if you like, a mini-town plan and define no-go areas and all that. At their ultimate, those plans are signed off by the land councils and by the Aboriginal areas protec-

tion authority as to the issue of sacred sites, and then you get on with constructing houses within that township.

CHAIR—If an Aboriginal family wanted to build a house on some of the land in the area that has been granted under the act that we are inquiring into, would they be able to do it only if the land council and the land trust agreed first?

Mr Jones—There are two things there. If it were merely building a house, it would probably just be sorted out locally, but if building that house had some measure of impact on the actual land title—if they sought a lease or whatever—it could not be done without express approval through the land council and land trust system. The provisions are set out in the land rights act for that and there are varying time periods.

CHAIR—On top of that, would it be necessary to get permission from a local government authority if a local government authority also had jurisdiction over that same area?

Mr Jones—Not necessarily. It is not a mirror image of local government planning systems. They are developing, emerging communities and every one of them is different as to how these things get sorted out.

CHAIR—So in your submission will you be able to explain how it is sorted out or not sorted out?

Mr Jones—We can give you some pen pictures.

CHAIR—I am asking these questions in the context that the opening remarks and questions from me express the concern that many of us have as to the state of health and wellbeing of Aboriginal people in the Northern Territory.

Mr Jones—There was a reference in our submission to Reeves about the commercial use of Aboriginal land and how the existing provisions of the land rights act can be used to establish leases of Aboriginal land. I emphasise that I personally see that as a solution for codifying relationships between, say, a local government structure and the landowners, that you would sort all those things out in the lease conditions. There is a minor reference to that in John Reeves's report.

CHAIR—You mentioned in your submission that the Northern Territory government will be arguing in its more detailed submission that the Northern Territory law should apply to the people living in these areas that are granted under the act, and you will give us further details of that.

Mr Jones—Northern Territory law does apply to Aboriginal land, except to the extent that it is inconsistent with the land rights act.

CHAIR—So you are arguing that all people should be equal before the law.

Mr Jones—Acknowledging a premise that the laws of the Northern Territory already recognise special aspects of Aboriginal culture, the point that we were making is that there is this continual uncertainty about whether or not the law applies, and it emerges in a variety of ways. There has never been the ultimate test case. Land commissioner after land commissioner have looked at this issue. Basically, we propose that certain classes of laws, such as for public health, environmental protection and what have you, should apply regardless and not have to go through this test of whether or not the law was inconsistent.

CHAIR—Could we ask the government if they would clarify this in the submission by specifying particular laws it is arguing should continue to apply and those which it argues should not apply, and the reasons for it.

Mr QUICK—Like you, Mr Chairman, I am disappointed that the Northern Territory government has not got a submission in front of us so we can go through and dissect it. But I am aware of the way the world operates.

How do you see that the creation of an additional 14 bureaucracies will address the obvious social and economic needs of the indigenous community when, looking at the land councils, their population ranges from 557 to over 10,000? In the rest of Australia we are tending to get bigger rather than smaller. What is wrong with the current set-up of four?

Mr Jones—I think we need to look at two different aspects here. Under the land rights act as it stands—and as Mr Snowdon has pointed out—the existing land councils are not responsible for health and education matters.

CHAIR—At the moment.

Mr Jones—They are your words, not mine. They are not responsible for those things. What Reeves proposed was a system of 18 regional land councils which he envisaged, through a partnership process with the Commonwealth and the territory governments, would then be prepared to take on additional functions. I point out that the existing land rights act already has a provision for a land council to take on existing functions under Northern Territory law, if so sought.

Mr QUICK—So you see four going to 18 would make your job a lot easier?

Mr Jones—No, I am not saying that at all. I do not see the relevance of the question, I am sorry.

Mr QUICK—I am asking whether you support four or whether you support 18 or whether you support a number in between. What is the government's position? We do not have your submission, so we are having to turn over stones to find out what your position is. Are you happy with four? Do you want 10? Or are you happy with Reeves's 18?

CHAIR—I do not want to override an important line of questioning but, in fairness, the deadline for submissions to the committee from the government and the community is 12 March.

Mr QUICK—I understand that.

CHAIR—It is fair that I indicate as chair that there is no criticism of anyone who has not yet done their full submission. We are trying to start the inquiry as early as possible because of its complexity, but we must make allowances. If the committee is receiving submissions in an interim preliminary way and being told that we will have a final one before 12 March, we will live with that. There is no criticism if you have not got it ready now.

Mr Jones—Understood, Mr Chairman. I will do my best to answer the question. Once upon a time, there were two land councils in the Northern Territory. Section 21 provides for the establishment of new land councils. After much objection, a further two were created. Until the Reeves report, the publicly stated position of the Northern Territory government was that it was prepared to assist those groups who would seek to make submissions to the Commonwealth minister responsible and who were wishing to set up their own land councils.

In my opening statement, I alluded to the fact that the Northern Territory always envisaged that this would be an evolutionary process—we did not put any submissions to Mr Reeves that he create overnight a system of 18; we are coming to grips with that ourselves. On one hand, the Northern Territory government has always believed that regional land councils being responsible for traditional decision making about land was a viable option but, as I alluded to in the opening statement, we can see some practical difficulties. We are in the position of having to work through that and provide advice to government.

Mr QUICK—Can you explain what you mean by 'practical difficulties'?

Mr Jones—I thought I did that in the opening statement. I do not want particularly to name organisations, but in one particular region an organisation that you will be hearing from later on today has evolved as a representative organisation in its own right. It is what I referred to as a maturing organisation to the extent that I believe that that group—and I do not want to put words in their mouths—and others believe that they are sufficiently mature in their organisational capacity and their representativeness that they can become a land council. However, you could go to one of the other regions proposed by Reeves, for example, south of Borroloola and the Barkly area, and there is no such body in existence. To try to create overnight a regional land council would seem to me to have some practical difficulties. That is all we are saying and about all we could say.

Mr QUICK—Thank you, Mr Chairman. That is all at this stage.

Mr SNOWDON—In your introduction you referred to the Northern Territory government's position. I understand that Mr Reeves was appointed on 8 October 1998. On 10 October the then Chief Minister made a public statement in which he said, 'The day of reckoning is at hand for the NLC and the CLC.' What do you think he meant by that?

Mr Jones—I have no idea. I have no recollection of the statement.

Mr SNOWDON—Could you perhaps explain to us whether you are representing the Northern Territory government? Are you able to amplify previous statements of the previous Chief Minister in relation to the Reeves report?

Mr Jones—I am representing the Northern Territory government, but there are some rules about this committee as to the position of officers and government policy.

Mr SNOWDON—I understand that, but can you justify his position?

Mr Jones—The quotes that I gave in the opening statement from our submissions to Reeves are official Northern Territory government policy because they have been cleared through the government's processes. There is a limit as to how far I, as an officer, can go at this point in time.

Mr SNOWDON—I understand and appreciate that. I am not trying to get you to say something that you do not want to say. I am just trying to put on the record that the then Chief Minister had a public position about this review in relation to the role of land councils and how they might be dealt with under the review.

Mr Jones—I do not recall that comment or where it was made. I do not have it in front of me, but at a point in time after the Reeves report was released there was a debate in parliament, and I did have a hand in preparing the draft material in which the Chief Minister's speech was made. If he said it then they were not my words.

Mr SNOWDON—On 6 November last year there was a report in the *Northern Territory News* of the proposal by the Northern Territory government to set up a working group, in conjunction with the Commonwealth, to investigate the proposals to break up the land councils. Can you tell us where that has come to? What has happened? Has such a committee been set up?

Mr Jones—I object to the words 'break up'—that is the NT news. I can tell you about that because I was present at the meeting between Senator Herron and Minister Baldwin for the Northern Territory government. The working group was a group of two—I and Mr Peter Vaughan from the Department of the Prime Minister and Cabinet. The object of the exercise was to look at the existing provisions of section 21 of the land rights act—to have a rethink; go over the history of previous applications and to try to get a handle on what the provisions of that act meant when they referred to 'a substantial majority' and 'an appropriate area'—and how the current applications before the Commonwealth minister would stack up.

On our side of the fence, we have initiated a recovery of some of those applications that we have access to. The Department of the Prime Minister and Cabinet has done the same or is doing the same. There is no reportable progress except that, in the course of this, we came across previous advisings of the Australian Government Solicitor about the meanings of those words and we have exchanged some information. That is as far as it has gone.

Mr SNOWDON—Do not answer the question if you do not want to, but it would seem to me that that presupposes an outcome for this review, does it not?

Mr Joyce—I think Mr Jones just said that was in respect of the existing provisions of the existing land rights act, section 21, which allows for additional land councils to be formed subject to certain procedures and applications.

Mr SNOWDON—You would forgive one for thinking something else, wouldn't you?

Mr Joyce—I cannot speculate on that. That was under the existing provisions of the land rights act. I do not think it has any relationship to the Reeves review at all.

Mr SNOWDON—Can you explain the role of the Northern Territory government in assisting breakaway land councils or groups proposing to break away from existing land councils?

Mr Jones—Yes. The Northern Territory government will entertain applications for financial assistance from groups desirous of establishing separate land councils to prepare their submissions to the Commonwealth minister, pursuant to section 21. Those applications are directed to my office. We have some internal guidelines whereupon we try to measure whether or not there is a real movement. That can take a variety of forms—whether or not there have been mass meetings, mass petitions, all of that sort of thing—and we will provide some financial assistance. It has been pretty meagre. There is an upper limit of $50,000, beyond which I would need to go to cabinet.

The Office of Aboriginal Development is not actually funded for this purpose. We will need to meet those costs out of our existing appropriation, and if necessary recover from the Treasurer's advance. If you wanted me to put a figure on the total expenditure since 1993, I would be guessing, but I would say that it would be something less than $200,000.

Mr Joyce—Can I just add to that that there is a perception out there amongst various Aboriginal groups that the land councils are not listening to what they have to say and are not accurately reflecting or implementing their wishes. Various of those groups have approached the Northern Territory government. So it is not a Northern Territory government driven process; it is the process of disaffected Aboriginal groups coming to us and saying, 'We have a problem, what can you do to assist us?' Thus it is us providing them assistance.

Mr SNOWDON—Can you tell me how much money you have expended on the Anmatyerre breakaway land council?

Mr Jones—I will confirm the figure for you. At a guess it would be less than $50,000.

Mr SNOWDON—It has also been the role of the Northern Territory government, has it not, to assist people who wish to register opposition to land claims?

Mr Jones—I could not answer that.

Mr SNOWDON—Can you tell me if the Northern Territory government has funded a legal challenge against the legitimacy of the Alcoota land claim and its claimants by one Mr Turner?

Mr Jones—Do you want to answer that one?

Mr Joyce—I do not know.

Mr Jones—I am not in possession of and was not involved in any of the details about the Alcoota land claim, but I do generally know about it. I could not answer the question as to whether the Territory government funded. I would make the point, however, that this is not unusual and indeed that land commissioners have enabled their legal counsel assisting to assist other groups that do not wish to be represented by a land council, and from time to time Commonwealth funds have been made available for that purpose.

Mr Joyce—Can I just add that there are a number of land claims where the Territory has provided funding and assistance to Aboriginal groups. The act requires the land councils to represent all groups who assert that they have an interest in the land and if they have a conflict of interest to provide outside assistance to them. On those occasions when they do not provide them with separate legal representation, again it is frequent that those disaffected groups approach us to have their interests protected. The Territory has a policy of representing those groups when they assert that they have a conflict with the group being put forward by the land council. There have been at least four occasions when I can recall that has occurred.

Mr SNOWDON—Could you take it on notice to provide us with advice as to the current status of any legal proceedings which might be funded by the Northern Territory government in relation to the Alcoota land claim.

You refer to evolutionary processes in Woodward. Woodward at 368—second report, April 1974—makes the point about the development that over time there will be a new approach. I will read 367 and 368 and then I want you to make a comment:

I believe it is inevitable that community councils will over a period of time come to play a more and more significant local government role. I think it is only being realistic to say that the likely development over the next 50 to 100 years will be the gradual weakening of the links with specific areas and sites and the strengthening of community identity in larger tracts of land.

He then goes on in 368 to say:

This will create problems for Aborigines over the period, but it will ultimately generate both a new approach to land owning and land use and a new leadership structure.

He then goes on:

I believe that this will be a natural development and that the general community, through its laws and other pressures, has no more right to prevent such a development by artificially bolstering traditional institutions than it has to try and bring about such changes.

Would you say that attempts to try and assert over Aboriginal interests that they should, for example, take on the functions of community government councils under the land rights act, as has been perhaps suggested by the chairman, or other functions—

CHAIR—For the record, I did not suggest that at all. My job is to assemble facts, and my line of questioning should not be interpreted by Mr Snowdon in that way. I ask you to not persist in that.

Mr SNOWDON—I appreciate that. I want to make the point, though, that there was discussion earlier on about the land rights act being amended to provide for Aboriginal people to take on other functions, that there is a process which our witnesses are aware of where the Northern Territory government has made proposals in relation to community government, and that they roughly coincide on a regional basis with the regional areas being proposed by Mr Reeves in the review. I just want to put that on record and ask this question. What is your recommendation: that the act should include an objects clause—and you mentioned that you supported the objects clause—that would include the following objective: to provide Aboriginal people with effective control over decisions in relation to their lands, their communities and their lives? That is the objective listed by Reeves.

Mr Jones—Not a problem.

Mr SNOWDON—Do you see this recommendation as being consistent with the recommendation to end the practice of traditional owners controlling the granting of permits for entry on Aboriginal lands?

Mr Jones—Mr Snowdon, I thought I indicated to you that this is an area where we will be carrying out some more examinations. I do not believe that Reeves's recommendation was as cut and dried as you have just stated—removing the right of traditional owners. There is a corollary in his recommendations—and let us remember also that the permit provisions in actual fact flow from the Northern Territory Aboriginal land act, complementary legislation—that there be additional provisions inserted into the trespass act as to the authorisation of persons who could prevent access.

CHAIR—Could I just interrupt? The time is getting on and we have other witnesses scheduled for 3 o'clock. I will call Mr Wakelin and ask members of the committee if they will cooperate by keeping their line of questioning as brief as possible, otherwise we will never get through the program.

Mr Jones—Could I just respond to two things to Mr Snowdon? One of the concerns or reservations that we had about the 18 regional land councils, of course, is that the administrative costs may have been underestimated and that there may not be sufficient skilled staff to man all of those. It seemed to us to be a natural policy progression that if there could be efficiencies generated in respect of amalgamation of local government functions, regional land councils and ATSIC so that you did not have three or four separate layers of local governments—governance—that that could be a useful option to explore.

In respect of the permit process, I think, as Neville said, it is a misrepresentation of Reeves to say that he proposed to scrap the permit system totally and not replace it with anything else. As I understand his submission, he said, 'We will replace the permit process with the same position in respect of private property for individuals and the trespass act will apply.' The position in respect of private property is that, if the private property owner indicates that he does not want someone to enter his private property, you are not allowed to

enter it. That is what he was proposing—to change the permit system. So it is a far cry from presenting it as a removal of the permit system and not putting anything else in its place.

Mr WAKELIN—Mr Jones, in a few words, what would you regard as the role of the land councils?

Mr Jones—To ascertain and express the wishes of traditional owners of Aboriginal land as to the development and management of that land.

Mr WAKELIN—There is an administrative cost that you will be well aware of that, in 1995-96, the two biggest councils cost about $18 million to basically administer that land. Do you know what purpose that money is put to?

Mr Jones—You will be hearing from the land councils later on, but the land councils obviously have a number of statutory responsibilities flowing out of the act, not the least of which is to manage part IV of the act, which is quite complex, dealing with the granting of mining exploration licences. There are a variety of other functions but that would be one of the major activities on the ground—apart from the general representation of Aboriginal people, the actual mining exploration provisions.

Mr WAKELIN—As the Director of the Office of Aboriginal Development, what is your day-to-day, week-to-week, month-to-month contact with the land councils in a practical way?

Mr Jones—It waxes and wanes according to the issues of the day. I will be meeting with one of the senior officers from the Northern Land Council tomorrow afternoon at 3 o'clock.

Mr WAKELIN—It has been said that there is an oppositional nature in the relationship. Is it about the same over a period of years or, as you said, does it wax and wane? Where is it at the moment? Is it up or down?

Mr Jones—Possibly climbing off a nadir. I could only answer that very personally, Mr Wakelin. My own personal observation, if you talk about the Central and Northern land councils, is that it is a bit like a sign graph. It goes like that. The relationships with the Tiwi Land Council have always been excellent. Relationships with the Anindilyakwa Land Council just proceed—life as normal.

Mr WAKELIN—Do you have any observations about the crossover between land councils and regional councils and your responsibility? In other words, is there a cooperative spirit? Is there any common purpose in those regional councils?

Mr Jones—Seven or eight regional councils I think there are.

Mr WAKELIN—I think there is the ATSIC—

Mr Jones—The ATSIC region. There are a variety of things operating in the Northern Territory.

Mr WAKELIN—Is there duplication within the two roles, the land council and the regional council?

Mr Jones—We work very hard. I am not sure about duplication within the land councils and ATSIC regional councils. But, for example, there is such a thing operating in the Northern Territory as the Indigenous Housing Authority which is essentially between the Northern Territory and the ATSIC regional councils. Shortly I will be chairing a meeting of the Aboriginal tourism task force, which has representatives from each land council, on behalf of ATSIC. There are many varied things operating.

Mr WAKELIN—My last question is to do with land management issues. In an era of land care, et cetera, what responsibilities does the land council have to the wellbeing and upkeep of the land?

Mr Jones—I am sure you will hear from the land councils on that.

Mr WAKELIN—You have the responsibility as the Territory government with the conservation of land in a statutory sense, I would think. I am just interested to know what the government view is of the role of the land council in the upkeep of that land in the proper way.

Mr Jones—I think both the Central and Northern land councils are big on land care strategies. There are a number of areas of cooperation. There are some areas of dispute and some of those areas of cooperation, of course. You would point to the Nitmiluk National Park and the Gurig National Park where there are joint management arrangements between the government and Aboriginal people generally with land councils there somewhere on the scene as advisers.

Mr Joyce—The care of land is a good example of the application of the Northern Territory laws issue that we talked about before. The basic premise is that Northern Territory laws apply to Aboriginal land to an extent, unless they cannot operate consistently. If we, for example, had a noxious weeds act or a weeds act which said that there is an outbreak of Noogoora burr and we wished to close an area of Aboriginal land for six months to stop the spread of that noxious weed into other areas, Aboriginals are entitled to occupy and use that land. The issue is whether a Northern Territory law which says to prevent the spread of weed you cannot occupy and use this land is consistent with the land rights act. That is an example of the application of the Northern Territory law's uncertainty.

Mr WAKELIN—So it is totally ambiguous.

Mr Joyce—It is not clear.

Mr WAKELIN—And therefore practically it would not apply? I mean, at the end of the day, if you had to apply it, you would not be able to do it?

Mr Joyce—We may not be able to do it and the noxious weed may spread.

CHAIR—But you could do it with other freehold land in the Northern Territory?

Mr Joyce—Indeed. Not Aboriginal land.

CHAIR—This land is freehold land.

Mr Joyce—Yes.

Ms HOARE—You mentioned before in response to a question from the chair that the Northern Territory has 56 local government organisations. Has it ever been on the agenda at the Northern Territory government to make those local government organisations larger so you would not have as many?

Mr Jones—Yes, there is currently operating what is known as the local government reform and development agenda. The department of local government is busily consulting and hosting conferences and workshops all over the place about the aggregation of local governments and a number of local governments are indeed negotiating between themselves.

Ms HOARE—Would that committee be looking at aggregating those local government organisations into around the four land council areas now or 18 land council areas as proposed by Reeves?

Mr Jones—I think, as Mr Joyce just said earlier on in response to Mr Snowdon's question, there is obviously some duplications and inefficiencies in all these different arrangements all over the place. When we talk about 56 local governments in the Northern Territory, largely, if you want to use southern parlance, the Northern Territory is unincorporated. These community councils indeed cover very small areas. It would be foolish of anybody not to look at the prospects of mixing and melding some of these functions. However, the local government reform agenda is not targeted at that. There are some obvious examples. Earlier on I used the example of the Tiwi Islands. It is a comparatively smaller area with a whole number of structures that are obviously the subject of sorting things out between the various communities. There are obvious efficiencies and scales of economies to be achieved.

I believe that there are discussions going on between the Palmerston Town Council and the surrounding Litchfield Shire Council. I believe that there are negotiations going on between the Katherine Town Council and Mataranka Community Government Council, some 100 miles south. These things are happening. Given the large size and the sparse population of the Northern Territory, it is not a matter of simply melding together three or four suburbs of Melbourne, where they reduced from nearly 300 down to 78 councils. There is not quite that option available.

Ms HOARE—Thank you. Picking up one comment you made in your opening statement when you were talking about the permit system and the unfettered government access only if it is in the public interest or for the public purpose, I think fairly recently we have had history show us that governments do not necessarily make good public interest purpose decisions about Aboriginal people. I do not know how we could reconcile that in the future and see governments making those types of decisions again.

Mr Jones—I am not sure what you are alluding to.

Ms HOARE—We have had governments make decisions, for example, to take Aboriginal children away from their families and communities and that was in the public interest and for the good public purpose. Now we have the Northern Territory government supporting a recommendation from Reeves that will allow unfettered government access if it is in the public interest or for the public purpose.

Mr Jones—I am sorry. You are misconstruing both the recommendation and the comment. The Northern Territory government does not seek unfettered access to land. The context in which access to land is being used here is land administration and land development. It is to do with the title to land and having an interest in land for the purposes of providing community services. That is what we are talking about—a school, police station, maybe a gas pipeline, power line and that sort of thing.

Mr MELHAM—Mr Jones, are there any instances you can name where you have not had access to Aboriginal land for the purpose of hospitals or schools?

Mr Jones—Not for hospitals or schools but there are some other issues.

Mr MELHAM—I appreciate that there are other issues. I am talking about hospitals, schools or essential public purpose utilities like that?

Mr Jones—I cannot think of an example where permission has been refused for a hospital or a school.

Mr Joyce—There certainly have been for other public utilities like gas pipelines.

Mr SNOWDON—If you have a negotiated agreement for the gas pipeline and the railway—

Mr Joyce—Not the gas pipeline to Gove.

CHAIR—Mr Melham has the call.

Mr MELHAM—I don't mind Mr Snowdon coming in.

CHAIR—Have you finished?

Mr MELHAM—No, I haven't finished, Mr Chairman, with the greatest respect. I have been patiently waiting and I wouldn't mind a couple of minutes.

CHAIR—Mr Melham has the call.

Mr MELHAM—Thank you. Mr Jones, how much of the Northern Territory is covered by pastoral leases?

Mr Jones—I would say approximately 48 per cent or thereabouts.

Mr MELHAM—Could you confirm whether it has been the policy of the Northern Territory government not to issue mining explorations on pastoral leases since the Wik decision? Has that been a policy decision of the government?

Mr Adams—It has been the policy of the Northern Territory government to issue exploration licences wherever we have been able to. Since the Wik decision the Territory government has not proceeded with right to negotiate procedures which are the requirement of the Native Title Act. However, it has issued a number of exploration licences over Aboriginal land where appropriate agreements were reached.

Mr MELHAM—Earlier, Mr Jones, in your submission you quoted some figures about 72 per cent in terms of exploration being off Aboriginal lands. Can you give us the figures in relation to mining in the Northern Territory? How much is actually on Aboriginal land? If the Central Land Council were to claim that, for instance, 80 per cent of mining in the Northern Territory in their region was on Aboriginal land, would you dispute that?

Mr Jones—I would not dispute that. However, may I add a corollary to my answer?

Mr MELHAM—Go ahead. I am not restricting your answer. I do not want to censor you, Mr Jones.

Mr Jones—Of course. Indeed, if you had read the Northern Territory submission, you would see the admission that the great bulk of mining occurs on Aboriginal land. However, in respect of those mines, they all emanated from a mining interest that was established prior to the enactment of the Aboriginal land rights act. Since the operation of the land rights act there has only been one new mine created on Aboriginal land.

Mr Joyce—In 23 years.

Mr MELHAM—Mr Jones, has the Northern Territory government obtained or sought any legal advice to the effect that the amendments proposed by Reeves, if they were carried through in terms of amendments to the land rights act, could give rise to an acquisition of property and require compensation to indigenous people on just terms, pursuant to the Commonwealth Constitution? Has there been any attempt by the Territory government to check whether that would be the case?

Mr Jones—I do not think we would need the legal advice.

Mr MELHAM—Why is that?

Mr Jones—Because the Northern Territory (Self Government) Act obliges the Northern Territory to pay just terms compensation, just as it is on the Commonwealth—

Mr MELHAM—I accept that. Have you looked at whether, if some of the recommendations of the Reeves report were to be implemented into legislation, it would amount to the acquisition of property on just terms?

Mr Jones—We understand that.

Mr MELHAM—So you acknowledge that that would be the natural thing that would flow if some of those recommendations were implemented?

Mr Jones—Yes.

Mr MELHAM—Have you had an amount put on that, any estimates done or have you just accepted that as a given?

Mr Jones—I can only assume that you are referring to the recommendations which would provide an amendment to the act which would allow the Northern Territory to acquire an interest in Aboriginal land. That is an interest short of freehold.

Mr MELHAM—No.

Mr Jones—I cannot envisage what else you are talking about. All we are saying is that the same land administration and land acquisition process would apply to Aboriginal land and we would be liable for compensation.

Mr MELHAM—So you have not looked at the broader implications of putting things in trust but just at the aspect you just mentioned then?

Mr Jones—I am not sure what you are getting at.

CHAIR—Mr Melham might indicate specifically the issues where he thinks there might something.

Mr MELHAM—Mr Chairman, I am trying to abide by your directive to keep it short and tight.

CHAIR—It is a wide ranging question.

Mr MELHAM—I accept that, and when we get a written submission—and I am conscious that written submissions will flow—there may be some questions that we will put to the Territory government. All I am doing is a preliminary gambit to see the nature of the advice they have sought or where they are. I am not trying to trap them, don't worry.

CHAIR—No, I did not think you were.

Mr MELHAM—Mr Jones, in your opening statement you cited part of the synopsis of the Reeves report—I think it is on page III—when you quoted about the next generation and young people.

Mr Jones—Yes.

Mr MELHAM—On page I of the synopsis Mr Reeves says:

If Aboriginal self-determination has any meaning at all, it must apply first and foremost to the processes and practices of Aboriginal tradition and the effective control, by Aboriginal people, of their lands.

Do you recall that statement at page I?

Mr Jones—Yes.

Mr MELHAM—Does the Northern Territory government adhere to that particular view?

Mr Jones—I think I spelt out that we do.

Mr MELHAM—Thank you. I have been made aware of an article to be put into the next edition of the *Indigenous Law Journal* by Mr Ian Viner QC, who was the Minister for Aboriginal Affairs under a conservative government that introduced the land rights act. I am interested in your views on this. He says:

What some might try to suggest is a good federalist model dividing power and authority between regional councils (analogous to the States) and the NTAC (analogous to the Commonwealth) is in truth a classic model of centralist government with the NTAC having ultimate and paramount power in all matters concerning the use and management of all Aboriginal land in the Northern Territory, irrespective of traditional Aboriginal social organisation and ownership. Such a system appears to me to be the very antithesis of self-determination and traditional Aboriginal society in the Northern Territory

Mr Jones—That is Mr Viner's view. I have not read the article. I heard that quote delivered on the media today.

Mr MELHAM—Mr Viner is saying that some of the recommendations of Mr Reeves in effect are the antithesis of self-determination.

Mr Joyce—I just think Mr Viner has misunderstood the Reeves recommendations and the impact of the regional land councils. I think the purpose of the regional land councils—and I am not saying that we necessarily accept that that is the worthwhile model to go down—is that they are supposed to represent more closely the views of the Aboriginal people on the ground.

Mr MELHAM—Okay. That will do me at this stage, Mr Chairman.

Mr QUICK—To follow on from Mr Melham about the NTAC, I think you mentioned in your opening statement about transitional arrangements of appointment to the NTAC. What do you envisage by transitional arrangements? Is there a time frame; is it a five- or 10-year process?

Mr Jones—I do not envisage anything. Mr Reeves suggested three to five years.

Mr QUICK—I know, but does your government have a view? If you are going to appoint Aboriginal people to that body, do you see that as an interim arrangement for a two- or three-year period, after which the indigenous people have their own election process?

Mr Jones—I find it difficult to answer the question, Mr Quick, in that—

Mr QUICK—Surely you are going to address it in your submission, aren't you?

Mr Jones—We will have a look at it in our submission, but depending on the outcome of this committee's report the Commonwealth government may choose to ignore everything and just leave the status quo. If it was acting on any reports of this committee and it did proceed to drafting of legislation, I envisage a much longer period of negotiation between the Territory and the Commonwealth governments, and I am sure that the Commonwealth would initiate extensive consultations with other stakeholders. We will be looking at the matter, but I cannot proffer a view except that I think we would go along with the Reeves recommendation that it is only transitional and becomes fully elected.

Mr MELHAM—In view of something that was asked of me earlier, I think I should put on notice to Mr Jones and the Northern Territory government, in terms of an acquisition of property matter, the implementation of the following recommendations it is suggested might give rise to an acquisition: that RLCs hold all Aboriginal land, paragraphs 27 to 32; the modification of rights relating to Aboriginal land, paragraphs 33 to 43; that a grant under the land rights act should extinguish native title, paragraphs 51 to 60; that a grant under the Northern Territory's Pastoral Land Act should extinguish native title, paragraphs 61 to 63; taking over the assets of royalty associations, paragraphs 64 to 70; reservations of ownership of living fish and native fauna, paragraphs 71 to 74; and remedy of the error in relation to the Elliott stockyards, paragraphs 75 to 78 of the report. I do not need answers at the moment, but you asked me for examples.

Mr Jones—I will make one point, however, in response, Mr Melham. We are talking about a Commonwealth act, not a Northern Territory act.

Mr MELHAM—I accept that but, as you are aware, under the Constitution the Commonwealth is also required to pay just terms compensation.

Mr Joyce—It is not necessarily so in the Northern Territory.

Mr Jones—Not in the Northern Territory.

Mr MELHAM—That is a live issue.

CHAIR—Gentlemen, this is a very interesting discussion, but—

Mr MELHAM—Mr Chairman, if that is the case I am interested, because I think this is something that I would like the Northern Territory officials to explore in view of their answer. That is why I have put it on notice. I am interested in your view—not today; I am interested in a considered view.

CHAIR—It is a question on notice.

Mr MELHAM—I was challenged, and that is why I raised those points.

CHAIR—I am quite happy to allow the question. That is good. It is on notice. Just before we finalise this session—and at 3.15 p.m. we have other witnesses coming in—will the Northern Territory detailed submission analyse its knowledge of the mining royalties

received over the years through the Aboriginals Benefit Reserve—that is, how much has been paid each year and to whom?

Mr Adams—I do not think we are able to do that, because our involvement in the ABF is that we receive royalties, we give advice to the Commonwealth agency on how much royalty we have received, who we have received it from and what Aboriginal area is relevant to the receipt, and after that our role completely ceases. We had no involvement in any decisions of the ABF in the distribution of the funds. When they do it it is solely in the hands of the ABF and the land councils. We would not be able to say who received what portion of the royalty equivalents that went into the fund.

CHAIR—Can you explain why the Northern Territory government would not be able to say that?

Mr Jones—Because this is a Commonwealth act and Commonwealth functions and what knowledge we have on these matters would be gleaned from the published reports of the Aboriginals Benefit Reserve.

CHAIR—Could you expand on that? What do those published reports reveal?

Mr Jones—These things are specified in the Reeves report. I think we gave some information, if you can just bear with me for one moment, Mr Chairman.

Mr Adams—Whilst Mr Jones is looking for that information, let me just say that, whilst the Territory government does not have any role in it and also the mining companies who are our clients do not have any role in it, we are concerned about the expenditure of those funds but we have no pathway by which we can have any formal say in what happens to them.

CHAIR—Could you speak up? I missed that last bit.

Mr Adams—We have no formal say in any distribution of the funds that come out of the Aboriginals Benefit Trust.

CHAIR—Is it the view of the Northern Territory government—and you can take this on notice; I would not expect you to answer it today—that it should? If so, why?

Mr Adams—It is the view of the Territory government that the expenditure of those funds, particularly of certain portions of them, should be used for the benefit of Aboriginals generally and that the trusts that receive those funds should apply them to the good of Aboriginal communities generally. But, again, it is not in our hands at all at this stage.

Mr Jones—In answer to your direct question, Mr Chairman, in the period 1978-79 to 1996-97, the total income of the Aboriginals Benefit Reserve, whereby these payments are directed—that is, statutory royalty equivalents are paid from the Commonwealth consolidated revenue—was $425,602,000.

CHAIR—I invite the Northern Territory government, in its submission, to spend some time on this issue and, if it would, to please give details of its actual knowledge and source of knowledge of these funds, where they come from and where they have been over the years since the operation. In particular, I invite the Northern Territory government to take the opportunity of putting forward any proposals it thinks should be considered likely to improve and enhance the health and wellbeing of Aboriginal people in the Northern Territory. I would appreciate it if you would take that on board.

Mr Jones—As far as our knowledge is concerned, Mr Reeves probably found out more about the distribution and expenditure of royalty equivalent funds than anybody else has ever done before.

CHAIR—Could you elaborate on that? Why would that be?

Mr Jones—Because it was in the terms of reference given to Mr Reeves. I cannot point you immediately to the section but I assure you that it is there. He identified and sought financial records of all of what is known colloquially as royalty associations. Inevitably, these organisations are incorporated under Commonwealth law. They are receiving Commonwealth funds. They are administered by Commonwealth legislation and, by and large, the Northern Territory government has no role to play.

CHAIR—I understand that.

Mr Jones—Our source of information is publicly available information. The records of some of those organisations are not publicly available, and Mr Reeves went on a hunt for them, as per his terms of reference.

CHAIR—The reason I am concerned about it, and hope that we can get some input from the Northern Territory government, is that, when we started off questioning today, we established that there is a very worrying situation with respect to the health and wellbeing of Aboriginals in the Northern Territory. You have referred to the social and economic needs of Aboriginal people, but I am very interested to know what the Northern Territory government believes might be a better way—if there is a better way—of ensuring that Aboriginal people's economic independence is improved. It is for that reason that I am inviting the government to provide us with details of its opinion in this matter. I think it is a very important issue that needs to be addressed.

Mr Jones—Point noted, Mr Chairman.

CHAIR—Are there any other questions from members?

Mr SNOWDON—I have a large number of questions, but I do not want to take up the time of the committee now if we are going to be talking to the Northern Territory government again.

CHAIR—I will give you five minutes.

Mr SNOWDON—One of the things that the Reeves report discussed was the issue of statehood. Since the Northern Territory referendum on statehood, could you provide the committee with an outline of how the Northern Territory government has gone about seeking the views of Aboriginal Territorians? You can take that on notice.

Mr Jones—The short answer is that a reference has been given to the Legislative Assembly's Legal and Constitutional Affairs Committee, and that is currently conducting an inquiry.

Mr SNOWDON—What is the relevance, do you think, of what Mr Reeves has had to say about statehood and the context of this inquiry's report?

Mr Jones—I will have to take that on notice, Mr Snowdon. I have a general recollection, but I am not sure of the point you are aiming at, and obviously a rather large development has occurred since Reeves published his report.

Mr SNOWDON—I appreciate that.

Mr Joyce—My recollection is that the Reeves report simply listed the options, rather than making any recommendation in respect of it to pursue the matter further.

Mr SNOWDON—I think it is worth while putting on the record that Mr Reeves, in his issues paper, said that he would not be discussing the issue of statehood.

Mr Joyce—That is right.

Mr SNOWDON—A very short time after that the Chief Minister of the Northern Territory said he would, and he did. So I will just leave that on the table.

Mr Joyce—He makes no recommendations as far as I can see. I think that is the point. He makes observations and lists the options but makes no recommendations.

Mr SNOWDON—What I am after is the relevance of the Chief Minister's statement and what influence he may or may not have had over Mr Reeves and his inquiry.

Mr Jones—That is not a question I could answer.

Mr SNOWDON—You might ask him.

Mr Jones—I do not think he is here.

Mr SNOWDON—He is still around. In the context of the anthropology of this document, I presume you have seen Dr Sutton's—

Mr Jones—I am aware of Dr Sutton's paper, yes.

Mr SNOWDON—What is your view of the anthropology which forms the basis of the Reeves report?

Mr Jones—I am not an anthropologist. I have not studied the Sutton report in detail. I can speak only in general terms. It would seem to me that what Reeves was trying to say was that, while still being premised on the principles of traditional Aboriginal ownership and affiliation, as life goes on and there are more and more contemporary issues to deal with falling outside of the parameters of Aboriginal tradition, there are new forms of governance emerging, that there is a more collective, more community approach to a number of things which might not have accorded strictly with Aboriginal traditional decision making in relation to a purely land related issue.

Mr SNOWDON—Doesn't that conflict with his objective—the goal? Earlier on I read you the goal that he refers to in his objective—that is, to provide Aboriginal people effective control over decisions in relation to their lands, their communities and their lives. Isn't the basis of the land rights act about the rights and responsibilities of traditional owners in relation to their land and the rights and relationships of the land council in relation to the wishes of the traditional owners?

Mr Jones—Yes.

Mr SNOWDON—Don't you see that there is a dysfunction between what you just said about where Reeves might be coming from and what land rights in fact were developed from?

Mr Jones—You asked the question about anthropology.

Mr SNOWDON—That is right.

Mr Jones—My interpretation of what Reeves is saying is that he still has everything rooted in the recognition—that he is still dealing with an Aboriginal land rights act that sets about recognising and acknowledging the Aboriginal traditional structures in relation to land. I do not believe that he is recommending that that be taken away at all.

Mr SNOWDON—But that is in direct conflict with the proposals for regional land councils, where people, other than people with traditional owner status, can decide on how land might be used. Indeed, if you read the logical extension of his arguments about the super-body—whatever it is called—the supremo politically appointed body at the top would have ultimate control. That, to me, would stand in stark contrast to the underlying premises of the land rights act and the underlying thesis of Woodward in his recommendations to the then federal government, of which Mr Viner was a member, when he was the minister who passed the act. What I am saying is that there is a strong argument about the veracity of the anthropology used by Mr Reeves, or his interpretation of it. You have, I think, expressed a view that it was a valid interpretation. Does the Northern Territory government have a view about the anthropology of that report?

Mr Jones—I would have to say that, right at this point in time, we are comparing what Reeves has said, what is in Sutton's paper and what Justice Lee said in Miriuwung Gajerrong, because I think there are some differences and similarities to be explored here. I do not wish to be, and I am I am not qualified to be, involved in an academic debate on

interpretations of what various anthropologists have said on these matters in years gone by, which seems to be what a large part of it is.

Mr Joyce—We have said before that we have not endorsed this proposal of 18 regional land councils and the Northern Territory Aboriginal Council over the top. It is my understanding that Reeves's suggestion is that the purpose of the regional land council is to ascertain and express the wishes and the opinions of the Aboriginals living in the area. There is nothing changed in that regard. That is what he is saying, that the purpose of the regional land council is to carry out the provisions of the existing land rights act.

What he is saying is that this regional land council structure will be able to do that better than the existing structure. He is seeking to improve on what we all acknowledge is not an optimum situation at the moment. The debate as to who they discuss it with is an anthropological debate or whatever, and he is trying to reflect what happens on the ground. To present his proposal as a revolutionary anthropological concept is wrong. He is just trying to reflect what happens on the ground and who it is appropriate to talk to when you are discussing development applications and the like, and the use of Aboriginal land.

Mr SNOWDON—I will just finish with the words of Mr Viner. You will, of course, get to see this paper once it is published, or perhaps beforehand. Mr Viner was the minister in 1976 when the land rights act was introduced. Perhaps you could comment on his statement.

He says that the Northern Territory government would by Reeves's recommendations have power to compulsorily acquire Aboriginal land where it cannot do so now, and the Commonwealth minister would delegate the minister's powers under the land rights act of the Northern Territory government. He says the permit system will be abolished, there will be more extensive application of the Northern Territory laws for Aboriginal land, and there will be easier access by miners for exploration. The end result, according to Mr Viner, is that the governance of Aboriginal land will be centralised in a super governing institution, the political power of Aboriginal land will be centralised in the Northern Territory government, and the authority of the traditional owners extinguished. Can you comment on that?

Mr Jones—I disagree with that interpretation. We have been through some of that. The recommendation of Reeves and what was sought by the Northern Territory was not the power to compulsorily acquire Aboriginal land, it was to acquire an interest in land in certain circumstances short of the freehold title, for a start.

Again, as we have already pointed out, he does not recommend the abolition of the permit system. You rattled them off too quickly, but Viner ends with a philosophical viewpoint of his own, which I am not about to debate.

Mr SNOWDON—Thank you, Mr Jones.

Mr WAKELIN—You would be aware of Mr Reeves talking about the proposed structure and function of a body to be known as the Northern Territory Aboriginal Council. How do you believe the Northern Territory government might react to the suggestion that that particular council could take over some of the funds from the Northern Territory

government currently earmarked for expenditure on Aboriginal economic, social and cultural advancement in the Territory?

Mr Jones—I am not sure that his recommendation was to 'take over'. Reeves was recommending that there would be a partnership approach whereby the NTAC and the regional councils would enter into—

Mr SNOWDON—I do not think you are clear on the question; the recommendation is to 'take over some'.

Mr Jones—arrangements whereby government services would be delivered at that level. It is not a foreign or frightening concept. There are many government services delivered by Aboriginal organisations today. In another arena it would just be called devolution. Reeves's recommendation, regardless of whether or not we support the system and the NTAC, is just another form of devolution and enhancement of Aboriginal involvement in service delivery to their own communities.

It would be a negotiated exercise. I referred earlier on—and you might not have picked it up—to the establishment of the Indigenous Housing Authority of the Northern Territory whereby two governments pool their funds into an essentially Aboriginal controlled body to deliver housing services.

Mr WAKELIN—I heard that very clearly, Mr Jones. Our role is to try to understand how the Territory feels about Reeves, and that is what I am trying to understand. Finding out how the Territory government feels about that proposal from Reeves is our main purpose.

Mr Jones—We will come to a firmer position, Mr Wakelin, but if the proposal was to be adopted by the federal government, the Northern Territory government would view entering into a financial partnership for delivering the services through such bodies as a legitimate course of action, and one which was to be negotiated.

Mr WAKELIN—Thank you very much. Could we expect something in your final submission on that point?

Mr Jones—Yes.

Mr WAKELIN—Thank you.

CHAIR—Thank you very much Mr Jones, Mr Joyce and Mr Adams. We look forward to receiving the further submission and to meeting again.

[3.34 p.m.]

CHRISTOPHERSON, Mr John, Executive Member, West Arnhem Regional Council of the Northern Land Council

FITZ, Mr Bill, Executive Member, Borroloola/Barkly Regional Council of the Northern Land Council

FRY, Mr Norman, Chief Executive Officer, Northern Land Council

NUNGGARGALU, Mr Mujiji, Executive Member, Roper Regional Council of the Northern Land Council

PETHERICK, Mr Raymond, Executive Member, Darwin/Daly Regional Council of the Northern Land Council

YARMIRR, Ms Mary, Deputy Chairperson, Northern Land Council

YUNUPINGU, Mr James Galarrwuy, Chairperson, Northern Land Council

CHAIR—Welcome. Although the committee does not require you to speak under oath, you should understand that these hearings are legal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Before we ask questions, do you have an opening statement that you would like to make?

Mr Fry—Yes. We have a process that we have worked out about how we will present our issues to the committee. The Chairman of the Northern Land Council will introduce the speakers who are seated behind those at the table. Galarrwuy will introduce each of them in turn to the committee and those people will speak to you. After those people have finished, each of the senior people will be talking to you about concerns they have. At the very end, the Chairman and I will be presenting a submission to the committee and we will talk very briefly to it because we understand that there will be an opportunity to take up some of those more formal matters at a later date.

CHAIR—Mr Fry, I want to discuss with you the logistical problems regarding time. There are other witnesses scheduled to give evidence to this committee today.

Mr Fry—We are aware of the time and we intend to be as diligent and judicious with our timing as possible.

CHAIR—Can you assure me that you will be able to fit into that program?

Mr Fry—I certainly would like to give the assurance that we will try to stick to that. Whether or not we extend over five minutes or 25 minutes, Chair, I will leave in your hands.

CHAIR—I do not want to be in the position of cutting you off. You must understand that the arrangements to give submissions today were not anything like what you have just outlined. Do you understand that?

Mr Fry—Yes.

CHAIR—The committee is very anxious to try to accommodate people and to be fair. But we also have to acknowledge that we have made arrangements in good faith for other witnesses to also give evidence according to a timetable. It would be impossible and, indeed, chaotic—

Mr Fry—We are aware of that timetable. We understand that.

Mr MELHAM—In fairness to these witnesses, you might tell them that the Northern Territory government went 30 minutes over time and not a word was said.

CHAIR—Mr Melham is making a point there about other witnesses. I think you and I have already agreed that the question of going over time will be a matter that you and I will discuss. We have already agreed on that. I think Mr Melham must have forgotten or did not hear that.

Mr MELHAM—No, this is a double standard. That is the point I am making.

Mr SNOWDON—Apply the same rules to everyone, Mr Chairman.

Mr Fry—I will hand over to the Chairman of the Northern Land Council.

Mr Yunupingu—I am happy that I have been asked by my organisation to speak with authority on behalf of the land councils. I represent a lot of our constituents. The case under review today has had a misrepresentation in its report. We came here to almost repeat ourselves, unfortunately. I have been cursed with being the spokesperson out in nobody's land for many years during my time with the Northern Land Council. We are undergoing a very important time. I have asked the senior people of different places in north-east Arnhem Land to come today.

The members that you see seated here behind me represent their own country, their own languages, their own law and their own way of doing things. They are nations within nations. I present them to the committee for the record to show that they are here and so that I do not have to speak for them. I would like to give them the opportunity to speak for themselves, which might be more appropriate in this matter than the land council carrying out the responsibilities on behalf of our constituents. We are at the point of being attacked for doing something which we thought was doing a justice for our people. Unfortunately, we are in that position right at this point of time. So as not to be attacked any further, I will introduce the senior people.

One of the senior people is Gawirrin Gumara. I am going to ask him to speak briefly on behalf of the Dhuwa people about their land, their interests, their law, their ceremonies and the people he represents.

Gawarrin Gumara—Ah I came, Sir, came and brought to this council, parliament, from the Gangan Parliament, from Yolnu parliaments. I came and brought these two 'Wapitja', just because the Balanda parliament does not recognise, our Yolnu parliaments, the Dhuwa and Yirritja parliaments. Just show (these wapitja), because we are becoming knowledgeable about your parliamentary system or law, while you in the parliament are not becoming knowledgeable about our (Yolnu) law or systems of law. These things of ours are not only Yirritja, the laws were laid down (by the ancestors), Dhuwa are the same, Djan'kawu (dhuwa creator) and Barama (Yirritja creator) these two laid down (our laws), and we have followed them ever since, only these two, Dhuwa and Yirritja. Dhuwa and Yirritja, we Yirritja (people) are responsible for managing and ensuring that the Dhuwa (people) follow the laws. And they the Dhuwa (people) are Yirritja (peoples') children, (Yirritja) are responsible for monitoring, managing and ensuring laws are followed, just like with you (in your parliament). I have finished here.

Mr Yunupingu—Ganduwuy represents the Yukululmirr, a nation on its own. The heroic track follows the Djankawu and the people of that creation.

Ganduwuy—Yes tell them we are very pleased that they, today they gave us an opportunity to talk. And (we are) very pleased that (we) are with them in their parliamentary council. And also showed um, to them, um showed (due) respect and regard, here and they will show to me (equal) respect and regard. Alright, this Djan'kawu whoever it is was, has not been seen, we have not seen (Djan'kawu). And it is about that (Djan'kawu that) I will tell the history, today. Djan'kawu is not here today, I represent them. I show myself through this here, I show Wanayawarr, Gungunmarra to them. I showed them this law, for (you) to recognise/understand, I presented myself, and this relic, (so that) they (in this council) will recognise and respect me, and my nation and those things sacred to me, through this parliament. Um, we heard about that (report), in that report it is saying to separate (the land council/the people) break it up. But here I will show to them that both Dhuwa and Yirritja are bound together, and the laws of both are orderly, and proven successful. Here I have finish my talk for you and shown myself, so that you will see me as a Yolnu, I have sacred laws, and there (in Arnhem Land) I have two estates, there in the sea and on dry land I hold the power for those, because Djan'kawu gave it to me. Yes and I um (thank) them for listening.

Mr Yunupingu—I now call Dula. Dula is of the Munyuku people and the nation of Munyuku people which represents the Caledon Bay area, north-east Arnhem Land.

Dula Nhurruwuthun—Alright, we here came to your council, to your congress of sacredness/law and chamber, from our law chamber and parliament. Dhuwa, Yirritja. Alright, because we came with these, we will stun you with these, these two authoritative eternal (relics), these two and also Dhuwa (have theirs). For this very law (my people) have in the past given birth, married and died and slept on the earth. And became wise/knowledgeable, in this cultural foundation/heritage, and became knowledgeable/old, and became wise in this cultural foundation/heritage. This cultural foundation/heritage is strong truly. From that time, from the groups long ago, long ago, and long ago and long ago and long ago here friends they (our laws) are cycling those from our ancestors. For this (Yirritja) people and also for Dhuwal'mirri people. And this (law) stops/resolves trouble and disputes, and makes people

calm, a murderous person will stop with this (law), and all trouble and disputes are resolved by this (law). There is much deep inside with the old people, and (with) previous elders, and with previous elders, and with previous elders, and there is no other (law) this one only. Also Aborigines grew, they breathe and live nowadays by this (law) not by themselves, the (path for life) is cleared with the (law), that country was consecrated with this (law), it doesn't independently (exist). (This law) is not from sleeping then dreaming, as if I could create new land for myself, it does not happen like that, it is in fact very old, from the ancestors. Because these elders from long ago, we Aboriginals and White people are nothing (we are) young, those ancestors have the real history, the true history, here (I) am finished.

Mr Yunupingu—I now call Djinini Gundarra. He represents the Dhurili nation which represents four groups of people from north-east Arnhem Land - four nations within nations.

Djinini Gundarra—Yes today (we) are happy about this committee. But (we) are worried because of that report by Reeves it has cut/hurt our inner feelings. Because we simply saw/thought it was supposed to be approached with trust and honesty, he went/met with all of our nations (we) all got together at the Yirrkala School and we told him what we thought contrary to what (he wrote) he was supposed to have reported our words. And that it came out um...the report it is destructive..., it does not um...bring us Yolnu people together to make us one, from all the different (Aboriginal) nations, from that foundation from (our ancestors) Barama and Djan'kawu. Because it is from that foundation of ours, the two laws for all our Yolnu nations originate from that (heritage). So this is the reason why we came here today, this group of elders, to bring, explain and show, our own law and heritage, so that we can stand/live on our very own heritage/foundations, because our heritage/foundation is peaceful, our heritage/foundation is consistent and fair. And we have our Yothu-yindi law. Yothu-yindi is (our) law, (our) traditions, in legal system, and parliaments. That's it, that is my message.

Mr Yunupingu—Luputhu Dhurrkay represents the Wangurri people. He represents seven clan nations.

Luputhu Dhurrkay—Djupandawuy Dhurrkay, I represent seven clan nation. I am from Dhaliny, Dhurralapa, over at Djambalnura, Gaywananala, Murrurinydji. It is very good we came to your chamber. Maybe you will hear/understand what we have to say. Long ago our ancestors spoke for (our) sacred ancestral homeland, for (our) land, for (our) water/sea. And now you have seen Yolnu people, us. These two Dhuwa and Yirritja that he spoke about, (they) are extremely powerful our sacred ceremonies, Dhuwa and Yirritja. And what we have brought and are looking at now, they are not toys. And that Reeves report (could) separate and divide and us, (both) Dhuwa and Yirritja. It is very good of you, you saw (and listened) to us here, now here in your council. But you still do not understand us, what things we brought, from our countries, both Dhuwa and Yirritja. And I'll leave I there.

Mr Yunupingu—Matjiwi represents the Gumatj nation, north-east Arnhem Land.

Matjiwi—Ah...we here are sitting, and have sat (on our land), by that very same heritage passed down by the ancestors, what (laws) they the ancestors laid down and showed for us, these can not change. This heritage and law for Yirritja and Dhuwa is united, and that is the

one that is unbroken and cannot be broken, there are no new (laws) that we could lay down or fabrications made by our ancestors, none. There is only that law and it is here (still) living. But what does change, is your law which splits things up, the changeable law, whereas ours is clear, united and unchanging. That's all.

Mr Yunupingu—Mr Marawili is of the Madarrpa.

Mr Marawili—I am Miniyawany Marawili a young, a middle aged man. But that ancient (law) from the ancestors, we have not left, or overlooked, or forgotten (it). Alright, this country and the land beneath the sea, those stretching lands have songs, have sacred designs as title, and are sacred and holy. Alright, we have not taken/grasped (this land), from other people, not from far away (people), not at all, we are firmly holding onto this, we have not given permission (to take our land), or given the land (to anyone). It doesn't matter if somebody (you), from far away (tries) to turn us, and change us, that will not be possible because we (live by) only those old ways passed down from our ancestors, (their) words/histories, heritage/foundation, and land title. Alright (I've) finish here (this) short (talk), thank you.

Mr Yunupingu—Tony is the last one. He is the representative of the Gupapuynu nation, and he is going to speak in English.

Tony Gumbula—I will speak in English, but if I am stuck, it is because I had a poor education.

Mr Yunupingu—He is an eastern Arnhem Land reporter, this bloke, so you watch out!

Tony Gumbula—I really should not be here because of my age: 45 years old. I was born on 5 July 1954. But, because my father died, I have to take that responsibility. Everyone takes that responsibility, right? Thank you very much for inviting me to your parliament. We here, Dula, Gawirrin, Galarrwuy, would like to invite your mob or your government to come to our parliament in the bush. That would be the chance for us to recognise one another. Otherwise we are wasting a lot of time. We Yolnu people in north-east Arnhem Land—I talk not only for those people there but for all of us in Australia—and all of us in Australia can help one another, if you help us. I am ashamed to talk to people who are older than I am but I have to do this for my father and for my Gupapuynu tribe.

We ask this committee to go to your parliament and say that we do not want land, we do not want nothing. We just want your mob to recognise us so that we can work together. That is all. It is a different thing altogether from South Africa—the Northern Territory has a different thing. We would like to cooperate with all governments—coalition, Labor, anything. We would like to cooperate on land rights, better essential services, better education and better health. Thank you very much.

Mr Yunupingu—I am rather proud that the senior people have come all the way. At this time of the year it is very hard to jump on a light aircraft without being tossed around,

because of the build-up of storms and lightning. Coming out of Arnhem Land is the hardest trip, and your committee will understand how hard it is to get here to pass on our concerns.

Before I take it away, my good executives will start the land council side of the presentation and then the executives will finalise it. They will each have their own short presentations. Then I will submit our document as a final presentation on our behalf.

You have just been listening to our senior people and it is a glimpse of learning from where we are coming from. As to Tony's last comments, I need to live with that because that is the point at which Aboriginal people have been for many years since we have been put under the governing authority of another civilised world, another tradition, another law, another system, another language. Since then, Aboriginal people have been nothing but a subject of that challenge. We have hardly shifted from that.

We hardly have been left alone to find out who we really are because the governing authority, the conquerors, have been at our throats since taking over this land and the Aboriginal people have considered they are as equal subjects as any other British subject, so the British were saying, until the Australian government, which was nothing much different really. It was all under the Westminster system of law. I am talking to politicians who understand all that. It has hardly been any different really because we still maintain the Westminster system as being the best to govern a group of people. Unfortunately, we are some of the victims. Aboriginal people have been the victims of that system of law and we still find ourselves victims at this point of time.

The land rights act has been one of those pieces of legislation that has arrived in the nick of time to save us. It is considered as the saviour of Aboriginal people, particularly in the Northern Territory where, everywhere else, everybody suffered and still are suffering. This unfortunately came under a coalition government. Whitlam drafted it and left it in the hands of Fraser. Fraser took some guts out of it and gave us what remains now. Now it is being challenged by the Northern Territory government.

Tell me if somebody else will be responsible for challenging that, because we won't be. Therefore, we see that that land rights act has been here for 20 years and more. It has turned the Northern Territory into something that the Aboriginal people in this land had not expected would ever happen.

The pastoralists, the mission boys, the mission girls, city people have virtually come out of somewhere that we thought was a hell in this society. We were simply yarded up and going for the mainstream. In fact, the land rights act cut it clean, and it gave a different direction from assimilation. Assimilation was not the way to go because that is where the mainstream and the government in power in the 1960s, 1970s and 1980s were directed—rather responsibly and happily—and Aboriginal people were going, of course, because there weren't any other options given to us by responsible governmental departments of so-called Aboriginal affairs. They were also left there as vehicles to implement, whether to brainwash Aboriginal people or just gently yard us and kill us all and our languages and ceremonies and so forth. I hope the committee is aware of the court case next door going on about the stolen generation. You just happen to be here to see that side of the story. I hope you put it in your notebooks that this is a serious business that I am talking about.

The land rights act has changed the lifestyle of Aboriginal people. It has brought us out into the open where Aboriginal people can talk and express themselves about who we are.

You know very well that with Aboriginal people before the 1960s nobody ever challenged governments legally. You know the walk-out of the Gurindji people. You know the Gulf case. Those two big things that I mention right here are the two big things that set out a direction where Aboriginal people had to be strong about who they are and what they represent. They come out fighting. We come out fighting. We come out talking about land. This is not government owned land; this is about private land—this is Gumatj land; this is Rirrtjingu land; this is Dagurugu land. We were telling the court case this, and for the first time the law people and government responsible were scratching their heads: 'Where are these people coming from? We are supposed to have conquered every inch of this land. Where did we go wrong? Did Captain Cook's claim of raising the British flag only stop in New South Wales or surrounding Sydney area, or does it go to Arnhem Land? Or does it go as far as Larrakia land? Does it go as far as Gumatj land? Where does it end?' Unfortunately, the Aboriginal people's minds are still within their own rights to try and interpret that, and I think there is a glimpse of that information just coming out, and a glimpse of that information just being spoken about right from here.

I turn to the John Reeves report. We wanted him to keep the land rights because you cannot take a steeple or a church away from that group of people because they might not like sitting under the tree praying. It is better to go into a church with all the rulings and everything else. This is the same thing. You cannot take something away that people are used to going to. Maybe that is not a good example, but let me say this: taking land away from us, and our authority and our permit controls, is not the way to go. That is only natural. John Reeves is saying, 'You cannot have authority; you cannot control your land. You must do it this way.' Maybe he thinks that he can do better for us than we ourselves, and I think that is a bit unfair to us.

We are saying that our land should be left intact; that our autonomy should be left intact; our permit control be left intact. These are human rights. These are things that we culturally have. If it is something that we do not understand in the word English or in the interpretation in the mind of a white man, at least tell us. Maybe you people will tell us; maybe the Northern Territory government will tell us; or maybe it will be something that will go into the education system to tell black fellas how best to change their minds to fit into John Reeves's report.

John Reeves's report does not offer me or any of these men or women and children in the Northern Territory anything. I bluntly say that. I am amazed, I am sad, I am angry and I am frustrated that such a man could write such a report and make you people run around all over the countryside trying to listen and find out what this is all about. Any sensible report would have gone home to learned people like yourselves and you would have read it there without jumping on a plane and coming out here to listen to it. Let us be sensible about it.

This is unreasonable. We spent thousands of dollars—over a million—of public money, to start off with, on this project. Mind you, it came out of Aboriginal public money. What do you make of that? A review has been set and you say, 'Review those people, where they have gone wrong, and then pinch their budget.' How do you do that? You pinch their land,

and you take all their resources as well. How fair can you be anymore when doing that? I think that is unfair.

Other than that, we stand united. People are talking about dividing land councils. As far as I am concerned, I have been in the land council too long actually; I should get out of it. But some of these challenges about dividing land councils is about me because I get into people's nerve. That is being straight about it. I talk to people. When I do not like issues, I tell them straight. Some of the politicians here in the Northern Territory hate my guts. They do not have to go around dividing people. If they do not want me, they should do something about getting rid of me, but not get rid of land councils. The land councils are there for everybody. That is what this dividing of land councils is to little communities. I said, 'What are they going to do for our people—what more than what we do here now?' This is not good. It is dividing and ruling tactics. I think the whole report is playing into the hands of the Northern Territory government.

I make one point before I leave: the Northern Territory government and the land councils have not gone a long way together. We are talking about the Northern Territory land rights act and how best it will work. We will give you the best way how this will work in the long run, as a responsible government. You have to give the Aboriginal people the opportunity to speak to the parliament of Australia, whether it be the Labor Party, the Liberal Party, the Democrats or independents—whoever runs this country: we do not care. We are not fussy about one government or the other. You people change all the time. We cannot keep up with you. One comes in and the other one goes out. They are constantly changing. Governments change, laws change and all sorts of things change. We can hardly keep up.

The point is, we want to relate to the government of the day. That legislation must be carried by all governments. Do not amend this legislation for some fancy government that might be calling out because they do not like some leaders in the Northern Territory. That is what the Northern Territory government is about. They are calling out loud and clear because they do not like some of us. The point that I would like to make here is this: let there be changes, but those changes must be of benefit to Aboriginal people before anybody else.

CHAIR—That is exactly the purpose of this inquiry—to benefit Aboriginal people.

Mr MELHAM—Mr Yunupingu, we heard from eight senior people. For the parliamentary record, can we have the number of senior people that came, because I think that is indicative as well. We did not hear from everyone. For the record, can we get an actual number as to how many are here?

Mr Yunupingu—Yes. We will give that to you.

Mr Fitz—My comments are going to be short because I have nothing good to say about this here—nothing good whatsoever. I think it is a disgrace. Why? A million dollars of ATSIC money, which was earmarked for Aboriginal spending, has gone on this book here. It is a total waste of taxpayers' money. I think that money could have been better spent elsewhere on health and housing in some of the remoter communities, Arnhem Land for instance. It is a total waste of taxpayers' money. We would certainly like an investigation

held into this, as to why $1 million of ATSIC money was spent on this. There is nothing good about it.

What I would like to see is a second review of the land rights act performed properly and better, and by someone independent—probably someone outside of Australia; maybe someone from the United Nations and someone from the Human Rights Commission. I think they are the people that should have been reviewing the land rights act—someone independent of the governments, of political parties; someone who is very neutral. That is what I would like to express. Like I say, I have nothing good to say about it—nothing whatsoever. I think Aboriginal people all over the Northern Territory are completely disgusted.

Mr Petherick—My main concern is not being able to claim national parks under the Northern Territory government. The main one in my region is the Litchfield National Park where probably 20 clans have cultural significance. All their totemic paintings are in that park and it is a major meeting place for the White Eagle group—the ceremonial group. We have this big city in our region and our people have been scattered and dispossessed. Most of the people end up on missions like Port Keats. It is a real problem area. It is a real concern of mine with so many clans there mixed together. Probably only 10 clans are recognised in our region but we actually have about 40 to 50 clans that have land. There are a lot of Larakia people there. They want more recognition.

The other thing I want to know is why pastoralists were compensated for Litchfield Park and Aboriginals were not. I think there should be an inquiry into the Northern Territory government about what they have done towards the advancement of Aboriginal people for the last 20 years. I would like to have an inquiry into that to see what they have done with the money.

Mr Christopherson—At times, I can waffle on a bit, but I will keep it short and sweet. Firstly, the land rights act, which is the subject of this report, is the document that enabled this committee to witness what you have already seen here this afternoon. That is a direct result of the land rights act as it was implemented in the 1970s. What we have here in this document is something that is attempting to shred and dismantle what you have witnessed. We could go on for days and days talking about this and no doubt you are going to have to put up with that. You are going to get a document from the Northern Land Council that goes through our concerns.

Let me start off by saying that John Reeves has shot himself in the foot quite a few times throughout this document. I would just like to highlight a couple. On the first page in the synopsis, in the third paragraph, he says:

There can be no doubt the Land Rights Act has had many positive results . . .

We can acknowledge that because we have witnessed several here this afternoon. But then he goes on to say:

However, the Act has produced some negative results as well.

And these were highlighted during this review. He goes on to spend $1 million and collects around $300,000 for himself. He produces two documents that continue the negatives. Not once through these documents does he highlight, espouse or try to encourage the positive things that he has found. So it is purely a negative view that he identified from the very beginning in his synopsis and he travelled with this, looking at all the negative things.

If we go over the page—and we are still on the synopsis—there have been many positive things. He says:

> The most fundamental source of these in the Land Rights Act is the linking of Aboriginal tradition with statutory controls over, and benefits flowing from, Aboriginal land, through a statutory definition of 'traditional Aboriginal owners'.

Then he goes on and talks about all that sort of stuff. I can tell you that there are a number of things that are positive, that relate to that sort of thing. He says:

> At least three other negative results in the Land Rights Act were highlighted during this Review.

Firstly, he mentions straightaway the issue of moneys. We had the Northern Territory government here just before us talking about accountability and all that sort of thing. They are talking about having this Northern Territory Aboriginal Corporation that will enhance accountability and what have you. Yet that same government will not have freedom of information legislation in this country. So where do you get accountability and that sort of thing around here?

The second negative highlighted was a strident oppositional political culture. We know that, if you are born black in this country, you have got political opposition. Finally, he mentioned the processes and procedures; we have had that brought upon us all the time. We understand that; we are developing. But to turn around and try to shred what you have witnessed here this afternoon, to say that it is wrong, is not going to help things.

On page 3 of his synopsis, he talks about genuine productive partnership with the Northern Territory and Commonwealth governments. Aboriginal people have no qualms about entering into joint ventures or partnerships—whatever you want to call it—with anybody as long as it is on an equitable basis with mutual respect for where each is coming from. The mutual respect that is entrenched in the land rights act is the ability of Aboriginal people to control and manage the use and occupation of their estate. That is what we are talking about.

I will continue with a couple of other points. One of the things he talks about is in relation to banks and beds of rivers and the seabeds. He shoots himself in the foot when he talks about self-determination. He talks about river banks and beds and says, 'Yes, Aboriginal people have a right to them, but they don't need to be protected. So why give them anything in the land rights act that will help them look after that, because they'll be looked after somewhere else.' If he reckons that it is not going to make any difference, why not give it to them? Why make an argument not to give it to them because they will be looked after somewhere else? It is an illogical argument. It should follow the precedent and that is it is written in the land rights act.

In his conclusion when he talks about river banks and beds, he says, 'All of these traditional rights to use these areas are therefore protected without Aboriginal people requiring title to these areas. In my view, the fact that claims over beds and banks of rivers have been recommended and granted in the past does not provide any compelling reason why that should continue in the future. It has been done in the past, just continue on, instead of developing within Aboriginal communities in the Northern Territory haves and have-nots—because you were here before this review, you have got your river banks; because you got your land after the review, you do not'. Why?

He says, 'Yes, I recognise traditional rights' but he does not want to recognise them. I will just cover that a bit more—I am sorry, I am waffling on; I am getting carried away. The Northern Territory government, prior to us coming on, talked about parks and reserves and, in particular, mentioned that Cobourg National Park has a wonderful relationship with the Northern Territory government. I can assure you, as a member of the Cobourg Peninsula Aboriginal Land and Sanctuary Board, that we do not have this wonderful relationship with the Northern Territory government.

In fact, it was the year before, around Christmas time, that we were carrying out some research in the Cobourg area in relation to beche-de-mer. There were four members of the research team: three were Aboriginal people from the park; the fourth member was a researcher from the Northern Territory University. When we sought accommodation at the Black Point Ranger Station to carry out our research, the three Aboriginal members of the research team were not given accommodation even though those three members are registered as traditional owners of the land. To say that we had this wonderful relationship with the Northern Territory government is just not on.

There is one other point I would like to make. Another way that Reeves shot himself in the foot can be seen if you look at page 179 about where it is his right and after he has stolen everyone else's words. He is talking about the continuation of ownership of land and the succession of ownership in land. I quote:

Often, with time, the details of past successions may be forgotten so that the relationship between a group and its land seems to have been eternal.

That statement is fair enough. He continues:

However, this is probably an uncommon conclusion to processes of succession and within any region there is likely to be land where processes of succession are incomplete and ambiguous.

He has written something there and he has turned around and shot himself in the foot in relation to it—'However, this is probably an uncommon conclusion'. So why write it in the first place, unless of course you are trying to establish something that is not really there or produce into people's mind ideologies or ideas that are not really there. We are short of time so I will close. Thank you very much for your time.

Mr Fry—We have run out of time but I would just like to give the deputy chair a couple of seconds to say a few things.

Ms Yarmirr—You may wonder what I am doing up here in the front. I have the same concerns as those expressed around this table and down on the floor with our elders. I am here as a woman, mother and grandmother. My concern is for the future of all my people, Aboriginal people. We were given land rights, but where is our freedom? How many times do people like Reeves come around to cross-examine us or to examine our ways and our laws regarding our land? He cannot understand who we are. We cannot fully understand who he is because we come from a totally different world. We have adapted into your world but you cannot adapt into ours, for our laws are very ancient and you cannot understand.

I am here because of what holds for my future generations. Will they be manipulated, will they be caged in like animals throughout their lives? As we come around to the year 2000, what holds for Aboriginal people? All I am saying is that this piece of paper here is not my paper. It does not belong to my people. This is not our law in here.

Mr Fry—Mr Chair, I am happy to present to you the Northern Land Council's preliminary submission to your inquiry for your information. Along with this submission we are also providing you with a copy of our submission to the competition review of part 4 of the land rights act currently being conducted by Dr Ian Manning. In providing you with this first submission I would like to point out to you the Northern Land Council's major concerns about the Reeves report overall. The Reeves report is based on four key elements.

CHAIR—I will just ask you to pause, Mr Fry. We have your submission?

Mr Fry—Yes, I table that.

CHAIR—You are tabling the submission first?

Mr Fry—Yes.

CHAIR—You have a submission you wish to table?

Mr Fry—This one here.

CHAIR—Would you table it now?

Mr Fry—Yes, I will. I just have to read the letter—

CHAIR—Do you have copies?

Mr Fry—Yes.

CHAIR—Thanks. Is it the wish of the committee that the submission tabled by the Northern Land Council be accepted as evidence to the inquiry into the Reeves report and authorised for publication? There being no objection, it is so ordered. You also wish to insert an exhibit?

Mr Fry—Yes.

CHAIR—Is it the wish of the committee that the document tabled by the Northern Land Council, being a submission on the competition review of the mining provisions of the Aboriginal Land Rights (Northern Territory) Act 1976, be accepted as an exhibit and received as evidence to the inquiry into the Reeves report? There being no objection, it is so ordered.

Mr Fry—Mr Chairman, the land council believes that the Reeves report is based on four key elements—his legal, anthropological and economic analysis and his overall methodological approach. The Northern Land Council considers in each of these areas the Reeves report is fundamentally flawed and cannot be accepted by the committee. We have consulted experts in each of the disciplines to provide us with objective advice on Reeves's recommendations. In each case they have found his work to be substandard and seriously inadequate. All four of his key elements are without any substance. A number of these consultants' reports are included in the submission and we will be providing more expert advice at a later date.

It is also important to note that the Reeves report represents a major lost opportunity. The Northern Land Council agreed with the government that the land rights act was due for review and we were keen to cooperate. Unfortunately, the Reeves review did not proceed in an appropriate or conclusive way. He failed to understand what the real issues with the workability of the act are and, as a result, he failed to come up with recommendations which deal with those issues.

The Northern Land Council is still keen to have such an examination and we hope that, through your committee, we can still leave the destructive and ill-informed Reeves report behind and focus on a constructive change for the Aboriginal Land Rights (Northern Territory) Act. The NLC would like the opportunity to address the committee further on these issues on your subsequent visits to Darwin. Mr Chair, on behalf of the Land Council, with the chairman of the NLC we thank you for listening to our presentation today.

Mr LLOYD—Thank you for your submission and for the elders coming here today. For me, as a person who is not a Territorian, it is very significant. I have just a couple of questions that I want to ask. Firstly, concerning people speaking to us in their native language, what level of English do these people have? It is difficult for us to try and get an understanding.

Mr Fry—I will let the chairman answer that.

Mr Yunupingu—The level of English is not as high as you would expect. The level of English is understandable, taking time of course. It is not a fluent level of language. Our native language is the speaking language at all times. English is considered everybody's language, which we worry about very little. Our spokespeople have not mastered it for a reason—there is no requirement for it.

There is a generation gap with the ones who have gone to school and learnt a little bit of English. I think most Aboriginal people, wherever you go in the Territory, speak our own language and very little English.

Mr LLOYD—That is fine. I just wanted to get an understanding of that for myself. What do you know about the Aboriginals Benefit Reserve Fund and what does it mean to your people?

Mr Yunupingu—The ABR, as it is known now, has benefited Aboriginal people mainly out in the scrub. This particular fund is being relied on by many of our constituents. It is the only resource that they can tap into for transportation, both sea and land transportation. It is the only resource that they can tap into for small business beginners to start businesses, for buying saddles, fencing wires and so on to start off their chicken farms and things like that. It is the only resource that they can tap into happily, without shame or hassle or hesitation, because they know a small amount of money can be readily granted to them and the rest of the applicants are not starved. It is funding that Aboriginal people administer, and particularly the land councils. It is funding that our constituents know will be granted to them.

Mr LLOYD—Do you think the elders that spoke to us today—and if any of them want to make a comment I am more than happy if they do—are happy with the level of benefits that they are getting from the ABR? Could it be administered in a better way? Are they disillusioned with it in some way?

Mr Fry—I will answer the second part of that, Galarrwuy will answer the first part.

Mr Yunupingu—We would be happier if the ABR was completely handled by an Aboriginal body. It is the money that we believe comes from our soil. We would be happier if it was not controlled by government departments such as ATSIC. It should be independently administered by land councils for the benefit of our constituents. And we would be happier if the minister for aboriginal affairs did not dry up too much of it.

Mr Fry—What needs to be pointed out, Mr Lloyd, is that the ABR, the Aboriginals Benefits Reserve, used to be called the ABTA. It is administered from ATSIC. It has very tight controls by the federal Minister for Aboriginal and Torres Strait Islander Affairs, and from ATSIC as well and the land councils. Each of the land councils' CEOs and directors and their chairpersons plus their executives formulate the committees of the ABR, along with the policy guidelines of the framework that are in place and the various categories that are set out in policy. There is a very competitive edge to monies, for constituents getting access to those monies. However, as the chairman of the NLC, Galarrwuy, has pointed out, on many occasions it is not enough money to go around. Certainly, we do our best to make as much of it go around and to spread it as thinly as possible. It is not a lot of money, but it is something that our people look forward to.

The money is used for very, very important things. We even dig bores. We help out with some of the education stuff, with education with some of the health programs. We have even bought uniforms for school kids. We have made sure that roads have been done properly, because the federal government cut out our money on roads. We have a lot of deaths on tracks out in the bush with the lack of maintenance of our roads that are largely in Aboriginal areas. The NTG does not give that much service to Aboriginal roads in terms of the maintenance of those roads.

As a result, there are things that the ABR doubles up on; and I would argue, along with many of the members here, that it is substituting for essential government provision of services. Really, the ABR should not be used for that. But we are all in the situation of being caught between a rock and a hard place—that is, a lot of our people need access to these types of things. We have even done such things, as far as I am aware, as helping out with the provision of fresh water in certain areas. So the ABR is a very strict thing, but it is not a lot of money.

Mr LLOYD—Okay. Thank you.

Mrs DRAPER—Firstly, I would like to say that I really appreciated Mary's comments and that that is something that I would like this committee to take up. Having had all three of my children in a hospital, I can say that by the third day when you have had somebody poking, prodding and examining you, you just want to tell them to go away and leave you alone and to be in peace. So that is certainly a very important issue for me as a committee member.

John and Norman, I would like your comments on a statement in the report. If we move on from page 2 of the synopsis, where Reeves said there had been the oppositional political culture that had developed, et cetera, to the next paragraph, I would like to quote it for the benefit of everybody here. Talking about the processes, procedures and permits, he says:

> Finally, the processes and procedures set out in the Act, in particular the 'go-between' status of the land Councils and the requirement to obtain a permit to enter Aboriginal land, have imposed unnecessary costs on Aboriginal and non Aboriginal Territorians alike. These processes and procedures have, for example, increased the costs for the mining and other industries, and restricted access by non Aboriginal Territorians to almost a half the land mass of the Northern Territory and about 80% of its coastline.

It that accurate or true?

Mr Fry—Let me respond first. John can talk to you about it in terms of the workability of the permits with the access provisions out in his country. On the permit system, what I just heard from you is a synopsis that was a Northern Territory Country Liberal Party political jibe of the late 1980s. The permit system has not been an issue for quite some time now. Since I have been the CEO of the NLC, which is roughly two and a bit years, I have received two complaints about permits. There have been tens of thousands of people who have accessed Aboriginal lands in the period that I have been at the NLC.

So I only know of a couple of issues where people from interstate have been given a bum steer with regard to Aboriginal land by other people who do not accept Aboriginal people's rights to land here in the Territory. We have a small minority of non-Aboriginal people that are like that now. I believe those days have passed. I think that was demonstrated in the last referendum here in the Northern Territory last year; if that had been held 10 years ago, I am pretty sure the referendum would have got up. But Territorians, black and white, are fast getting to an apex of the political divide. So the permits issue has been one of those scaremongering issues that has been around to frighten the public, because there is nothing like scaring people about what they believe they should have access to, which is essentially other people's private land. I believe those issues have dissipated.

In fact, I might point out to this committee that the Northern Land Council and traditional Aboriginal owners have divested to various groups the provision to administer the permit system. In fact, with the next crowd you will hear from, which is the fishing industry, the land council has entered into, with these people, self-regulatory provisions so that they can handle the permits amongst all their fishing members. It is really a furphy that Mr Reeves should zero in on one or two comments.

At the public hearings where all the countrymen got up—and I was there—they said they did not want the permit system weaker; they wanted it stronger. Then Reeves gets a few things out of left field from a few people and here it is given authenticity and integrity in this booklet.

Mr Petherick—As Norman was saying, they are always going on about Aboriginal land but why don't some of these pastoralists start opening up their land because they have got a lot of good fishing places as well?

Mr Christopherson—In relation to the permit system, as Reeves says here, it has restricted access to non-Aboriginal Territorians. I will put it to you in another way. The land rights act, by allowing land that was claimable to be returned to the rightful owners, does not automatically allow every Aboriginal person in the Northern Territory access to that clan's estate or land. On top of that you have to realise that 100 per cent of this land, until very recently, was owned by Aboriginal people.

To put it in a way that it is all inclusive for one group of people and all exclusive for another group is not right. For example, I cannot go to chairman Galarrwuy's land just like that because I am an Aboriginal person and that is Aboriginal land. I have got to check with him. In relation to this report, that is an ambiguity that you need to understand. In relation to the permits, to take away the right of Aboriginal people to say yes or no to access, and to control and manage access on their land, does not fit in with what he purports to say and hear in relation to self-determination. In fact, it is taking away one of the hard fought for rights and responsibilities that Aboriginal people have got under the land rights act.

Mr MELHAM—I only wanted to know how many senior people actually did come here today so that our records show that, and that has been answered.

Mr SNOWDON—Mr Fry, were you present when the Northern Territory government representatives were here?

Mr Fry—No, I was not.

Mr SNOWDON—Have you sought legal advice as to the possible implications of the compulsory acquisition of the trust lands of Aboriginal people to have them transferred to the ownership of regional councils? If you have, what has that legal advice been?

Mr Fry—Yes, we have had advice on various aspects of Reeves's model. In respect to the regional councils, the Northern Territory Aboriginal Council would be the umbrella body and the 16 regional land councils would stem out of that. It would be a systemic situation.

However, in his recommendations he does point out that the CEO and the council members would be chosen by the Northern Territory Aboriginal development minister and his counterpart in the federal sphere, the Minister for Aboriginal and Torres Strait Islander Affairs. Therefore, I would have to be chosen and go before the minister of both governments, Territory and federal, and so would the present chairman.

He prescribes to the regional councils an all encompassing power base, that they make all decisions for Aboriginal land. We have had independent legal advice to tell us what some of these things actually mean, although we know from our own legal branch and legal staff what they believe these things mean. However, we do seek advice far and wide.

We have heard that it is against the Australian Constitution with respect to property rights. It is very much against people's common law rights, it is against the Australian law as it currently stands, and it is against very much the Aboriginal law.

As you heard Galarrwuy say, and as John has just reiterated, nobody can speak for other people's country. I, as an Aboriginal person, cannot rock up to Galarrwuy's country, or Christo's country, or Billy's country, or to the country of other members that you have heard from. It is a fallacy to believe that there is some universality, that Aboriginal people somehow just walk willy-nilly over other people's property. It does not exist like that. Mr Reeves has failed to understand that.

Our legal advice says that to follow this path would make invalid law. Our advice is that it would be against the Australian Constitution and Australian law as it currently stands with respect to property rights and common law rights.

Mr SNOWDON—I note that Mujiji is here. I wonder, Mr Chairman, whether I could ask Mujiji a question. Mujiji, from my recollection, you are very strongly behind the proposal to set up a separate land council in south-east Arnhem Land, at Ngukurr and those communities. Recently the Northern Territory government gave assistance to some people from the Ngukurr region to put a proposition to Mr Reeves that there was a need for a breakaway land council in that region. Could you tell me what your view of the breakaway land council idea is now?

Mr Nunggargalu—We were asking for a breakaway land council, an Angurugu Groote Eylandt breakaway land council. We were remembering the problems we had locally in the settlements as a result of arguing about the permit business and things like that. We had difficulties with different people living in the community and the law saying that the landowner could do this and that. Locally we had a problem. We were thinking about breakaway land councils. I was one of them. I have been with the breakaway council idea. We thought about breakaway land councils.

But it was a trick that we did not understand. One of the things we said to Reeves was that we wanted breakaway land councils, a very small group of land councils, to have the same law, the land rights act. We wanted the land rights act to remain. You cannot change that. We wanted the land rights act to remain. If a small group of land councils break away, we wanted them to have the same law. We told him that.

But he ignored that, he did not listen to us. Some of the things we said to him he did not report in his book. He did not come up. One of the things we said was that we wanted the land rights act to remain. We said the permit business and whatever in the land rights act should remain. That is what we said to him.

Mr WAKELIN—Norman, do disputes occur about traditional Aboriginal ownerships of land?

Mr Fry—Yes, from time to time.

Mr WAKELIN—How is that resolved?

Mr Fry—There is not a universal answer to that question. It depends on what type of tensions are apparent in a specific case. If you are talking about something that is before a lands claim based process, before a justice of the Federal Court, then that has a particular set of machinations of its own. If we are talking about tensions on a day-to-day level about land ownership, the land council's anthropologist and senior traditional Aboriginal owners—many not unlike the people who have been present here today—sit down and resolve it in that way. From time to time, when it gets exacerbated or out of control, it will involve the chairman and other senior members of the council that you see here, and other very senior members who are not present here today.

Mr WAKELIN—How many would occur in a year? Would it be half a dozen or a dozen?

Mr Fry—It depends on what you are talking about.

Mr WAKELIN—The day-to-day matters.

Mr Fry—If we are talking about ongoing things like schooling, in some communities the tension is a daily occurrence. That has to do with the appropriateness of policy with respect to service delivery and provision of education. There is a raging debate in the Territory at the moment about bilingual education, and there is a raging debate about service provision and delivery. We have health facilities denied on the basis of one or two health staff, I understand from the reports, being assaulted, raped or something like this. The provision of health care has been taken out of the community.

Mr WAKELIN—Does that lead to a dispute about the land?

Mr Fry—It has to do with things outside the control of Aboriginal people.

Mr WAKELIN—Between Aboriginal people in communities, on a daily basis, it is a relatively frequent event that there will be disputation?

Mr Fry—From time to time, yes.

Mr WAKELIN—One quick one on the money that was in the synopsis: do you believe that money applied strategically for the social and economic advantage of Aboriginal people could be improved?

Mr Fry—Absolutely. In fact, one of the things you will get from the people up the front here is that, in ABR, we do not totally disagree with the current minister, Senator Herron, on some of these things, in terms of a bigger economic development policy. We have difficulties with how he goes about constructing the vehicle to do it. Certainly, Senator Herron has some good ideas that we believe we can take forward. To that extent, some of the major investments that we are looking at with ABR are of a passive nature.

Mr WAKELIN—With the recommendations in the Reeves report regarding the 18 regional land councils, what sorts of problems would occur if those recommendations were brought forward?

Mr Fry—At a community level, a local level?

Mr WAKELIN—Yes.

Mr Fry—At a local level, we believe that it would exacerbate tribal and cultural tensions without proper regulatory functions that are quite apparent now.

Mr WAKELIN—Within your own land council?

Mr Fry—Within all the jurisdictions of the current NLC, yes. That would also be true for the current CLC.

Mr WAKELIN—Can you describe, under the current land rights act, what is the role of traditional owners in relation to decision making over their land?

Mr Fry—Traditional Aboriginal owners, as a group, must give their consent with respect to any development or commercial development proposals, or other proposals, that take place on their land.

Mr WAKELIN—Do you agree with the statement in the Reeves report that mining royalty equivalent payments distributed by the ABR to royalty associations are public moneys?

Mr Fry—No, we do not subscribe to that view at all.

Mr WAKELIN—Why not?

Mr Fry—Firstly, it is money generated on private property so therefore it is private money. Secondly, with respect to the royalty associations, what they do with their moneys is entirely their business. However, one of the members of the land council wanted to put forward to the review a reporting mechanism to make the accountability more transparent.

Mr WAKELIN—On the administration of the land councils—and no doubt you are well aware of comment from time to time—I understand there are various communities that have offices, et cetera.

Mr Fry—Regional offices.

Mr WAKELIN—What is the main administrative function and what is the administrative money mainly spent on?

Mr Fry—The administrative moneys are mainly spent on the facilitation of land based agreements, sorting out cultural ceremonies and a whole range of interlocking, interface things with governments. It can be the Commonwealth—ATSIC or a Commonwealth department of some sort. We have a lot to do with the Department of Social Security regarding CDEP, for instance, because many of our communities have CDEP. Our officers are currently doing that. We facilitate all the ELAs. These things do take a lot of time.

Mr WAKELIN—How many employees would the Northern Land Council have?

Mr Fry—Off the top of my head, depending on fluctuations because of whatever we are doing, it can be roughly between 100 and 120.

Mr MELHAM—I have a question arising out of something that Mr Wakelin asked. Currently, can you tell us if there are disputes on land ownership or access to land on a day-to-day basis?

Mr Fry—No, there are not arguments about land or access to land on a day-to-day basis. It depends what the issues are. One or two issues at a regional level have been exacerbated due to the lengthy impasse in terms of people getting along with each other at a local or regional level. But apart from that, no.

Mr MELHAM—In previous inquiries, I have heard a figure bandied about, that the Northern Territory government spends about $20 million on court cases, trying to defeat claims under the land rights act. Are you able to say how much it has cost land councils to oppose the Territory government in court to protect and advance land rights and who has paid for it?

Mr Fry—Let me break up the answer into two bits. The first one is financial and the other one is the time administratively in terms of the functions of the land rights act. In terms of moneys, only the Northern Territory Treasury people will know the true answer to how much they have spent in terms of opposing land claims in the last 20 years. As far as I am aware, they have opposed about 98 per cent of all claims that have been lodged.

They argue that, as due process, and as a respondent to the land claims based process or regime, they have an obligation on behalf of all Territorians to lodge such a complaint. We argue that in some of these cases it is more bloody mindedness or ideology that prevents an outcome.

A case in point is the Kenbi land claim. I understand the Darwin town boundary is as big as New York, if not larger. So whether or not there is a future for Darwin that big, I do not know, but certainly the extension of town boundaries has been a feature and it has impacted, as I understand it, on the Kenbi land claim.

The Northern Territory government have been quite hostile to the Larakia people. It is fair to say that the last Chief Minister singled out the Larakia people for some absolutely devastating criticism. At times it left me, as a Darwin person, absolutely sick in the guts because we had not heard a lot of that stuff, in terms of the nature and type of continuity of it all, since we had our first Chief Minister, Mr Paul Everingham, who was pretty good at bashing Aboriginal people back in the late 1970s and early 1980s.

Shane Stone, as you know, is now history. However, he certainly went at it like a bull at a gate. He knocked over the Aboriginal people, singled the Larakia people out for ages, and the Northern Territory government has wasted a lot of time, money, energy and effort.

In terms of the land council, in terms of responding to those things to protect the interests of Aboriginal people, I would have to take that question on notice to give a proper answer to it.

Mr HAASE—Mr Yunupingu, I have a question for you with regard to registration of community members for the election of councillors to the Northern Land Council. What is the basis for registration currently? What do you believe the system for registration would be under the Reeves report proposition? And what are your comments about the possible unsuitability of a registration system that required that a voter could only be a member of one particular land council in the new era of things?

Mr Yunupingu—The present system, as it stands, is that it is a community effort to nominate their membership to the council. For the larger communities, the land councils normally take three or four. It depends on the size of the population in each region—one would be the lowest number for a rep for any region but four would be the highest. The procedure is simple. I believe the community appoints appropriate, well-spoken membership, and the leaders in the community vote for that particular person to be a member for three years. That, of course, is being carried out on the community level. Land councils have nothing to do to take that autonomy away from the community. They make their own appointments and let them sit in this council, which meets three times a year; the executive meets more than that, but it is three times a year for that member to be representing that particular community.

John Reeves's recommendation just takes the autonomy away and hands it back to the government. The government will have its part in participating in this by appointing the chairman, of course, and the committee members. From where we sit, we see the Northern Territory government influencing the people on the community level in appointing or electing who the membership is going to be to sit in at those smaller councils that are being proposed. Of course we are concerned that the power of the people's choice of any delegations to the land councils will be taken away.

Mr HAASE—I thank you. For clarification of the record, are you saying that there is no registration of membership entitled to vote for council members? Is that the status quo?

Mr Fry—Let me answer your question. I cannot quite understand the nature of your question, Mr Haase, because, let me explain to you, councillors are elected and selected. Where they are selected, they are from communities where they have fixed ideas about who is going to represent them. That is a community delegation. They make that—

Mr HAASE—No, the question is quite simple: is there a registration of persons in a community responsible for this task or is it something that is loosely organised in the community?

Mr Fry—No, it is something that is usually around the community council, which is a local government body, and it is through the regional offices that we facilitate with the executive member; each of the executive councillors of each of the seven regions of the NLC plays a role.

Mr HAASE—I accept your answer. There is no registration.

Mr Fry—No, not as such. There is a second—

Mr SNOWDON—A point of clarification: subsections 29(1) and (2) of the land rights act set out the membership of a land council and the procedures by which they will be appointed. They do not require registration.

Mr Fry—That is right.

Mr SNOWDON—What they require is that the members be:

. . . chosen by Aboriginals living in the area of the Land Council in accordance with such method or methods of choice, and holding office on such terms and conditions, as is, or are, approved by the Minister from time to time.

So it is a ministerial prerogative; and there is no requirement for Aboriginal people to register, as on a voting register, to participate—and this is in accordance with Aboriginal tradition.

Mr HAASE—I think Mr Fry was quite adequately explaining that himself. And you accept that the proposition was to have a registrar of persons eligible to vote in communities for the election of land council members?

Mr Fry—Yes.

Mr HAASE—That is your understanding of the Reeves report?

Mr Fry—I do not know about the Reeves report, but on the current system—

Mr HAASE—That is the understanding that I have of the Reeves report.

Mr Fry—Well, okay. The other thing is that where it is in a non-prescribed area that is clearly Aboriginal land and Aboriginal communities, we invoke the voting system that is done here in Darwin, in Katherine and in Tennant Creek. So where these sorts of things are not clear we have to bring in the Australian Electoral Commission to make sure that it is done according to the rules. As Warren has pointed out, there are certain things we have to do and abide by.

CHAIR—As there are no further questions, I would like to thank you all. It has been a marathon session, but we appreciate very much the trouble you have taken. We wish your people well. We will do our best. It is a very difficult thing for us to try and cover all the issues in such a short time. We appreciate the submission and we will go through it. Can I foreshadow that, after the submission is read by members, the committee will probably ask the secretary to write to you seeking amplification and some further information. Thank you again.

Mr SNOWDON—Chair, is it the committee's intention to travel to the northern Top End communities at some point in the future?

CHAIR—The committee's travel program will be discussed in the committee.

Mr SNOWDON—Can I just make this point, and it needs to be very clear: will there be an opportunity for the Northern Land Council to come back and make further submissions in an oral fashion?

CHAIR—I cannot commit the committee at this stage, but we will take that on board after we have read the submission and after we receive the further submission that you wish to send us. We will do our best.

Mr Fry—One of the things we did notice, Mr Chair, was that the Tiwi Land Council was getting such an opportunity on their home turf, where you could get to see all the countrymen and all the people. You will have a wonderful day over there tomorrow. Some of us speak Tiwi and we know those people, we have grown up with them. You will have a wonderful day with them. They will say things not too dissimilar to what you have heard today.

We would like the opportunity for you to see Arnhem Land and to see some of these communities and hear some wonderful Australians get up and tell you how they see things. It is not in terms of black and white; it is about equity and nothing more.

CHAIR—Thank you. We will hear next from the Northern Territory Fishing Industry Council and we will adjourn while the members take their places.

Proceedings suspended from 5.31 p.m. to 5.41 p.m.

[5.41 p.m.]

SCULLION, Mr Nigel, Chair, Northern Territory Fishing Industry Council

SMITH, Mr Iain, Executive Officer, Northern Territory Fishing Industry Council

CHAIR—Thank you. Although the committee does not require you to speak under oath, you should understand that these hearings are legal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Before we ask you questions, do you have an opening statement that you would like to make?

Mr Scullion—We have not a written submission to hand to the committee at this stage. We are still evaluating the full impact of the Reeves report on the specifics of our industry. We are having the full submission considered by our executive in the meeting in April. We will be considering a draft of that submission at that stage and we hope to be able to make a submission at some time after that date.

In terms of a preamble, I have been here during the vast majority of the evidence given by the Northern Land Council. I would like to make a couple of things quite clear from the start. I reflect the seafood industry as meaning the constituents of the Northern Territory Fishing Industry Council in the Northern Territory which often stretch far beyond the actual wild catch and aquaculture sectors. We clearly do not want the land rights act removed.

It is something that we have traditionally respected. We have always respected the fact that the people own the land that they have been granted. In terms of a preamble as well I would go further to say that in most of our negotiations in dealing with Aboriginal people we have always respected their rights to their beliefs. I have spoken often to indigenous people about the way the two cultures generally react to each other. It is reflected in our Constitution. Certainly the way I was brought up in Australia was that we would respect the rights and cultural beliefs of others. We did not necessarily need to embrace them ourselves but that respect was an important issue.

CHAIR—It is a draft preamble for our Constitution.

Mr Scullion—I have had broad agreement from many individuals in Arnhem Land that that is obviously the way to pursue many of these issues. In the necessary negotiations about issues of contention and whether there is actually a content issue of someone fishing somewhere they should not be or some perception that someone is doing the wrong thing, we often travel to the communities to discuss those issues. The very basis of those discussions is in the mutual respect of our cultures. I would put on record that the culture that I am referring to in terms of the fishing industry council is effectively the balanda culture. Our position is that the fish that swim in the sea and the sea itself are a common community resource and our law and our culture reflects that everybody contributes towards the management and care of the sea in perpetuity through the taxation system and through the fisheries management authorities and their various plans because their charter is to ensure that we preserve those stocks for everybody. That is effectively our cultural perspective.

The indigenous cultural perspective differs from area to area effectively. I hope I do not offend anybody by trying to encompass it so I will make it fairly brief. They have basically a stewardship role that has a similar sort of outcome in that they want to ensure that the stocks are there sustainably for everybody. As I said, it goes from area to area. I would allow it for those people to put those views forward.

It was very interesting that during this process—I would make a note that we spent some 15 months fighting with the Northern Land Council so that the Northern Territory Fishing Industry Council could protect the interests of our own constituents in the Federal Court case. I thought it was fairly hypocritical that they should take that particular view in regard to being able to represent their own constituents. That is, I guess, a bit of a throwaway line. You can take it or leave it.

I will ask Iain from time to time to make representations on a technical level in terms of particularly the Northern Prawn Fishery. We have a fairly brief list of those issues within the Reeves report that directly impact on the fishing industry council. We have taken the view that those issues that do not directly affect us we will not be making comment on.

CHAIR—That is a pity; it might help me. But I understand.

Mr Scullion—Perhaps that is the case.

Mr Smith—At this stage we are still looking at the suite of five recommendations.

Mr Scullion—Hopefully we can reserve the right to return.

CHAIR—I only make the comment because you have had a long association with Aboriginal people. Certainly, I think the committee would be interested to have the benefit of your views on some of the matters other than the pure fishing matters. But it is up to you.

Mr Scullion—I would certainly welcome the committee to direct questions on those particular areas at the end of our very brief presentation. In terms of some history, we have always recognised the challenges of working together with two cultures within the fishing industry as something that should be driven by some sort of a process. We have established around the coastline of the Northern Territory regional consultative committees—when I say 'we' I would like to make sure we are demonstrating some ownership in that. The Aboriginal people within each area in concert with the fishing industry have laid down some rules for meeting to discuss issues of contention. These have stretched from the situation of the Warrahiliba about dugong by-catch and the deaths of dugongs in the area to other areas within the Tiwi Islands on how we find a process so that we do not necessarily visit areas of cultural significance that they do not wish to make us aware of in these particular peculiar issues. I think they work very well. I think they have been in train now for some—they vary—five years. They started off with a conference, one of those belly button gazing conferences where everybody is invited to agree with each other. I am glad I attended that particular one.

It was actually John Christopherson, who spoke earlier, who said that Aboriginal people had been continually taken out of mainstream management. I realised at the time that he was

completely correct. There are reasons for that, and they are not by way of an excuse; it was simply the way we approached issues at the time.

Our Northern Territory legislation effectively demonstrates that, in any law we bring down in terms of by-catch, what you can use or how you go about your business, somebody fishing in a traditional manner, a traditional owner, is effectively exempted from those regulations. We felt that if you were managing commercial fisheries—all fisheries—you should ensure that as part of the management regime those people make decisions that come down on themselves. We felt that effectively they were exempt from that process. That clearly is not an equitable answer, so from that day forward we have attempted to bring Aboriginal people into mainstream management in the best way we can. I will not say that it has not been a process without its eventful days, but I think substantively everybody's goodwill in moving down that road has made it a very good process.

Mr Smith—Could I add to what Nigel has said that the secret of that consultative process, which was Nigel Scullion's—he has not said it, but it was his particular vision that brought this on—was dealing with people at the regional level. The Numburindi and the Warrahiliba committees are actually consultative committees on the western coast of the Gulf of Carpentaria. There is the Anindilyakwa on Groote Eylandt. There is Port Keats. There is Mabunyaga Rulyapa on Elcho Island and there is another one that is being developed with the Larakia people that you heard from earlier. It is dealing with people on the ground. They are the ones who have the questions and they are the ones who have to live with the answers. I guess that leads us to the problem of representation when you have a large organisation, be it the Northern Land Council or the Central Land Council—we deal with the Northern Land Council in our industry—and the regionalisation recommendation of Mr Reeves.

Mr Scullion—I suppose particularly the issue of the establishment of smaller regionalised councils has some impact. I do not wish to purport to give evidence on behalf of other parties, but certainly the advice has been given to me in many areas, particularly in eastern Arnhem Land, that the fact that they are regionalised makes it far easier to make decisions based on far smaller parameters.

We do not have to have the holistic view of the whole world. We can actually deal with it within these areas. For example, we only have one barramundi fishery, one mackerel fishery and one crab fishery in the Territory. That is the way we manage fisheries here, and it is by far the best mechanism to manage fisheries: take the fence out and manage them holistically.

When you come down to having to deal with the fisheries issues on a regional basis, Aboriginal people, by their law, only have the right to speak for certain areas specifically at sea and on land. So we have to facilitate a regionalised approach to fisheries interaction on that particular level of indigenous people.

Certainly the establishment of smaller regionalised councils assists us in facilitating and strengthening the committees that we have in place at the moment. Our experience in dealing with the smaller councils and groups of bodies locally has been far more successful than trying to deal with the Northern Land Council on those same issues. In fact, the attempt to

deal with the Northern Land Council in the first instance has been an abject failure. My personal view is that their participation in some of these areas has certainly been a negative one, not a positive one. I would hope—I am always very positive—that their input in the future will change as time goes on.

Mr Smith—I will just go on with some of the other Reeves recommendations. These are not exhaustive by any stretch of the imagination but will give an idea of where the council is coming from. If our understanding of the recommendation that beds and banks of rivers that fall wholly within other land that is claimable should be granted without further delay is correct, then we certainly disagree with that. There is a big difference between land that is claimable and land that is granted. We do not agree that beds and banks should be claimable at all, as a matter of fact; and we do agree with Mr Reeves that other beds and banks should not be able to be claimed.

The land seaward of the high-water mark is something that has created an enormous amount of difficulty for our industry in the last 20-plus years since the land rights act came in, because of the granting of land to low-water mark without absolute clarity within the act of what happens when the water comes in and the fish come in over the low-water mark and how you go about commercially fishing, et cetera.

As you will no doubt be aware, the court case of the Northern Land Council v. the Director of Fisheries is in the Federal Court. We are expecting Justice Mansfield to hand down his findings possibly next week or even this week—it is that close. The legal argument has been completed—the first round anyway—about the Arnhem Land Aboriginal Trust and the Northern Land Council asking the court to determine that while water is over Aboriginal land the water, the animals in it, the animals on the seabed and the airspace above it belong to Aboriginal people as freehold title, if you like.

That has cost a fair bit of money already, and that is just one example of what happens when an act is not specific in its wording and of the tensions it creates. That was the case, incidentally, that Nigel was referring to, where for some 15 months the NLC opposed us getting into the case. We went through about five or six directions hearings and finally reached an accommodation with the NLC and the NT Fishing Industry Council.

We very strongly support Mr Reeves's recommendation that land seaward of the high-water mark not be claimable under the act. We certainly agree that land seaward of the low-water mark adjacent to Aboriginal land that has already been granted under the land rights act not be claimable either. The reason is that, as you will be aware, there are land claims out to the boundary of the Northern Territory of Australia and that encompasses an enormous amount of seabed that never dries out. It is a very significant amount of seabed and sea above it.

There is a hearing in the Aboriginal Land Commissioner's jurisdiction right now as to whether he feels that land is claimable. It is probably going to end up in the Federal Court or maybe the High Court. All that has very significant costs attached to it for our council and obviously for the Northern Land Council and the NT government, et cetera, because once again the act is not specific—in our terms anyway.

Then there is the recommendation that the common law position regarding ownership of living fish and native fauna on Aboriginal land be confirmed in the land rights act. Quite frankly, we are not sure what the implications of that recommendation are at this stage. We have not had legal advice. I might say that I was in Canberra in early January and went to the Government Bookshop and bought the last copy they had at that stage of this. So that is how difficult it has been to get hold of.

Mr Scullion—If I could just add to that point that it is completely inconsistent with the way we run our fish everywhere else. I noted how the Northern Land Council's submission dealt with inconsistencies between the approach for pastoralists and access to their land and Aboriginal land. There are clear inconsistencies.

On the same basis, a barramundi on Tipperary Station, which is owned by Mr Anderson, is not owned in fact by Mr Anderson; it is owned by the common community. He cannot take that fish and sell it to someone else. He can deny you access to it through a variety of processes, but he does not own that fish in that sense, and that is reflected in the fisheries act, which is an important difference. I think that is definitely an implication of this. Also the Commonwealth position regarding ownership of living fish and native fauna in the one sentence is fairly confusing.

In a freshwater and in an inland sense it is fairly easy to define what they are talking about and what they are trying to get at. Because the intertidal zone is necessarily a part of Arnhem Land and has been granted as Aboriginal land, when you start talking about the intertidal zone and the contentious issues involving the fish that swim in the sea and the sea above the land whilst the tide is in—which is different from when the tide is out—it is not an easy situation to get around. So when we say that we are not sure of the exact implications, it is not that we have not been across it, it is just that it will take some time to actually string out exactly what those implications are.

I will go to the next issue that we picked up. We certainly agree that the Northern Territory government be able to allow members of the public lawfully fishing in waters in the intertidal zone adjacent to Aboriginal land to place anchors, nets, fishing lines or similar items of equipment on the bed or shore of Aboriginal land. We are saying this in agreement and with the understanding that the Northern Territory government, through its department of fisheries, allows only actions and activities that are sustainable, environmentally sound and generally do not impact upon other persons in a negative way. That is not to say that it is a carte blanche situation: you can go there and do what you like. There are regulations. It is a very, very heavily regulated industry, and effectively things like where you place anchors and nets are contentious issues. The anchor is in fact trespassing, and you are sitting in the boat that it is attached to. All that sort of stuff is a bit beyond me, but those are the sorts of issues we are dealing with.

The Northern Territory government currently—and it is an issue before the Federal Court at the moment—issues licences to people to fish within the intertidal zone, and the industry have enjoyed that right since as long as we have been issuing licences. We would certainly agree with that particular issue.

Mr Smith—Going on to the definition of low-water mark, the act says low-water mark, and nowhere does it say astronomical, low or mean low-water mark. In both the Croker Island native title claim in the Federal Court before Justice Olney, which Nigel and I participated in from day one, including from the day the claim was lodged, and the recent hearing of the Northern Land Council v. Director of Fisheries, this particular point was raised several times. Where is the boundary of Aboriginal land? Under the acts, the Aboriginal Land Commissioner has to define the actual boundary of the land. Similarly, in the Native Title Act, the court is bound to define the boundaries of the native title area if it is granted. The Commonwealth has argued over and over again that it is the mean low-water mark, and we agree with that—that it is the mean low-water mark—and we believe the act should be amended to in fact state that so that there is no more ambiguity.

One thing which Nigel has not mentioned and which I will just mention is that there is a recommendation that the definition of traditional Aboriginal owners in the land rights act should be retained for the purposes of the act for the remaining land claims, and we certainly agree with that. We have no argument about that. We are not here to say who is an Aboriginal and who is not an Aboriginal; that is a very personal and cultural thing.

There are two particular areas that we would like to comment on. One is in the report at page 264, and it is to do with legal aid to incorporated associations. Mr Reeves believes that the incorporated bodies fall within the definition of 'person' as it is defined in the Acts Interpretation Act of the Commonwealth. I am basically paraphrasing what he says. Our council has had two formal written advices from the Commonwealth Attorney-General—in 1993 and again last year—that, in fact, the council, as an incorporated association, is not eligible for legal aid under the land rights act. In fact, in the current case—Northern Land Council v. Director of Fisheries, which is under the land rights act—we went to the Commonwealth in Canberra to discuss this, and we had Legal Aid appear for our members, but not under the land rights act. It is under a very special test case act of some description. I cannot recall the detail of it.

Mr MELHAM—Civil claims at a federal level. In a test case there is a discretion for the Attorney-General to give it to you.

Mr Smith—Yes. We believe that we, and any other incorporated body for that matter, are very seriously disadvantaged, because right now we are facing, under the land rights act claims, probably 20 claims to banks and riverbeds that we would have to feature and put in cases of detriment, et cetera. There are 10 claims to the intertidal zone and some 17 claims to the sea and seabeds. They are in appendix J of the appendices to Mr Reeves's report. I just took those out today.

We had a classic example the last time we were involved in a major land claim, which was the Borroloola 2 land claim in 1993. Having been refused legal aid we had no access to lawyers—we do not have the funds to employ lawyers otherwise—so we spent many weeks of my time, and certainly the time of a number of other people, developing cases of detriment. We were then faced with having to go to Borroloola at our own cost and stay overnight at our own cost. We appeared before Justice Peter Gray, who was the land commissioner in that case. We gave our evidence in cases of detriment and then we were cross-examined by lawyers for the Northern Land Council, who were very good, and they

did their job very well. We felt very, very disadvantaged that, because of the wording of an act, we could not get that legal aid.

A related matter that was not raised with Mr Reeves but is of concern to my council is the fact that nowhere in the act is there any provision for aid of a non-legal nature. So, for people like me who have to go away from the core business they are doing to draw up cases of detriment or what have you, there is no provision for that at all. We believe we are basically being discriminated against by not being able to do that. I would draw to the committee's attention the fact that we raised this with the Attorney-General in terms of the Native Title Act, in which we have been involved from when it was a bill in the parliament back in 1993. Last year, the rules were changed so that people like me, the administrative people, could claim aid under the legal aid umbrella for non-legal activity. We believe, initially anyway, that the original recommendation we put to Mr Reeves in January last year should be acted upon and that is that the word 'unincorporated' before the word 'association' in section 54C(1)(b) and 74A(1)(c) of the land rights act be deleted. That would simply make it an association that does not differentiate in any way, and that is clear. Otherwise, we are up for legal opinions and we have been around a few cases in the last few years to know that every person you go to for a legal opinion has a different legal opinion.

CHAIR—You do not have to answer this, but, in talking with some of the people that you know personally—and I am sure you have good relations with them, and I realise these cases are not resolved yet—who are making the claims for the seabed and others, has there been any indication from them as to what they would like to do if they should win the case in relation to your fishing rights? Have you had any indication at all of what sort of accommodation, if any, they would be seeking?

Mr Scullion—Yes, I have, and it differs very much. I have spoken to some people on the ground who have a very sad expectation that effectively they will be able to own everything, own the fisheries, and they will be able to go and do it all themselves. These people believe they will just start up and that people are going to give them money.

I have also spoken to members of the Northern Land Council who say, 'We are effectively going to control access to the area and through a similar permit system you will have to come to us.' Instead of the fisheries giving their imprimatur to allow visits, or commercially fish these areas, the Northern Land Council will take that role. There is quite a range of views in there.

Generally, we have not had much satisfaction from our discussions with those people. We have a lot of ownership in the current management regimes and we know they work. If you ask a barramundi fisherman how it is going, he will put his hand up and say, 'Well, I have probably one of the only stocks in the world that is increasing.' I do not think it is too bad.

When I speak to Aboriginal people, some of them are quite across some of the issues of fisheries management, but many of them are not. There is a whole range of people who now have the commercial right to take barramundi, for example, above and beyond the number of allocated access rights. I might add that those rights have already been granted to Aboriginal

people in many ways. They own them themselves. That is going to cause an immediate crisis with the stock.

It is very hard to give a clinical answer to that question. The range of views is quite wide, but I am not given a great deal of comfort by the expectations of the indigenous people. It is unfortunate, and I am not pointing the finger at anyone specifically, but Aboriginal people are very much encouraged beyond what either the system or the resource can give.

Mr WAKELIN—Can I ask about the crisis in the stock? Are you saying the granting of access will cause that crisis?

Mr Scullion—Absolutely.

Mr WAKELIN—And that would be within a short period?

Mr Scullion—Yes, a relatively short period. It would depend on the conditions of that access, but I do not believe that there is a proper mechanism at the moment.

When I first started in this fishery 15 years ago there were about 284 barramundi licences. My own fishery had 168 Spanish mackerel licences. Spanish mackerel is now down to 21, and barramundi down to 22 licences. The industry believes that they were the sustainable levels of take.

If there are 22 licences and indigenous people suddenly have the right to be able to give extra licences, or some other body even if it is not Aboriginal people, you can imagine what one licence means, even in percentage terms. It is very significant. We have already set those levels at international best fisheries management practice. So to expand on that number at all can cause a substantive increased risk in the viability of the stock.

Mr WAKELIN—And the access—the 22 or whatever it might be—is a statutory—

Mr Scullion—They have a statutory access right, the same as I do.

Mr WAKELIN—There is also the Aboriginal right to grant the licence. How do the two statutory rights operate, if I can call the second statutory right a statutory right?

Mr Scullion—One is an assumption of the way it is going to be. I am answering the chairman's question in the context of the scenario. If they get the right to be able to manage these waters, what is going to be the potential processes of being able to manage them.

One of the most significant processes is that they are going to have capacity to say to indigenous people, 'You now have the right to be able to commercially fish within this area.' The challenge is how to balance the rights that exist with those who fish the entire Northern Territory coast, with the extra effort that is going to be put in by this new process. From a fisheries management point of view, without doubt, anybody in fisheries management will tell you that the stocks will certainly suffer as a consequence.

Mr Smith—Perhaps I could point out that our council represents a number of commercial fishing licensees who are Aboriginal, either individuals or corporations. The difficulty is, as Nigel said, there are differing views within the regional Aboriginal groups that we talk to.

For instance, when we were over at Groote Eylandt in about September-October last year we told the Anindilyakwa Land Council that there was this land claim to the seabed to the north and to the east of Groote, and from the west coast of Groote to Blue Mud Bay, which is basically the Anindilyakwa land trust area. They were horrified. They said, 'We have not put one in'—and they hadn't. It was put in by the Northern Land Council. Similarly, we have been to Elcho Island where we have had a number of traditional leaders say to us, 'We do not want the land claim to the sea.' So, it is a mixture of views. The Northern Land Council has said in the case of the Northern Land Council v. the Director of Fisheries that it would certainly consider who should be able to access the stocks if it was granted the ownership of the seabed and the sea above it and the fish in it.

The other element that Nigel raised was the differing views of people. You heard earlier today from the Northern Land Council representatives that one person cannot talk for another person's country. You could have five kilometres of seabed here, or an intertidal zone there, six kilometres here, or two kilometres there, and the view that the council holds, as Nigel has already said, is that the stocks are owned by the people of Australia. It does not matter what colour, they are owned by the people of Australia. We have a responsibility under national and international law to manage those in a very sustainable way.

CHAIR—Would you go further and say that you could not manage them on a sustainable basis unless you had a comprehensive management plan?

Mr Scullion—Yes. To go further, Mr Chairman, I do not want you to think that there is no existing management plan. I guess there is probably a reason for Aboriginal people not having a plan, but there is no existing management plan for Aboriginal people. Aboriginal people have managed their own estates and resources very effectively since time immemorial, but they have done it in a manner that involves very low impact.

CHAIR—Or non-commercial.

Mr Scullion—Absolutely. My comments are related to non-commercial. The law already reflects that they continue to do that. One of the great things about our consultative committees is that it is a two-way street. We learn very much from the way Aboriginal people manage the seas, particularly within species. We are continuing to learn from their approach to seasonality. We are always very suspicious, as white people, of these old wives stories. But quite often, with a bit of focused research, it turns out that seasonality actually has a very specific reason.

They have been managing those fisheries in a very low impact, traditional way. But those processes, given the recreational access and all the other needs of the wider community, are no longer appropriate processes for the sustainable management of those fisheries.

Mr Smith—On the theme of us representing all commercial licensees, Aboriginal and non-Aboriginal, the other 30 nationalities that are in our industry, Nigel and I had occasion to address the full board of Kakadu National Park on the draft management plan that came out about 2½ years ago. That draft said that there should be no commercial activity whatsoever associated with fishing in the park.

We pointed out that is seriously potentially advantaging, for instance, the people of Maningrida who were at that stage looking at purchasing a fishing licence. It meant that they could not travel by road from Darwin with their fishing nets or their crab nets through Kakadu park without breaking the law. That shows that if you do not have a holistic view of the management of the fishery you can get into real trouble. Actually, the plan was amended and you can take nets and crab pots through, but you cannot fish. Obviously, that is fair enough. We do not ask to do that.

There is one other area that we would like to point out today and that is on page 265 of Mr Reeves's report, which relates to sea closure claims and provisions. Mr Reeves basically says that there is no 'justification for any amendment to the Land Rights Act to specifically provide for compensation for detriment to commercial fishing licensees' because the current Aboriginal land act—the Northern Territory land act—says that existing licensees can keep fishing in an area that is declared closed, if the sea is declared closed.

With respect, we believe that, in this case, Mr Reeves is wrong. We do have existing licensee rights to fish enclosed waters. However, when the licensee sells the licence, and most licences are transferable, the purchaser of that licence is then excluded from that area of closed seas without the permission of the appropriate land council. There is one major area of closed seas—it is in a couple of closures—and that is around the Milingimbi-Howard River area, as you will be aware, on the north coast of Arnhem Land. To our knowledge, there has not been one application granted to go in there to fish since those seas were closed. I would stand corrected on that, but that is our understanding.

With the loss of the right to fish there, that means that the person who purchased the licence then has to go and fish somewhere else where the seas are still open. That then puts in jeopardy the whole management plan concept that Nigel was talking about. We have the most conservative fishing management regime in the world bar none, and people from overseas and around Australia will tell you that. We work on the basis that, if all licences in a particular fishery were worked, then the harvest would be sustainable. Where it is not thought that harvest is going to be sustainable, we have licence reduction mechanisms in place et cetera to get those numbers down.

Additionally, the Northern Territory government has formally made a decision about areas closed to commercial fishing, and the classic example is barramundi. This happened last year: a decision was made that commercial barramundi fishing should cease in Darwin Harbour and nearby Shoal Bay. They made the decision that they would buy out at the equivalent amount of effort, which was two licences and something close to half a million dollars—I do not know the full details—was spent doing that, and yet, under the sea closure provisions, you have an act which effectively overrides all that management without any consideration whatsoever, and it has a chain reaction down the line.

It should be noted that, as far as we are aware, the Northern Territory is the only area of Australia that has legislation that allows waters to be closed to all but one group of people, and we believe this is discriminatory in a general sense. It is certainly socially divisive and we do not believe it is in the best interests of the wider community—either of the Northern Territory or Australia.

We did recommend, in our submission to Mr Reeves last January, that section 73(1)(d) of the Aboriginal land rights act, the Commonwealth act, should be deleted. That is the one that allows the Northern Territory to make laws regulating control and to seize within two kilometres of Aboriginal land.

CHAIR—Mr Smith, I do not want to be rude, but I am informed by the secretary that the lease of these premises expires because of security reasons. We have to be out of here no later than seven. In fact, I think the words used were 'by seven'. We have another witness to go. Can you give me an idea of how long you think you might need to wrap it up?

Mr Smith—Chairman, that was it. I can probably wrap it up in another five minutes. There are just another couple of issues.

CHAIR—Thank you.

Mr Scullion—I have some comments on the sea closure provisions and the evidence provided by Mr Smith. I represent indigenous people who are commercial fishermen as well as mainstream commercial fishers. I have a vision on the future of our fisheries that many of the access rights of the inshore fisheries will be transferred slowly, but fairly surely, to Arnhem Land. We have put training packages and a number of other mechanisms in place to ensure that is facilitated as easily as possible. The sea closure provision under section 73(1)(d) of the land rights act is clearly an impediment to that. For example, around Milingimbi there is a sea closure area. If somebody who is currently operating a fishing licence in that area sells it to the community, that licence cannot be used within that community. It will be argued, but the land council in the area can say that the licence can be used there if they can grant the right to use that licence. I guarantee that the same people in the community have already argued with me. The act very clearly says that this has been closed for the quiet enjoyment of Aboriginal people that does not include a commercial operation.

I can tell you now that, if you speak to any of the Aboriginals in the community, particularly the women, you will find that employment for the young Aboriginals in that community is absolutely central to the future and to the success of some of these communities and their general wellbeing. Because they are adjacent to their estates, I feel that we need to do everything to ensure that commercial operations can happen in these areas. There are Aboriginal licences that have been granted, special licences that do not allow a commercial nature. They are allowed to sell, but only within that direct community. This will enable a larger operation, if you like, with the capacity to employ more indigenous people.

I am pleased to report that the Mabunji Association from Borroloola has worked very closely with the seafood industry. They now employ 12 people and it is going to be another

one of the icons in Aboriginal employment. It is doing very well, both as a fishery, as an employer and as a business. I certainly would like to see more of those businesses springing up. I think section 71(1)(d) of the land rights act is an impediment to that happening.

We would certainly agree with the position taken by Mr Reeves that the act should be amended to provide that the areas of the Northern Territory on the seaward side of mean low watermark on land granted to the Aboriginal land trust under the act and to the seaward side of the high watermark on all land in the Northern Territory—that includes the seabed under the Northern Territory's territorial waters—should not be available for claim. It is a bit of a mouthful. I do not know if we have got enough of these to table. If you would like me to table them, I certainly will. This is a map we have made to give you a bit of an example of the sorts of areas we are talking about. On the areas adjacent to Arnhem Land, clearly we were just talking about basically outside of low watermark, what we consider the sea. It is an issue we want to have clarified. We did not believe claims should happen within that area. Within the areas that are not currently under claim, we believe that it should not happen on the seaward side of high watermark, because that is basically where the line is. These are all areas, of course, within the territorial baseline that can be under claim at the moment. You can see by just the huge extent of it, why our concerns have been reflected in the—

CHAIR—Is it the wish of the committee that the map tabled by the witness be received as an exhibit to the inquiry? There being no objection, it is so ordered.

Mr Scullion—If you have some questions about specific issues, I would be more than happy to answer; I am very cognisant of time.

CHAIR—We know that you are going to be putting in a formal submission. Members are free to ask questions, keeping in mind the time constraints. We have got another witness and we have to be out of this room before 7 p.m. I ask members to assist me, as chairman, to avoid a problem in that regard.

Mr SNOWDON—There are a range of questions and I think we could have a long discussion about a lot of these issues but we do not have time to do it now. Do you accept the legitimacy of Aboriginal aspirations in relation to the sea? Do you accept that Aboriginal people see that they have a right to claim the seabed because of cultural tradition? I am not arguing whether or not it is a good thing to have.

Mr Scullion—I am happy to take the question, Mr Snowdon. I would preface what we are going to say by saying that I think there is certainly a difference in cultures, and I am on record in the Federal Court as putting the position that I very much respect the views of Aboriginals in respect of their sea and their estates. I guess the challenge is: what does that really mean on the ground? It is the pragmatics of that that I am forced to deal with, and the position we put forward today reflects that.

Mr SNOWDON—But you do not deny the possibility that you are able to form agreements with people on a regional basis for the management of a fishery?

Mr Scullion—We certainly at the moment have a process that reflects to a degree that situation, in that we strive to embrace Aboriginal views about fisheries management within

their own areas. A case in point is the issue of dugong deaths in the Borroloola area. The seafood industry showed leadership: we went there and we actually closed four-fifths of the area and we had a whole range of regulations put in place as a consequence of advice given by Aboriginal people on the movement of dugongs. We sat down as a group and worked through the pragmatic issues, those pragmatic issues were put to government jointly, and the government then passed regulation to reflect that. So we do have mechanisms in place to ensure that the views of Aboriginals in terms of fisheries management regionally are put in place.

However, I would go on to say that I am also always loath to nod my head and agree when anybody talks about fishing management and regional areas because it just simply does not work. The drawing of fences and lines and having those regional management plans is something that, just in terms of fisheries management generally, has been proved not to work.

Mr SNOWDON—This is a bit of a digression but the logic of your position in relation to regional land councils and your statement just then contradict one another, as does, Iain, your statement about Maningrida and the Kakadu National Park. Conceivably you could have a regional land council where the people of Kakadu could say no but the people of Maningrida would then be prohibited. On the current basis it seems to me possible, is it not, that the Northern Land Council has a macro view, or can develop a macro view, because it crosses those language boundaries, those cultural boundaries, and is able to bring people together? Secondly—

Mr Scullion—Just a point of clarification, Warren. I am sorry if I was confusing you. I want to make it very clear. The first issue is that, in terms of Aboriginal management, I did not think your question in any way was in respect to ownership, and I respected that and I dealt with it in terms of management. We manage in a regional area—that is what the Aboriginals have asked for because they cannot speak for people outside of that area. So we have said that, whilst we do not choose to manage the fish within the fisheries within that area because it is not in the best interests of the stocks, we have respected the cultural integrity of the Aboriginal people and we have basically complied with their wishes of regional management input into the management plan. That was actually where the difference was. I was not intending to try to say that there was not—

Mr Smith—We basically manage people and perceptions at a regional level, but we manage the fish—barramundi or whatever it may be—right around the coast.

Mr SNOWDON—I will finish with this last question. In the context of your overall view about the intransigence or the obdurate nature of the Northern Land Council, is that a reflection of the bureaucratic nature of the Northern Land Council or do you think it could conceivably be that their instructions by traditional owners are to do particular things?

Mr Scullion—It is a question I will have to think about, and mutter and splutter and look at the water bottle for a moment, because I have to continue to exist here. Every day—

CHAIR—You can take it on notice.

Mr Scullion—No, I am happy to deal with it. Every day I deal with a myriad of issues that involve different personalities and people. There are people and personalities within the Northern Land Council who I do not necessarily think are particularly generous on certain days, and there are others who do their very level best to ensure that, bureaucrats or otherwise, they get the job done. It is just too hard to give an answer that would cut right across that.

Mr SNOWDON—The reason I asked the question is that there has been a historical criticism of the Northern Land Council and Central Land Council being large bureaucracies, and therefore that is the reason to carve them up. In fact, for example, on the sea claim issue and Terry Yumbillil, that was initiated not by the Northern Land Council but by a local group of people. The Northern Land Council has got to carry it because that is their instructions. What I am pointing out is that we need to be very clear when we talk about regional issues that we do not confuse the job that the Northern Land Council is required to do under the act, under section 23, and its broader community responsibility as it might be seen by the general public. You and I both know—we have lived here long enough to know—that the Northern Land Council is being vilified for doing exactly what the traditional owners have required it to do.

CHAIR—I am sorry, we have got to keep to time please, Warren.

Mr Scullion—I have a very brief response to that. I think it is very important to remember, Warren—and I was very closely involved with that situation—that clearly an error was made. You mentioned Gurindji. His specific country that he speaks for and has owned traditionally for many years was under claim without his knowledge, full stop. That would not have happened if the sea claim had come from the direct regional area; it was simply an error that would not have occurred.

Mr WAKELIN—You deal with a whole cross-section of Aboriginal people. How do you find the language issues?

Mr Scullion—I have not got time for the presentation but I spoke to a conference on doing business in Aboriginal communities. If people are arrogant enough to go along to do business in Aboriginal communities without the aid of an interpreter, then they are really going to lose the day. You have to be able to ensure that people have a true understanding of what we are all talking about. For too long, we have been going there and saying, 'We spoke. They must have understood.' Frankly, many people, particularly the old people, simply do not understand what we are saying, nor do they have a need to.

CHAIR—Thank you, gentlemen. I appreciate that.

[6.37 p.m.]

LEE, Mr Robert, Executive Director, Jawoyn Association

MACKINOLTY, Mr Chips, Policy Adviser, Jawoyn Association

WALSHE, Mr Paul, Legal Adviser, Jawoyn Association

CHAIR—Welcome. Although the committee does not require you to speak under oath, you should understand that these hearings are legal proceedings of parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I understand you do have a written submission.

Mr Lee—Not at present. We have put one in.

CHAIR—You are now tabling it?

Mr Mackinolty—This is an address that is about to be read out to you. We have given you a copy out of courtesy.

CHAIR—Is it the wish of the committee that the submission tabled by Mr Lee be accepted as evidence to the inquiry into the Reeves report and authorised for publication?

Mr MELHAM—Mr Chairman, he should be allowed to read it. If we have been given this as a courtesy—

Mr Mackinolty—This is not our submission.

CHAIR—I am sorry if I have misunderstood. I did not hear you properly.

Mr MELHAM—They have given it to us as a courtesy, but Mr Lee does want to read it out.

CHAIR—So you do not want this to be tabled today?

Mr Lee—After I deliver it.

CHAIR—Right. I apologise for that; I did not hear you.

Mr Lee—It is not a written submission of the Jawoyn Association. It is the overall picture, as we understand it, from reading the Reeves review, and where we are coming from. Firstly, I would like to thank the committee for giving us this opportunity to sit here today and discuss this important subject. Secondly, I would like to thank the people of Larrakia for allowing us to be here in their original country for this important subject. Next week, we will be putting a written submission to you which will add to what I am able to present to you here today. I would be grateful if you would read this along with the two submissions we made to the Reeves inquiry last year.

These lands cover about 34,000 square kilometres north and east of Katherine, about 300 kilometres south of here. Some of the land we have won back under the land rights act, some we have got back through asserting our native title rights and some we have purchased. The rest of our land is now owned under whitefella law by other people, but under Aboriginal law we still regard these lands as being part of Jawoyn heritage.

Our written submission will directly address the details of your terms of reference. Today I want to tell you what the Jawoyn people feel about the Reeves report. When we wrote our submission to the Reeves inquiry, we said two things: first, that any changes made to the land rights act must protect the rights that Aboriginal people already have—that our rights must not be reduced; secondly, that if the act is changed it must strengthen the control traditional owners have over the administration and development of Aboriginal land. On both counts the Reeves report has failed.

The ideas in the report will take away the rights we already have and will reduce the control the traditional owners have over their lands. The report has been a failure. We are very disappointed, and I will tell you why. The Jawoyn people want to break away from dead-end welfare. In the words of one of our former leaders, we want to live on the wealth of our lands the way our ancestors were able to. The land rights act has allowed us to do that. As some of you would know, since we got our land back, the Jawoyn people, through the Jawoyn Association, have worked hard to develop our land in a careful way to produce wealth for our children and grandchildren. We are showing how land rights work, not just for Aboriginal people but for all Territorians.

This September will be the 10th anniversary of the day we got our land at Nitmiluk National Park. So, in a way, we have had land rights under the act for only 10 years. Since that time—in just 10 years—we have built up our commercial assets from nothing to something worth over $5 million. I will supply you with a list of our enterprises along with new ones we are investigating. We have worked hard. Among other things, we have developed a five-year plan which will help our people move towards economic independence. We are the first Aboriginal group in the nation to adopt a formal policy on mining. I will supply you also with a list of some of our achievements over the last decade.

We are now on the next rung of the ladder. We want to build on our land rights. Using our land rights, we are now starting to work towards the time where we can control our own destiny, our own lives. We are working towards building our commercial enterprises to create jobs which will lead to improved health, improved education and training opportunities, and a better life for our people.

We are moving away from the mission days, from the days of government settlements, from the days of native affairs and from the days of welfare dependency. That is why we suggest some strategy changes to the land rights act to make it work better. That is why we are disappointed that almost none of our suggested changes have been taken up in the Reeves inquiry. That is why we are very disappointed that the inquiry suggests removing some of our rights. More importantly, it is why we are very disappointed that the inquiry makes suggestions that would attack the viability of our commercial enterprises and not allow us to build them up.

I will give you a brief example. Under the Reeves suggestions, all profits coming from Aboriginal land will go to the regional land councils. These regional land councils must bank their money under the central control of the Northern Territory Aboriginal Council. The Northern Territory Aboriginal Council must then approve what the money is spent on. Not only that; the regional council must invest these moneys in the fund controlled by the NTAC. This is a commercial stupidity as well as being old fashioned imperialism. It is like native affairs time all over again. It is something that no whitefella in Australia would have to do with their money, nor would they tolerate it.

For example, one of our businesses has a real rate of return of over 25 per cent. Why on earth should we be told to invest our money in the Northern Territory Aboriginal Corporation investment fund which Reeves estimated would earn a rate of return of only 10 per cent? If the directors of normal commercial companies made decisions like that, they would deserve to be sacked for incompetence.

The Reeves inquiry told us that Aboriginal people must be obliged to be incompetent and must not act commercially and competitively. The Reeves proposal would be a disaster for Aboriginal economic development. It removes the incentive provided by real ownership of our businesses. Furthermore, it would actively discourage joint ventures with non-Aboriginal partners, as prospective partners would not invest in any enterprise where the Aboriginal partner is effectively controlled by an external non-beneficial entity which has complete control over investment policies in joint ventures.

No-one would invest in us under these conditions, including, I would suggest, the commercial development corporation which has been established for the sole purpose of supplying finance to indigenous enterprises. For all of these reasons, not a single one of these business enterprises would be viable. It would destroy everything we have been building for the future of our people.

I ask members of this committee to try to imagine what it would be like to be controlled in this way and to imagine how you would feel. Imagine, for example, if the committee chairman, Mr Lieberman, wanted to build a granny flat at his place at Warlangluk; or if Mr Snowdon wanted to do the same in Alice Springs. You get someone to move in and pay rent; you want to make a few dollars out of your private property. Maybe you want to invest the rent money somewhere else or maybe pay for your kids' education.

If you were under the system suggested in this report, you would have to send your profits to something like the Northern Territory whitefella council. They would force you to invest money in their funds and then they would have control over what you can do with what is left. You would not like that; nor do we. It is an insult to free enterprise.

We want something that other Australians have—that is, commercial freedom. We certainly do not want to go from a dead hand over welfare to a dead hand over a centrally controlled marketplace, a system that has failed all over the world. Because the Northern Territory Aboriginal Council is to be completely appointed by the government, it is just big government under another name. It would take Aboriginal hands off the control of enterprises and put them in the hands of the NTAC bureaucrats. It is a big leap back to the time of native affairs, when our lives were controlled and directed from morning until night.

As I said, we will be supplying a written submission that will fully address the terms of reference. I know the committee is busy, so I will close by making a final brief comment. Chapter 28 of the Reeves report spoke of the act and the land we have won back. The report said, 'It is their land, their act.' He is actually right. In another submission to you, Ian Viner talked about this and raised the issue of how Aboriginal consent to change the act can come about. Ian Viner was the Minister for Aboriginal Affairs who introduced the land rights act. He did not say how that consent might be obtained, but he did question whether Reeves or the Commonwealth parliament had a mandate to change the act without the consent of the Aboriginal people.

It is our land and it is our act. The question that the committee must consider is whether changes to the act have the consent of the Aboriginal people of the Northern Territory. It is this question which you must ask of all of us. On behalf of the Jawoyn people, I would like to make it perfectly clear that we do not give our consent to the changes in the act as laid out in the Reeves report. Thank you.

CHAIR—Thank you, Robert. It has been very helpful and clear to get that statement of your ideas. How many people are in your group?

Mr Lee—Totally, within the region, about 600 adults.

Mr Mackinolty—In the region, there are about 2,500 people, excluding Katherine. Of Jawoyn people, there are about 600 adults and 400 kids.

CHAIR—Yes, I meant Jawoyn people. At present, the Jawoyn people's lands are in the Northern Land Council area. Is that right?

Mr Lee—Yes.

CHAIR—So your wish to develop businesses is done in conjunction with the Northern Land Council at the moment. Is that right?

Mr Lee—The Nitmiluk joint venture—correct me if I am wrong—has been done by ourselves.

Mr Mackinolty—Yes. I think it is fair to say that after the land rights process, which the Jawoyn won, that allowed the Jawoyn Association in this case to then enter into commercial agreements such as the Nitmiluk joint venture, which controls the—

CHAIR—Do you have to get the approval of the Northern Land Council before you can do that?

Mr Mackinolty—Initially, yes, we did.

CHAIR—Are you happy to stay that way, or would you prefer to have only your own people make those decisions?

Mr Lee—We prefer to make our own decisions.

CHAIR—You do not like the idea that Mr Reeves suggested of the big central body as well?

Mr Lee—I do not like the idea at all. I prefer to see that it comes from a federation that has been set up by the people, not by the government.

CHAIR—Robert, without any disrespect to the Northern Land Council, and I am sure you are not being disrespectful, you want the committee—and you will give us a submission on this, I understand—to consider supporting your people having their own independent land council. Is that what you will be asking us to do?

Mr Lee—That is what we will be asking.

Mr SNOWDON—Can I just clarify that, Mr Chairman?

CHAIR—Let me finish.

Mr Lee—Under the existing legislation.

Mr SNOWDON—Under the existing legislation, are you not?

CHAIR—Yes, I knew that. I did not think otherwise. How long do you think it will be before you give us your full submission with those ideas?

Mr Lee—On 12 March.

Ms HOARE—Robert, with regard to the outline that you have given here of the Jawoyn people and the corporations that you have been able to build up over the past 10 years, during that time, and in the process of building up those corporations in a commercially viable way, have you had any impediments at all from the Northern Land Council?

Mr Lee—Not at all, I do not think.

Mr Mackinolty—Ms Hoare, if I can follow on from that: that would contrast greatly with the situation under the Reeves proposal for the NTAC. To my knowledge, Mr Reeves or his team did not look at any of the businesses that the Jawoyn run. They did no investigation of any of those businesses, so I do not know how he drew his conclusions. There are certainly huge tax implications which he has not taken into account in terms of rolling it all into the NTAC.

A large number of the businesses, certainly that we run and that other Aboriginal organisations run, direct their profits or distribute their profits through charitable trusts. God knows what would happen if this grand vision of the NTAC came into all those arrangements, assuming his suggestions are legal at all.

What he also has not thought about is that there is a huge number of businesses already on Aboriginal land that derive their incomes from Aboriginal land and the people with them and so on. What he is suggesting is that the profits from all these businesses, some of which

have been running for decades—30 years—including every community store, every mechanical workshop, the arts and crafts industry which is worth over $100 million a year, and festivals—would all now be turned through the RLCs into this NTAC. It is bizarre. As far as I am concerned—and it is a personal view—he may be a good lawyer but he has got his commercial advice out of a Weeties box. He has not taken into account any realities of running businesses.

I have been involved, obviously, as Robert has, in setting a lot of these businesses up and it is a hard grind. The real issue here is that of this list of commercial enterprises—and there are some 16 potential enterprises listed here—not a single one would be viable under the Reeves proposal, for two very good reasons. Most of them are or are about to be joint ventures. There is no way known that a joint venture is going to get into bed with the Jawoyn if our cash flows and profits are controlled by a third entity. I doubt that a bank would lend us that money. We get most of our money from banks. I doubt very much that any other joint venture would do it. Say you and I were going into business and two years down we needed some more money: if you found that my funds were then controlled by my father, you would rightly feel ripped off, because I have not got control over my destiny. That is what the Reeves report does not understand about commercial enterprise and about capitalism generally. It is about controlling the businesses yourself.

His idea of the NTAC is some sort of weird bank run by a bunch of bureaucrats presumably in Darwin. The Jawoyn Association has been far happier to deal with real banks with real bankers. As Robert made the point, I doubt very much whether the Aboriginal and Torres Strait Islander Commercial Development Corporation would be able under their own charter to lend money to any Northern Territory Aboriginal enterprise if there was a third party controlling their profits, quite apart from the stuff the land council raised earlier about it possibly being unconstitutional.

CHAIR—Thank you. We look forward to receiving that submission, Robert, and congratulate you on your efforts to date.

Mr SNOWDON—What is your attitude to the recommendations in Reeves on permits specifically?

Mr Lee—On permits, it has got to be kept on so it is more controllable but there needs to be a mechanism put in place. At present it is unworkable for the simple reason that you sometimes have a permit delegate who does not live within the community. He lives in Darwin or Katherine or somewhere else. He is a pretty hard person to track, to delegate the powers to when the land council does give him the delegation. He could be out in a remote outstation somewhere. He is uncontactable. So there has got to be a mechanism where it has got to be looked at; one possibility is to look at the community council or association.

CHAIR—Local people?

Mr Lee—Yes, as long as one of the community—a major community—is the delegate.

Mr Mackinolty—The point about the permit system is that it is different from, say, trespass laws. What you are talking about is informed access, and it cuts both ways. It means

that a non-Aboriginal person will not inadvertently walk over a sacred site or a ceremony ground and therefore lay himself open to serious prosecution. Likewise, if someone is out hunting, they want to know if there are some visitors there, otherwise they might be up for manslaughter if they mistake something in the distance. It is informed access in the permit system. It is not like the trespass laws.

CHAIR—Thank you once again for your evidence. It has been most helpful. I thank everyone for their attendance today, and particularly to *Hansard* and our staff for the wonderful job they have done today.

Resolved (on motion by **Mrs Draper**, seconded by **Mr Wakelin**):

That, pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 6.58 p.m.