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

WEDNESDAY, 3 MARCH 1999

DARWIN

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Wednesday, 3 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 8.58 a.m.

CHAIR—I would like to welcome everyone to this public hearing relating to our inquiry into the recommendations of the Reeves report on the Aboriginal Land Rights (Northern Territory) Act. As you know, the Minister for Aboriginal and Torres Strait Islander Affairs, Senator John Herron, has asked the committee to seek people's views about the recommendations in the Reeves report. I do not think there are any media present at the moment, which is a pity because the media do not appear to be aware of the fact that the minister has actually asked the committee to seek the views of Northern Territorians on the recommendations in the Reeves report. That fact seems to be lost. We will try to put greater emphasis on that as the committee does its work.

Members of the committee are starting the inquiry with open minds. We want to talk with all interested parties, Aboriginal and non-Aboriginal, in a spirit of cooperation. We want to consult as widely as possible. We are all very conscious of the need to hear the views of the people in more remote communities. For this reason, we will be visiting a number of centres and communities over the next few months.

We plan to present our report to parliament in August this year. The hearing is open to the public and a transcript of what is said will be made available. If anyone in the community, in the public gallery or elsewhere, would like further details about the inquiry or the transcripts please do not hesitate to ask any of the committee staff here at the hearing today or to contact the committee back in Canberra.

[9.00 a.m.]

CRAWSHAW, Commissioner Josie, Northern Territory Northern Zone, Aboriginal and Torres Strait Islander Commission

CURTIS, Commissioner David, Northern Territory Central Zone, Aboriginal and Torres Strait Islander Commission

HAYES, Mr Noel, Chairperson, Yapakurlangu Regional Council, Aboriginal and Torres Strait Islander Commission

HOOSAN, Ms Eileen, Chairperson, Alice Springs Regional Council, Aboriginal and Torres Strait Islander Commission

JACK, Mr Tony, Chairperson, Garrak Jarru Regional Council, Aboriginal and Torres Strait Islander Commission

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. Hansard will be taking a record of what is said today and from time to time I will ask you to repeat or spell placenames so that we can make sure the record is accurate. Before we ask questions, do you have an opening statement that you would like to make?

Ms Crawshaw—Yes. I would like to make the opening statement, but then I would like to open it up to the other representatives to make a statement themselves. On behalf of the ATSIC chairs and the other commissioner, we thank you very much for giving us this opportunity to speak to the committee. We apologise for the fact that a couple of our chairs could not come as they have got regional council meetings on, but we hope that we can present their views to the best of our ability.

Firstly, I want to point out to the committee that Mr Reeves's proposals for the future conduct of indigenous affairs are doomed to failure because they invite Aboriginal people to break their own laws.

CHAIR—Can I just interrupt for a moment, so that I know the format that we will be proceeding with today. Is it your intention to give us a written submission today?

Ms Crawshaw—No, we would like to give you the written submission on 10 March—next Wednesday—in Canberra.

CHAIR—That is fine. I just wanted to know so that members can prepare. They might want to make notes more accurately now rather than rely on a written document that they might have thought they would get. Please proceed.

Ms Crawshaw—I would like to point out to this standing committee that Mr Reeves's proposals for the future conduct of indigenous affairs are doomed to failure because they invite Aboriginal people to break their own laws. In proposing the new system of regional land councils, and the overarching Northern Territory Aboriginal Council, Mr Reeves says membership is open to any Aboriginal person who can be nominated by any other Aboriginal person.

At the regional level, there is a residential qualification but at no stage is membership at any level qualified by a requirement that the person have authority under Aboriginal law to make decisions about the use of or access to country. Mr Reeves's proposals would put people in the position of making decisions about other people's country.

I cannot imagine any Aboriginal person wanting to be put in this position because it is ingrained in us that to do so is wrong. This is not simply a prohibition; it is a crime. It is viewed as a crime and judged and punished as a crime. It is true that some people without authority may be tempted to assume authority unlawfully, where white fellow law presents them with the opportunity to do so. If Mr Reeves would have government give people this opportunity, he will be answerable for the widespread social disruption, not to mention dysfunction, which would surely follow.

The people with true authority will not just refuse to accept this assumption of authority but they will act as our law entitles them to. This is not just a fundamental flaw in the Reeves proposal for the conduct of indigenous affairs; it is a recipe for disaster—and these are words I do not use lightly.

CHAIR—Can I just interrupt you? I will do it as little as I can, but it just might help the flow and understanding. Your concern is that people in the newly constituted land councils recommended by Reeves will have a mandate to make decisions about people living within those areas that the land council will operate in, and that those decisions will be being made by people who are not of the same clan as the Aboriginal people in that area. Perhaps you could explain it a little more to me.

Ms Crawshaw—The reason that we are making this statement up-front is that the whole Reeves report is based on a whole new identification of how he sees Aboriginal decision making and the authority of how that comes about. With the proposal for the 18 regional councils, where Aboriginal people can elect another Aboriginal person, his qualification is that you just have to be a resident in that area.

CHAIR—And an Aboriginal?

Ms Crawshaw—And an Aboriginal. It is the same with the proposed new Northern Territory Aboriginal Council. You have got to be Aboriginal, but you will be appointed by the Minister for Aboriginal and Torres Strait Islander Affairs—the federal minister—plus by the Chief Minister of the Northern Territory. They will have overriding decision making powers over the 18 regional councils, and that is not based on what you experienced yesterday with the traditional elders. It is not possible in Aboriginal society for that to happen. It is a crime to speak for someone else's country. To be a resident, but not be the traditional owner with the authority to make those decisions, and to bring in other people

that have relationships with country and links with sacred sites—and that is all done in that context—is breaking the law. The whole Reeves report is based on that assumption, and that is the biggest flaw of the whole report.

CHAIR—That is one of the clearest statements I have heard. Thank you for that. With those decisions that you are identifying, are they decisions relating only to the use of the land vested in the land council or are they decisions affecting the lives of Aboriginal people, other than the land itself?

Ms Crawshaw—In general, there has been an encroachment over the years on traditional society, traditional decision making. A lot of traditional owners have had to wear a lot of encroachment on their powers to make decisions. For example, even though there is a permit system to enter Aboriginal land, the government, for services, allows each agency an open permit system to go in and deliver services. One of the areas where it is clear that encroachment has happened is where they have community government councils that carry out municipal services. Often, the membership of that does not come from being a traditional owner—that is, as we say, a person to do with the land. It will be made up of people with skills in that area or people that the government appoints. There is not an election process, as there is here with, say, the city council.

One of the complaints that traditional owners have is that they sit and watch infrastructure happening on their land. Tony will speak a bit more because he is the chairman of an Aboriginal land trust. They are not sure whether they own that infrastructure. They think if they were to legally take that on they probably would own it. Government has been warned about these things by land councils who are trying to get some memorandums of understanding. Even land councils that are the bodies that make up traditional owners to speak about land matters are now doing these sorts of negotiations with government and saying that we could have the ability for housing associations to start building housing on our land or a school because it is going to be for the benefit of our people. But, really, it should be done with what we consider is the Aboriginal government—the traditional owners. They are the true representatives.

When it comes down to land rights in terms of economic development, land councils have a mandate and the legislation gives them true power that is recognised by their legal and traditional authority to land. That is what cannot be touched and tampered with. That is one area that we have been able to fight for and get rights on. That is what we are saying must not be touched because, if anything, they should be able to have control over what development happens on their land in terms of economic development, whether there is going to be mining or a tourism venture. ATSIC holds to that principle. No Aboriginal person anywhere in Australia would ever deviate from at least that principle. That is the one thing that holds land rights together.

CHAIR—If the member of the land council was elected and not appointed by the minister or by anyone, would that act as a bridge to better partnership and understanding, or do you say that even if a non-clan person was elected by the local Aboriginal people, that that person would still not be accepted, because they do not belong to that particular clan?

Ms Crawshaw—By traditional law there is no possibility for that person to make those decisions. Under Aboriginal law, when growing up, you know that you cannot speak for a particular piece of country. It just could not happen. I think there was a question yesterday, and you are alluding to it a bit today, about the idea of a Western system of election. That is where the sticking point seems to be. Our system of electing people as representatives is more powerful but equal to your system of election. It is just that we do not have a formal election process.

The reason that the terra nullius legal fiction of this country happened is because you could not see the buildings, you could not see the courthouse and you could not see the gaol. All the structures of law and order and good governance happen without the symbolic buildings. All the processes of who can be the decision makers, who makes the law, who does the punishment when someone in society is not behaving properly, does not happen through going to a courthouse with a judge. We have judges but they are not in a building and they are not called a judge. But everything of good governance and law and order happens in Aboriginal society.

CHAIR—Yes.

Mr SNOWDON—Can we allow Ms Crawshaw to finish her statement.

Mr MELHAM—I want to come in on this. I find this extraordinary. This is the first group of witnesses that have not been allowed to make an opening statement. We have interrupted their flow. If you do not have the capacity to listen to an opening statement and then ask questions, you should consider yourself and your position of chair. Let the witnesses give their opening statement. That is the procedure. Let us have some consistency and not a change of procedure. I think the questions are good, don't get me wrong, but I would like to let them put their opening statement, like every other person before the committee, without interruption. You cannot change the rules midstream.

CHAIR—I am sorry for the interruption. I will finish with one more question. I think your opening statement will then be a little clearer, certainly to me, and I think helpful to the inquiry and the responsibility that we have to Aboriginal people. If a person was a non-clan Aboriginal living permanently in an area that a land council was responsible for, would that person be eligible to receive any help or assistance with the various programs that the land council was developing and wanting to deliver? Can you help me on that one? If you would rather defer it, I do not mind.

Ms Crawshaw—I am not sure whether you mean under the new proposal of a land council.

CHAIR—In an existing land council or any one that Reeves proposed—either way.

Ms Crawshaw—If we take the land councils as they are now, the function that they have now, and are funded to carry out, is to do with land claims. The only people who can do land claims are people who are the land owners and the clans. If there is going to be development on a particular piece of land, the first thing that the land councils must do is go

to a traditional owner and get the consent for that development to happen—before they can even proceed with whoever the people are who have come with the inquiry.

The land councils are also responsible if a particular development is going to have an effect on other clan groups in areas bordering on that land. They must take into consideration their views and report on that, but the traditional owners have the overriding consent. For example, I live on Larakia country. I was born on Larakia country—this area that we are living on—but my country, where my mother was taken from, is Gurindji country, which is about 700 kilometres south-west of here near the Western Australia border, so any meetings to do with Larakia with decisions about development I do not participate in.

You do not get called in, unless they ask you to come in as an adviser, and you do not have any decision making powers. But if Larakia were working with the Northern Land Council—they come under its jurisdiction—and they wanted to put a nuclear power station here, the first thing I would do as an Aboriginal person, because of my politics about it, would be to put my case and tell them I would fight to stop a nuclear power station because it is going to affect what I see as my lifestyle, and I do not want a nuclear power station here. There is that ability that a land council takes into consideration and must take account of. But, at the end of the day, they have to abide by the decision that the land council makes.

The traditional owners can take into consideration our concerns and say, 'Well, we still want to go and work with whoever that company is that wants to build a nuclear power station because we believe that it is going to give us more housing and better health. Blow the rest of you.' All land councils work like that because we have an understanding in the world that, while there might be a form of sovereignty, we still stop things like what is happening in the Gulf War, and we still put things such as economic sanctions on South Africa for 50 years. They are the things we know and understand, even within a land council or Aboriginal affairs process.

Reeves's model of programs is not only taking the functions of land councils in terms of economic development and land but they are also talking about building a huge new bureaucracy that will take away—what we are more concerned about—ATSIC's program money and all the self-determination. We get democratically elected in your system—because we get elected through the AEC—and it is one of the contradictions that a lot of us have to live by because we aren't traditional owners, and therefore we are very careful that we do not talk about someone else's country in those sorts of negotiations. We are more about governance and providing services. That is what ATSIC does.

They are not only talking about our money; they are talking about NT government money, ABR money—the whole lot—in that model. He is tying in traditional ownerships with democratically elected government services and making this huge bureaucracy, but the power that that new NTAC has is more to do with acquiring your land, compulsory acquisition and overriding your decision if you do not want economic development—totally taking away every ability to make a decision. That is the absolute flaw in the whole process.

CHAIR—Thank you, that has been most helpful to me and I appreciate it.

Ms Crawshaw—The committee should be aware that we have serious concerns about the way this review has been conducted. There are two principal areas of concern. Firstly, and of fundamental importance, there is our concern that Mr Reeves has read his mandate for this review too broadly. We do not see in the terms of reference, nor in the normal understanding of reviews of legislation, any justification for Mr Reeves's proposing a fundamental rewrite of the purposes, operations and arrangements of the Land Rights Act. Indeed, Mr Reeves has gone further by proposing a structure of land rights which, in effect, would be a new set of institutional, administrative and financial arrangements in respect of programs for Aboriginal social and economic development in the Northern Territory. Under the Reeves proposal, the Land Rights Act becomes the vehicle for Aboriginal affairs in the Northern Territory, and we would go further to say that it is the vehicle for Aboriginal affairs nationally.

In particular, the new Aboriginal super body, the proposed Northern Territory Aboriginal Council, is to become the primary coordinating agency for Aboriginal programs and funding, subsuming the Aboriginal Benefit Reserve, the Northern Territory government and Commonwealth and ATSIC programs. Indeed, Mr Reeves proposes a new preamble to the act, setting out its new purposes. This is quite unacceptable. Such far-reaching and broad purposes were never the intention of the land rights act. It is inappropriate and impractical that they should become so now but, more importantly, we must ask in this context: by what did Mr Reeves assume the role of arbiter of Aboriginal affairs in the Northern Territory? The sorts of changes he is proposing would at least require detailed and expert examination and extensive consultation by all parties. This has not occurred.

To attempt to implement a radical change agenda as part of an examination of a specific land rights act with specific purposes is not the way to develop good policy. For Aboriginal people, it means we are faced with a complete rewrite of the land rights act which would give it purposes much wider than land rights and which would fundamentally affect the control and management of Aboriginal lands. The wider community as well is faced with a report which is long and complex to the point of incomprehensibility.

The implications of implementing Mr Reeves's proposal in full are profound. In Australia, it will result in bitter political dispute and contention, as happened with Mr Howard's 10-point plan for native title. It will again throw the international spotlight on Australia's performance in respect of fair and just treatment of its indigenous peoples. The committee has the opportunity to restore some commonsense and perspective to the consideration of the land rights act. We need to put aside Mr Reeves's grandiose vision and his wider agenda. We need to face the facts that the land rights act needs review. After all, it was 1983 when the previous review was undertaken.

The land rights act was groundbreaking legislation in Australia. There are bound to be provisions of the act which do not work as well as they might or which cause concern. We should be looking at such provisions in the light of experience and seeking fresh and innovative ways of making the act work where this is required. However, we do not need to take apart an act which, for Aboriginal people overall, has been an outstanding success and which has, in the space of 23 short years, advanced our people from a hopeless position of dispossession, marginalisation and powerlessness to one where we have a real say and where our culture and society is again valued, recognised and viable. To jeopardise what has been achieved at this stage would be a tragedy, so let us get down to some real issues and put to

one side proposals for NTAC, proposals to establish a whole new regional land council structure and proposals to effect blanket extinguishment of native title on Aboriginal land.

According to Mr Reeves, there are serious problems with the permit system. Let us examine the permit system. Are there real problems? If so, how extensive are they? If there are problems, are they best addressed through reforming the permit system rather than by scrapping it? How feasible is the proposal to replace permits by the Northern Territory trespass laws? This is an example of a real issue. It is the nitty-gritty of the land rights act in operation, affecting the lives of real people—both Aboriginal and non-Aboriginal. It is this sort of issue which the committee should single out and focus on.

CHAIR—As chairman, the thing I have been trying to focus on—and I bring it out now to try to highlight it—is that the community should understand that these lands are owned by the Aboriginal people and they have a freehold title to them. If it does not, there ought to be an education program. If people are having difficulty in understanding why someone should need a permit or not, they need to understand that, after all, it is people's land. It is not government land or Crown land; it is Aboriginal land. I mention that now because I have been struck by the lack of understanding of some people that we are talking about freehold land that is owned by Aboriginal people.

Mr MELHAM—It is not normal freehold land.

Ms Crawshaw—It is inalienable.

Mr SNOWDON—It is inalienable freehold. There is a radical difference.

CHAIR—I understand that, but it is still very close to the absolute freehold title.

Mr SNOWDON—It is stronger.

Ms Crawshaw—Chairman, you are absolutely right.

CHAIR—I thought it was helpful to your cause and I just wanted to say that.

Ms Crawshaw—For 23 years we have been living with the land rights act here in the Northern Territory, and it is still the major focus of every campaign that you are going to lose your backyard. They have lived with it for 23 years. They know it. Some of my best friends that I grew up with and went to school with still ask, 'Can I lose my backyard, Josie?' It just astounds me—the lack of understanding where land rights have been. It has happened for 23 years and they still have not lost their backyard.

Another issue is whether the large land councils are overly bureaucratic and not serving their constituencies well enough. Related to this is the desire of some groups to separate and form their own land councils. This is another real issue. At present, the land rights act provides for new land councils to be established, and in fact the Tiwi and Anindilyakwa councils have been set up under these provisions. The real question is whether those provisions are adequate to meet the genuine aspirations of Aboriginal people in the Northern Territory. To address the issue in this way makes much more sense than the irresponsible

proposals to virtually start from scratch by abolishing the two major land councils, with all their accumulated experience and expertise, and setting up 18 new regional land councils, regardless of whether the people in a particular area want one of these new organisations or not, and also whether they want such an organisation holding the title to their land in trust.

Over the course of this hearing and later ones we can get down to all sorts of practical issues and consider whether there are problems and, if there are problems, attempt to identify workable solutions. What ATSIC is proposing now is that we move away from the overblown rhetoric, the dubious analysis and the more grandiose recommendations which, unfortunately, characterise much of this report. We need to define the task and confine it to real and practical issues capable of workable and broadly acceptable solutions.

The second concern, which I will allude to briefly, is the widespread expression of dissatisfaction at the way the review was conducted. This boils down to grossly inadequate consultation processes, given the scope and the importance of the report's findings and recommendations, and the fact that the report contains recommendations which do not appear to have been discussed at all in the consultation process—for example, the proposal to establish the NTAC.

We have to endeavour to see that this committee's deliberations avoid these failings of the consultation process. We have major concerns about the specific findings and recommendations of the report. Some of these will no doubt be covered in today's discussion. We also have doubts about the legal validity of some proposals. However, it should be noted that ATSIC will make a formal submission before the committee in Canberra on 10 March where we will cover a number of such matters. We understand also that we will be able to come back to the committee at a later date in light of further consideration of these matters by the ATSIC elected arm and by the Aboriginal community of the Northern Territory. Thank you.

CHAIR—Thank you, Josie. I call on Mr Snowdon.

Mr SNOWDON—I thought we were going to have other statements, but I am happy to ask a question. The chair talked about the need for education about the land rights act and the fact that people are not aware of the title. For the benefit of the committee, most of whom have not lived in the Northern Territory or visited very often, perhaps you might like to comment on the way in which the issue of land rights has been handled by the CLP government here over the last 20 years, including efforts to push poll in the 1993 election on the basis of division on the basis of race. How might that have helped the education process for non-Aboriginal Territorians in relation to land rights and land rights related issues?

Ms Crawshaw—Do you mean how it would have helped, or how it would not have helped? One of the things that Reeves actually uses as his basis for this whole new NTAC is that, in his view, it will bring the divisive nature of 'Aboriginal versus the government' to an end, especially with the land councils and the government. Let us make this clear: we sat and listened to the Northern Land Council's presentation yesterday and our history and our experience show—and if you had heard the people speak, you would know—that our people are the most conciliatory people that you could ever meet. The lack of confrontation in

Aboriginal society is possibly to our detriment in lots of ways, because Aboriginal law says that to have good government and peace and order you must try to have consensus.

We have tried—and it is not only ATSIC: I know it is so with land councils and all Aboriginal people—to work with government and its agencies to develop better relationships in this place. We ain't leaving. This is our home and we do not leave it. For most of the people who come to Darwin, and most of the politicians, even if they have a working life here of 35 years, they will not retire here. The majority of non-Aboriginal people do not retire here. They come from the south and they come here for a working life and then leave. Of course, there are some old established families that do stay on, but they also have a history of colonisation with us.

It has been our experience again, with the Reeves report, that any confrontation or concern is not raised by us: it is because we keep being bombarded by reports that take away our dignity, our rights, our humanity. This report wants to put us back into the 19th century. We have to stop this. In terms of the government and the NT government, you have an act of federal parliament in Australia—and indeed, internationally—that is a piece of legislation that has happened without a civil war. In the way of it and in its magnitude, we would claim there has been war. All the deaths, all the poisoning of the waterholes, and all our history has been to take our land and our resources. So there has been a civil war, but not in terms of what modern society knows as a civil war.

Land rights were handed back here in the Northern Territory. This government in the Northern Territory has, from a piece of federal legislation, fought every land claim since then. You tell me where the goodwill is when pieces of legislation in government are made for the betterment of society—and they talk about us wanting to have an economic base, and we have a minister for Aboriginal affairs who says that he wants all of this—yet what they want is to take away any ability for us to learn those skills, to be part of that process, to be part of the solutions to the many problems faced—problems that have not been put on by us—and place it all back in the government's hands, totally under their political control. This report goes even further than the 10-point plan amendments ever did. This is a major change in Aboriginal affairs and it will make us invisible again.

Mr SNOWDON—Prior to the last election, the Deputy Prime Minister came to the Northern Territory and said that the Northern Territory land councils were responsible for health and education. Would you comment on that for us?

Ms Crawshaw—He has obviously taken that from the Reeves report, because that is one of the things that Reeves actually claims. If you read the land rights act and the functions of the land councils, they do not have funding or a program to do education, health, housing or any of the other social issues.

To actually use that as a basis to claim that the operations of the land rights act are failing the economic and social conditions of our people is so damaging and so ludicrous that we cannot accept that. Even ATSIC gets that all the time. ATSIC is held responsible for all of the social conditions in this country, and yet we have been in existence for only nine years and have 75 per cent of our budget quarantined, with no control over that budget at all. We do not control education, we do not control health, and we do not control employment

and training in this country. Those are very real issues: if you are sick, you cannot be educated; if you are not educated, you cannot get a job—and so the welfare cycle goes on. It is not to do with us.

To see this move go back into the hands of government, when we have tried to start for only nine years after 210 years with 75 per cent of our budget quarantined is, again, something that this country should be ashamed of and should be ridiculed for. This cannot continue. This is why we object to the whole Reeves report being based on all of those sorts of things. It is outrageous that he makes those assumptions and assertions.

CHAIR—Mr Lloyd will have the call after my quick question. You support the request of the minister, Mr Herron, that this committee should undertake a review of the Reeves report and seek the views of the people. Do you think that is a positive and appropriate step, in view of your concern about the Reeves report?

Ms Crawshaw—Absolutely. It is absolutely paramount; and that is one thing I will give him. I think even he did not expect it to be so damning. The minister would know that, to try to push through this piece of legislation without it going back to the community and to the people affected for them to look at this major change in legislation and the change in Aboriginal Affairs and in the whole landscape of how we are going to operate nationally—because this is only a springboard that they are using for the NT land rights—would cause such a division in the reconciliation process, which is already shaky in this country, that it would have to have been a duty.

We know this because we are getting reports from every conceivable person who is going to be presenting to you or writing reports to you. We have one here from Mr Viner, who was the minister at the time and who introduced this piece of legislation, which report I gather he will send to you. This is a report to the *Law Bulletin*. You will hear the word 'flawed' used every single time, in every piece and from every person who is going to present to you. You might not get that view from someone like the NT government, because it is everything that they have worked for since land rights came in for us, in order to get that control back. This is better than they could have ever expected. I would say that you will get it said in every report that this is so legally, politically, morally and anthropologically flawed that this committee could not take it anywhere.

Mr LLOYD—In your opening statement you explained very clearly why you felt that the recommendations of Reeves could not work, particularly with the expansion of the land councils: because of the fact that traditional owners can only speak for their land and cannot speak for other people. The question I am trying to raise is this. With the election of ATSIC commissioners and the ATSIC board, as you said, you use the Australian Electoral Commission and you have that problem now. Obviously there is a workable solution which you deal with, and it works under the ATSIC model, so why can't it work under a proposed new model?

Ms Crawshaw—Why can't it work under a proposed new model? You would all know of the big development that happened with Century Zinc, Rio Tinto or CSR—I do not know: the names change—up in the Gulf country. That nearly brought this country to its knees for a little while, and one of the things that the chairperson of ATSIC at the time came out and

made a statement about was that these people should sign the deal. That is one of the roles that ATSIC's elected arm tries to do. They try to broker—if they are in agreement—a deal. But at the end of the day, the chairperson at that stage was Lois O'Donoghue, and she and one of the commissioners were told in no uncertain terms that ATSIC had no rights to be part of the negotiations: 'If you want to come in and help up to make the deal in such a way that it is going to give us benefits, that's fine. But you have no rights. You cannot sign on the dotted line. You are not a signatory to this deal.'

That is how we understand it to be. For example, we are all on the bilateral indigenous housing committee with the NT government, where we put in ATSIC money and the NT government puts in their Commonwealth contribution to what we call IHA housing. One of the policy issues we have is that we keep putting up our housing stock with our money, but who actually owns it? Does the actual land trust own that infrastructure, or is it ATSIC housing money? We are putting it in, but can a land trust actually make a decision and move people?

Yesterday you talked about what would be some on-ground conflicts. That is the sort of role that we have in terms of making policy decisions, in trying to establish where other people are affected who are living in a community and are not the TOs but who have cultural obligations to do with sites and ceremonies but not the overriding authority for what happens to land at the end of the day. They are all taken into consideration. That is the difference: the new NTAC takes ATSIC and everybody else out of the picture. These will be people that will be politically picked and they will have the overriding powers to negate even the one thing that Reeves did leave in: the veto to mining. But, if you can compulsorily acquire land, it negates all of that. The powers are very far reaching, and so that is why it would not work: ATSIC is very different from that as a model. I would like to open it up for other speakers who have thought about different parts that they would actually like to address, if that is okay, Chairman.

CHAIR—Sure. We will try and run it as informally as we can, while being conscious of the time.

Ms Crawshaw—What time have we got left, basically?

CHAIR—Forty minutes to go, before the next witnesses.

Mr Curtis—I would like to make some comments. It has been mentioned on more than one occasion already that the report is flawed. It has cost ATSIC $1 million to produce this report, and now we understand that figure has gone up to $1.3 million. Where is the accountability in all of this? ATSIC is the most scrutinised organisation in the country, and yet this money can be appropriated for this review without any accountability to the Aboriginal people, let alone the taxpayers of this country.

When the report was finalised, ATSIC was not privy to that report or even the draft report. We only found out about the report through the media. It was leaked to the media. This whole process—even setting up this new body, NTAC—is not accountable to the people at all. I think Commissioner Crawshaw has already covered quite a number of concerns in setting up this new organisation. It is reinventing the wheel and it is putting

Aboriginal affairs back, you could say, 50 years or more. We have come a long way in establishing our rights, through many processes, and certainly the land rights act has empowered people and put them in a position to move forward.

I would like to comment on the permit system. I think the permit system ought to remain because if you are going to introduce something such as a trespass act where the traditional owners can enforce a trespass notice on people, it will just become unwieldy. It cannot be policed. The logical thing is to maintain the permit system. You already have a record where people apply to enter Aboriginal land, whereas if the permit system were taken away, people would have a free run. How can traditional owners police their own country when it is such a large piece of land? It is for those reasons that the permit system needs to remain, and—

Mr QUICK—Excuse me for interrupting. Would you see that as being something that will stay there for ever and ever?

Mr Curtis—I think it ought to, and why shouldn't it? I think it was explained to this committee yesterday, and again by Commissioner Crawshaw, that it is Aboriginal land and private land. If people want access to Aboriginal land—and that includes other Aboriginal people—there are customs and traditions where you simply cannot enter another person's land without their permission. That already existed before the European style of permit entry ever came into being. That is already in place. It has been there for thousands of years; you simply cannot walk on other people's land.

Mr QUICK—The reason I am asking is that we imposed an Anglo-Saxon sort of pass system that you were forced to adopt as part of this permit system. You said you want to keep the system but, in light of technology and changes, have ATSIC and the land councils thought of an improved method of keeping track of who goes in and who goes out, apart from something that was thought of and imposed last century?

Mr Curtis—I think it ought to remain, but it ought to be strengthened.

Mr QUICK—In what way?

Mr Curtis—I cannot really say in what way, but I think there certainly are ways that it ought to be.

Mr QUICK—We are here basically to listen but also to try to find out the thoughts behind how you see—as Josie said—things evolving. We are talking about something that has been in place for the last 30-odd years. Technology is changing and things have to move on, and we need to iron out the imperfections and put in place things that suit you as traditional land-holders and commissioners.

We have a permit system, but how would you see it being improved so that it is not a bureaucratic nightmare for people within your various land councils to keep track of who is in and out, thinking of modern technology and what is going to happen in the next 20 or 30 years?

Mr Curtis—I think it ought to remain. If you are talking about modern technology, you have computers and you can now use all sorts of systems to maintain a system of recording, and that is where it could be improved. Certainly, there is scope for that, but I do not think it ought to be changed. The permit system ought to remain. This is one of the areas where, when the Northern Territory elections come around, you get this scaremongering that goes on—non-Aboriginal people are told they are not going to get access for their fishing and those sorts of things.

There are other agendas for wanting to remove the permit system. One argument that was put up was about the Territory lifestyle—that people come to the Territory for access to all these areas, that people come to the Territory to do these sorts of things. But it is Aboriginal land and it is not acceptable that the permit system be removed or tampered with in any way.

Ms Crawshaw—We are talking about a system of controlling access that has only been in place 23 years. That got put in because, for the first time in this country, we were able to be afforded the same right as any other landowner: to have privacy on our land. That is the first fundamental thing. That is the reason it gets upheld. It is like any other right that any other citizen of this country has. If you have a title to your land, you are the owner of that country and you have the right to say who can access it.

In terms of major developments, we have Uluru—which is in Eileen's area—the Katherine Gorge and Kakadu. All of those major parks and attractions have been set up by negotiation with Aboriginal people, and access has not stopped. You cannot stop people crawling over that rock. As Aboriginal people, we do not think that anybody should be climbing that rock; we know that is why all the accidents happen. But you cannot tell mainstream society about that sort of stuff, and that is what happens. That access has not been stopped.

We have had four-wheel driving clubs that want to be able to go out and be hoons and check out how good their four-wheel drive is. They have wrecked land. It is the same with the big Army patrols. We have areas where we have said all of the forces of the Northern Territory could accumulate—with the Singapore airlines and everything—to do reconnaissance and to work out how they would handle conditions in war. We have areas of Aboriginal land where they can do that, and, with their big tanks and stuff, the damage to the country is astronomical.

There is just not any evidence to say that there has not been any access and there is not any ability to have access. Every time that they have come with a proposal, it gets passed. Even if it is against the person's wishes, in the end it will come down to, 'Okay, we will give in and you can have that part. Go and wreck that part of that conservation area.' At the end of the day the pressure is so strong, and there is no evidence that the permit system has not worked. As I said, you will be able to go out to a community without a permit system because you are a government official. That is open to all people that are from a government agency.

The other thing is: can you imagine just how many people hit on an Aboriginal community? You would not be able to deal with all the different types of requests that are

coming because there is no real strict policing in terms of services and the like. It is only where you have four-wheel drive clubs and individuals wanting to be able to have access to land. We have the most beautiful parts out here where most of the CLP have got the major pastoral properties—all the government appear to have access to be able to buy up real estate in those areas. We cannot get through to those beautiful fishing spots, which is some of our country, because it is private property. They have signs up: 'Trespassers will be shot.' If we put that up on our land, it would be a cry in this country, 'Get the permit system down.'

There is no evidence that the permit system has not worked and there will always be a lot of requests, but people know that if they are coming up they have got two weeks. If any one of you were to say to us, 'We would really like to see some of the best parts of the country,' you could ring and, because of the people that you are, any of those members of the Northern Land Council will take you. They are proud to show you their place. You can fish and take your family up there. I have done it with overseas visitors. John Christofferson was in here yesterday with the Northern Land Council. He has some of the best country. I said, 'Chris, I have people from overseas who have not had a chance to see Aboriginal culture. Can I bring them out?' You ring up just as you do when you know any other person that has a property and can get to their beautiful spots.

Mr QUICK—The argument would be that increasing the trespass to $10,000 or six months in prison is a far more effective way of regulating. Are you saying that is ridiculous?

Ms Crawshaw—If you want to go to that ridiculous protective thing, let us have a funding for the new land councils from the government to actually be able to police that, take it to court and meet the court costs to do that, to be able to police that. I can tell you that it would be far cheaper to just ring up and fill out your application form and process it that way. If they are going to do that and if they are serious about protecting our rights to our land and our sacred sites, let us have a budget so that our people can patrol those, put patrols out, and be able to take a person to court. Where is the individual going to get the money to take that person to court? It is outrageous.

CHAIR—On notice, when you see us again on 10 March, I would like to have a wholesome discussion on the Nabalco submission, which was published yesterday—you would not have seen it yet. It was dated 26 February and it was published by the committee yesterday as evidence. It refers to a number of important things, including some concerns about the permit system. Also on 10 March I would like to clarify—I do not know this myself—whether the Northern Territory trespass law applies to Aboriginal land anyway as well as the permit system. I will need to have that clarified as well.

Mr SNOWDON—I would also like to ask how many prosecutions there have been of people who have breached the permit system.

CHAIR—Yes, we need to look at that and at any other relevant matters on the permit system.

Mr Jack—I just want to say about the report that it is like a virus going back down through our organisation, through our communities right back down to an individual standing under a tree. They are worried about it. If you go out there today, there are still people

talking about it. Traditional owners and elders and all are really worried about it. Some of them are saying, 'Oh, they have started again with us,' and they are asking questions, even through regional council reps, through all the land council reps, to fight this.

CHAIR—Maybe this committee's inquiry might be a vaccine, Tony, for the virus.

Mr Jack—Yes, maybe.

CHAIR—If we work together and adopt a positive approach and talk frankly with each other, we may be able to come up with some good ideas. I would like to emphasise that today. That needs to be cleared up so that the opportunity to come out with a good blueprint is there, and let us seize it and try and use that opportunity.

Mr Jack—Some of the things they have been saying about the consultation process that happened when Reeves went around are that 'It is all right for them to fit in with their time frame. What about us, the Aboriginal people on the ground, to have our say on it?' The traditional elders have been saying to me that people should come out and talk to us on the ground here about that process. It should not be a rush job where you come in and out, through all the major towns and all that. Everybody is out there still dazed about it: what happened? But it is done, it has gone. That process has been gone about in the wrong way. They are saying it should go right down to the grassroots level and traditional people should have their say on it. They are not worried about the time frame—'Oh, but we have got to do this in three months'—and all that sort of thing. We are used to waiting. We have been waiting all our lives. That is the process that they want to follow.

I just want to talk a bit about land trust membership. The Reeves report was talking about demolishing land trusts and for the new body to take over that part of the land trusts. First of all, the land trust is formed up in the community, on the land, from community people. All the elders, tribal elders, traditional owners—senior law people that we have got respect for, like myself. They form up this land trust. That happened to me. Put up nomination, nominate ourselves in our own community, and they elect a chair and the membership of it.

One of the things in the Reeves report says that the land trust is not working out there. Let me tell you, committee and chair: it is working, and it is us, the land trust members, who make this work out there. But we do not go and tell everybody about what we are doing on the ground; that is our business. We respect our traditional tribal elders, the TOs. They govern all the laws, ceremonies, culture and all that we have to follow as land trust members. We worked this out on our land, and out from our land, with various departments, that we want to follow up advice from our elders, but it is done on the ground, locally.

We do a lot of follow up of issues with the land council, ATSIC, roads departments, transport and works, whoever—that is our job—again, through our elders in the community. They would come up to us, and we would sit down and have a meeting and they would say, 'You might do this.' It is our role to take it up. So it is working out there, but it is on a local level, on the ground, and it cannot be taken away from us.

When you look at it overall, the decision making process there is being dealt with on the ground, and that is the way we want to go about it. Our own people get elected to the land trust to make decisions. No-one else outside can take that away from us or come in and tell us what to do. We are working with the land council, ATSIC or whoever through that land trust. It is one of the biggest roles of the land trust—to protect our land. Some of our elders are no longer with us, they are gone, and it is up to people like me, on the ground, on the land trust, to protect our land not only for me but for my kids, their kids, and so on, which our elders have been doing for the past 100 years.

So when you look at it overall, the land trust is the way we want to go about it. We want to stay as a land trust, on our own land, that works in with our elders, traditional people, to carry on our ceremonies and culture and, again, to look at the future—working and planning for the future. But in the back of our mind we still have our traditions to follow; we just cannot forget about that. The land trust is our main decision making body on the land, and we do not want that to go. We are sick of people telling us what to do about our land. People on the land are happy with the land trust. We want the decision making process and all that to be handled by them, not somebody in Darwin telling us what to do down there. I want to point that out about the land trust.

I want to talk a bit about the 18 regional land councils which are proposed in that report that Mr Reeve put together. I am sorry, Mr Reeve, and committee members here, it is just not going to work. You are going to have to go back and do your homework on it.

CHAIR—We have not done that report; it is not our report. We are here to listen and come back, hopefully, with some recommendations to make your people very happy. At least that is what we hope to do. We will do our best.

Mr Jack—When I looked at that map of the 18 regional councils, I had a laugh about it. Then I pulled up and stopped laughing, because it is a serious matter that we are now talking about. We are going to have to go back through our traditional law and get expert advice, as you would call it, on where our boundary is going to go, otherwise we are going to be overlapping somebody else's boundary and that is one thing we are very careful of. Is there a ceremony; are there dreaming tracks or sacred sites? All of those sorts of things we have to take into consideration, and that is the biggest stumbling block that I see for us Aboriginal people.

I would be very wary of this boundary getting set up. Instead of 18 land councils, you will have about 118 land councils. If we go ahead, that boundary would have to be worked out with traditional elders in that area. You would sit down and work out where your boundary is. You cannot just put that boundary there and say, 'That is it. We had all our states divided up, boundary by boundary, and now it does not matter to us.' Our ceremonies go across the border and over to the Queensland border. We did not put that boundary there.

Mr QUICK—How did the CLC and the Northern Land Council establish those 18 'defined land council regions' as Reeve says? How did the two major land councils define those 18? Was it in consultation with the Aboriginal community?

Ms Crawshaw—I do not know; he has proposed that.

Mr QUICK—No, he says here, 'At present there are 18 defined land council regions covering all land in the Northern Territory.'

Mr SNOWDON—That is not correct.

Mr QUICK—I am just asking the question.

Mr SNOWDON—I am just indicating here, to assist, that that is not correct.

Mr QUICK—He says:

I assume the CLC and the NLC gave careful consideration to geographical and cultural factors in defining and establishing their 16 regions.

Have the CLC and the NLC established those 16 regions?

Ms Crawshaw—They are regions. The Northern Land Council has seven regions, but that is just to do with where they can put their staff. It is not to do with talking about someone else's boundaries. That is just a regional thing for their staff to help them administer any development that might be going on out on the land. Like Tony said, if it was really done on tribal boundaries, we are talking—

Mr QUICK—It says here that the Tanami region has an Aboriginal population of 2,211 and is 171,272 square kilometres of non-urban land.

Mr MELHAM—What page are you on?

Mr QUICK—Page 208 of the Reeves report. It says that that is 90 per cent Aboriginal land. That is not a clearly defined region?

Mr SNOWDON—Can I assist, Mr Chair?

CHAIR—Order! Mr Quick has the call and the witness is allowed to answer Mr Quick's question.

Mr SNOWDON—Perhaps I can clarify it and help Mr Quick. The Tanami region is not in the Northern Land Council area.

CHAIR—Mr Snowdon, I call you to order. Mr Quick has the call.

Mr SNOWDON—It would help if we had a discussion before we had these meetings so that we could sort out a few things, Mr Chair. We have not had a meeting to discuss some of the issues that need to be discussed.

CHAIR—Mr Snowdon, would you please allow your colleague to ask his question.

Mr SNOWDON—Would you please allow us to have a discussion about some of the issues before we embark on these interrogations?

Mr QUICK—It is not an interrogation. I am just trying to ask a question.

CHAIR—Mr Quick, you have the call. Please proceed.

Mr QUICK—It is the school teacher in me, and I want to find out the answers. Is the Tanami a clearly defined region?

Ms Crawshaw—I think you would need to ask the Central Land Council that question. We are ATSIC, and we do not have any working details. Whether that is a region, again, that has language groups that are common and is an area where there will be a range of communities that they would group together to actually service. It is the same with any government agency. We have seven regional councils in the Northern Territory. There are some communities that are huge, like my tribal community. It is not represented on ATSIC. Because the government only allows funding for so much, we have had to have only 11 people represent your boundaries in your area, and it might go 1,500 kilometres from the Queensland border across to the Western Australian border. This is how far he covers, and he is the only full-time paid person. The rest of his council, the other 10 members, are part time and come in for meetings, policy decisions and submissions.

If you take David and me, that is two commissioners for the whole of the Northern Territory. I have to represent from just above Tennant Creek all the way up for the Northern Territory and David all the way down. There are just thousands. I wish we had the money that politicians have. There are probably about 15 in my area, compared with one person. We do all the same sorts of issues: economic development, education, housing—we have to sit on every one of those committees where ATSIC's represented. I do not know; you would need to check with them, Mr Quick.

Mr QUICK—Where Reeves says on page 209:

These 18 existing regions are therefore an obvious basis for establishing a system of Regional Land Councils in the Northern Territory.

That is a load of hogwash, is it?

Ms Crawshaw—My understanding is that it would need to be investigated by the land councils. How many does he say—18?

Mr QUICK—Yes.

Ms Crawshaw—I know that the Northern Land Council has, from my understanding, only seven; that is in my region. There are seven regional areas. That is so that decisions, regionally, from those reps can be brought back into a big body. It is the same as us. There are nine of us altogether, but there are only two of us who take all of these people's stories to Canberra.

But in terms of making decisions on someone's land, even though they might have seven regions, when it comes down to development, no-one can make that decision except the traditional owners for that particular land area and the trust that they hold.

CHAIR—I just want to have a discussion with you on timing. We are going to Bathurst Island, as you know, and the plane has to take off at noon. I am told we have to leave here at 11.30 a.m. We have got the Aboriginals Benefit Reserve scheduled for 10.30 a.m. I know Eileen and Noel wish to also say some things, and Mr Wakelin has indicated he has some questions, too. With that knowledge, can we now proceed and try to move along.

Ms Hoosan—I would just like to bring forward four issues. The first one is that I sit here in front of this committee as an elected member of ATSIC in the Alice Springs region and also as the chairperson. The majority of constituents in the Alice Springs region, particularly the traditional owners of the area, are very supportive of the land council and the Land Rights Act. I am not a traditional owner of the area, but I also have a responsibility to reflect the views of a silent number of Aboriginal people who have welcomed this review and who have spoken to Reeves. The second and third issues I want to bring forward are that I am a Yankunytjatjara person from Uluru. I belong to the senior traditional owner family. I am also a recipient of royalty money. My family will be presenting a position to the review when you visit Uluru.

I support the position of the Northern Territory ATSIC that the Reeves review is unacceptable to Aboriginal people. ATSIC's broad policy position is that any proposal which will reduce the benefits and protections of owners of traditional Aboriginal land, and the Aboriginal community of the Northern Territory in general, shall be identified and opposed and the nature of the Aboriginal concerns explained. Any changes to the land rights legislation can only be dealt with effectively if they are consistent with the aspirations of the Northern Territory Aboriginal peoples. Changes to the land rights act must come from Aboriginal people and there must be a consensus for change from Aboriginal people.

Mr Hayes—I will be very brief; you are running out of time. There has been talk about hogwash. I reckon this review is a lot of hogwash. I am a tribal man. I have done the ceremonies; I do all that sort of thing. They talk about other people's land. You can't do that. You are going to hear that 1,000 times, if possible, when you go to the other committee hearings. You can't talk about other people's land. You can't make decisions about other people's land, because you are going to get hurt in one way or another or your families are going to get hurt in one way or another. This is black law that I am talking about. You can't talk to some people, especially ladies, women. They cannot talk about certain things on Aboriginal land or about certain things like ceremonies and that sort of thing. That is the same thing that I am talking about when I am talking about other people's land.

What the Reeves report is doing is putting everything back into the government's pocket. I suppose I can say 'pocket' because the NT government is going to take it over. If they do give it back, it will be controlled by the NT government, and they will go back to the welfare days. For 50 years I grew up with those. You will go back and you will be starting over again. They will be giving you what you need and telling you how to run your life—when to give you your medicine, sugar, tea, flour or whatever. So, basically, what I am saying is that report is very flawed. It has to be done again. We can do it again. Can we do it with someone else's money so they can do the review again? Thank you, Chair.

CHAIR—That was even more succinct and very direct. Thank you very much, Noel.

Mr WAKELIN—Ms Crawshaw, what is your understanding of the role of the land council? What is its prime role in your view?

Ms Crawshaw—Because there are still outstanding claims, the first prime role is to acquire back land that is claimable for the traditional owners that own that defined piece of land. The second thing is that they have a role to help facilitate any economic development—it has been mainly mining and possibly tourism.

Some stuff with which I have been involved with through the Northern Land Council is that we have set up a facility with AMRAD, the Australian Medical Research and Development organisation in Australia. It is the first funded one. Australia has made many advancements in the pharmaceutical area but all of our ideas have had to go offshore and be developed. AMRAD has come to the Northern Territory. They actually just thought they could do an agreement with an individual and we said, 'No, these are collective rights. You must go through the land council and pick who are the rightful people that can make decisions about whether you can do research and develop pharmaceutical benefits.'

Mr WAKELIN—Does the health component of the land council fund it?

Ms Crawshaw—No, they do not have a health budget at all.

Mr WAKELIN—No, but perhaps in the research area?

Ms Crawshaw—No. If AMRAD makes a drug, there could be royalties. It is an enterprise thing; so no, not in terms of health.

Mr WAKELIN—The Northern Territory government achieved self-government after the granting of land rights—I think it was two or three years afterwards. Whatever the colour of the Northern Territory government, it does have certain statutory responsibilities. There is discussion about the Territory wanting to go to statehood. In terms of the 23 years since the original land rights legislation was introduced and in the context of self-government, would you believe—in the evolving life of the Territory—that it is appropriate that we look at the land rights legislation now?

Ms Crawshaw—I do not know in what relation it would need to be looked at in terms of self-government. We have many pieces of legislation that are Commonwealth, and it works across native title, for instance.

Mr WAKELIN—I will be more specific. Self-government and moving towards statehood, as other states have in the Commonwealth, would imply that the state—or the self-government in governing the Northern Territory—has certain statutory responsibilities. That has implications for land management. The land council is heading towards 54 per cent control of the land of the Northern Territory, and there are certain statutory responsibilities of government in the interests of all the people. Therefore, in that changing circumstance of the last 23 years, isn't it reasonable that we have a review now?

Ms Crawshaw—Let me put it this way. Probably before the election and the referendum happened as to whether the Northern Territory would become a state, 80 per cent of people

in the Northern Territory, which would have included many of the Aboriginal people, would have said, 'Yes, the Territory should become a state.' However, all Territorians recognise that at the moment the Territory does not have the capacity to actually raise the taxes and the revenue it would require to become a state. Eighty-seven per cent of its budget, I think, comes from the Commonwealth.

In this situation now, where you have a one-house parliament, Aboriginal people were instrumental—80 per cent of Aboriginal people said no at the referendum. It brought down not only Stone, who lost his job. Everybody who has done any analysis on it has known that it has been the Aboriginal vote that has stopped self-government, because we do not want to give any more statutory powers to this government.

We are asking first for an inquiry. If we want to give you more powers over our lives, we want to have an investigation into what you have done for us in the last 20 years. One of the things that this committee also needs to do is ask about the years and years of untied grants that this government gets with no accountability from federal money. We do not know where that money goes. No federal government—whether it has been a Labor government or a coalition government—can track where the NT government's untied grants go. We do not want to give those powers to them.

Mr WAKELIN—Can I just interrupt you. I understand the background. What I really wanted to know is this: in terms of 23 years of land rights and 20 years of self-government, the Territory does have certain statutory rights in terms of land management and we touched on them yesterday in terms of weed control or general issues that affect the whole community. I am wondering, in terms of the evolution of government processes, if maybe it is reasonable to look at some of those processes and the interface between a state government or a self-government territory and the land councils. That is why I am asking a general question rather than about some of the politics, which you know better than I.

Ms Crawshaw—Yes. ATSIC actually accepts that there needs to be a review of the operational part of the land rights act on how to make it more efficient and effective. I will leave it at that. The politics would go on much further.

Mr WAKELIN—Yes, that is fine. I have about three more quick questions, in the interests of time and in fairness to the ensuing witnesses. Do you know how many Aboriginal groups have sought to form new land councils?

Ms Crawshaw—No, I would not be able to say.

Mr WAKELIN—My guess is that it has been a fair number over the years. Would you have any idea how many may have sought that? If not, that is fine. The issue of income from the Aboriginals Benefit Reserve, going back—

Ms Crawshaw—As ATSIC's reporters said, even if there are people willing to start their own land councils, the provisions under the act right now allow them to do that. There does not need to be a major restructuring. It does do that. ATSIC's view, as with our organisations, is that the resources are too light on the ground financially to start new

organisations. If there is a service doing this, we do not need 101 organisations doing it. We cannot fund in every community a particular organisation that wants to do something.

Mr WAKELIN—The best use of resources is very important.

Ms Crawshaw—It is the same with land councils. Land councils require a lot of expertise because of their legal nature and the complexity of the functions they carry out. It is another flaw in the Reeves report. The $400,000 to run a regional council would be like having one lawyer and one other person.

Mr WAKELIN—I need to move on because the chair will be breathing down my neck if I do not. The Territory government has been criticised for spending something like $20 million on opposing land claims over, I presume, something like 20 years. I can understand the concern. My understanding is that the Territory has tried to establish who the real owner of that land is. There has been a difference of opinion about who owns that piece of land. Is it fair to say that some of the resources of the Territory government have gone into establishing who the traditional owner of that land is?

Ms Crawshaw—I cannot really answer that in any detail. I am not really aware that the NT government actually does put a lot of money into identifying who the land owners are. That is a function of the Northern Land Council and the major land councils that have the funding to do that.

Mr WAKELIN—I turn to the funding of the land councils themselves. As I understand it, the Aboriginals Benefit Reserve income from 1978-79 to 1996-97 was about $425.5 million. The land council administration fund expenditure in that same period—that is, from 1978-79 to 1996-97—has been $202 million. So there has been a significant number of resources involved. We criticise the Territory government for its involvement in land claims, yet in the same period the land council has spent something like $200 million. Of all the money that has been spent over that period, would you regard it as a fair amount of money to have spent in this process?

Ms Crawshaw—Absolutely. It is a very complex question. We need time to answer that. I cannot give it any—

Mr WAKELIN—That is fine. We will no doubt have the opportunity to examine it as we go through. My last question concerns the historical context. After all, it is our responsibility, because we have to do it on behalf of all Australians as well as the Territory and Aboriginal people; it is our responsibility. Apparently in the second reading speech in 1976, the then minister, Ian Viner, predicted that about 12 per cent of the Territory would come under Aboriginal ownership. We now know since the Hawke sunset clause, et cetera of June 1997 that that will probably hit around 54 per cent. Therefore, can you understand how people think the increase from 12 per cent in 1976 to 54 per cent now is a significant one when it comes to the amount of money to be controlled by Aboriginal people?

Ms Crawshaw—No. That attitude derives from a very ignorant and racist view. We believe that we own 100 per cent of this. There has been no treaty. There has never been any setting of sovereignty. You have taken all the resources. Fifty per cent is for us to be

able to come out of the Third World conditions in which you have put us. We had survived 60,000 years, and within 200 years you have nearly wiped out Aboriginal people. It is fair to say that we believe that 50 per cent is claimable.

Mr WAKELIN—Do you believe that the land claim should be for 100 per cent of the Territory?

Ms Crawshaw—We know that the land rights act can be only on inalienable crown land. That is all that is claimable. History has gone on since then. We know that 17 million non-Aboriginal people are not going to be able to sail off here. We are not unreasonable people. The unreasonableness is coming from you. You think that white society thinks we do not have any rights.

Mr WAKELIN—It is not what we think. It is what we think in terms of the Reeves report.

Ms Crawshaw—Mainstream society thinks we have no right to this land, resources or any economic development or to be human beings in our own country. We are fighting for that. We will maintain it.

Mr WAKELIN—From 12 per cent to 54 per cent. You would say that it should be 100 per cent?

Ms Crawshaw—It is your court system that has given us that, not our court systems. We have fought on international developments around the world. It is what international courts, the common law courts of the world, have said. On any of these sorts of things, you change it in your own legal system, which you do. That is what this Reeves report is about. We can win a right like native title and within one year, after taking 200 years to win that right and get it recognised terra nullius, we have a government that can turn around and take it away. We understand that. We have accommodated it. We are going to fight on those sorts of things.

Mr WAKELIN—I had better respect the chair. Thank you for all that you have said. You are quite convinced that it is the best process in terms of the land council and everything else that has served the Aboriginal people for their health and welfare, education and progress. This is absolutely the best way under the current arrangements that it can be done. Do you believe that?

Ms Crawshaw—I have already answered your question. The land councils and the current system are not responsible for health, education and housing. They are the responsibility of state and Commonwealth governments. If you are talking about managing land, having control of land and having decision making power and self-determination to deal with the land and the resources which you now legally own under law, yes, it is the best system. If there are operational or procedural clauses that need to be made more efficient and effective, let us look at them.

Mr SNOWDON—Mr Chairman, could we ask the secretariat to prepare a paper on the functions and responsibilities of the land councils so that every member of this committee is clear that the land councils are not responsible for health and education.

CHAIR—One of the objects of the chair is to clarify the role of all organisations, including ATSIC, the land trust that Tony was talking about and the land councils. We will be pursuing that and publishing any findings we have to help the community and ourselves to get a better grip of what we are dealing with.

Mr SNOWDON—I want to follow up a question asked by my colleague. Could you ask the secretariat to inquire of the Northern Territory government whether they can give us any examples of where any Northern Territory law has been acting in conflict with the land rights law and, therefore, has been seen as inconsistent? We need to understand that the Northern Territory laws do apply in Aboriginal land except in so far as they are inconsistent. There are no examples of where they have been inconsistent. I would like you to clarify that through the secretariat, if you would, please.

Josie, you made mention earlier in your presentation—I know that Mr Curtis made the same representation—about the money paid by ATSIC for this review. I asked you this question previously. However, I note that page 8 of the Reeves report refers to a reference group that was established which you have consulted from time to time. Firstly, can you tell me whether that reference group met and how often it met?

Ms Crawshaw—Commissioner Curtis and I were the ATSIC members of the reference group along with the minister, Greg Hunting and possibly Peter Vaughan; we are not sure. They were the reference group members and steering committee for Reeves. Commissioner Curtis had one phone link-up with that reference committee in about November 1997. We both then had one meeting very early on—there were one or two consultations—at the minister's office. The steering committee met there. It is the only meeting we have had, which was roughly on 3 February 1998 in Canberra. He has never contacted us, or there has never been a steering committee called to look at a draft. There was not even a first draft done at that stage. It was very early, as you can imagine; it was around 3 February 1998. We have never been involved.

One thing I wanted to say in my closing statement is that we think it is the duty of this committee to call an inquiry into why this consultancy has spent, at this stage, $1.3 million—the bills are still coming in and climbing—of taxpayers' money without any checks and balances. There has been no tapping into a budget. There is nobody in place to ask when they will stop. There have been no tendering processes for the consultants. I do not know where it has ever happened that there can be an open cheque book with no tapping. The minister needs to be called on to answer how this unaccountable spending has happened.

CHAIR—Our terms of reference are quite specific. We must remain focused, and we will. We have a big job ahead of us. The issues you raise are issues that can be raised by ATSIC with their minister, and properly so; that is fine. I do not want this committee and anyone involved in the inquiry to take their mind off the terms of reference that we are involved in. The things you raise are matters between you and ATSIC and, of course, the government.

Ms Crawshaw—No. You are a House of Representatives standing committee and these are public moneys.

CHAIR—We are short of time. I want to make it clear that our terms of reference are our terms of reference and that we will stick to them. The other matters you will raise as you can and vigorously in other areas.

Ms Crawshaw—At least it is on the record.

CHAIR—We will have to wind up now.

Mr SNOWDON—I want to finish this question, if I may. Can you tell me whether there were any informal or formal discussions with you, or had you seen any documents relating to the recommendations of this report between February last year, when you met with Mr Reeves in the minister's office, and when the report was produced?

Ms Crawshaw—No.

Mr SNOWDON—Do you know whether there were any discussions with the minister's office, Mr Hunting or Mr Vaughan about those recommendations between February and when the report was produced?

Ms Crawshaw—All I can say is that it would have had to have happened because it was already tabled outside sittings. It was the media that gave us the recommendations.

Mr SNOWDON—As your federal member, as opposed to being a committee member, I will take up the issues you have raised, regardless of what the committee says.

Ms Crawshaw—Thank you.

Mr Curtis—It is good to see that you are sticking to your terms of reference, unlike Reeves, who went right outside his terms of reference.

CHAIR—Thank you. That is about the nicest thing that has been said about me today. I thank all of our friends from ATSIC. For the benefit of the public here today and the media, we are continuing our discussions in Canberra with ATSIC. We understand that the chair of ATSIC will be presenting the major submission, supported by Josie, in Canberra on 10 March. If you had the impression that we curtailed our discussions today, let me say that we did not. We are proceeding with as much vigour and enthusiasm as we can. I will be going out close to your people on one of our visits. I look forward to personally meeting with some of your people, if I can. We will now discharge these witnesses and call the next witness. Thank you once again. There is a cup of tea available. If you are quiet, you can help yourself to one while we go on.

Ms Crawshaw—Thank you, Chair, for giving us this opportunity.

[10.52 a.m.]

LANE, Mr Michael, Manager, Aboriginals Benefit Reserve Secretariat, Aboriginal and Torres Strait Islander Commission

CHAIR—I now welcome Michael Lane from the Aboriginals Benefit Reserve. Although the committee does not require you to speak under oath, you should understand that these hearings are legal proceedings of the parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Hansard will be taking a record of what is said today. From time to time I may ask you to repeat or spell name places so that we can record the details accurately. Before we ask you questions, do you have an opening statement that you would like to make?

Mr Lane—I understand ATSIC is making a major written submission to the standing committee next week. I understand, with my presence here today, that it would be useful if I explained to the committee the mechanics of the operation of the fund under the act as it stands, what Reeves is proposing and what those proposals would mean to our administration of the fund as officers of ATSIC.

CHAIR—Thank you. Please proceed, Michael.

Mr Lane—If I may use the technology, may I go to the projector?

CHAIR—Yes, you are free to roam.

Overhead transparencies were then shown—

Mr Lane—It is important to know the status of the ABR—the Aboriginal Benefits Reserve—as we call it. It is, in fact, not a legal entity. What is the ABR? It is not a state authority like ATSIC and it is not a body corporate. It is effectively a component of what is called the reserve money fund, which was established by the Financial Management Accountability Act. In terms of getting a grip on what the ABR actually is, it is a heading on an account in the Commonwealth government's financial accounting system. The previous term, of course, was the Aboriginals Benefit Trust Account, which is a very descriptive term—it is an account.

We hear the term 'royalties' used in connection with the ABR. Does the ABR receive royalties? That is quite a misconception. The ABR does not receive royalties. The revenues into the ABR are the equivalent of royalties, but they are actually funds drawn down from the consolidated revenue fund of the Commonwealth. I will move into another projection slide and show the moneys in.

CHAIR—Members of the public, you are most welcome to stand here, if you wish, so that you can see the graphics.

Mr Lane—We can depict the structure of the money flows. To see how the money flows into the ABR, we will start down here on the slide with mining on Aboriginal land. We have uranium miners and we have non-uranium miners. Broadly, non-uranium mines are called

hard rock, oil and gas. These mining interests pay royalties to respective governments under a number of different royalty regimes. The uranium rests in the province of the Commonwealth, and royalty is paid to the Department of Industry, Science and Resources. In the case of the hard rock, oil and gas—non-uranium—the royalties are paid under a series of different royalty regimes to the Northern Territory government, being the Northern Territory Treasury.

At that point, we have the royalties paid to government. These respective government bodies then advise the ABR that they have received royalties from mining on Aboriginal land. That advice then triggers a mechanism under the act. That mechanism provides that, under section 63 of the act, through an accounting transaction, we draw down from consolidated revenue the equivalent of these royalties. So the flow is: a royalty to a government, advice to ABR and a draw down of the equivalent. In the case of uranium, it is not exactly an equivalent. When a uranium royalty is paid, we draw down on the fund about three-quarters of that royalty. The reason for that can be found in the agreement between the Commonwealth, the Northern Territory and the relative miner. The rate and the amount of the royalty that we draw down—the equivalent—is set in the Ranger agreement.

CHAIR—Could you clarify whether the consolidated revenue fund is the Commonwealth consolidated revenue fund?

Mr Lane—That is correct.

CHAIR—And the equivalent that is drawn from it is also the money that is already paid to the Northern Territory Treasury?

Mr Lane—It is equivalent to, but it is done on a parallel basis. When $100 is paid to Treasury we draw down $100. But there is no connection, other than the amounts are equivalent.

CHAIR—So the Commonwealth is not reimbursed?

Mr Lane—There are arrangements, I would understand, through the various agreements between the Commonwealth and the Northern Territory—probably starting with the self-government act. There would be mechanisms there where, I understand, some balance would be struck or Commonwealth funding would take into account these cash flows.

Moving on, if we look at the moneys out of the fund, the moneys we are referring to here are what we call the royalty equivalents. The ABR does receive other moneys but they are relatively minor, being moneys from investments and some very minor loan repayments. We can identify under the act something that, in academic treaties on the fund, has been generally called the clearing house function. The act provides that, of the statutory royalties received into the fund, 40 per cent is paid out to the Northern, Central, Tiwi and the Anindilyakwa Land Councils to meet their administrative costs. These budgets, as we call them, are approved by the minister under the act.

CHAIR—Is it 40 per cent of their costs or is it 40 per cent of all the royalties received?

Mr Lane—The latter. It is 40 per cent of the royalty equivalents received.

CHAIR—How do you know their administrative costs will equal 40 per cent of the royalties?

Mr Lane—There is a process under the act that when the minister approves the budget of a land council—ideally prior to the start of the financial year—we do our projections and we have an idea of what the moneys coming into the fund will be. The moneys coming into the fund are very uncertain. We have no control over the level of revenues. We can get the best advice we are able from looking at the macro views of the commodities markets and we can get specific information at the mining company level at times. So we have an idea of what is coming into the fund. In the event that those moneys were not enough to meet the costs of the land councils' budgets as approved, there is a provision in the act that, from the remaining 30 per cent of the fund after what we call the clearing house, a portion can be paid out to supplement their budgets with their self-generated moneys and meet their costs.

The act also provides for a mechanism that we have implemented locally where, instead of triggering this clearing house immediately to the two major land councils, we aggregate the moneys they would be entitled to plus what they would need, under a section we call subsection 64(7), and we make quarterly releases. That provides a greater certainty of timeliness to the land councils for their estimates costs and it complies with the act. So it takes out the lumps in the funding.

CHAIR—Is there a legal definition, through regulation or otherwise, as to what administrative costs are so the question of whether they are eligible for reimbursement is clearly defined, or is it a moving landscape?

Mr Lane—I would say it is probably well defined in terms of the powers of a land council under the act. The budgets are constructed on the basis of their proposed activity relative to those powers. The two major land councils are large organisations and we have the two smaller land councils, but all of them have an idea of the activity they will undertake under the act for a year. That activity is costed. ATSIC has that activity reviewed. The dollars against the activities are costed in detail and the minister knows, when he is signing off budgets, what those activities are and what they would cost.

CHAIR—Does the minister sign off or does he delegate to someone to sign off for him?

Mr Lane—He makes various delegations under the act, but he does not delegate the approval of budgets. He actually approves the budgets. So we have a clearing house function—

Mr SNOWDON—The land councils are also subject to the Commonwealth audit, are they not?

Mr Lane—They are now. You would find that since the application of the Commonwealth Authorities and Companies Act—the CAC Act as we call it—the ANAO, the Australian National Audit Office, is the auditor for the land councils.

Mr SNOWDON—And they produce annual reports for the parliament?

Mr Lane—Yes. That of course preceded the audit by the ANAO.

Mr SNOWDON—The point I am trying to make is that there is absolute transparency in terms of public accountability about the way in which their funds are spent; firstly, in the process which the minister has to determine whether their budgets are okayed or not and, secondly, their reporting mechanisms to the federal parliament.

Mr Lane—It is much the same as for other Commonwealth reporting entities, I would think.

Mr WAKELIN—That would have been the case in 1978 and 1979?

Mr Lane—In 1978 and 1979 we had three land councils. We did not have the smaller one. We had a very different regime in that the Commonwealth Audit Act would have applied to the then Aboriginals Benefit Trust Fund, which became the trust account. The land councils were no less statutory authorities at that time, but it would have been that they appointed their own auditors.

Mr WAKELIN—Thank you.

Mr Lane—I will move on to the second part of the clearing house function. Thirty per cent of the statutory royalty equivalents that come in are paid out to the land councils—not beneficially but for them to pay on to bodies we call the royalty associations. These are in respect of areas affected by mining. 'Royalty associations' is not a legal term; it is something we have come to use to describe the bodies that receive these moneys and variously invest them or distribute them as their constitutions permit.

CHAIR—Is there a legal definition, regulation or some other document defining how an area is eligible to be deemed to be an area affected by mining operations?

Mr Lane—That question might be better directed at the land councils. I would not feel competent, in view of their recent experience, to actually answer that question today.

CHAIR—We will take that on notice.

Mr Lane—Then, 70 per cent having been dealt with by the act having the clearing house function, we have a residual 30 per cent. That can be available for what we call the grants program, to meet certain administration costs of running the ABR and, as I have dealt with, to supplement the land council budgets where these distributions here are not enough. This 30 per cent is for, basically again, some costs and to provide some accumulations to the fund.

CHAIR—Is the amount of accumulation defined, or is it discretionary on an annual basis?

Mr Lane—It is not defined. If I could speak on that later on, I would like to flesh that out. I would like to turn to the grants program and explain how that operates. Under the act we had the establishment of the ABR Advisory Committee. It has 14 members, all elected by the land councils, which I think is very fundamental to the nature of the committee. A chair is appointed by the minister for three-year terms. The act also provides that the Advisory Committee has certain powers and it recommends funding to the minister or his delegate. Under the act, the minister has certain powers, the minister delegates these powers and he provides some instructions to his delegates—senior officers at ATSIC. In this loop here we have the Advisory Committee holding grants meetings, making recommendations on funding to the delegate, and the delegate in ATSIC either approves or declines grants.

CHAIR—The people on the ground are a long way away, aren't they?

Mr Lane—They are in terms of the process, but I would say that the people on the ground are represented at this forum here by the 14 members from the land councils. There is a very important process here: when the Advisory Committee is looking at which particular grant applications it wishes to fund—and I would point out that they can exceed the number of dollars tenfold—it does so on its own 'regions within the land council' basis. It does take advice. The land councils take advice in their prioritising of grant applications that come before them.

CHAIR—From Tony's land trusts, that he spoke about?

Mr Lane—I could not give you the precise region of the Northern Land Council. I presume it is the Katherine region—I am not sure of the exact term—where he is from. He is from the Garrak Jarru ATSIC Council, but I was just thinking of it geographically on the map. There would be people from his region, for example, who would represent people there in the NLC when they are looking at prioritising—as we call it—the grant applications to finalise what they will or will not support. So there is representation of the grassroots at that level.

CHAIR—But there is no statutory connection or administrative connection between the land trusts' suggestions for programs. In other words, it stops at the ABR, as far as you are concerned. Where the ABR gets advice from could be the land trust but it may be other areas.

Mr Lane—Generally it is from the ATSIC regional office and from the land council. I would say that with their construction of the act—this being part VI of the act—there seems to be no connection with land trusts in other parts of the act. I do not think that was contemplated.

CHAIR—They are floating somewhere or other?

Mr Lane—They were seen to have a specific function to hold titles to land. I would say that the draftspersons of the act did not contemplate that land trusts would have any part in this process under part VI of the act.

Mr SNOWDON—To clarify this, land trusts are made up of traditional owners who are so determined under the act.

Mr Lane—Right, but the land trust has a function to hold land.

Mr SNOWDON—I understand. But, in relation to the way in which the advisory committee works, whether or not they are a member of the land trust, the traditional owners will have a duplicate role in providing advice to the NLC or ATSIC on what its submissions might be on their region.

Mr Lane—But they would be doing that as land council members.

Mr SNOWDON—That is right. But my point is that the land council looks after the interests of traditional owners under the act. The land trusts are set up as groups of traditional owners under the act.

Mr Lane—Again, there is no interaction between part VI and the section dealing with land trusts.

Mr SNOWDON—No.

Mr Lane—Chair, might I move on from there?

CHAIR—Yes, sure. I am sorry to do that to you, but it is sometimes helpful to fill in the little gaps as you move along.

Mr Lane—Surely. I will try and move through this fairly quickly, as I am conscious of time. The nub of it is: what does Reeves say about all of this? The act, as it stands, provides a direct link between mining royalties paid to government and moneys paid into ABR, as we saw in the overheads previously. Reeves suggests that this link should be maintained to keep the nexus. We would see no change administratively there. He does, however, find that 'there is no clear statement of purpose in the act for the ABR. For example, under section 64(4), payments can be made to or for the benefit of Aboriginal people in the NT'. I guess that is a fairly generic form of statement. He may be looking at something more specific—I do not know what he actually contemplates. However, he says 'there should be a clear statement of purpose for the ABR in the land rights act'.

The implications for us administering the fund would be, if there were such a statement, that we would be obliged to follow that, and it may have some implication for the types of things we would be funding.

CHAIR—Ultra vires.

Mr Lane—It could be ultra vires, yes.

CHAIR—I guess that is the question. I am just making a comment. The health, social and economic matters—obviously they are matters of great concern to some—need to be resolved. Should they be involved or not?

Mr SNOWDON—I would like to make a comment on that as well. There is another view, which says of course that these moneys should not be prescribed to be used for those purposes, as those purposes are the responsibility of government.

CHAIR—That is what I meant by the 'or not'. Thanks. Keep pushing on, Mr Lane.

Mr Lane—Under the arrangements as they stand, the ABR is administered by ATSIC. As we heard this morning from Commissioner Crawshaw, Reeves's proposal is to establish the Northern Territory Aboriginal Council—NTAC, as we call it. NTAC would then administer the ABR. So the implications for us managing the fund are that we would see the excision of the ABR from ATSIC's administration.

Turning to the clearing house function again, which we showed on one of the charts, we have the clearing house function here: the 40 per cent we showed before for admin costs, the 30 per cent to the areas affected and the other discretionary payments. Generally, we call this the 40:30:30 formula. Reeves is suggesting that that would be abolished, and NTAC, as we call it, would decide on the distributions. The implications for those administering the fund are that the clearing house function would cease where under 70 per cent of the royalty equivalents have been paid out. So there would be a major change there.

In terms of the portions that go through the land councils to the royalty associations—that is, the 30 per cent—Reeves is again saying, 'Abolish this formula and pay the amounts to the new regional land councils in specific areas that can establish an adverse impact from mining.' Again, that would be a termination of the clearing house function we have, and it would be a major change in the functions of the land councils too.

CHAIR—It could also exclude people who were seeking assistance if they could not prove an adverse impact from mining?

Mr Lane—It would appear so. Under the act as it stands, mining withholding tax is imposed on payments from the ABR. It is actually legislated under the Income Tax Assessment Act where we have a role as tax collectors and remitters to the Australian Taxation Office. Reeves is saying, 'Abolish mining withholding tax,' and this would mean an amendment to the Income Tax Assessment Act to repeal it and we would cease to be collectors and remitters of this tax. It is unusual that it is a tax on payments. If we make a payment similar to the royalty equivalent coming in, the mining withholding tax applies to that payment.

As to a question you raised before about how much should stay in the fund or what are the rules on accumulation, there is nothing in the act that sets any accumulation or minimum fund or any rate of accumulation to the fund. Reeves is suggesting under NTAC that it should develop an investment strategy that will ensure the continuation of investment revenues after mining ceases and that those revenues would be equal to the revenues previously received in respect of mining. That would require a very significant capital base to have your investment revenues equalling your mining royalty equivalents. In fact, it would be a vast capital base and we would not be able to do that on our present projections of growth.

The implications there would be that we would have to massively strengthen our current financial management strategy—in fact, we would probably have to decrease payments from the fund—and, quite possibly, we would have to amend the approved investment regime under the Financial Management and Accountability Act which requires us effectively to invest in government and bank papers.

CHAIR—It would highlight, would it not, the need to have a defined objective and strategy as to why you are accumulating the money anyway, and for what programs and purpose?

Mr Lane—Yes.

CHAIR—It would be senseless to have an investment strategy to have a permanent capital fund unless you know what you want to achieve. It is usually good business to define that fairly accurately.

Mr SNOWDON—Why should it be that the government should determine what that is? Why shouldn't the traditional owners and the people that are beneficiaries determine what that is?

CHAIR—That is what I would have thought we have to report on.

Mr SNOWDON—I am making a point. The implication of what Reeves says is that the government should set the criteria.

CHAIR—We are the committee looking at the terms of reference.

Mr SNOWDON—That is right, and that is why I am raising the issue.

CHAIR—The minister has given us plenty of scope on that.

Mr Lane—As it stands, the investment of the ABR funds is made in investments authorised under the Financial Management and Accountability Act—again, largely government and bank paper. Reeves is suggesting that the ABR invest in commercial type investments. The implication there would be quite possibly the ABR would have to be excised from the reserve money fund, because the types of investments that we are investing in are very safe but very conservative. The commercial type of investments and the fact that he has used that term I would say would contemplate the type of investments that are not presently authorised by the legislation. So there would be a major change contemplated there.

CHAIR—You would have to do some projections for us, wouldn't you, if you were asked hypothetically to project for the next five years what the returns would be if you did have that flexibility compared with what the returns would be if you remained in the confined investment fund arena?

Mr Lane—Under either regime, they would be very qualified projections. I do not know where interest rates are going today and I do not know where the share market is going and

we do not know where commodities are going. It is a very difficult area to provide projections in that would be meaningful, to which you could be held.

CHAIR—I can foreshadow that we will ask you to do that.

Mr SNOWDON—Can I make the point, to support your statement, that the superannuation fund for the defence forces has had a negative return over the last 12 months. So you might have to contemplate negative returns.

Mr Lane—I would suggest that that is probably why legislators over the years have kept the investments in fairly secure types of funds.

CHAIR—I would just add, for people that are interested, that it is my intention to ask the committee to also look at the scenario of letting the Aboriginal people make their own decisions on those funds free of any government control so the government and the parliaments are not intermeddling with those decisions. I think it is our duty to try to expose and bring that out for discussion.

Mr Lane—In the act as it stands, there is no mandatory requirement—as we saw in the second frame—that we have to get that advice from government about mining royalties having been received. Generally, we get that advice from officer goodwill at local levels. Reeves has picked up that that flow of information is rather important and should be secured by legislation. It is not terribly controversial but very useful. The amendment he is suggesting would give us some guarantee of getting that information flow.

The act also has a very clear role—as we saw earlier—for the ABR Advisory Committee, established under section 65 of the act. However, Reeves is suggesting that all ABR funds be expended by the Northern Territory Aboriginal Council or the new regional councils on specified purposes. It would seem that we now, under this proposal, have a nil role for the ABR Advisory Committee. At a local administrative level, we also have a subcommittee—non-statutory—that helps with the Advisory Committee meetings. But, equally, that would have no role as well. That is a very major change.

Perhaps most controversially, under the act as it stands and under the decisions made under the act by ministers as it stands, we have two major land councils covering the jurisdiction of the mainland NT. The Reeves report seeks to establish or recommends that there be 16 smaller land councils on the mainland—and I point out that 16 on the mainland plus the two island land councils give the 18 which is the total figure. Administratively, that would leave NTAC—the Northern Territory Aboriginal Council—funding 18 smaller land councils from the ABR relative to the present four land councils.

I will move on to look at some numbers. We will look at what the revenue streams have been over the last six years. We go back to 1992-93 and we go up to 1997-98. The slide shows the statutory mining royalty equivalent revenues in total that have been received. You can see it is quite a gyrating journey that we travel over those years. We have no control over those revenues that come in the fund. Most government operations, of course, get an appropriation. They have an idea of what their appropriations for a year or a couple of out years will be and what they will spend against them. But maintaining the link under section

63, with the royalties paid to government, has proved to be immensely volatile. That is an area over which we have no control. What do we do? We have controls over expenditure, but that is really the only area where we can implement any controls. That impacts on the accumulated fund.

The fund actually reached a fairly low point in 1992-93—around $23 million. Generally, though, it has been trending upwards. We seem to be accumulating some money and making our payments as we do under the financial management strategy. As at the reporting date of 30 June 1998, we had just under $50 million in the accumulated fund.

CHAIR—I am going to ask you a question which may be difficult to answer in simple terms, so take it on notice if you want to. Is the trending up due to a combination of things such as new discoveries—therefore new mines—increased commodity price, extra exploration leading to new developments or new technology? Can you give a quick summation of what caused the trending up?

Mr Lane—I think initially it was probably good fortune as much as anything. But, in terms of those questions, the reasons are probably a lot more local. For example, we have had renegotiations of some of the royalty regimes. The Gove agreement, for example, was renegotiated in, I think, 1993 and there was a significant increase in revenues from that area. There is always what we call 'overs and unders' with the royalty assessments too. For example, sometimes it is found that a miner has overpaid, and there is a repayment made by the Northern Territory government. Sometimes a miner is assessed and has to actually pay an extra sum. So these amounts impact. Of those things you mentioned, I think world commodity prices is the only one I recognise as having been of impact.

Also, the various royalty regimes are not all just on the basis of, say, gross commodity outputs. Some are based on the actual profits they earn. So, when you are looking at the bottom line rather than the sales at the top, you take into account all sorts of write-offs and other factors. The reasons for the fluctuations in the actual royalties we pay tend to be for very local reasons pertaining to the individual operation.

CHAIR—If, for example, some government of the future decided to use these moneys for specific health education programs—which it is argued should not be—there would need to be a guarantee that a shortfall in royalty income for those vital programs would have to be funded from consolidated revenue, otherwise you would have a precarious health program, would you not?

Mr Lane—I think you would because there are just no guarantees. This is the accumulated fund, but the volatility there reflects the royalty revenues coming in. They are immensely volatile; there are no guarantees. So you could be in a precarious position to have a three-year program on the strength of some assumption of funding.

Just a final slight: how can we impact on the accumulated fund? I can answer that question by referring to what we call the 'financial management strategy' for the ABR. The financial management strategy has been approved by the minister and it comprises three planks. Before I go on, I would point out that it has been approved now by two successive governments. It was approved in 1994 and it is being maintained at the present. The first

plank is that the accumulated fund is to be maintained in excess of $23 million so we have some buffer against those revenue downturns we saw on an earlier chart. The second is that land council funding from the ABR is to remain broadly at 1993-94 levels. The third is that the grants program—under the Advisory Committee—is limited to $5 million a year. They are the only types of influences we can really have over moneys in the fund. Some controls over expenditure; no real effective controls over statutory royalty equivalent revenues.

CHAIR—Are there any performance measures in place to measure the delivery outcomes of the grants programs?

Mr Lane—There has not been to date. In the way of ATSIC's performance indicators or other funding bodies' program performance indicators, the grants are very much of a one-off nature. They tend to supplement existing activity. For example, most of the grants, if not all, are for capital items—whether it is small infrastructure or small projects. But we do not have a program type of grant operation that, say, ATSIC has. Therefore, it does not really lend itself to those types of program performance indicators. But the grants program does supplement a lot of other activities. For example, there might be grants to a community that has a CDEP. There might be moneys for a small project that the CDEP impacts on or assists or the small grant may assist in the carrying out of the CDEP.

CHAIR—So you are stretching the dollar. You might put a dollar of grant money in and that is matched by two or three dollars from other programs.

Mr Lane—Other sources.

CHAIR—So you are a getting a one for four or one for five outcome.

Mr Lane—Yes. The Advisory Committee is keen to provide moneys as a supplement rather than a substitute. That is the end of the slides. Are there any questions?

CHAIR—If it is okay with you, we need to move that those slides be accepted as exhibits. There being no objection, it is so ordered.

Are you open for further grilling? We have only two or three minutes, so I will foreshadow that we will meet again. I am sure the committee members will want to talk to you again as we delve further into this. But I would like to congratulate you on your excellent presentation. It has been very helpful, and I appreciate the effort you have taken.

Resolved (on motion by **Mrs Draper**):

That this committee authorises publication of the proof transcript of the evidence given before it at the public hearing this day.

Committee adjourned at 11.29 a.m.