COMMONWEALTH OF AUSTRALIA

Proof 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

THURSDAY, 4 MARCH 1999

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Thursday, 4 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, Ms Hoare, Mr Haase, 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 8.14 a.m.

AGNEW, Mr Colin John, Managing Director, Nabalco Pty Ltd

SIMMONS, Mr Bruce Winston, Manager, Aboriginal Relations, Nabalco Pty Ltd

CHAIR—I declare open the public hearing of this committee and welcome everybody, particularly Mr Agnew and Mr Simmons. Thank you for coming in so early to assist us with our travel arrangements. 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. Our Hansard reporters will be taking a record of what is said today. From time to time they may ask you to repeat or spell names so that they can record details accurately. Do you have an opening statement that you would like to make?

Mr Agnew—I would like to do that.

CHAIR—Perhaps I should say, Mr Agnew, that we received your letter dated 26 February 1999, and this committee has resolved to publish that letter as part of the public record.

Mr Agnew—Thank you. I propose to simply hit the highlights; I do not propose to read the whole letter. Nabalco is the manager of the Gove joint venture. The participants are Swiss Aluminium Australia Ltd and Gove Aluminium Ltd. The project produces 6.5 million tonnes of bauxite. Some of that is converted into alumina and some of it is shipped as bauxite. It employs approximately 1,200 people directly, both our own personnel and contract personnel. We have an annual sales revenue of about $500 million and when we have done an analysis of the replacement cost of the project it has been approximately $A2.2 billion. So it is quite a significant economic project.

When we looked at how we define the numbers of Aboriginal people in the area, we used the census statistics and found that in 1996 there were 876 Aboriginal people living in what we call the Gove Peninsula, which is the Marrngar community, Nhulunbuy and Yirrkala. A further 622 Aboriginal people were recorded as resident under what we call the Laynhapuy Homeland Association, and we could take the view that they are indirectly affected by the project. So a narrow view could be that 876 are affected by the project. A wider view could be that approximately 1,500 Aboriginal people are affected by the project.

We have had a very close relationship with YBE, which is an Aboriginal owned and managed company, and we have had that relationship for many years. Shortly, the intent of allowing mining on Aboriginal land came out of the 1952 review, and that was that royalties would benefit both the broader Aboriginal population of the Northern Territory and the local, affected Aboriginal people. Our view is that that is a fine concept. However, it inadvertently disproportionately allocates the broader Aboriginal population. There is only a fixed sum of money. We understand that. We are not saying that the broader Aboriginal people should not receive some benefit from the royalties, but the reality is that the local people to whom the mining operation is more visible feel that they do not receive a proportional amount.

The second point concerns what we call 'the local 30 per cent'. That is a term we use which really refers to section 64(3) distributions because there are two lots of 30 per cent distributions and that can get a bit confusing. We just call it 'the local 30 per cent'. That of itself is restricted in this distribution in that it does not flow to what we suggest would be all of the Aboriginal people in the area affected by mining. Anecdotally, if we look around, we do not see that those funds have resulted in what we would call a provision of infrastructure of services for the long-term or tangible benefits for the Aboriginal people. That is not to be critical of how it has been or criticising individuals: it is just an observation that we make.

Locally, to put this in context, we have paid royalties in the order of $9 million per annum since 1993, since the royalties were renegotiated. If we took the broad definition of Aboriginal people being affected as 1,500 people, that would equate to $30,000 tax free per family, on the assumption that there are five people in a family. I am trying to put into context that they are not insignificant sums of money. We know, of course, that those sums are not available to all Aboriginal people under the land rights act but we are trying to put the $9 million in context. The total royalties payable to date are about $A90 million.

There has been disputation about the distribution of royalties over the years. That is clear. A lot of that is to do with how Aboriginal people define traditional land. I read recently a paper from Nancy Williams who is a respected anthropologist. She says that, as an anthropologist, she would not draw traditional land boundaries as a European would draw on a title system because it is a much more complex relationship that the Aboriginal people have in defining their traditional lands.

That, we think, is some of the source of the disputation. We point out quite clearly that section 35(2) of the act does create confusion. Section 35(2) is the section which talks about how the 64(3) moneys are distributed. In our view, it talks about moneys being distributed both to traditional owners and Aboriginal people in the area affected by mining. Those two concepts basically are not synonymous, or maybe they are antagonistic concepts because the definition of traditional owners comes about from Aboriginal law and the definition of Aboriginals in the area affected comes out of 'balanda' law or the act itself. It is understandable that, when you have two mixed definitions of how those local royalties would get distributed, over the years there has been some confusion or, perhaps, some disputation as to the equity of those distributions. We think the act itself creates some of those confusions.

We have some comments about permit systems, which I will not go into greatly. Simply, we would say that we respect the Aboriginal land. We respect their rights to maintain control over the land. In fact, we support the land corporation quite substantially to help maintain recreation areas on Aboriginal land.

Basically, the concern for us is that the permit system can be used as a leverage point in times of political events. That creates tension within the town. People feel that they are being threatened as to their ability to move off the leases. Our view is that it is not helpful to the Aboriginal people either. I think for both parties, for both the Aboriginal people and the townspeople, it would be better if we could somehow have a longer term settlement as to what is reasonable recreation. We understand their need to protect their sacred sites. That is

not the issue here. The issue is defining what is long term, other than being on an almost daily permit system.

CHAIR—Mr Simmons, do you wish to add anything at this stage?

Mr Simmons—No. I agree with what Mr Agnew stated.

CHAIR—You have given a very succinct summary of what I regard as significant issues for our inquiry and the apparent conflict between the section 35 tests. That has been most helpful. I am not asking you to define what you perhaps would say would be the perfect answer, but can you give us any guidelines as to what sort of criterion or parameters you think, as an observer, could be adopted to determine how a person, an Aboriginal person, is affected by the mining operation? What sorts of tests would you perhaps give us to think about?

Mr Agnew—I think in our region it is perhaps a social test. We find that historically Yirrkala has been a centre for the clan groups to come together. They do not necessarily all reside at Yirrkala, and with the homeland movements people have moved back out of Yirrkala. But there is socially a group called Laynhapuy Association representing the homeland areas which have had this historical connection with Yirrkala. There is obviously Yirrkala itself and there is obviously the Marrngar group of people, which is largely Gumatj people. We have named it as 13 clans but, depending on your anthropological background, there may well be 19 clans.

The definition of clans is not so precise either, but there is a group of either 13 or 19 clans of people who, of themselves, have socially come together in a way. In our particular region—I am not saying this is necessarily true in other regions in the Northern Territory, because I cannot comment on that—we would suggest that it is basically the 1,500 people we are talking about who have social interaction with each other over the period.

CHAIR—So the test would be a case by case study of the involvement of those people in that area?

Mr Agnew—Yes. It is a matter of great complexity, because I did do some reading in relation to Ranger uranium and, over the period of years, there have been six different definitions of people living in 'area affected'. So it is not a simple matter.

Our view, however, is that to narrow it to only being the traditional owners, you raise this continuing disputation, because the definition of traditional owners is not clear. The fact that under the Native Title Act we have had competing claims—I think in Kalgoorlie there are something like 18 claimants—suggests that, even between the Aboriginal people themselves, there is not clear understanding.

When you understand the anthropological background, that is true because the land, as Professor Nancy Williams says, is not defined in title system the way our land system is titled. So the Aboriginal traditional ownership is very much a bargaining social event. To narrow it to that, we feel, is too narrow a definition. We respect the Aboriginal tradition, but

it leaves another group of people outside, who we believe would be affected by mining, clearly not participating in any of the royalties available from mining.

We respect the Aboriginal law in defining 'traditional', but we think that, if you narrow it to simply that matter, it does create these continuing disputations about who is a traditional person.

CHAIR—From your observation as a citizen or resident in that area and your company's corporate involvement, you are aware anecdotally of the problems that have occurred over the years?

Mr Agnew—Sure, to the extent that the Aboriginal people come to us who are not necessarily receiving some of the benefit from the local royalties, or perhaps, in their view, not receiving a proportional share of the benefits. And we feel it, when we say anecdotally, because those people come to us. We feel the pressure of them saying, 'Look, you are mining; you are impacting on us but we do not get the benefit of the royalties.' This is not a moral stance we are taking. If the Aboriginal people choose amongst themselves to distribute royalties in accordance with their customs, we would be quite happy with that, but the consequence of doing that is that the other Aboriginals come to us and feel disadvantaged under the system.

CHAIR—I think that in your submission letter you indicate that your company does feel sometimes that it is unjustly referred to in some statements by people as not contributing to the social betterment of the Aboriginal people in that area.

Mr Agnew—To the extent that, in a statement that is occasionally made, we do not pay royalties at all to the Aboriginal people. However, as you read the act, it is really what we call a technical accounting question. We pay the royalties to the Northern Territory government, which is the Crown, which owns the minerals. As a consequence of paying those royalties the Commonwealth government contributes an equal amount to the Aboriginals Benefit Reserve. So, if you are being very technically precise in reading the act, that is the flow.

One could argue that we do not pay royalties to the Aboriginal people. However, we would say that is almost a rather specious argument because clearly the Aboriginals Benefit Reserve receives funds which they themselves call royalty equivalents in their own annual report. So they clearly recognise that the moneys they receive from the Commonwealth government are as a consequence of our paying royalties.

CHAIR—So perhaps one of the recommendations my colleagues on this committee could consider in order to assist harmonisation between people in the Northern Territory could be that an appropriate education program be undertaken to explain to all Northern Territorians the legal basis on which payments are made and the objects of what they are trying to achieve and how they are derived.

Mr Agnew—I think that is correct, yes.

CHAIR—I must say as chair I have an open mind on these matters, but it has struck me already in just the early part of the inquiry that there seems to be a very sad gap of understanding between certain groups. Whether that understanding or misunderstanding is creating barriers to good relationships in the Northern Territory and future social and economic gains for Aboriginal people I have not yet made a finding on as chairman. It does occur to me, prima facie, that there is a serious problem that could be addressed for the benefit of everyone.

Mr SNOWDON—Can I get some clarification on a couple of things. Firstly, there is no negotiated agreement between your company and the local Aboriginal traditional owners, is there?

Mr Agnew—No. There is not. Our agreement predates the land rights act. The agreement was written in 1968.

Mr SNOWDON—I have here Woodward's report where he refers extensively to Yirrkala and Nhulunbuy and the mining operation and in which he recommends that there be agreements reached between your company and the traditional owners. Has there ever been any attempt by your company to reach agreements or negotiate agreements officially?

Mr Agnew—We have had approaches by the Aboriginal people to seek agreements. Their asking price, in our view, was absolutely absurd so negotiations never got anywhere. In any case our view is that any agreement we have would be no different from a renegotiated agreement. If we look around us and see what agreements have been put in place subsequent to the Aboriginal land rights act they really are no different from ours.

We paid $90 million royalties; Century Zinc is paying $60 million, for example. Their rate of royalties is probably less than ours. These agreements have been reached subsequent to the land rights act and Native Title Act. The Aboriginals have protection of their sacred sites and those kinds of things. So if we look at the agreement we have, we do not see that a negotiated agreement in any case would be any different.

Mr SNOWDON—As far back as 1973 your company was saying to Justice Woodward that it thought it should not negotiate with Aboriginal people, that it thought that the only people who should negotiate with Aboriginal government is the Commonwealth government over the issue of your leases and mining in the area. Is that position the one you retain?

Mr Agnew—The issue is the participants reached a financial and contractual arrangement with the Commonwealth government. At the time the government of Australia went all around the world to get participants to come in and start up this project. No-one was willing to put their hand up except this particular group of people. At the time they spent $310 million which was the largest single private investment in Australia. It was a very risky project, and that is why the project was entered into. Like every contractual agreement, the contractual agreement is what it is.

Mr SNOWDON—But you can imagine why Aboriginal people might themselves feel as if they should have been part of those negotiations.

Mr Agnew—Sure. I can understand that.

Mr SNOWDON—So you can imagine why they might feel subsequently that they should be part of any further negotiations.

Mr Agnew—If there was a need for there to be further negotiations. Our view is that we pay the highest royalties in Australia on bauxite mining in any case. The areas to negotiate seem to me to be very slim in any case.

Mr SNOWDON—To give an example, has there been an attempt by the company to negotiate over the issue of access permits?

Mr Agnew—Yes. We, for example, have a permit system through to Barrkira, which is a recreation area, where we have struck an arrangement with the traditional owners of that area.

Mr SNOWDON—So it is possible to negotiate with people over issues relating to the mine's interests?

Mr Agnew—Yes.

Mr SNOWDON—But the one area you will not negotiate is a question of whether or not there should be a negotiated royalty?

Mr Agnew—No, our view is that there is already a royalty. We are not proposing to pay two royalties on the project. In the last three years—

Mr SNOWDON—I am sorry; can we just clarify this? The royalty which is being paid is one which is negotiated between your company and the Commonwealth government, is it not?

Mr Agnew—At the moment it is negotiated with the Northern Territory government.

Mr SNOWDON—But it is with this government?

Mr Agnew—That is correct.

Mr SNOWDON—The Aboriginal traditional owners have no role in those negotiations?

Mr Agnew—To date they have not.

CHAIR—I will just let members know that I have the call from Mr Lloyd, Mr Wakelin, Mr Haase and Mr Melham—in that order. I call Mr Lloyd.

Mr LLOYD—If you could, could you expand on how you feel the role of the Aboriginals Benefit Reserve Fund is functioning? The reason I ask that question is that I was very concerned when I visited Nhulunbuy. It seemed to me that the amount of money that was being distributed through the communities was not being reflected in the standard of

living by those communities and that to me was a great concern. I just wondered if you could expand on that a little.

Mr Agnew—I cannot expand much more than what we have said here—that is, it is essentially 30 per cent of $9 million a year which is $2.7 million per annum. We do not want to make comment as to whether the moneys are being spent properly other than in the sense that it does not appear, as you look around you—and as you have observed obviously yourself—that there are what I call tangible benefits to the Aboriginal people as a result of those royalties. That is all we can say. We have no mechanism, and the act does not provide any mechanism, for how those moneys are accounted for. Therefore, you have to deal just with what I call anecdotal evidence in this process.

Mr LLOYD—The second and final question is this: in your submission you raise the issue of road access from Katherine to Gove. That obviously is of concern to all residents of Gove and industries of Gove with the permit system. It is a mining town, and I think it has some great potential for tourism and other industries. Is the permit system an impediment to further development of the town for that road in particular?

Mr Agnew—I think the Aboriginal people rightly need to take control of Aboriginal land. That is their land. It has been granted to them in freehold title and therefore I think it would be quite improper for tourist activities or whatever other activity has come in there without consultation with the Aboriginal people.

The issue of the access, though, is more to do with what I might call the changing nature of the permit system. Sometimes the permit system is relatively open and anyone can get a permit and other times it gets quite restricted. At the present time, and Bruce can bear me out, I think it is restricted only to those people who are residents of Nhulunbuy or have relatives in Nhulunbuy. I think that is the concern that people have. Maybe it is a phantom concern but the concern is, if there is a right to change the permit system at any time, where does it leave us.

Mr LLOYD—The difficulty is not so much in the permit system but the inconsistencies in the granting of permits, as you say?

Mr Agnew—That is part of the issue, yes.

Mr WAKELIN—Mr Agnew, Mr Simmons has been employed, by my reading of your letter, for about 22 years with your company. Could you describe Mr Simmons's role? What is his main function?

Mr Agnew—Bruce, you can describe that, can't you?

Mr Simmons—In the early days of the project there was a perception that there was a lack of communication between the company and the Aboriginal community. I am employed full time. I was adopted by the Rirratjingu clan by the late Wandjuc Marika's family through our interest in the Aboriginal culture. So on a daily basis I have contact with most clans, the local Aboriginal organisations, go to their meetings, provide information about Nabalco, changing activities, and the sharing of information.

One of the concerns from a number of the landowners and people from whom we have leases for associated activities has clearly been the lack of knowledge about royalties distributions and how the payments are made. We have taken the leaders on tours of our operation, so that they are quite aware of what is happening.

I believe that in the wider community we have Aboriginal relations that are probably as good as, if not better than, those you would find anywhere. Last year, YBE had their 30-year celebration. Our contribution to YBE for training and employment was very significant—in the order of $7½ million per year. The board of that company, of course, are all Aboriginal clan leaders. They have had great pride in the establishment and the success of YBE.

So ours is mainly a facilitating role and responding to requests—what I would call a good neighbour policy. We sponsor sporting teams in town and also various Aboriginal activities. So it is a matter of sifting through the very many requests we get for assistance and giving it where we can.

Mr WAKELIN—Above and beyond the other financial agreements.

Mr Simmons—Absolutely.

Mr WAKELIN—I understand that Nabalco is the largest private employer in the Territory, and it has been that way for a number of years. How important do you think Aboriginal people regard employment as being in their overall view of life?

Mr Agnew—It very much depends, but a traditional Aboriginal person has a cultural affinity with his traditional lifestyle. That is why we use the efforts of YBE, which is an Aboriginally owned and managed company, to help with Aboriginal employment: they can mesh with those cultural things. Basically, where we are, the traditional owners have made the decision that they do not choose to work in a rigid high technological environment such as we have got. The sight of all the pipes and valves is quite threatening to a traditional person. The fact is that in our continuous process we cannot have people not attending in a very rigid structure. We would say that the traditional Aboriginal people have made their choice to keep their traditional lifestyle.

There is, again, a sort of dissonance between a traditional lifestyle and working in a factory with a rigid four days on, four days off set-up. With much of what we do with YBE, the reason we contract to YBE for many of the jobs is that YBE has the capacity to offer something like 50 permanent jobs plus a whole number of what are called casual jobs—jobs that are not so essential, in terms of not needing one single person turning up for four 12-hour shifts—because on that basis, within their Aboriginal structure, they can take people who turn up for work literally on a daily basis and manage that process.

Mr WAKELIN—On the issue of royalty equivalence, in your letter you laid down significant changes, and you said that, over the years, 'the distribution of local royalties has moved from the original 100 per cent . . . and you wouldn't understand the changes.' Do you understand why those changes occurred?

Mr Agnew—My understanding is that it is to do with the statement I made before about the definition of 'traditional owners'.

Mr WAKELIN—I may have missed that. I apologise.

Mr Agnew—I would like to read Nancy Williams's quote directly. It is a very short quote. She says:

> In everything I have written about what I understand boundaries to mean to Yolngu (Aboriginal people of north-east Arnhem Land), I have explained why I do not draw lines as in boundaries on maps. This is because of a concern that it would contribute to fossilizing, or at least freezing at a particular moment in time, what is for the Yolngu a continuous process of negotiating interests in land.

To reaffirm what I said before, the changing nature of the distribution has come about because of what Nancy Williams calls the 'continuous process of negotiating interests in land'. It has also come about, I repeat, because of the genuine confusion which has been created by section 35(2) between 'affected' Aboriginal people and traditional owners.

That is why I think you have had this process of negotiating, which has been a consequence. It is very natural that the Gumatj would take a proportionately larger share, because, under traditional Aboriginal law, they believe they are the owners of the bauxite mine itself. It is a natural event that they would do that, so we are not in any way criticising the process. All we are saying is that it has been a process, and the fact that it has changed over the years is an indication that there have been disputes or negotiations taking place.

Mr WAKELIN—One last question, and maybe a quick supplementary: what is your understanding of the land council's role? How would you define its role?

Mr Agnew—The broad way I would describe it, whether it be the Northern Land Council or the Regional Land Council, is that in a sense they are both essentially 'balanda' structures or European structures. They are not Aboriginal structures. Aboriginal structure was very much what one person described as a primary social structure. Their activities took place within the clan or family groups for their education standards and their health, whereas in our European structure we have secondary social structures: health facilities and education facilities.

I come from a rather broad view, which is that there is real delicacy in this whole question of the Aboriginal people: how much is devolved to their traditional lifestyle and under their traditional systems, and how much of the framework is given by our systems? I cannot really answer in any other way. I see that the essential conflict or issue is that the land council by its very nature is not necessarily an Aboriginal structure. I am not saying it is not employing Aboriginal people or managed by Aboriginal people.

Mr WAKELIN—Thank you. I will go back and check *Hansard*, because I need to absorb that and to think about what you said. The supplementary question is this: how do the local Yirrkala—or other associations to which you people and Mr Simmons relate—relate to, say, the Northern Land Council? What is your general understanding of that relationship?

Mr Agnew—That is very difficult for me to answer. Sometimes the Aboriginal people would prefer to talk to us directly, rather than through the land council. Sometimes they are quite happy to have the land council. It is situational: let me put it that way. It depends on the situation at the time as to whether the traditional Aboriginal people will want to use the Northern Land Council to talk to us or whether they prefer to talk to us directly; so I cannot answer in a generalisation.

Mr WAKELIN—That is all right. Thank you.

Mr HAASE—Mr Agnew, you mentioned in your delivery that there was an attempt to negotiate royalties directly with the local clans, and you said the initial amount they requested was exorbitant. You did not say what that amount was.

Mr Agnew—I would prefer not to. It happened before I joined the company, so I do not have a lot of details. I am only going by what was told to me. There was a request and our participants, as I understand it, met with the Aboriginal people in Darwin, and there was put on the table a bargaining position by the Aboriginal people. It was never pursued past that point.

Mr HAASE—All right; so you would prefer not to divulge that information.

Mr Agnew—I was not part of it.

Mr HAASE—I accept that; that is fine. Given that we do not know the exact sum and that certainly it is fair to say you have had some disagreement with local clans on the basis of their perception that they are not receiving royalties, I am surprised that such a long period of time has elapsed in which you have not endeavoured to return to the negotiating table on a lesser sum settlement. Is there a reason for that? I know that you are conscious that you are paying them already.

Mr Agnew—I think that is the point. Let me state that, in the last three financial years of published financial data, Swiss Aluminium Australia Ltd, which owns 70 per cent of the project, had an annual net profit after tax of $28.19 million. Again, if you see the $9 million of royalties in that context, you will understand it is also a significant sum of money.

We have been quoted as making $400 million per year profit. That is another published statement, but it is just not correct. So there is a misconception about the economics of the project, for a start. It is very hard to deal with people who have what I would call gross misconceptions. Going back to the 1952 proposal, I repeat that the royalties would be for the benefit of the Aboriginal people. We think that that concept, which was the very concept on which mining was allowed to take place in the Aboriginal land, has not been followed through to reality; and that is the issue we are dealing with here.

Mr HAASE—Thank you. There was a process of identification, before the mine started, of what was considered to be the local group, I believe.

Mr Agnew—There was a whole series.

Mr HAASE—So you believe that there would be a process possible today to identify that local group again, with regard to payment of royalties for plant, mine, evap. ponds, et cetera?

Mr Agnew—There is obviously a process. I have not read all of the literature, but every anthropologist who comes there has a different view from the previous anthropologist's, and so it is not cut and dried. I just keep referring back to Nancy Williams's point. She says she cannot draw defined boundaries, and she has been in the area for at least 25 years.

Mr Simmons—For 30 years.

Mr Agnew—Therefore it is a very difficult thing to do. You are always going to be left with this negotiation issue between the traditional people about what their traditional land is.

Mr HAASE—It is a personal response that I expect from you now. I believe everyone understands the problem of defining specific territorial boundaries on the basis of historically a seasonal nomadic existence. It is a negotiated thing, as you say. Given that we are now talking near the 21st century and that the process of royalties payment is a very formal one under our system of law, do you believe that, in order to establish a firm basis for negotiation and comparison in the future, Aboriginal clan boundaries should be delineated firmly, just as the contract price is delineated firmly?

Mr Agnew—Thinking in my European mind-set, I would say yes; but realistically I do not think that that is possible to deal with in the Aboriginal cultural system. I keep referring back to these matters. I am not sure of the numbers, but there are something like 18 overlapping claims under the Native Title Act in Kalgoorlie, which I think demonstrates that even between the Aboriginals there are issues about who the traditional owners are.

The other thing you raise then, which I think is the key question, is whether the benefits should flow—let us take a hypothetical example where we can clearly define the traditional owner—only to the traditional owner or also to the people affected in the area. I think this then becomes the question. I could leave a map with you, if the Chairman wants to have that, as a record of what we see as the social area of those people who see themselves as affected. It takes in homeland areas. We have people living on homelands that could well be 200 kilometres away from us, but their view is that, because they travel into the area and because their clan groups have ceremonies close by with other clan groups, they see themselves as part of the area.

CHAIR—We will accept that offer, if you do not mind, as a document being tabled.

Mr Agnew—We have labelled it 'North East Arnhem Land Homeland Centres'. It does more than that, of course; it puts Nhulunbuy and Yirrkala there as well, but it is a definition that we have of the Aboriginal people who come to us because they see us as impacting of their area. It is for that purpose that I would like to do that.

CHAIR—Is it the wish of the committee that the document now tabled by Mr Agnew be accepted as an exhibit and received as evidence in the inquiry into the Reeves report? There being no objection, it is so ordered. Thank you, Mr Agnew.

Mr HAASE—I would appear to be labouring this point but I think it is an important one. My perception is that this territorial border is a very nebulous situation. Given an approach from the local clan groups indicating a willingness to have the boundaries defined once and for all by survey, would the company be more orientated towards negotiating to pay a royalty directly to those identified local affected people? Do you still believe that it is something that should be handled by government?

Mr Agnew—We believe that the existing royalty payments are quite substantial in the context of what every other bauxite miner in Australia is paying and in terms of the overall economics of the project. We just do not see the reason why we would be paying a secondary royalty on top of that, if that gets to your question.

Mr HAASE—Yes, I was referring in fact to a renegotiated royalty that would take the place of the already paid royalty. So, to sum up, it is fair to say that you would agree with Reeves that the best arrangement for the payment of that royalty is to have it paid directly to those identified local groups, given that they are identified.

Mr Agnew—We have to choose our words very carefully. As long as the local groups themselves are in what I would call agreement that they form the affected people, we would be quite happy. That is the real issue; that is the nub of the question.

I have read a paper and the author—I forget his name; Altman, I think it was—referred back to the Woodward report. Woodward took a view that it is a 60-kilometre radius. He fixed that not just for Nhulunbuy but for whole areas. I am not suggesting we go back to that type of thing, because I think that is unnecessarily rigid in its definition. But the definition has to be a definition around the people affected by mining, which I think is a different definition from those who might be just the traditional owners of the land. That is my view. If you continue to move towards just traditional owners, you will always have disputation because there will always be another group of Aboriginal people sitting outside that group who will see themselves as being affected.

Mr HAASE—So you agree with me that we need to delineate?

Mr Agnew—Sure.

Mr HAASE—It is a modern, negotiated situation as far as the amount of money payable is concerned. You believe that it should be a similarly modern, surveyed, delineated boundary or identification of people.

Mr Agnew—Yes.

Mr SNOWDON—A moment ago you said you did not. Just to clarify this, a moment ago you said—

CHAIR—Mr Snowdon, Mr Haase has the call, then Mr Melham, then Ms Hoare and then I will give you the call.

Mr HAASE—I have only one question remaining. With regard to the question of access—the permit arrangements—in your letter you allude to the fact that, from time to time, there are threats by traditional owners with regard to the non-issue of permits to allow the movement of essential supplies through to the mine. How often does that occur? What are some of the disruptions that cause the threats? Anecdotally, what is the justification for that?

Mr Agnew—In some cases there are legitimate reasons. The Aboriginal people will say that some of the access is too close to some of their traditional sites and they want to close the access off. That is what is put. I have no objection to that. Personally, I do not have an issue with the Aboriginal permit system. I see it more in some ways as a ghost thing. It is this issue: if the Aboriginal people have apparently chosen in some cases to unilaterally restrict access, when are they going to go to the next step and cut it off completely? It is a fear thing and you can understand that. You are in a small, isolated community and people have that fear factor.

So I cannot describe it other than that there have been occasions where Aboriginals, in their eyes, have had legitimate reasons because they have wanted to protect some of their sacred areas. There are other areas where people who associate with Aboriginal people make threatening noises that they will use this to get guys to the bargaining table—that kind of stuff—and that floats around town. So there is innuendo and those things float around town.

CHAIR—So a few hotheads on each side?

Mr Agnew—Yes.

Mr MELHAM—Mr Agnew, this question flows from some questions that Mr Lloyd asked you. Do you have a value judgment on how your shareholders spend their funds?

Mr Agnew—I am not sure that this is part of this committee at all. I do not even understand the question.

Mr MELHAM—You were asked, in relation to local indigenous people, about the benefits that have flowed to them from royalties that they have received and you have been asked to offer a value judgment in relation to that. It is inappropriate for you to offer that judgment, is it?

Mr Agnew—I do not believe that I offered a value judgment on it. I am sorry if I did. Can you reflect back to me where I made a value judgment?

Mr MELHAM—But it is inappropriate in any instance, isn't it?

Mr Agnew—I am sorry; what value judgement do you feel I have made?

Mr MELHAM—No, it is inappropriate for you—I am not saying you did—to make a value judgment on how benefits flowed to locals.

CHAIR—On the question of the question: I will allow it provided it is seen as a question being put by Mr Melham and not as a statement. I am just trying to clarify this.

Mr MELHAM—Yes, that is all I am saying. I accept that it is inappropriate; I am not saying he has done that.

CHAIR—You are putting the question?

Mr MELHAM—Yes.

Mr Agnew—Mr Melham, I am reflecting back. I did not say that it was a value judgment as to how the Aboriginals spent their money. I was not making a value judgment. I simply said that for the money which has been spent there are no tangible benefits to it. I am not saying that it is good or bad that there are tangible benefits. That is a value judgment. I am just making a statement. If the Aboriginal people are happy to have spent their royalties on consumption, that is their choice. Forgive me; I am not trying to say whether it is good or bad.

Mr MELHAM—In your view it would be inappropriate for government to dictate to your company how benefits flow to your shareholders?

Mr Agnew—That is correct.

Mr MELHAM—In your view it would be inappropriate for Aboriginal people to dictate how benefits flow to your shareholders?

Mr Agnew—That is correct.

Mr MELHAM—Don't you think it is inappropriate for your company to be dictating how benefits flow to indigenous people?

Mr Agnew—You ask the question as if we are doing it.

Mr MELHAM—I would have thought, in terms of your submission and in terms of the break-up of where the royalties go, that is exactly what your company is doing.

Mr Agnew—No, it is not. I do not see how you could possibly read that into it at all.

Mr MELHAM—In your submission, don't you talk about royalty payments being redirected in terms of Aboriginal people who have a close geographic proximity to the mine and that they are not receiving the benefits that they should be receiving from the royalty payments?

Mr Agnew—We are saying that is not necessary. We are not taking a moral stance on this. We are saying that those people come to us saying that they are being affected and are not receiving the royalty. We are reflecting what the Aboriginal people tell us. We are not making a value judgment as to whether it is good, bad or indifferent; we are just simply making statements of fact.

The fact is that not every Aboriginal person of the 1,500 people receives proportionately the same amount of royalties. We are not saying whether that is good or bad; we are saying it is a fact that happens. The other fact that happens is that some Aboriginal people come to us and make the comment that they are not receiving a proportionate share of the royalties. Again, I must reject your statement that we are making value judgments as to whether the Aboriginal people are spending their moneys properly or improperly. We are not saying that at all.

CHAIR—In fairness, I understood you were also highlighting what appears to be a lack of legal definition between the traditional owners and the people affected.

Mr Agnew—That is correct.

CHAIR—I understood the thesis was that it is not the solution being put by Mr Agnew; rather, he is pointing to the difficulties on the ground. I am sorry, Mr Melham, if I cut in.

Mr Agnew—Just a comment on that, Mr Chairman: under traditional Aboriginal law, if the Gumatj people honestly believe they are the traditional owners, the Gumatj people—under their law—honestly believe that they are entitled to a larger share of the royalties, and they are not doing anything improper under Aboriginal law by doing that. We are not making a comment as to whether that is good or bad. All we are saying is that, as a consequence of that, there are other Aboriginal people who feel disadvantaged. That is what we are saying.

Mr MELHAM—It is also open to your company, isn't it, to make extra payments to Aboriginal people in close proximity to the area. There is nothing stopping you from doing that.

Mr Agnew—There is nothing stopping us from doing that.

Mr MELHAM—If you think that they are not receiving sufficient benefits, your company could take it upon itself to give extra benefits?

Mr Agnew—Sure; in a hypothetical way we could do that.

Mr LLOYD—Isn't that happening through YBE already?

Mr Agnew—We are already doing that to some extent.

Ms HOARE—Would you quickly describe your relationship with the Northern Land Council? Is it a good relationship? Is it an ongoing relationship or is it an ad hoc relationship?

Mr Agnew—That depends. In some areas we have a very good relationship with the Northern Land Council. We are working with the Northern Land Council on some rehabilitation projects at the site, and we have very good relationships. In another area—and it is not any secret—there is a call by the Northern Land Council to renegotiate the agreement. We have been through that. We are not in the process of renegotiating the

agreement. As to whether it is a good or a bad relationship, I do not see it is a bad relationship. If people want to renegotiate something commercially, they are quite entitled to do that.

Ms HOARE—Okay. You talked about the previous approach to negotiation on the royalties. You said that that was long before your time and that it was an exorbitant amount, in the company's view. When was that?

Mr Agnew—That goes back to 1993. It was not just a renegotiation of royalties; it was really a negotiation for the whole project. On top of that, the Aboriginals wanted to manage the project—that was one of their asking points. This organisation was not going to allow a $2.2 billion project to be managed by other than the equity owners.

Ms HOARE—This was in the early nineties—eight years ago?

Mr Agnew—Sure.

Ms HOARE—You talked about your boundaries, the clan boundaries, who are the traditional owners, who are not and who is affected. Would you concede that, after 200 years of dispossession and only 20 years of the land rights act being in place, there are going to be ongoing negotiations within the clans themselves? We are talking about three or four generations of dispossession. Making a value judgment, do you really think it is fair that, in the interest of your company, there should be rigid geographical boundaries now?

Mr Agnew—For what purpose?

Ms HOARE—For the payment of royalties.

Mr Agnew—I think we are mixing the terms again. It depends if we are talking about rigid geographic boundaries for determining traditional owners or rigid geographic boundaries for payment of royalties. I think for the purpose of payment—

Ms HOARE—I think they interlap.

Mr Agnew—No, I do not think they do. They are two separate groups of people, with all due respect. The person who is the traditional owner is not necessarily the same person who is affected by mining. We have that already: we have Aboriginal people who believe they are affected by mining and who clearly are not traditional owners. The two are not synonymous. That is the whole point of my submission here. Section 35(2) of the act, in my view, creates two categories of people, neither of whom are synonymous with each other. That is the issue.

CHAIR—Mr Quick and then Mr Snowdon. We are more than time on; we are out of time.

Mr QUICK—You have not raised Reeves's suggestion of 18 regional councils and the establishment of a super Northern Territory aboriginal council. Could we quickly have your

views on whether you think that is going to complicate things, improve the current status or remove boundaries?

Mr Agnew—My view is that it is impossible to have a view until you have seen the detail. One view could be that the administrative costs are going to grow even more. If you have 18 councils, you have 18 times the amount of administrative costs, which means you have less money available for the affected people. So it depends. That is what we tried to say in our submission in a rather indirect way. We cannot really have a view on whether regional land councils are good or bad; the answer is it specifically depends on how much it is going to cost to manage them and what their terms of reference are, and those things are not clear from my first reading of the Reeves report. In contrast to that, you could suggest that the benefit of the regional land council is that it gets closer to the people on the ground. It still does not replicate a traditional Aboriginal structure but it gets closer to the traditional Aboriginal structure because it is closer to the people on the ground.

I am sorry, I would like to answer it very specifically, but my answer is that, until the details of regional land councils are put forward, it is very hard for me to comment.

Mr QUICK—I want to ask Mr Simmons's view, since he has been working with the people for the last 22 years. One would like to think that there has been some comment in your part of the world on the Reeves report. What sort of feedback are you getting?

Mr Simmons—A lot of the clan leaders, I believe, feel that their views are not entirely dealt with.

CHAIR—Mr Simmons, we are having a problem with the sound. What were you saying?

Mr Simmons—As Mr Agnew pointed out, the benefits to the local people would depend on how a regional land council is structured. In the past there has been support for regional land councils by local clans because in dealing with local issues traditionally the decisions would be made by the clans and the eldership in the region. So there are differing views and I believe it is a matter for the Aboriginal people.

Mr SNOWDON—Can we clarify the issue of royalties? You pay a tax to the Northern Territory government, do you not?

Mr Agnew—We call it a royalty.

Mr SNOWDON—Yes, but it is a royalty to the Northern Territory government, not to the Aboriginal people. Aboriginal people get a mining royalty equivalent paid from consolidated revenue. Your company does not pay a royalty to Aboriginal people?

Mr Agnew—I have said that all along.

Mr SNOWDON—Thank you, I wanted to clarify that. Secondly, I am a little confused as to your position on the issue of boundaries. You have said on the one hand that you agree

with Nancy Williams and on the other that you agree with Mr Haase. Could you clarify your position?

Mr Agnew—I agreed in the context of two different questions. One question is to do with the definition of 'traditional land' and, as I pointed out, I used Nancy Williams as a reference—there are other anthropologists I could have equally used. She says that traditional land is a very difficult matter to define specifically because of the changing negotiations that the Aboriginal people have between themselves. What I thought I agreed with Mr Haase on was that the 'area affected' can be defined. I answered two different questions.

Mr SNOWDON—We will check the *Hansard*; I do not think that is the question he asked.

Mr Agnew—We need to be very precise then because I thought that was what I was answering. I would like to correct that now. I would like to repeat my view so that there is no misunderstanding: I think the definition of traditional ownership of land by drawing boundaries—and I use Nancy Williams as a reference—is a very difficult thing to do. However, I think it is less difficult—and I am not saying that it is not difficult—and more likely that you can draw a relatively rigid boundary around those people affected by the mining operation.

Mr SNOWDON—That is clear to me.

CHAIR—Thank you, Mr Agnew and Mr Simmons. I appreciate the efforts and contributions you have made. You have been very helpful and we wish your colleagues every success in their work.

[9.13 a.m.]

HENWOOD Mr Neville, Land Access Committee Member, Northern Territory Minerals Council (Inc.)

PURICK, Ms Kezia, Chief Executive Officer, Northern Territory Minerals Council (Inc.)

WATT, Mr Grant, Vice-President of Executive Committee, Northern Territory Minerals Council (Inc.)

CHAIR—Welcome. 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 reporters will be taking a record of what is said today. From time to time I may ask you to repeat or spell placenames so that we can record the detail accurately. I believe you have an opening statement in the form of a letter which you are going to submit first. Will you speak to that letter?

Ms Purick—Yes, we will.

CHAIR—The letter is dated Wednesday, 3 March 1999 and is from the Northern Territory Minerals Council. The committee resolves that the submission now tabled be accepted as evidence to the inquiry into the Reeves report and authorises it for publication. I understand also that during the course of your presentation this morning you will refer to a submission that you made on behalf of the Northern Territory Minerals Council to the review of the Aboriginal Land Rights (Northern Territory) Act by John Reeves QC.

Ms Purick—That is correct.

CHAIR—You have tabled that. The committee accepts the document so tabled as an exhibit and receives it as evidence to the inquiry into the Reeves report.

I am very troubled by the fact that we have been told that we have to terminate the hearing at 10 a.m. because of logistics with aeroplanes that have to be met in other parts of Australia. I hope members and witnesses will understand the constraints I have as chairman. Thank you.

Ms Purick—The letter that we have tabled today for the committee and our submission are not our final submissions to this inquiry. We will be forwarding a more detailed submission at a later date for your deliberations.

The Northern Territory Minerals Council is working in association with the national body, the Minerals Council of Australia, on this inquiry and also into the review of the land rights act. We collectively put in a submission to the original review and that is what you have here today. The Reeves report and the recommendations contained within address a multitude of complex issues. It is not possible to analyse all of these issues in depth or to

make an assessment of the impact on the minerals industry in the Northern Territory and elsewhere arising from the wide ranging proposals and recommendations.

Many of the recommendations of the Reeves report interact, and implementing only subsets of the recommendations could have disproportionate practical consequences for the minerals industry. For example, the views of the minerals industry in relation to the structure of the Aboriginal benefits reserve and the distribution of funds from this reserve may need to be re-evaluated in the light of acceptance of recommendations about the Northern Territory Aboriginal Council or proposed regional lands councils.

In general terms, the Northern Territory Minerals Council and the minerals industry support Mr Reeves's recommendations in relation to the devolution of decision making responsibility to a local level and his proposals for regional land councils, but the minerals industry does have a concern to ensure that the regional land councils, as proposed, are properly resourced and funded to undertake the statutory responsibilities under an amended Aboriginal land rights act. This will be important, especially in the transition period when regional land councils may need expert assistance in meeting these statutory responsibilities.

As mentioned, it is the Mineral Council's intention to prepare a full written submission dealing with four key issues that are of most relevance to the minerals industry and that are contained in the Reeves report recommendations. These are the proposed modifications to the mining provisions of the act and recommendations associated with the granting of titles; the proposed system of regional land councils; the proposed structure and functions of the Northern Territory Aboriginal Land Council; and the proposed changes to the operations of the Aboriginal benefits reserve including the distribution of moneys from that reserve.

Two issues specific to the minerals industry which are of concern in the Reeves report recommendations but are not supported by the Minerals Council are in relation to the distribution of moneys from the Aboriginal benefits reserve and the proposed amendments to the mining provisions of the act. On page 531 of the Reeves report, Mr Reeves introduces his discussion of the mining provisions with an acknowledgment that:

> . . . the existing arrangements for exploration and mining on Aboriginal land are quite unsatisfactory and should be changed. Continuing the status quo . . . is not in the interests of Territorians and, in particular, not in the interests of Aboriginal Territorians. As a community, we should be able to do better.

These are the sentiments with which the Minerals Council entirely agrees. It is the proposed means of rectifying the problem with which the Minerals Council differs.

The issue will be dealt with in detail in our written submission. However, it may be of assistance to the members of the committee to review the Minerals Council's initial submission to Mr Reeves, a copy of which has been attached and circulated. The Minerals Council considers the model proposed in that submission to be an appropriate measure preserving, as it does, the right of traditional Aboriginal owners to control activities on their land, while ensuring that no inappropriate use is made of the right of veto in negotiating the terms of agreements. The review of the act in this inquiry provides the opportunity to create more efficient and effective legislation for the benefit of all stakeholders.

In the Northern Territory, the minerals industry has a long record of good working partnerships with Aboriginal people which is reflected in part by three of the larger Aboriginal associations being members of the Northern Territory Minerals Council. The Jawoyn Association, the Gagudju Association and Yirrkala Business Enterprises are all members of the Minerals Council and have been for many years. Furthermore, the Jawoyn Association now has an elected position on the executive committee of the Minerals Council.

This involvement by Aboriginal associations with a resource or industry group such as the Northern Territory Minerals Council is unique in Australia and demonstrates not only good working partnerships, but industry's commitment to the involvement of Aboriginal people with the minerals industry. The Minerals Council will be able to provide further comment on the general issues raised in this letter today and we will be expanding further in our written submission. We welcome the committee to Darwin and also this inquiry.

Mr QUICK—In your letter today, you mentioned that you are supportive of Mr Reeves with his 18 land councils model, but you do not mention anything about the Northern Territory Aboriginal Council. Do you see having one super structure as being the key?

Mr Watt—Over the last two days we have heard quite hysterical claims about the 18 land councils. The suggestion of regional land councils is not a Reeves QC innovation. As early as 1973, Justice Woodward suggested that a northern land council and a central land council may get together at some time. In the Reeves report, on page 191, you have a reference to a meeting in Tiwi in 1977. The land councils themselves have agreed—and yesterday we heard mention of the query about the boundaries. Nowhere in the Reeves report can I see that Reeves says that there must be 18 land councils.

That was mainly a recommendation. I would like to point out that all these are recommendations; they are not set in clay. Yet what I was hearing in earlier hearings this week was the fact that somehow the establishment of regional land councils, or the empowerment of regional councils, somehow or other meant the demise of land rights. That is not our reading of Reeves's recommendations.

To get back to the NTAC, we would like to take that one on notice because, like the NT government, when we came across it, it was a brand new one to us. Following Robert Lee's submission to the committee the other day, I spoke to the Jawoyn about their position on it because, as I said, the Jawoyn are members. We would like to put that into a final submission.

Mr QUICK—Okay. What about the issue of permits?

Mr Watt—With permits, the general consensus within our organisation and the Northern Territory Minerals Council is that we have no problems at present with a permit system.

Mr QUICK—Do you think that the abolition of permits, the introduction of $10,000 and six months in jail for trespass, would be a retrograde step? Would you be happy with the current system?

Mr Watt—I think, in all honesty, the mining companies make very good use of the issue of NLC and CLC permits. It is an extra control for them. We have no problems at present with them. We do not see too many hold-ups for the mining industry with permits. I think it was Josie Crawshaw yesterday who said, 'Who is going to fund the regional councils to take this to court and how long is it going to take for the whole thing?' People in the mining industries have said, 'I have had a fairly good relationship with the Aboriginal people. If you are not smart enough to know who to phone to get a permit, you had better start learning.' As far as we are concerned, we have no objection to the permit system at present.

Mr QUICK—Good. Thank you, Mr Chairman.

Mr SNOWDON—Could you just explain the construct of the Minerals Council, what its membership comprises. You have mentioned the Jawoyn Association. The point I want to get to is whether all of your members support your position.

Ms Purick—The Northern Territory Minerals Council is the industry group for the resource industry in the Northern Territory. It covers exploration and mining, the extractive industry and also, to a lesser extent, oil and gas, onshore and offshore. We also have a multitude of wide ranging membership from service and supply companies and specialist consultants. The majority of all operating projects in the Northern Territory and the companies that manage them or own them are members of the Minerals Council.

There are a number of major exploration companies and smaller junior companies in the Northern Territory that are members. Like any industry group, we do not have exclusive membership across the Northern Territory's borders, but we account through our membership for about 95 per cent of the Northern Territory mineral exports.

Mr SNOWDON—So is the position you have articulated supported by the whole of the membership? Has the Jawoyn Association endorsed your submission? Has the Gagudju Association endorsed your submission?

Mr Watt—The Jawoyn has a member on our executive and he is also on our land access committee. But, as you know, Mr Snowdon, and it is even within political parties, you cannot get 100 per cent consensus but we do represent the majority of the companies who are members of the NT Minerals Council.

Mr SNOWDON—Is CRA a member of the Minerals Council?

Mr Watt—CRA have said to us that they will be resigning from the NT Minerals Council but remaining with the Minerals Council of Australia.

Mr SNOWDON—What is CRA's attitude towards the amendments proposed?

Mr Watt—I am not quite sure, because CRA have not attended one meeting of the NT Minerals Council, I think, in the last year.

Mr SNOWDON—What is the attitude of Giants Reef to the proposals?

Mr Watt—I think you are referring to Nick Burns's article in the *Land Rights News* where he said strongly that he did not support the 18 land councils.

Ms Purick—I think it has to be pointed out that, as Grant has said, we are not always going to get 100 per cent consensus from our members. I think it is healthy to have this type of debate. Members do speak out and they are entitled to their view on the particular issue they are talking on. But, as the Minerals Council, we are speaking collectively on behalf of the industry in the Northern Territory.

Mr Henwood—I think that works both ways. There are a number of members of the Minerals Council who have certainly expressed to me that they would have preferred us to call for an abolition of the veto, but we did not do that because the consensus view was that it would not be appropriate.

Mr SNOWDON—I appreciate that. I wanted to make it very clear that there are a range of views within the minerals industry. CRA has a very different view about the proposed amendments.

Ms Purick—For the record, it is Rio Tinto.

Mr SNOWDON—You are right. In fact, there is a press release, which I know to be going out today, in which they say:

We are able to work with the Land Rights Act. There are some workability amendments which we would like to see negotiated. We are concerned that the current discussions surrounding possible amendments to the Act may result in a period of hiatus regarding negotiated access to Aboriginal land. This would have an extremely detrimental impact on our exploration programs in the Northern Territory.

CHAIR—Mr Snowdon, as that was read into the record, can you tell us the date of the news release and who issued it?

Mr SNOWDON—3 March.

CHAIR—Will you make it available as an exhibit?

Mr SNOWDON—Yes, I will.

CHAIR—When it is made available, it will become part of the public record.

Mr Watt—It comes as no surprise that that press release was issued at this time. I think you will find that the agreement they reached would have taken five or six years to reach anyway. We know companies have differing opinions. We know that, behind closed doors, some of the companies will tell us a different story from what they put out in a public release. I am not suggesting this is the case with Rio Tinto but, as I said before, we are never going to get 100 per cent agreement on these things.

Mr SNOWDON—I am not asserting that you are. I wanted to make it very clear that you do not.

Mr Henwood—You will see in the third paragraph of our letter that Kezia read out the reference to the concern about any proposed regional land councils being properly resourced, particularly in the transition period. That picks up the point that Rio Tinto made.

Mr SNOWDON—I am interested in your preliminary observations about NTAC. Do you have a view about Reeves's recommendations on NTAC?

Mr Watt—I prefer to keep that to our final submission. To explain briefly, in this document here, we were concentrating on part 4. Then we suddenly found out that you went to page 3. I finally got to the back of it late last night. I am not in a position to comment on this now.

Mr SNOWDON—I think that makes the point though, very eloquently, that this proposal for NTAC has come right out of the blue. Would you care to comment on that?

Mr Watt—I would agree with you. I had a brief conversation with Jawoyn about it and they pointed out a couple of their concerns about it. I know it took a few people by surprise but, as I said, if you go back to Woodward in 1973, he suggested that the NLC and the CLC might get together at a future date. That would have virtually been an NTAC anyway.

Mr QUICK—The whole point of the structure where the Commonwealth minister and the Territory minister pick out their names and say, 'You are in control' is totally different from, say, a merger of the CLC and the Northern Land Council.

Mr Watt—I am not quite sure on that point, if that is the way it is actually going. Off the top of my head, I thought the regional councils might be there, and the NTAC or whatever down here. It may have changed. That is as far as we will go.

Mr WAKELIN—I want to talk a bit more about the access to land issue. You mentioned page 531 of Reeves. You tend to be in agreement with Reeves, and you have documented in your submission the general issues around all of that. I want to try to understand a bit more about the three points you mention in your submission—and I will go through the three of them: inconsistent with the rights of freehold landowners; inconsistent with Crown ownership of minerals; and inconsistent with the scheme for the restoration of the Native Title Act.

You can take whichever part you would like, but I just want to try to understand this access for the exploration licence. I presume the mining industry is still pretty keen to get into prospective country. Is it true, as we understand it, that you are about four times less likely to be able to access Aboriginal land as normal freehold land or other land—and correct me if I am wrong on that? Could we deal with those three points at the bottom of page 4 and the top of page 5 of your submission?

Mr Henwood—Notwithstanding that we are not calling for an abolition of the veto, the point is simply that, in most of the rest of Australia, as we understand it—and certainly the rest of the Northern Territory—landowners do not have a say on whether or not mining companies obtain exploration licences or whether they hold freehold or some other form of tenure.

CHAIR—But they have input into that.

Mr Henwood—They have the right of objection through the wardens court process. The current position is still that the Crown retains ownership of all minerals in Australia, and a grant of Aboriginal land does not include a grant of the minerals under the land. In that sense, a right of veto is arguably inconsistent with the Crown being able to regulate the exploitation of those minerals. The third point is that the Native Title Act, which operates elsewhere in Australia as well as the Northern Territory, does not provide a veto as such; it provides a mechanism for consultation, et cetera. We are pointing out that the land rights act is unique, and that is probably in recognition of the unique circumstances of the Territory and the unique intent of the land rights act.

Mr WAKELIN—But going back to that first point about access to the prospective land, is it right that you are four times less likely to get access to Aboriginal land? Is that about right?

Mr Henwood—I have not heard that statistic.

Ms Purick—I have not heard the 'four'.

Mr Watt—The latest statistics that we have obtained—and I do not think there is too much difference between the figures from the land councils and the figures we have from the department of mines—show that, out of approximately 300 exploration licence applications that have been forwarded to the land councils, only 74 have really come to fruition. So we are still looking at about 25 per cent of all applications that have gone in. There was a build-up of applications because, for some reason, the act did not open up in the Northern Territory again until 1980 or 1981 and they then started giving the right to negotiate.

We feel that this should be speeded up. If it gets down to the resources to speed this up, the mining companies will be of assistance in that. The mining companies pay for all meetings, all anthropological studies, and all the transport, et cetera. It is interesting that, when you go through the annual reports of the land councils, you never see an itemisation of exploration and mining in expenditure. We talk to the NLC on a regular basis, and I have brought up many times that, if even 10 per cent of the income was allocated—and I am not saying that they do not spend it, but it does not show there—to what is really the main revenue of the land councils, then things could be speeded up.

Mr WAKELIN—I really struggle with this whole process. I hear constantly about the deprivation of Aboriginal communities. The Northern Land Council in their charter talk about the advancement of Aboriginal people. I understood that, in this country, the mining industry was a significant producer and creator of wealth. I am just puzzled as to why there would not be greater enthusiasm for mining in terms of respecting the culture and the issues—and picking up the point you were making about the administrative costs as well.

Mr Henwood—It probably goes further than that. Mining in a place like the Territory is one of the few industries that will ever have the opportunity to foster economic development in remote regions. There are, no doubt, numerous reasons why there is not enthusiasm for it:

the preservation of traditional lifestyles; just not wanting to get on to that treadmill, if you like. We do not pretend to know the answers to that; it is a fact.

Mr WAKELIN—Nevertheless, it is not easy to get exploration licences for the purposes of economic advancement, notwithstanding the fact that your people need to make a profit for their companies as well.

Mr MELHAM—I do not know who can answer this question—maybe Ms Purick. Can you confirm that more than 80 per cent of the value of minerals extracted in the Northern Territory comes from Aboriginal land, and that that amounts to more than $1 billion a year?

Mr Henwood—Yes, it is Ranger, Nabalco, Gemco—all of which were in place before the land rights act.

Mr MELHAM—Can you confirm whether more than 30 per cent of Aboriginal land in the Northern Land Council region is currently subject to exploration agreements and whether that figure is rising compared with non-Aboriginal land where the proportion is much smaller and declining?

Ms Purick—I think you have to keep it in perspective. The non-Aboriginal land is pastoral land and now subject to the Native Title Act.

Mr MELHAM—I would have thought, Ms Purick, that the Native Title Act would be a lot easier to get exploration on than the land rights act.

Mr Watt—It may, for some people, be a lot easier, but it has meant that we now have 90 per cent of the Northern Territory under two different federal acts, which is not exactly an enticement to investors either from overseas or from within Australia.

Mr MELHAM—So, in effect, Mr Watt, changes to the act really delay development because you have to work out with the new regime. Is that what you are saying?

Mr Watt—No, I am not saying that at all. I was just pointing out a fact. We have been told that, because we now have the two acts, companies have come up here and have virtually thrown up their hands in horror. I will admit that, on the other hand, companies have come up here and have not really pushed with the land councils to have the exploration licence granted. This has been taken up by us and the mines department, and I think this is referred to some place in the documents as ‘warehousing’.

Mr MELHAM—But has it not been a problem with the Northern Territory government in terms of the policy of the government since the Wik decision not to issue exploration licences on pastoral leases? Was that not a policy decision—

Mr Watt—You may shoot the blame back to the NT government or the court or whoever, but we are the meat in the sandwich, Mr Melham.

Mr MELHAM—I accept that—

Mr Watt—I do not think Mr Carr or anybody else has made a decision on native title that the mining industries are happy with. So we are in the same boat.

Mr MELHAM—In terms of policy and the exploration licence, it is not the role of the land councils; it is the government's role. Is that not the position?

Mr Henwood—In relation to native title?

Mr MELHAM—In relation to native title.

Mr Henwood—Yes.

Mr MELHAM—So the policy decision by this government has been not to issue them on pastoral leases since the Wik decision.

Mr Henwood—I do not know if it was a policy decision but it is certainly the fact that none, except one that I am aware of, were issued in that intervening period.

Mr MELHAM—But it is the Northern Territory government that you actually go to under the Native Title Act, is it not?

Mr Henwood—Yes.

Mr MELHAM—Not the land councils?

Mr Henwood—No.

Mr Watt—Mr Melham, you have really been giving the NT government a bit of a lashing, but—and I will get into trouble with some of my colleagues—if the land rights act was such a good act, I do not see why it has not been introduced in other states.

Mr MELHAM—It is something called Commonwealth power, Mr Watt. The Commonwealth parliament only has power over the territories. I would like the abolition of states so that we have power over everywhere else. That is a constitutional limitation.

Mr Watt—You know, Mr Melham, it is historical that some of your own premiers threw up their hands in horror when it was even suggested that anything like the land rights act was introduced.

Mr MELHAM—Well, there is a land rights act in New South Wales. It was introduced by the Wran government. Over the last 12 years, is it the case that 75 per cent of exploration licence agreements were resolved in less than two years? I will also put a qualifier: that includes the five years following the 1987 amendments and the 1992 Stockdale decision, which obviously caused considerable disruption to the process of exploration licence negotiations. Is it fair to say that, basically, the speed and success over the past seven years have been much greater? Is that a fair statement to make?

Mr Watt—If you wanted to go back to the 1987 amendments where—

Mr MELHAM—It has improved since then.

Mr Watt—It has obviously improved since then. The minister at the time, in his second reading speech, virtually said the act was not working and removed the second veto from it.

Mr MELHAM—I just needed confirmation as to whether that figure is correct. There is a suggestion that when you look at the last 12 years, 75 per cent of exploration agreements were resolved in less than two years.

Mr Watt—I am not quite sure on that figure, Mr Melham, but—

Mr MELHAM—I am just interested as to whether—

Mr Henwood—Do you know what that is in terms of a number?

Mr MELHAM—No. What has been suggested is that that period is quicker now since Stockdale and since the 1987 amendments.

Mr Henwood—As you would expect with a statutory time frame of 12 months. I would not have thought two years was anything to boast about.

Mr MELHAM—I am not arguing that. I am just saying that there has been an improvement in that period.

Mr Watt—There has been an improvement. As I said, in our opinion the land councils did not allocate to the mining industry. The main object of the land councils, as you said yourself, was to get land back under the land claims.

Mr MELHAM—Yes. I accept that.

Mr Watt—So I think there was a concentration on the land claims, but earning the dollar was left behind.

CHAIR—Thank you. I just have a couple of questions, and you might wish to take these on notice for your final submission. The committee would be very interested to get a comprehensive statement from your council as to the contribution the industry has been able to make in partnership with the Aboriginal and non-Aboriginal people of the Northern Territory over the last 20 years, if that is not too difficult for you.

Could that statement incorporate a summary of the investments made and a summary of the present employment position—the number of people employed directly and indirectly? And, if it is possible, could it include a reference to the number of non-Aboriginal and Aboriginal people who are employed directly or indirectly and a description of the sorts of programs to assist in the training of unemployed Aboriginal people as a result of the industry's involvement in the Northern Territory?

Do not take that as exhaustive, but I think it is very important for this inquiry to have a perspective as to those matters. Obviously, those matters will be scrutinised by others, and that is the way it ought to be.

Could I also ask you, when we meet again, to elaborate particularly on your experience with respect to the Aboriginal reserve account—the benefit reserve account? If there is any observation and submission that you would like to make—I know you have foreshadowed that you are reserving your position—I would like you to give us a statement as to what you think about it at the moment, if there are no changes made, and what you think about it if the Reeves recommendations are implemented. I think there are two distinct positions.

Thirdly, if the council feels able to, could you tell us what the council itself would think would be of benefit to the Aboriginal people of the Northern Territory, regardless of the recommendations of Reeves or of the present position? You might even take a reformist role in that regard because of your experience.

I have no further questions. Mr Snowdon, I have been handed a Northern Land Council media release, dated 3 March. Just for clarification, you mentioned it was a news release by Rio Tinto?

Mr SNOWDON—It is a joint statement. Rio Tinto are quoted—

CHAIR—Rio Tinto are quoted. Just for the record, if that is okay by Mr Snowdon, is it the wish of the committee that the document headed 'Northern Land Council Media Release' dated 3 March 1999 and tabled by Mr Snowdon, be accepted as an exhibit and received as evidence to the inquiry? There being no objection, it is so ordered.

We have done very well. I think we are going to have a marathon session again when we meet, so I thank witnesses and members of the public for coming along to these hearings.

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

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

Committee adjourned at 9.49 a.m.