



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**

MONDAY, 12 APRIL 1999

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STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER
AFFAIRS

Monday, 12 April 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: 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.

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Committee met at 12.33 p.m.

CHAIR—Welcome, ladies and gentlemen. I now open this public hearing for the inquiry into the recommendations of the Reeves report on the Aboriginal Land Rights (Northern Territory) Act. As you would all 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. The minister has told us that we can suggest changes to the recommendations in the Reeves report.

The government has not decided what its position is on the Reeves report. It wants to know the outcome of this committee's deliberations after hearing the advice of people like yourselves. Members of the committee are conducting this inquiry with open minds. We want to talk with all interested parties, Aboriginal and non-Aboriginal, in a spirit of cooperation.

We are all very conscious of the need to hear the views of people in more remote communities. For this reason we are visiting as many regional centres and communities as we can. Unfortunately, as you would understand, we cannot visit everywhere or stay in places as long as we would like because we have to finish the inquiry and report to the parliament by August. However, we are doing our best: we have already visited a number of communities and we will be visiting other communities this week and in May and June.

The first part of this hearing is open to the public. A record of what is said at the hearing will be available; just ask our staff if you would like a copy. After the tea-break, at the request of members of the public involved, we will be holding a private meeting with some people who have asked to speak to us separately. With these remarks, I turn to our first witnesses from the Central Land Council.

[12.35 p.m.]

AVERY, Mr David, Manager Legal, Central Land Council

STUART, Mr Maxwell, Chairperson, Central Land Council

TILMOUTH, Mr Leigh Bruce (Tracker), Director, Central Land Council

CHAIR—Welcome. I have a formal matter that the committee is required to draw to your attention. It is done in every case with the Commonwealth parliament committee system and not just in this inquiry. 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 the parliament. Before we ask you questions, I understand it has been agreed, because of our program, that you will make an opening statement which will not last longer than 15 minutes. That will give enough time for witnesses to be questioned, for you to add explanatory information and for us to fulfil our program today. Thank you for your cooperation. I now invite you to make your opening statement.

Mr Stuart—What we talked about in Areyonga is that we did not want our land council taken away from us. In his statement, Mr Reeves did not put what we said. He put in his own words which we did not agree with. Also, we want permits for going into our communities that are not on the map. There are places in Australia which people from the other side of the world might come to and then get lost, and they would be a long way from any sort of community where there is a helicopter. The Central Land Council would know where they were getting a permit for—what area—so we would know the whereabouts of the missing person and we could send out a search party from the community. In a known region every community gets in contact with each other.

The other thing I did not like was that he wanted to take our character and so on from us, but first I would like to hear what the others have to say.

Mr Tilmouth—The Central Land Council's position is very clear. We, at no stage, are objecting to changes to the land rights act that are beneficial to Aboriginal people. We will object strongly to changes to the land rights act that force the position of Aboriginal people to be diminished—that is, either through legislation, through regulation or through a whole range of other government type activity.

We have assisted with the discussion on Reeves in our first submission. Unfortunately, we do not have the resources of Reeves. When we go back through the Reeves report, which is the second document in front of me, the detail on the legal argument requires a lot of consideration and therefore it takes a lot of work and a lot of time to make sure that the reply meets the criteria of legal argument. So, unfortunately, at this stage we do not have a full submission for you, but I can guarantee you that by the end of this week you will have a full submission. We have split the submission into a number of themes. One is dealing totally with the legal argument of Reeves. The other one is the Aboriginal community's concerns about Reeves and, as they understand it, what Reeves has proposed to them in relation to his report and what activities he sees flowing from that report.

We in the Central Land Council are very concerned that at no stage did Reeves consider the opinions or the discussions or ask the questions of the Aboriginal community before he wrote the report. The answers he gave in his report, the emphasis in that report of government control of land rights, were not placed on the table at any stage. The formation of the Northern Territory Aboriginal Corporation was not placed on the table. The compulsory acquisition arguments, the removal of royalties, the compulsory acquisition of royalty associations and those assets and the seizure of those assets were never placed on the table at any stage. The permit system was not placed on the table at any stage.

So what we have got is a report that, from what we understand, has virtually been written in the abstract, without any Aboriginal input, any dialogue, any discussion whatsoever that, as far as I understand—and you can take transcripts of Reeves' meetings with those communities' members—is reflected at any stage. There is in the smaller document a section that dealt with what people said—and, like everything else, it was taken out of context. I think you had a conference last week at the Australian National University that dealt with the academic and legal arguments of Reeves' proposal. People who were verbalised within Reeves had a chance to reiterate their position and to deal with the misconceptions that flowed from Reeves.

As far as the land council is concerned, our position is that we reject totally the notions that Reeves has put forward. We see it as a document that deals very much with the social engineering paradigms of government funding to Aboriginal communities that are state responsibilities. What we have got is a moving of the argument, a blaming of the victim: blaming the victim in relation to the current situation that they enjoy in terms of government resources funding Aboriginal communities and the lack of control by the Aboriginal communities in that government resourcing. Therefore, we can see that, through Reeves, there is a 'grab all': a grab bag of finances that would normally be Aboriginal people's compensation for mining on Aboriginal land, compensation for tourism, compensation for a whole range of developments on land—which, incidentally, is freehold land—and a grab bag process where these funds would be sent to Darwin under a non-elected process. We are talking about a non-elected body delivering and determining the resource use of our Aboriginal community. I do not think that meets anyone's criteria.

What we have is a grab bag of dealing with royalties, handing them off to governments and allowing royalties to underwrite the funding responsibilities of state governments—in this case, the Northern Territory government. Fortunately, they are not a state, and the reason they are not a state is precisely the same predicament that Reeves identified when he went around and asked, 'Why isn't the land council doing everything else bar what it's supposed to be doing under the land rights act?'

This is the wash-up. You can read all the detail and the nice resolutions and so forth, but the wash-up is that it is a document that socially engineers the development of Aboriginal people—removing the sense of responsibility, removing the sense of autonomy and placing that in government hands, and then asking the Aboriginal people to be responsible to the government for their own lives. That flows against everything that the federal government and any other previous government has done in relation to the rights of indigenous people. This flows against the international covenant on human rights and a whole range of other arguments. I think it even flows against certain areas of the Racial Discrimination Act.

So what we have is a very dangerous document that was undertaken with very little understanding of the Aboriginal community and what it was saying. There is no understanding of the cultural maintenance of land, the social and cultural hierarchies within Aboriginal communities, and the maintenance of government and decision making processes that exist today in those communities. The author is, without a shadow of doubt, the Northern Territory government. It is attempting to regulate the lives of the Northern Territory Aboriginal people to coincide with and be part and parcel of the arguments that we see flowing from other states which have a very bad history on Aboriginal people—like Queensland and Western Australia. The Northern Territory is attempting to bring into line—smoothing the playing field, if you like—Aboriginal decision making processes so that they do not conflict with government. There is no way at the moment, in this environment and in this political world, that anyone would consider that as a proper position. That is what Bosnia was all about; that is what Kosovo is all about. You cannot keep doing that.

Governments have to understand that indigenous people, no matter what race, what colour or what religion, will always have a difference of opinion from governments and, therefore, have the right to exercise those differences of opinion. To attempt to do a review of the land rights act is an attempt to knock over one of those very fine acts—if you are an Aboriginal person who lives in the Northern Territory, you are looking at probably one of the historical processes that were put in not only by the Labor government of Gough Whitlam but implemented and strengthened by Fraser's government—that attempts to address the abuse of Aboriginal people, the degradation of Aboriginal culture and the whole range of Aboriginal dispossession that was put forward fairly strongly by Viner and everyone else. This land rights act was a very good attempt to meet those demands and those criteria.

What we get now is a turning back of those benefits that Aboriginal people enjoy in terms of rights. I can assure you that as you go around these communities you can see that the argument does not only rest with the land rights act but also with the Northern Territory government's ability to serve its Aboriginal communities. You will see that the beneficiaries of this act do not live in sartorial splendour, as was once described. What we need now is a fairly strong position in relation to this land rights act to maintain the level of dignity, the level of land rights and the level of cultural maintenance which still flows through international arguments. UNESCO was very right in its response to Kakadu being on the endangered list when it talked about the living culture, which is very important, as well as the fauna and flora.

Those are the sorts of arguments we are talking about. We are not talking about any detailed amendments that remove those arguments. We are talking about amendments that enhance, so that people can enjoy further the rights that were rightfully given to them by the Fraser government and by the Whitlam government.

Mr Avery—I intend to very briefly go through the dot points in your terms of reference. I hope that will make it easier for you to ask questions in a focused way. The first of those points is a proposed system of regional land councils, including the extent to which they would provide a greater level of self-management for Aboriginal people, and the role of traditional owners in decision making in relation to Aboriginal land under that system. Our very well-founded position is that the recommendations in the Reeves report would result in a wholesale loss of autonomy to Aboriginal people through that system.

The regional land councils would be comprised of residents, that is, the members would be residents, as they are now. But the difference would be that the traditional landowners who are the decision makers under the land rights act at the moment would be deprived of that; they would have no certainty of being consulted or of being the decision makers on anything affecting their land, their lives, their culture and their sacred sites. This is because Mr Reeves recommends that the regional land councils would decide for themselves whether or not they would consult with traditional owners.

There would also be a changed definition of traditional owner which would enable the regional land councils to determine that people who have no particular rights in a specific area of country would be consulted. There is also a recommendation for delegation of decisions to officers of these councils which would mean even less accountability to the traditional landowners. What that would lead to is a wholesale loss of autonomy to the people who at the moment have the principal autonomy under the act—the traditional landowners. That is the keystone to the land rights act at present and it has worked extremely well.

With respect to the extent to which the land councils would provide a greater level of self-management for Aboriginal people, take into account my prior comments. Add to that that the regional land councils would be funded at the whim of this new structure recommended by Mr Reeves called the Northern Territory Aboriginal Corporation. They would not have guaranteed funding as at present under the land rights act. The funding would be discretionary and therefore very much subject to pressure. NTAC is the next point and I will come to that.

The negotiated funds and other income from Aboriginal land would not be retained at the regional land council level and it would not be retained by the traditional owners through the current representative corporations which they have—Aboriginal corporations under which they invest that money and manage it. And I might say that in the Central Land Council region that is almost faultless—there is no criticism of us in this review. I cannot recall what is said about one association in the Top End, but you can look in there and you will not find anything about the management of the money in this region.

That will all be removed in a wholesale way: the money will be sent off to the Northern Territory Aboriginal Corporation to stick into investments that it so chooses, without particular accountability back to the landowners and probably without much accountability to the regional land councils—it is a very vague thing—and the accessibility of those funds will be denied to the people who are affected most by all these things that happen to their land and denied to the people who are, without doubt, the most impoverished group in Australia at the present time. That impoverishment is used by Mr Reeves as a stick to beat them with, because he says they have to haul themselves up by their own boot straps but he is going to take their boot straps off them.

That is the system of regional land councils and deprivation of the funding that they need. It is not just the regional land councils; the other recommendations have to be brought into account. They will not have the power to issue permits, as the chairman referred to. He referred to one aspect of that, which was the importance Aboriginal people place on the responsibility for guests and visitors on their land. But their sacred sites and other matters

are extremely important as well. Without having rules that are affixed to permits, the trespassers will not know where, or where not, to go. They will just be simply trespassers, and a very great burden will be placed on Aboriginal people to try and prevent that incursion into their land. The system was without complaint to Mr Reeves in the Central Land Council region. In fact, it was supported by the tourist industry, as I recall. So there was no complaint about the permit system, as I understand it, in the Central Land Council region—and I exempt the Northern Territory government's submission, it goes without saying. I stand to be corrected on that, but I have no memory of it, and having examined them I thought I might remember.

With respect to the loss of the right of land councils to protect sacred sites, that goes over to the Aboriginal areas protection authority under Mr Reeves recommendations. It is an extraordinarily important right that Aboriginal people that I have consulted are very concerned about. Perhaps I should add that I have worked for the Central Land Council in excess of 12 years. I have lived in the Northern Territory and practised law here since 1971, prior to the Land Rights Act, so I am fairly familiar with all these issues.

Having touched on that briefly, I will move on to the proposed structure and functions of the Northern Territory Aboriginal Council, called NTAC. As proposed, this is a totally unrepresentative body in the sense that it will be appointed. It will consist of Aboriginal people appointed by the Minister for Aboriginal and Torres Strait Islander Affairs and the territory minister jointly. The functions will, in fact, encompass not matters just under the Land Rights Act, but also broad matters which the Land Rights Act is not responsible for.

The setting up of this organisation, in a sense, tries to fix the Land Rights Act with the responsibility for the fact that Aboriginal health parameters, social indicators, and education and so on, are very poor. There has been a single government in the Northern Territory during the whole of the time of the Land Rights Act and Mr Reeves fails to examine the activities and policies of that government in relation to these things he is so critical of—the poor economic performance and so on. The recommendations which he makes cannot be taken seriously if he fails to look at those government policies of a government which has been in power for so long.

I am not here criticising the policies. I am just saying he should have looked at them and seen where the responsibility lies. It is the Land Rights Act. It is not the health act, an Aboriginal economic improvement act or the Aboriginal education rights act. It is the Land Rights Act we are talking about.

NTAC would take away all these powers. It would have a CEO who would only be appointed if he or she were approved by the two ministers. In other words, it would not have the autonomy to appoint its own CEO. I think I need go no further than that. It is appointed by government. The CEO has to have the imprimatur of the ministers and that does not look like an independent or autonomous Aboriginal organisation to me. Eventually it might be elected, but only after there had been a further review of the Land Rights Act to see how the measures recommended by Mr Reeves had worked out in fact. In other words had everything that he set up, which is designed almost—I do not think he sees it this way—to create conflict and despair, worked then it would be reviewed to see how it was working in a few years and it would be decided by the powers that be whether NTAC would be elected.

Aboriginal people have voiced to me, and I have heard them say in other forums, that this is back to the welfare days.

Onto the ABR and the proposed changes to the operation of the ABR including the distribution of moneys from the reserve. At the moment funding for the land councils is guaranteed because of the 40 per cent set aside under the Land Rights Act for funding land councils. Thirty per cent is set aside for affected areas. Again, in the Central Land Council area that has worked very well. The Ngurratjuta Aboriginal Corporation administers the 30 per cent of affected area money from Palm Valley and Mereenie petroleum fields and is a well established and resourced organisation with numerous programs of benefit to Aboriginal people. Under Mr Reeves's recommendations, it would lose its rights and its funding—and not only that. If you read at page 609—and this is one of the most astonishing things in the report—he says:

The existing assets and liabilities of the royalty associations will be taken over and rationalised if necessary by NTAC.

That is in there. It is contrary to the Australian Constitution, but who am I to say that a lawyer of the eminence of Mr Reeves would be wrong.

CHAIR—It is not unusual for lawyers to say another lawyer is wrong. I thought it was a healthy pastime.

Mr Avery—Absolutely.

CHAIR—You enjoy it.

Mr SNOWDON—You are not the only one that thinks he is wrong.

Mr Avery—Let us indulge ourselves. That is quite astonishing. If it were said about the banks, it would be 1948 all over again. But you can say anything you like about Aboriginal organisations it seems. That informs the whole theme of taking economic resources away from ground level and transferring them up through to NTAC and to government control. That is not autonomy. That is the reverse. It is astonishing that it should be proposed and that that sentence should even appear in a document in 1998, when it was published.

The proposed modifications to the mining provisions are also being reviewed under the competition policy provisions at the moment. We are addressing that and that will come back into your process, I think, when you report. That is my understanding. I will not go into that in great detail, but we think there are very serious problems with, say, the reconnaissance licences that he proposes.

We put up to the Northern Territory Department of Mines and Energy some years ago that they should have a look at the definition of exploration in the Mining Act so that we could use the permit system to allow mining companies to go and look at a specific anomaly, say—a magnetic anomaly—with their instruments. There would be no interference. Just take a couple of the crucial lines, spend a day or two in the field—do not dig a hole or anything—and come back and then decide if you are sufficiently interested. One of the reasons they gave us is that in Central Australia sometimes there are 100 metres of sand over

a magnetic anomaly but you cannot tell that from the aeroplane. It is lovely to take your instruments out on the ground where you can get a very accurate and precise reading of those anomalies and then you can decide whether they are sufficiently interesting for you to want to take out a licence and drill, because you have to drill through that much sand. We were very sympathetic to that.

As you have probably found out, we have made dozens and dozens of exploration agreements in Central Australia. It is not a problem and we have overcome those hiccups of the early part of the Land Rights Act. The Aboriginal people have been very receptive, subject to protection of their cultural rights and their social circumstances, and we have a respectful relationship with numerous mining companies. We get on very well in a very relaxed way. We stick the agreements in the cupboard and we get on with it. We do not go back to them and point the finger at each other all the time, and you will not read about disputes about mining projects on Aboriginal land in Central Australia. You will not see that in the newspaper. You never have and you will not because our agreements overcome all those potential areas of conflict. No Century Zincs are going to occur here because the Land Rights Act has empowered people and they have got used to it, and the mining companies are used to it, and the system is working economically for the mining companies and beneficially for Aboriginal people in numerous ways.

I think the mining provisions need finetuning. We would say get the minister out of it. Let people get on with the commercial relationship. Remove interference and let us get on with it. Do not rock the boat—in fact, I think they are pulling the plug on the boat in some of these. They will sink the boat with these provisions. I will not go into the details—it has been dealt with elsewhere.

I just gave the example of the reconnaissance licence. You do not need what he recommends because it could have been done under a permit with a simple cooperative amendment to exploration by the DME. We are not against that and Aboriginal people would go along with that.

With respect to access to Aboriginal land, the permits system, as I have mentioned already, is fundamental. The control of access to their land in Aboriginal law is absolutely fundamental. I might go back to the regional land council's thing, and it relates to this. We question, and we question on good advice, the anthropological underpinning of Mr Reeves's assertions about decision making in Aboriginal society. The chapters—and I do not invite you to read them if you have not already done so—

CHAIR—I have.

Mr Avery—I hope you stayed awake—they are sleep making. I read them out of interest and we have taken good advice and we say that the anthropological analysis is unsound as a justification for saying that something akin to the current traditional owner groupings should be done away with and a regional grouping substituted as the decision making body, particularly when the regions that are selected by Mr Reeves conveniently follow land trust boundaries and other white fella demarcations on maps. It does not look as though it has a sound anthropological underpinning to me.

While I am on it, we also say that you could have slightly amended the Land Rights Act, section 21, to provide that where people want new land councils it should, subject to informed consent as elsewhere in the Land Rights Act. It is not. I am talking about section 21(3). At the moment, it is a substantial majority. The Northern Territory government has thrown \$50,000 at quite a few different groups publicly to fund them to try and get up new land councils and they have run all over the bush trying to do this. A few people have had very serious advantages with this money—the majority have not—and they have not managed to do this.

As a land council we do not take a position opposed—I am not aware of it—to new land councils. The provision has been in the act. We support the provision. We want it strengthened by the addition of a provision for informed consent.

CHAIR—By how many? By what majority?

Mr Avery—It says ‘a substantial majority’, but I am not advocating that. I am saying, as in section 23(3), where there is such a serious decision as that, that the traditional owners—or you might substitute words as necessary—understand the nature and purpose of the proposed action and as a group consent, and the community as well.

The two things are important because in Central Australia we have, as a result of past policies, a number of communities of one language group living on country that really belongs to a different group. We have that and it cannot be undone and people have learned to live with it. I have emphasised the permit thing; I have said enough on that.

CHAIR—I have just been reminded by my secretary that, in colloquial terms, your time is up.

Mr Avery—I think I will pause there.

CHAIR—Are you happy to? If there was a vital point that you wanted to make, the committee would want to hear it. It is just that we want to leave space for dialogue, too. Is there a vital point that you have not yet been able to make?

Mr Avery—No, the only dot point left is the proposed application of territory laws. That is a complex point and I will not start on it.

CHAIR—But, in your submission, which we will have by the end of the week, you will elaborate on that.

Mr Avery—Yes, we are addressing that in detail.

CHAIR—That is great. Thank you. I will open the batting. I appreciate your undertaking to give us the submission because it will help us substantially in our not too easy inquiry. This is a hard one but we are trying to do our best, and we will be assisted no end by your detailed submission. Can I just get a little bit more of the mosaic, though. How many Aboriginal people live in your Central Land Council area?

Mr Tilmouth—Approximately 17,000.

CHAIR—How many of those people are recognised as traditional owners?

Mr Tilmouth—You have to remember that at the start of the Land Rights Act we had reserves and missions that were established by the Department of Native Affairs. Those were collection points for Aboriginal people off pastoral leases and other areas to ensure that rations, health and other issues were dealt with. That was done through the Department of Native Affairs and then went on to the Department of Aboriginal Affairs.

In very large communities, sometimes you get a population that is not the traditional owner of that area. So what you get is—even though they have married in and they have close relationships with the land, with the language and a whole range of other things—at the end of the day, the traditional ownership argument in relation to big settlements is in some cases fairly well biased towards what we call historicals—people who have been picked up from another area. Whilst they may be of the same language group or the same kinship group, at the end of the day they are still living on somebody else's land.

We propose—and this is our argument that we put forward in relation to the pastoral lease excision process—that most of the pastoral lease areas, most of the out-stations are traditional ownership arguments are based on. They are living out there on their country in the out-stations. That is why we wanted a fairly substantial out-station development program earlier in the piece. On excisions on pastoral leases, you do still have—

CHAIR—Getting to the substance of my question, of the 17,000 Aboriginal people living in the Aboriginal Land Council area, what is your estimate of the number of traditional in that 17,000?

Mr Tilmouth—About 80 per cent, 90 per cent would be traditional ownership.

Mr Avery—Mr Chairman, if I can assist, as to the people who have traditional associations with land, everybody who is born in Central Australia of Aboriginal parents who come from this thing will still know where their ties are. I am not talking about people who come from interstate or from Darwin—Top Enders.

Mr Tilmouth—So a good 90 per cent.

Mr Avery—So a very high proportion have a strong association with the land even if they live in town.

CHAIR—And they are identified in your land council records as being traditional owners?

Mr Avery—We have not got every square kilometre with traditional owners identified, because a lot was reserved land that was scheduled. But, where we have done land claims, yes, they have been published in the land commission's reports from time to time.

CHAIR—There are about 70 per cent to 80 per cent, did I hear you say?

Mr Tilmouth—About 80 per cent to 90 per cent, actually.

Mr SNOWDON—We need clarification, I think, to make sure we understand. When you say 80 per cent or 90 per cent, it is true, is it not, that any person born in Central Australia would regard themselves as a traditional owner for Central Australia wherever they were born. Whether or not they have land which they can claim, they would see themselves as traditional owners for other country, like on pastoral leases, for example.

Mr Avery—Absolutely, yes.

Mr SNOWDON—Whilst you might have 80 per cent, does that 80 per cent talk about all Aboriginal people and all types of land, including pastoral leases?

Mr Avery—Yes.

Mr SNOWDON—And every bit of land around it, including all pastoral leases which are not available for claim?

Mr Avery—Yes.

CHAIR—On the question of decision making, which you criticised in the Reeves recommendations—I think you are saying the present provision of the act is the one that ought to be kept—do you understand that, in actual practice, the decision making process is made by a consultative process between the traditional landowners and the non-traditional Aboriginal landowners or residents? Does that happen in your area? In other words, what input does a non-traditional but Aboriginal permanent resident have into contemporary decision making in 1999?

Mr Tilmouth—It all depends on the decision. If you are going out to Yuendumu and your decision is related to an area of land in the Tanami, the people for that area of land in the Tanami would make the decision about that area of land.

CHAIR—Whether traditional or not?

Mr Tilmouth—No. They would be traditional owners and they may be resident at Yuendumu. If you had an issue dealing with Yuendumu, then people who own Yuendumu and those traditional owners would make a decision about it.

CHAIR—Not the residents of Yuendumu?

Mr Tilmouth—Not the residents.

CHAIR—Even though they are Aboriginal?

Mr Avery—In the land rights act, the current provision, which is pretty effective, is that the traditional owners are in effect the decision makers, but any community or group that might be affected has to be consulted. Where you get to urban areas—

CHAIR—Does that happen?

Mr Avery—Yes. We do it religiously.

CHAIR—It does happen.

Mr Avery—Yes.

CHAIR—Do you record incidences, if there are any, where the people have been consulted and have not agreed on the proposal but the proposal has nevertheless been implemented? Has there been any such case?

Mr Avery—I cannot recall one, not in my time.

CHAIR—What you are saying to the committee is that the present operation of the act works well, and you are saying that, in your experience, the land council is not aware of cases where consultation took place and there was no dissent in the final outcome.

Mr Avery—I can think of the reverse. It came up in the submissions to Reeves. Areyonga community was putting in a sewerage thing, and the land council took the traditional owners over to ensure that sacred site clearance was done. Areyonga community jacked up, because they said they should be able to speak by themselves, without the traditional owners coming over. We just cope with that. That is a reverse of what you were saying, and that is a Pitjantjatjara speaking language group on Aranda country.

CHAIR—What I am trying to clarify is that you are critical of Mr Reeves recommending that non-traditional Aboriginal permanent residents should be given a greater say along with traditional owners. You are critical, I think, Tracker, in your general submission of saying that, and that is fine. We want to hear what you say about that. He is trying to blend the two groups of Aboriginal people together in some form of consensus for the future. You are saying, 'No, that should not be. We are very critical of that.' If that is the case, what are you saying is the future for non-traditional permanent Aboriginal people living in these lands? What do you say is the right model for the future to create harmony and justice and progress for the Aboriginal people?

Mr Tilmouth—The Land Rights Act provides that process. I have lived in the Northern Territory since I was born—but not here. Since I was 16 I lived in Alice Springs and surrounding communities. I have yet to run into a dispute where the decision making process in relation to a development does not have the full support of either the community or the traditional owners. I have not found that the current system does not work. We are critical of Reeves in that he tries to manufacture a dispute to provide a system that really depletes and diminishes the current system where the traditional owners have the paramount decision making process.

CHAIR—I understand. I have only one more question and then we will have to move along to my colleagues.

Mr SNOWDON—While we are on it, I want to clarify this point because it is very important. There are examples, though, where Aboriginal people have disputed particular things—say, land claims. I am thinking now of Alcoota. Could you explain how that difference emerged and who has been involved in the difference—that is, who has provided the resources for that difference to be facilitated?

Mr Avery—I was involved in the Alcoota land claim assisting the claimants. The dispute is not between people who are traditional owners and people who are not traditional owners. It is disputed because some people who have been included and fully respected as traditional owners do not want to pursue the land claim. There are, I think, four or five of those and 140 pursuing the land claim. Four or five got funding from the Attorney-General. Daryl Manzie was the Attorney-General in those days, and he went on TV saying he was going to fund that. It is in a sense a false dispute because it is not between traditional and non-traditional owners. It is just a spat where one has got access to a large amount of funding from the territory government in order to keep the dispute rolling.

CHAIR—You mentioned, Tracker, your wish that Aboriginal people have autonomy. I think I can speak for the committee when I say that the committee's wish is that Aboriginal people will continue to have autonomy and achieve greater autonomy. I think that is an accurate description of where we are coming from. You have nine regional offices now of your land council. In your model of autonomy, endeavouring to achieve that very important objective of real autonomy, would you contemplate enhancing the role of your regional offices or do you think that their present role and function is adequate?

Mr Tilmouth—The role of the regional committees as we have it, and there are nine regions, has been developed, and they are moving towards a fairly autonomous process within the Land Rights Act. They understand that you cannot have a strong position in relation to decisions unless you all link together. They understand that very clearly. They also understand that there are decisions that need to be made, and it is one of the proposals in our submission, section 28—which I will allow Mr Avery to clarify—that the decision making process on mining and stuff like that would stay with the committee and therefore come back to the land council to be rubber-stamped—which it is anyway, but it is formalising that process. That is the degree of autonomy I was talking about.

Aboriginal people understand that they need to be linked together in a fairly strong, versatile and very robust organisation. At the moment the Central Land Council provides that for them with controls made by elected people from those communities and representatives from those communities that sit with the land council. That is the autonomy I was talking about. I was not talking about a process where everyone else sort of grabs a non-indigenous model of autonomy and tries to place it on an Aboriginal process and then say, 'This is a generic model of autonomy. This works everywhere else; why shouldn't it work for you.' Fortunately a lot of Aboriginal groups think differently on a whole range of issues.

CHAIR—Did you say fortunately or unfortunately?

Mr Tilmouth—Fortunately.

Mr Avery—To add to that, I will address the delegation situation. As I understood your comments earlier, if I may assist you, the people in the Central Australian area do not wear a hat of 'I'm a traditional owner' and 'I'm not.' People may be not a traditional owner for this block but they are for that block, or they have got one status. So you were talking, I thought, along the lines that some were and some were not. They are all traditional owners for somewhere, but not all equally over the whole place. This is what Mr Reeves wants. He wants a homogenous decision making body, whereas people speak for their country and they respect other people's rights to speak for them and they do not jump over. That is what exists at the moment in the present arrangements. That was the criticism that was being levelled from our side.

On the regional committees, the offices that we have, we think that the autonomy of people in the regions would be best served by retaining the substantial resources currently available and having decision making rights. That could be done—

CHAIR—By the regional offices?

Mr Avery—Yes, by regional committees.

CHAIR—That is what I was trying to develop.

Mr Avery—Yes, and that could be done by delegation. Section 28 would need to be amended to allow broader delegation of powers by a land council to a committee of the land council. So if they could all be committees of the land council, they would operate under their delegations and they would have the best of both worlds. They would have autonomy plus substantial resources. Of course, we put with that that the strengths of the act as it stands remain and are enhanced.

Mr QUICK—You talk about the indigenous model, 83 members representing 65 communities and 17,000 people in total, with nine regional offices. What resources do you have available to do that adequately? What number of staff and what is the budget you have for the Central Land Council?

Mr Tilmouth—The Central Land Council's current budget is \$7.4 million. I have a staff of 120 people. It is all grant funded from the Aboriginal Benefit Trust Account—or ABR in this case. In terms of the efficiencies, we have probably got the highest work rate for the lowest amount of dollars spent by any government Commonwealth statutory body, or Northern Territory government body as well. Our pay scales are fairly low. I do not know why they stay with us, but they do stay with us. Our workload is extremely high and very demanding. Unfortunately, due to all of this, we can have a very high turnover rate.

We currently have a full Aboriginalisation strategy which means that everyone works for the land councils on a three-year contract. Peter Reith should come up here and learn how to do industrial relations off us because he could have everyone on contracts if he followed our model. We do three-year contracts, and it is based purely on an Aboriginalisation strategy that allows us to renew contracts and replace staff as Aboriginal people are educated to then take over those positions.

We are also probably the only organisation that has an Aboriginal cadet program which is currently funded with DETYA, where we send away year 12 graduates to do a university degree in selected areas of discipline that we need in the land council. We have them as cadets. We currently have five cadets away at the moment at various universities down south. When they return, they return to the land council to replace non-Aboriginal staff. Therefore, we have a very positive Aboriginalisation program. We also have a major employment strategy that at the moment is not being funded. We would like to talk to someone from DETYA about that. What we end up with is a higher than normal Aboriginalisation policy than most organisations in town in the Northern Territory and probably in the Commonwealth.

Mr QUICK—Looking down the track, is the current structure for land councils in the Northern Territory as good as it is going to get?

Mr Tilmouth—I think so. If you are looking at efficiencies of scale and you go back to the regional land council model that was proposed by Reeves, you are looking at probably \$500,000 per land council; that is nine times \$500,000—and that is a substantial amount of money. But the big argument is whether they as a land council can perform, at such a small rate, the functions that are required.

You have to remember that we provide a service that is mostly not paid for by the mining industry—we get some recoverables. We provide a service to the wider public on access to and development on Aboriginal land. That is not normally funded. If this were a private institution, those organisations would have to foot most of the bill. So we are providing a very good service from public funds and with some of the major mining companies in the country. We end up with a decision making process that is extremely watertight because all the right processes have been met: consultation, decision making, and a whole range of other things. That is the difference between our model and the Reeves model. The Reeves model, over a period of time, would collapse inwardly because it would have to be either overly funded or restructured in such a way that the funding requirements would more than exceed the \$7.4 million that you get out of ABR.

Mr QUICK—My final question at this stage is: is there anything in the Reeves report that you agree with?

Mr Tilmouth—You should not ask me that question; I used to work with John Reeves in legal aid.

CHAIR—Not personally, but with the report.

Mr QUICK—Is there anything in the report that you agree with?

Mr Tilmouth—I saw John Reeves's report on the pastoral industry. His comments in relation to that were that he agreed with our position that the value of land is meaningless in this debate. There are certain areas that we agree on. We, like you, have looked at Reeves in a very open-minded way, because at the end of the day our role is purely to support the constituency that employs us. Our role is not to push our own political barrows but to have a look at Reeves to see if there are any benefits within Reeves that we could really talk about.

The answer is that, because of the hijacking of the process by the Northern Territory government and the inability of Senator Herron to make sure that the terms of reference were adequate, we have unfortunately ended up with a report the majority of which would have to be rejected totally.

Mr QUICK—Can you elucidate on what you support and why?

Mr Tilmouth—We will do that in our final submission. I have a draft submission sitting here, but a whole range of things are underlined that need to be taken out. But it will be highlighted in our submission.

Mr WAKELIN—Could you give us an understanding of the variation of the responsibilities of the 120 people that you have in your employ? You are obviously a director; what sort of work are they doing? I do not expect job specifications for 120 people, but in the general classification you have officers that are administrative, legal et cetera—what sort of roles do they have?

Mr Tilmouth—The land council is structurally a very simple organisation, when you think of it. At the top of the process is the community, which is represented by the delegates of the land council. They then have an executive which directs and deals with policy, which it then channels through me to the rest of the organisation. We have a legal section of four; we have a mining section, which is made up of mining officers; we have an anthropology section.

We deal with virtually everything to do with land. The functions under the land rights act are pretty broad. If you were to try to determine the functions under the land rights act and say, 'You need to do only this, this and this,' then you have missed the argument on land rights. The argument on land rights is not the rights you currently receive, but the exercising of those rights—the enjoyment of land rights.

We deal with tourist developers and sometimes with housing associations. Most of the store managers are unfortunately sacked by me on a regular basis. They are not employed by me, but they end up being sacked by me because the community wants us to have a policing role in that regard. We also have pastoral lease activities. The two best pastoral leases in the Northern Territory are currently run by the Central Land Council—that is Mistake Creek and Loves Creek. We deal with clearance on housing associations, sewerage works, roads and with a whole range of issues that come past our door.

Mr WAKELIN—You are probably familiar with section 23(3) of the Land Rights Act which says that there is a need to ascertain and express the wishes and the opinions of Aboriginals living in the area of the land councils. Can you give us some indication of how that process occurs? I would like Max to comment as well. What is the process of ascertaining and expressing the wish and the opinion of Aboriginal people—you have got 17,000 people, as with any group of people, any political process, if I can put it that way? Can you give us some indication of how that occurs?

Mr Tilmouth—I am glad you asked that question because the Kalkarindji issue was a watershed in relation to what Aboriginal people saw as a whole range of issues to deal with

their lives. What we had was a process where we helped fund, through the Aboriginal Benefit Trust Account, a meeting, calling together all the communities throughout our region, to sit down and discuss a whole range of issues, dealing not only with the stated question in the Northern Territory but a whole range—‘Where do we want to go as an Aboriginal community? What are your aspirations in relation to being part of this Aboriginal community?’ Those issues were dealt with in a very strong and forceful manner. The Central Land Council’s role was as a facilitator only; we took notes and organised consultants to discuss the whole range of issues. Legal consultants and others drew up the Kalkarindji statement that dealt with a whole range of issues that Aboriginal people saw as being the highest priorities that they wanted dealt with by governments. Kalkarindji is a classic example of how we get everyone together to discuss an issue.

Mr WAKELIN—How often would that occur? That is one example, but is it 12-monthly? Is it on demand? What is the process? Are there regular meetings?

Mr Tilmouth—Every three months we have a full land council meeting which is open to community members, to everybody. Whilst we have delegates, community members do turn up, and they turn up en masse. We sit down and we discuss. The hard part is when Mr Avery has got to turn up and talk about mining for a couple of hours. The rest of the day is taken up dealing with community work and community problems—everything from store managers to schoolteachers to development and so on.

Mr WAKELIN—I do not know if Max wants to say a word on it. With your role as chairman you are obviously active within the region and that sort of thing? It keeps you busy, Max?

Mr Stuart—It keeps me very busy, listening to what we might be going to get from the government and about our rights, our culture and that. Now and again they try to pull the wool over our eyes. That is what we talked about in Kalkarindji. We put up a good argument for two days. We had an argument with the fella coming to talk to us, but now we have started again. I do not know what the chairman said about the tribe; that we cannot mix in with the pitchi pitchi and Aranda. The chairman just said that a while ago. We cannot mix another tribe into our culture. That is very dangerous. But we mix with Aranda people and with the Warlpiri side. We might be friendly enough. We are black in colour, but what is underneath that ground might belong to them. It is not mine. If we go on the pitchi pitchi site, I watch my step. I cannot go over that white mark. It is something between me and the pitchi pitchis. To cross that border, I would not be allowed to cross it. They would carry me back. With our sacred site, what he said here, we had to get a permit. I had to get a permit to see my own sacred site, my dreamtime and my culture. How do we know about the culture and the dreamtime, that is what I would like to find out?

That was a very funny little thing that he talked about, just using us like a puppet on a string. He could have taken us down the public street there. The puppet would arrive there today if he wanted it. That is the game he was playing. Since I have been a chairman, I have been listening all over to all old people who knew the culture and knew how many tribes there were from this and that area. For instance, Mr Chairman, you asked how many traditional owners there are in Yuendumu. I can put it this way. In Hermannsburg, Santa

Teresa, Yuendumu and Papunya, there is a traditional owner but, as Tracker pointed out, there has been intermarriage.

Most of the people in Hermannsburg are not the traditional owners of Hermannsburg, same in Santa Teresa, same in Yuendumu. We might be 15 or 25 miles apart. Say the farm is 50 or 60 acres. Every 50 miles or so we stop and another tribe takes up—Aranda tribe. There are about 20 different Arandas here and it is the same around Alice Springs. But there are 20 to 30 different groups. That is what Reeves and all of us should understand and put it up in our brain box, to memorise it and teach our kids right from kindergarten so that, when a thing like that happens, they can speak up. A lot of old people have gone. They are all down there and some of them just fallen like a fly. We got to teach our children about those sorts of things.

We can pull them out of school—both the white side of school and our side of school. We are asking for things like that. We are not demanding. We want to get a fair go. Aboriginals have not been recognised. We are still unrecognised today. Thank you.

Mr Avery—I just add something on a smaller level than that. We, as a land council, carry out hundreds of consultations about all sorts of things with Aboriginal groups in our area every year. That is a terrific avenue to ascertain the wishes. You were referring to 23(a). That is a primary avenue to ascertain the wishes of people. We are on the ground constantly talking to people about all sorts of things.

Mr WAKELIN—It is an important part of our understanding of how people talk, work and are reassured that their wishes are being discussed and respected. You touched on the anthropological base of Reeves and the nine regional councils. Could you just define the anthropological base of the Central Land Council? Where is the difference in anthropological terms?

Mr Avery—The Central Land Council does not substitute its decision for the traditional owners. It is not an isolated thing. Mr Reeves recommends that the regional land council under his model would be able to substitute its decision for the traditional owners. The Central Land Council is under the Land Rights Act, like any other land council under the act. It must be responsive to the traditional owners. They make the decision and instruct the Central Land Council. That is the 23 (3). You see it in part 4 as well and section 19 and other parts.

There is a constant reference back to the traditional owners understanding the nature and purpose of the action and, as a group, consenting to it. If they do not consent or they do not even bother to come to the meeting, there is no decision, no action. If that is the case, it does not really matter. I know the point you are making. It does not matter that the Central Land Council has no traditional owner base. The point is that the regional land councils are bolstered by the so-called new anthropology that Mr Reeves discusses. Then, in turn, he goes on and provides the powers to ignore traditional owners.

Mr WAKELIN—Thank you. As I understand it, therefore, in terms of people's country, that is in perpetuity—forever, with no change.

Mr SNOWDON—David, you commented on the issue of mining negotiations and made a suggestion about the minister not being involved in the negotiations. Could you give us an example of where the minister in the Northern Territory may have intervened in a way which turned around established practice? I am thinking now of Stockdale. We do not need to go into this in detail. The reason I am asking the question is that there was a process which traditional owners had set up through the land council negotiating with this particular company. It was a Northern Land Council area, of course, but it was about disjunctive and conjunctive agreements and they intervened in the commercial process. Could you just comment on that?

Mr Avery—I am sorry; I might differ with you there. The court made a decision on Stockdale, albeit at the instigation of the Territory government, but it is a court decision. That really was a problem with the Land Rights Act not allowing that kind of agreement, according to the judge. I was not really meaning so much the Territory minister. I was meaning that the Commonwealth minister has a role which is becoming more or less supernumerary as the land councils have a mature and well-resourced approach to the matters they deal with. An example is extensions of negotiating period. It is a very charged thing if people want to make it that way. Why cannot the parties just get down to doing what they want to do in the time frame that they agree upon? That is not allowed currently under the act after the first extension has been agreed. If you are outside the first 12 months, then the minister makes all the decisions.

There are other aspects where the minister's role could be reviewed. That is what I was referring to—freeing up the parties to be able to negotiate as equals and not have one party subject to review and ministerial interference.

Mr SNOWDON—Tracker, in the context of when you were explaining the administrative structure of the land council and the funding, could you clarify whether or not all of the human resources—that is, 120 positions—are funded out of ABR or are they funded from other grants as well?

Mr Tilmouth—I would like to put everyone together. I think on Wednesday you will probably come for a visit to have a look at our land assessment GIS, our resource assessment program. That is at the cutting edge of technology, I must say. These types of activities are required by Aboriginal people to help manage their land and the whole range of other things that have been placed on them in relation to arguments about biodiversity and a whole range of other issues. This has been funded by LWRDC, CSIRO and these types of organisations. We also have ATSIC funded programs. We also have the ABTA funded programs. About 94 people are employed by the ABR process. The rests of it is ATSIC and a few other funding agencies that allow us to take on the extra role.

You will remember that, when the minister came into power, he wanted to retain 93 levels of funding. My staff currently forewent a whole range of industrial relations type activity for pay rises and a whole range of other things so we are still back at 1993 funding levels. Those people within that structure or that section of ABR funding do not enjoy the normal pay rises that everyone else enjoys. We look to other external agencies to make up the shortfall of the land council in delivering its services.

Mr SNOWDON—Will your submission detail your interpretation of the functions you undertake?

Mr Tilmouth—Our submission will detail the arguments that Reeves put forward in his recommendations. Unfortunately, again we are coming back to the argument that we did not have the resources of Reeves, even though ATSIC wanted us to be funded to answer the Reeves question. We have had to find consultants from within our own funding and we have concentrated purely and simply on the ability of the Reeves recommendations to perform the functions they are currently prepared to do. You already have our annual report with all the financial statements in it. It shows you the structures. The annual report is a public document which is tabled in the House of Representatives on a yearly basis. That gives you all the information on what we see as our functions.

Mr SNOWDON—In the Darwin hearings, I asked the Northern Territory government representatives whether or not they are aware of the funding that they made available to the process involved in the Alcoota land claim. They were unable to tell us whether or not they were funding the case against the claim. Could you outline the status of that claim at the moment, where the court is at and who is funding whom?

Mr Avery—Currently, there is litigation in the Supreme Court of the Northern Territory. I will not go into any detail. At the moment, we are preparing a defence to file in the next few days. It has been going on for a couple of years now. When I said that it was funded by the Northern Territory, I believe that to be true because Mr Manzie went on TV on the day he announced that funding to say that he had funded the representation of this person, and the person himself went on radio and TV and said the same thing. That is about as much information as I have. I do not think it will get any better. I have not seen the cheques.

Mr SNOWDON—I will ask them.

Mr Avery—I can give you the TV clip, if you want.

Mr SNOWDON—I do not know whether you were at the conference in Canberra, but I would be interested in your comment on the statement made by Professor Blandy, who was the economic adviser to the Reeves report, that they saw no value in the land.

Mr Tilmouth—That is classic neo-Keynesian—you need government intervention to get a decision. Unless you do something with land, land is always going to be held in the eyes of the beholder for certain things. Unless you come from the external non-indigenous process, you cannot see the value of it. Unfortunately, Aboriginal culture is a bit different, and it is a culture related argument. Aboriginal people see culture and land use as extremely important. Unfortunately, it is very hard to quantify in economic terms. Not only that, you need people to think about land use to give it a value. If there is a block of land in northern New South Wales that happens to be on a beach and along comes a tourist developer who wants it and says, 'Right, this is a resort,' unless he comes along and says that there is a resort, there is no value to that land. It is unimproved capital value. It is a very simple argument. Unfortunately, Professor Blandy suffers the same problem that unless someone thinks about the use of that land there will be no value to that land.

Mr LLOYD—So what you are saying is that the value comes from the intellectual application.

Mr Avery—Yes.

Mr SNOWDON—From the perception that Aboriginal people value land differently.

Mr Avery—They have several thousand years of intellectual application of the different culture.

Mr LLOYD—The Reeves report asserts that mining royalty equivalents are public moneys. What are your views on that?

Mr Tilmouth—You have to remember that mining agreements are based on the assumption that certain activity will happen on Aboriginal land. You have to remember that Aboriginal land is Aboriginal freehold land, therefore it is private land. With any activity that requires mining royalties, people have made a decision saying that it is their agreement. They made those agreements in good faith, understanding that those royalties belong to them. There is also an argument in relation to mining withholding tax where tax has already been taken out on the assumption that it is private moneys. You cannot have it both ways: either you have private money, therefore it is taxed, or it is non-private money or government money, therefore it should not be taxed. That argument was put forward on a number of occasions in relation to competition inquiries and a whole range of other things. That is the only issue, as I understand it, at the moment.

Mr Avery—The argument is at what point moneys that come out of Treasury become private moneys. With social security cheques we have a fairly good indicator of when they become private moneys, provided there is no fraud involved. Money going through ABR is different because it goes in three different directions: it funds land councils, it goes to the affected areas and some remains for investment and so on. Mr Reeves advocates that the mining withholding tax should be removed from those payments.

Of course we support that, but we do not necessarily support his other contention that the public character of the money continues right down the line to infinity. It changes at some point and he does not recognise that point—that is our criticism. It comes out of Treasury as public money, it goes into ABR as public money and its character starts to change. My salary comes out of the ABR but I am as sure as hell that it ain't public money in my bank account. So I know that the character has changed. That is really the point.

CHAIR—Is it public money in the Central Land Council's bank account before it gets paid to you?

Mr Avery—I am not an expert—I really do bow to people who are experts in public finance—but we are a quango, so the funds in our bank account, presumably, have the same character as the funds of other non-trading quangos.

Mr LLOYD—It is an important point, in an area that we have different views on.

Mr Avery—He conflates the negotiated payments into the whole bundle and then grabs that bundle up and allocates it back to NTAC to administer. There is a fundamental error in all that.

Mr LLOYD—The report also claims that land councils have failed to enforce section 35A of the Land Rights Act, mainly on the accountability side of things. My interest is whether it was public money or private money relating to whether it was a cooperative or that sort of thing.

Mr Avery—I do not know whether there is a requirement to enforce in 35A—I have not read it, but I do not think it is there. As far as the land council is concerned, I go back to my original statement that our associations are squeaky clean. So if you are saying not enforcing, what is there to enforce when they are doing it? How to enforce may not be there, but we do not have to enforce because they are all complying. That is the best information I have.

Mr Tilmouth—There is another thing to that, too. Through discussion with the royalty associations we ensure that there is a certain level of accountability—talking to the right people and making sure the right decisions are being made.

Mr LLOYD—You mentioned that funding for the Central Land Council is \$7.4 million, 120 people. You said in your earlier statement that it probably has one of the highest levels of efficiency of any government body. Is there a method of assessing that? What is the method you have when making that statement?

Mr Tilmouth—The current level of staff and the funds to each staff member for different functions, if you were to compare them with ATSIC or the Northern Territory government—our staff have been asking to be paid real TA so that they would get the full travel allowance that is awarded to staff of any other non-Aboriginal organisation, government agency staff. We fall well short of it.

Our salary level is a lot lower, and our travel allowance and a whole range of other things. Our facility is a lot lower. We tried, as a measure of efficiency, to put to the minister to build a new building to allow us to house all our staff in one place so that we do not have the inefficiencies of extra computer lines and telephone lines at a cost of \$60,000 a year going to Telstra.

Mr Avery—At no additional cost—this would not cost anything on ABR. We would just sell our existing assets and build a new building.

Mr Tilmouth—We would just sell our existing assets and build a proper building that would house everyone in one place. Unfortunately, we have got people moved all over this town—I think we have five different offices doing different things. To rationalise that, and to get better use of funding, we put that to the minister, who decided to put it aside.

Mr LLOYD—Thank you. Mr Chairman, I have other questions but I know time is running short.

Ms HOARE—I am interested in how the Central Land Council has developed and the kinds of projects that you have undertaken, Tracker, and I am really impressed. I am interested in how the current land rights act could be enhanced, going on from some of the things that you have all said. With your cadetship, if you had a regional office which gained a lot of expertise in its development through the nurturing and the directorship of the council, and then they wanted to break away, for example, and form their own land council, do you see, with your suggestions on amending the section on the establishment of more land councils in the current land rights act, that that could be done just by enhancing what is currently in the act to make it a bit more substantial?

Mr Avery—Section 21 is the section that I referred to earlier. What I said about that was that there is a capacity already in the land rights act for new land councils to be established. What I perhaps did not say before was that, under the Reeves proposal, you are going to have a new land council whether you like it or not. So it is like it or lump it, no informed consent—in fact, no consent and no pretence of consent.

We do not take an attitude about new land councils. We do not go out campaigning in the bush or anything. We do not allocate \$50,000 to go and campaign, unlike the Territory government. What we say is that section 21 should be amended so that that provision in subsection (3) is enhanced by bringing into it the informed consent provisions from elsewhere in the act. That is all we say. We do not try to say anything else.

Ms HOARE—So under this act, with your proposed enhancements to section 21, it is a possibility that one of your regional offices could apply, with informed consent, of course.

Mr Avery—Absolutely.

Ms HOARE—Thank you for that. You have talked about the squeaky cleanliness of the Central Land Council, and maybe not of some other corporations. As I said, I have been hugely impressed with the devolution at the Central Land Council. Tracker, is there a process whereby any of these other organisations or councils or corporations can network with each other currently, so that if the Central Land Council had a process in place that would work for another organisation that was facing problems there was a networking facility there?

Mr Tilmouth—There was the development of a facility to allow accounts and audits to be done in one place. We had an organisation called JAMIS—Joint Aboriginal Management Information Service. Unfortunately, ATSIC at that stage did not want to continue the funding of it.

Mr Avery—That was CDC.

Mr Tilmouth—CDC, I am sorry. I apologise to ATSIC. I think Queensland's Cape York Land Council is at the moment looking at our duty statements, what type of work people do and who they are responsible for. We have got ATSIC in Queensland looking at our structure, our decision making processes, in relation to establishing rep bodies. We give advice on structures and so forth. I have been involved with Kakadu Gagadju group in relation to the hotel. So we do give advice, if and when required. There is no problem with

you ringing me up and getting a structure of how the land council works and what sort of decisions and checks and balances occur within our own structure.

Mr Avery—We offer all the Aboriginal corporations which receive any negotiated funds or any of those sorts of things an accounting and management service. We actually have a separate unit that offers this service. It is not quite the networking you are talking about, but in fact it is a self-funding unit and provides a service. That is how I am quite confident to say that their accounts are all fully audited and lodged with the registrar of Aboriginal corporations.

Mr MELHAM—How many Aboriginal people attended and participated in the Kalkarindji conference that was over two days?

Mr Tilmouth—I will take the data from the kitchen: we fed on one day 1,200 people but it dropped no lower than 800 on a daily basis, and that was for three days.

Mr Avery—There were some pretty scared bullocks up there!

Mr Tilmouth—There were very frightened cattle up there, Mr Avery. We managed to feed 800 to 1,000 people a day, with three meals a day for three days of the week.

Mr MELHAM—The Central Land Council has been tabling reports in the national parliament for over 20 years. Notwithstanding the criticisms of the current Deputy Prime Minister shortly before the last election, has there been any occasion that you can recall where any of those reports have been challenged as to substance or queries raised?

Mr Tilmouth—There have been a lot of questions from various political people about certain activities, but most of those questions were able to be answered successfully. There has been no real challenge whatsoever, as I understand. In fact, I do not think we have ever run a deficit in any of our accounts. We have been cautious about running deficits in relation to the financial management strategy that the minister has in place, or the previous minister had before him. We have made sure we do not run a deficit to impinge on our ability to provide the functions that we do.

Mr MELHAM—In terms of the written submission that you are going to give the committee later this week, putting Reeves aside and the fact that he has raised a number of things that you say were not raised during his inquiry, are you making any suggestions as to how the land rights act can be improved apart from Reeves, or are you leaving that for a later day? I am just interested as to whether, through your experience and the experience of your officers, there are recommendations you could make to us as a committee that would attract support from Aboriginal people and at a community level and that can improve this act?

Mr Tilmouth—We see this as a fairly long-term process. We do not expect that there will be an answer to the Reeves report in the short term. So what we have done in relation to this document here is to answer the terms of reference questions and also deal with the questions in relation to Reeves. In relation to making other recommendations, what is being proposed and hopefully will be taken up by ATSIC is that we get some extra funds from

ATSIC to run a number of consultative forums to provide what other recommendations we should be putting in detail to this committee. What we have had to get to is for people to understand what is in Reeves first, which has been very difficult. Whilst Reeves has got nine regions as his recommendations, unfortunately there are 14 different language groups and 32 subdialects, and to get something like Reeves right around the bush and get people to understand what is in it is extremely time consuming and very difficult.

Mr Avery—I will put a pointer there that it meets Mr Quick's comments about what we do agree with and a pointer about what we think can be improved. I think that is quite simple to do. It is in the text, but I think it is better to extract it and put it there, because you have raised the issue.

Mr MELHAM—I am just—

Mr Tilmouth—If you can let me finish, what I will do is come back to you with a number of improvements.

Mr MELHAM—Finally, I am wondering whether, to date, you have discovered any Aboriginal people who actually agree with Reeves and whether they consent with the direction he wants to take the land rights act? Or are we in a situation where Aboriginal people across the board oppose these recommendations of Reeves?

Mr Tilmouth—I have never worried about who agreed with Reeves or who did not agree with Reeves. My concern and my responsibility has been to hear what the Aboriginal people said or did not say, whether they agree with Reeves or not. I can tell you though that, from that position, 90 per cent of the Aboriginal people I have talked to reject Reeves outright. Unfortunately, you will find people who have inordinate accessibility to resources, they will number four or five, and you will find these people at most places you go to that have proposed in the past a breakaway land council. Unfortunately, these people have resources and they have been able to get around the bush. Fortunately—and this is why I have never entered into the debate on Alcoota or anywhere else—the Aboriginal community have rejected most of their proposals at any given time. These are the people that require private meetings because the Aboriginal community do not agree with the arguments they have put. I will hand over to David.

Mr Avery—I have met one or two Aboriginal people who say they agree with the Reeves report, and you may meet them too. I am on friendly terms with them, so we have a detailed discussion. I say, 'What do you think about getting rid of permits?' 'Oh, no, wouldn't do that,' they say. I say, 'What about that rent you are getting from somewhere or other or something?' 'Oh, no, I'll still get that,' they say. You see, they are very ignorant about the content. They pay lip service to it because they have been told to do so or something, but when you get into the content and the way it will personally affect them they are quite shocked and simply do not believe the recommendations are there. So I have met them and, yes, they say that they do agree, but they do not know what is in the book.

Mr MELHAM—So when you raise with them the devil in the detail, they are quite alarmed—

Mr Avery—They are alarmed.

Mr MELHAM—as to the consequences if Reeves were to be implemented?

Mr Avery—They are alarmed to the point of disbelief. They see it is just Avery talking, that it could not possibly be in the book. And these are people that I am friendly with.

CHAIR—Thank you. I appreciate your time, and we will look forward to your detailed submission by the end of the week.

[2.09 p.m.]

TOYNE, Mr Peter, MLA, Shadow Minister for Aboriginal Development, Legislative Assembly, Northern Territory

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 staff will be taking a record of what is said today. From time to time I may ask you to repeat or spell place names 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 Toyne—Yes. I would like to go through some of the main issues that the territory Labor Party has taken to this exercise. Firstly, I would like to tell you a bit about my background. I spent two years at the Utopia community as a community adviser, and 17 years in the Yuendumu community as a mixture of things—adult educator, school principal and telecommunications consultant. My own background in the communities that this report is talking about is fairly extensive. I now represent an electorate where there are 40 of the communities that you are talking about included within its boundaries. So I am in an ongoing relationship with these communities.

I would like to say four things about the Labor Party's position on the Reeves report. We are looking at it from the point of view of public policy and our own policies on our side of politics, and how it impacts on our broad intent at the moment and when we hopefully win government.

The first thing is the question of the mandate that the report is speaking from. It is fairly apparent from the report itself how narrow the mandate is for any proposal to break up the current land councils. The document itself includes a record of the attendance at different meetings, and we could only find a meeting of 11 people and a meeting of 17 people that actually go back to support a breakaway land council. The meetings that gave support for the current land council arrangements are numbered in the hundreds in many cases. So we believe that the report itself does not present within its own structure a mandate for the recommendations that it is putting forward.

Secondly, I am a member of the legal and constitutional committee of the Northern Territory parliament which has been going around, over the last two or three months, doing consultations on why the referendum was voted 'No'. Those meetings out bush of some 40 in number I can only describe as political bloodbaths from the point of view of the Northern Territory government. It was simply about the Reeves report. Time and time again we were told that the positions that people put at these big public meetings during the Reeves consultations were simply not being respected in the report and that they, therefore, did not trust either the report or the process that had been put through subsequent to the consultations being held.

I cannot overstate the degree of feeling that is out there. The Papunya meeting, the Mutitjulu meeting, the Yuendumu meeting—there was enormous anger. As politicians, it is the very place that normally you do not want to be in—although, from my point of view, it was not directed at our side of politics. Our position on Reeves is very clear. There was definitely a lot of unfinished business out there in terms of the report and the types of recommendations that it was putting forward. So we do not believe that there is a working mandate for these recommendations. As a political exercise, that is our starting point in terms of whether we would support it or not.

The second point is that the arguments within the report are flawed. The anthropology of the report is very questionable. I am an active academic in my own right and I have studied most of the anthropology that is quoted by Reeves in his report. The work of Stanner and Peterson, and additional work by Frederick Rose at Groote Eylandt, all indicate that ownership of land has multiple layers which combine local land owning groups in increasingly larger compendiums as a basic unit.

The membership of those local groups themselves is very flexible. So you have virtually a continuum from, say, a number of families with the land owning arrangement within a very localised area through to the whole of Australia for some circumstances. So, really, to be putting a fence line at a regional level between one system of land tenure arrangements and another is quite illogical, according to the anthropology. In fact, it is going to both challenge the integrity of the present handling of land tenure and also the flexibility that is built into the current arrangements. It is literally a recipe for bloodshed if people are wrongly speaking for land that they in fact do not have tenure or custodial rights to. It spills down into the relationships within the communities and the clans that are involved.

So we are very much, from our point of view, in favour of a regionalisation process within the existing land councils. That is happening very actively at the moment. In fact, last Thursday, I attended the opening of the Yuelamu regional office for the CLC and there was quite clear and very broad support, both in terms of the number of people who turned up for that opening, not only from Yuelamu itself, but from places like Papunya and Willowra and Nyirripi and further afield.

CHAIR—Can I just get you to clarify this: broad support for increased regionalisation or to maintain the existing level of regionalisation? Can you just comment on that for me, please?

Mr Toyne—In the case of the opening I went to it was in fact an increased regionalisation because, clearly, they were opening a new regional office so it was extending the scope of the regionalisation arrangements within the Central Land Council. It was a very popular decision and very strongly supported by the communities that were there.

They are basically saying that they want greater on-the-ground access to the processes of the land council and to the expertise, and I think the office embodied that in its physical make-up in that it had accommodation at the back to allow lawyers, anthropologists and other consultants coming out from the land council to stay at Yuelamu for extended periods of time to carry out the sort of work that the people wanted them to carry out and for people to have access to them for those extended periods of time.

But people are also very aware of the need for a powerful base of expertise. They do not want to be rolled over by greater resources on what they see as the opposing side. They want to see a room full of lawyers, a room full of anthropologists and a room full of land management consultants that can give them equal weight in the technical debates that might happen around land issues.

To summarise what we are saying, we are saying that we find the idea of drawing fence lines at the regional level quite illogical and out of step with both the views of the communities as they have been put and also the existing academic record. We believe that would lose both integrity and flexibility in the carriage of land tenure negotiations. We believe, at the worst end of the spectrum, it could be a recipe for bloodshed.

The third thing I want to say is that the peak body to control royalty distribution, the NTAC, we believe is a recipe for misrepresentation and disempowerment. In fact, the only way that we believe that such deployment of the royalties should be pursued is either through a mass mandate—in other words, to have the full meetings of the assembled land councils, as occurs now, to mandate a structure for disbursement of the royalties so that it is ultimately under the control of the TOs en masse—or to have a purely bureaucratic mechanism, in other words, distribution by formula so that it is free of any political or personal bias when it is being enacted through the structure.

CHAIR—Do you see a regime of agreement before you got to that format?

Mr Toyne—Yes, I think that the huge strength of the land councils as they stand at the moment is that there are very big, open meetings witnessed by people en masse. Propositions will be pursued until there is some degree of consensus by those people. The structure, although it is slower to build and more costly in terms of assembling people on a basis, actually builds a much stronger framework to hold the detail of the carriage of those things in place. In other words, it is a regular case where the TOs can come and revisit the arrangements that they are party to and to witness them together, en masse. We very much believe that that is the strength of the land councils at the moment.

The structure proposed under Reeves would also allow royalties to be more readily substituted for expenditure that should be the responsibility of the NT government and indeed other governments. We are taking a very clear clue to this as being the distributed material on the reforms to local government where there are some very clear, repeated suggestions that the local government regional structures that are being proposed generally, under this policy, be based around traditional ownership regimes. To me, and to us in the party, we believe that there is an agenda there to break down the big land councils into regional bodies and then merge them with the local government regional bodies which are being built up.

CHAIR—Do you mean an agenda at the Northern Territory government level?

Mr Toyne—Yes.

CHAIR—You are not referring to the Commonwealth government?

Mr Toyne—No. That combination of local government and municipal aims and land custodianship would be pretty fatal to both endeavours. There is an ultimate mandate to local government activities, particularly on Aboriginal freehold land, as to what can and cannot be agreed to by the traditional owners. Ultimately, traditional owners can put a stop to stuff that is going on within a local government structure that they do not agree with, but to bring these councils out into a regional basis actually dilutes that considerably because the traditional owners have been able to effectively apply influence on a local community council which would be more difficult under a regional structure, particularly if it is not based on any logical formation of the traditional ownership.

I have lived through about three cycles of council collapses at Yuendumu during the time I was there. In fact at one stage the structure had become so paralysed by a contest between a council town clerk and other organisations within the Yuendumu community that the only way you could get out of the deadlock, namely, the out-station resource centre—the traditional owners for the Warlpiri lands, which is at Yuendumu, had split into two camps pretty well of equal weight and cancelled each other out as an effective force—was to bring the traditional owners of the patch of land that Yuendumu stands on who were the Anmatjere people from the neighbouring community of Yuelamu to come in and basically break the deadlock.

If you are going to look at the local government reforms in the context of what Reeves is saying about breaking down the large land councils, what we are going to end up with is a chook's breakfast where agendas of municipal aims and other government aims are going to be mixed in with land custody issues, if they pursue this type of reform. In general, the peak body creates a narrow and opaque base for the decisions on royalty distribution, one which is open to manipulation by the NT government to a far greater extent than the current arrangements.

My fourth and final point is that territory Labor has as its main Aboriginal affairs policy direction the pursuit of regional agreements under native title. We are taking regional agreements, in other words, negotiated agreements between stakeholders in a community of interest, as being the main way in which we can pursue both the economic future of Aboriginal territorians and also the general economic future of the territory as a whole. Certainly, when you look at Central Australia, there is nothing apparent at the moment that will grow the economy of Central Australia in the next 10 years, except if we can get some creative process going under native title provisions of the original point 10, the idea of regional agreements and applying packages to a negotiated agreement once it has been arrived at.

I went to the South Island of New Zealand and had a look at the Kai Tahu regional agreement. That is a \$170 million package that is being applied to the south island economy as a whole. At the same time, it is building the Maori interests into the overall economic life of the south island. The south island economy is very stagnant at the moment. This is by far the biggest thing on the horizon in terms of the their continued development of horticulture, tourism, fisheries and so on. We see a similar process being applied to the territory.

If you take that as a general policy intent and look at what smaller land councils would do to the carriage of that, there are no gains in it. To give you some examples of

communities of interest, the rail corridor for the new Alice Springs to Darwin link of the railway is a community of interest. It is a series of traditional owners along a very narrow bit of land, in conjunction with other stakeholders such as the NT government and the business community. To apply that negotiation across what might have been, say, eight or nine regional land councils would have been absolutely impractical because, by the time each land council goes through its organisational steps, we would still be there, probably with 10 years to go on that negotiation.

With the Ord River expansion over on the Western Australian border, there is a proposal to put cattle feed lots into the Ord River as an adjunct to the sugarcane industry. That would be fed from cattle bred on the various Aboriginal-owned stations. Again, you would be creating a community of interest for that particular economic development which would spread over a large number of these regional entities that Reeves is recommending—again, a very cumbersome and probably impractical negotiating structure.

I have read the Normandy mines submission and also the submission from the Minerals Council in the Northern Territory. I have had very clear evidence from them that they prefer a one-stop shop. They want a large professionally set up body where they can go and get their matter dealt with. They are not always happy with the land councils in their present state and they would like three years to be one year, or one year to be six months. They are pretty unanimous in their view that the larger grouping is a more efficient structure for them to deal through.

In summary on the fourth point, regional agreements require flexibility and compact resource bases if they are going to be pursued. Of the two, the main thing is the flexibility because we do not know what these community interests are going to be until we get into the nitty-gritty of it. I am making these remarks also because the first tentative steps towards negotiated agreements have been taken in the territory with the Jawoyn Association and their recent agreement with the NT government to exchange native title rights for a parcel of land for a rehabilitation facility.

We have also seen a motion pass through sittings of the Northern Territory Legislative Assembly, agreed to by the current Chief Minister, which for the first time acknowledges that there is the possibility of negotiated agreements as an alternative to litigation in terms of framing and responding to native title rights and agreeing that they will now start to pursue those. How that comes out of government, I am not sure. Certainly, from this point onwards, we are entering an era where we would expect those things to be happening. That is all I want to say, Mr Chairman.

CHAIR—Thank you, Mr Toyne, I appreciate your comments.

Mr SNOWDON—You mentioned regional agreements. We did not get an opportunity to discuss this with Tracker, but could you tell us what you know about the proposals. Let me just give you a bit of background. You are aware of the statements by the Deputy Prime Minister, Mr Fischer, prior to the last election. You are aware of the criticisms that Aboriginal people do not use their land commercially. You have made a statement about regional agreements. Are you aware of any proposals in the area that you represent for the development of the citrus industry?

Mr Toyne—Very much so, yes.

Mr SNOWDON—Are you aware of any proposals in your area to develop the regional economy based on mining? If you are, could you explain how those proposals came about?

Mr Toyne—I will be talking about a community of interest. You have mentioned the citrus development. One potential community of interest would be the Sandover and Plenty Highway area, which is just north of the Simpson Desert on the north-eastern side of Central Australia. The community of interest there would be a number of different groups. There would be the pastoral industry, and there would be maybe 14 to 20 pastoral properties, or somewhere in that range—I cannot say offhand how many—and the Aboriginal communities, of which there are some 2,000, maybe 3,000, depending on which communities you put in or out. Language groups are Aranda and Alyawarra. There are tourism developments along the Plenty Highway, and there is the potential for horticulture with the existence of a very high quality aquifer along the Sandover River bed.

If you put all those together, there are two main strands to the development that are occurring at the moment. One is that, in conjunction with the Aboriginal communities, the land council is negotiating with a citrus exporter that exports to California with a view to growing the particular varieties of citrus on that aquifer that can be transported straight to Adelaide and then off for export. Because of the guaranteed and lucrative market that is available for that product, on the figures that I have seen now of the business case for it, it looks very strong.

The second major strand is the Plenty Highway as a leg in the east-west national outback highway. That is a proposal that is being pursued largely from a group within Western Australia, and we have now registered all Aboriginal groups along the Plenty Highway as members of that group that is pursuing that proposal.

I think our approach is to get as many groups interacting, so that one development actually feeds another. From the point of view of each of those stakeholders in the area, it is not a good look. The Aboriginal communities are economically pretty bereft. The pastoral industry is struggling. There are many properties that are being freely sold because the incumbents cannot make them pay on the traditional cattle structure. The tourism industry along the Plenty Highway, although it has established a foothold, certainly needs further work to be consolidated. It is actually a very prospective route through to Queensland. They are the kinds of raw ingredients that would go into a regional agreement. They have to be built into an overall plan, and then we will look at the resource issues that are required for it.

Mr SNOWDON—One of the premises which seems to underline the proposals in the Reeves report is that the revised land council structure should provide a whole range of other services. What is your view about the level of services currently being provided in Aboriginal communities, and are land councils responsible for them?

Mr Toyne—The level of service that is being provided in Aboriginal communities is atrocious. In fact, there have been systematic studies done of the efficiency of those service deliveries, and the evidence is absolutely clear.

It might be a good idea to have a look at the Griffith Service Access Frame, which was developed by a member of the Northern Territory education department and was applied to educational outcomes and resource implications for our remote communities. That shows beyond doubt that, the more isolated and the less economically strong a community is, the worse the outcome. It is a recurring cycle spiralling downwards in that, the worse off you are, the worse off you are going to be in the future.

That is the general picture of our service delivery from both the federal and the NT governments. There is very little effective delivery out there; it is still struggling with basics. There is no reliable provision of secondary education out there.

Mr SNOWDON—Is it or is it not the responsibility of the land council? Should it come under the land rights act?

Mr Toyne—The land council has been integral to attempts to get a lot of those services in place; for example, in two areas to date, the Central Land Council has directly facilitated attempts to get further expansion of educational services. They have often been involved in dysfunctional areas of local government. If a community is trying to take action against their own employees, it is usually the land council that has to step in to do that. So there is a lot of interaction between the land councils.

Mr SNOWDON—The question is this: are the land councils responsible, or should they be responsible, for education services? Should they be responsible for health services? Should they be responsible for police services? Should they be responsible for local government services?

Mr Toyne—No.

Mr SNOWDON—Thank you.

Mr QUICK—Following on from that point, those services are appalling and have been appalling for a long time. Some might argue that land councils get mining royalties, and that if the state and territory governments are not going to do anything—and they are third world standards—why not invest like the Maoris have done, rather than waiting for Darwin to get off its whatsit to do something? The Maoris have said, ‘Well, look, we are going to assume some responsibility. It might take a long period of time, but at least whatever mistakes we make are our mistakes.’

Mr Toyne—If you take the Maori example, the real nub of the whole thing from the point of view of the Maori groups was that they were not going to get an enhancement of services as a dependent group of the government. They wanted to break out of that to get some real economic development and an independent base of their own from the earned money.

I am aware of very strong Aboriginal opinion that says that they do not want to see royalty money used to substitute for what they see as their legitimate rights to government services—in other words, they do not want to see some substitution agenda going on. I think the Reeves structure that has been proposed is wide open for that sort of abuse.

I think if a position was put to an Aboriginal group—under, say, a regional agreement negotiation—saying, ‘Okay, we’re going to have a look across this whole thing. What service delivery is dysfunctional? What economic development is needed? Let us see if we can encompass all of those within an agreement,’ then I think you would find some considerable support for Aboriginal money to be put in as a component of service delivery arrangements.

Mr QUICK—Something like this is happening with cashing out of MBS and PBS, for example, for the Tiwis on Bathurst and Melville. At least they have a greater control in the delivery of health services. They have a far better say; you can encourage the people to put up their hands to develop strategies that suit their own people and their own people’s needs.

Mr Toyne—I have had very mixed reports about Tiwi, both on the effectiveness of those health arrangements—I am talking in-house, from my colleague Maurice Rioli, who keeps me informed on a lot of this stuff—and from the Tiwi Land Council in terms of its commercial dealings, where there are some shady aspects. I do not want to get into bagging the Tiwis, because they are not the ones who are doing it. I am saying that it is not the epitome of a brilliant model.

Mr MELHAM—Are you able to say from your knowledge whether the vote against statehood, and also the vote for Mr Snowdon in terms of the Aboriginal vote, had in it an element of a backlash against the Reeves report and a fear that Aboriginal people were going to have their land rights act taken away from them?

CHAIR—If you didn’t, you would be the only one who didn’t!

Mr Toyne—They were putting up signs at each polling booth saying, ‘If you want a breakaway land council, vote for Nick Dondas.’ The NT government made it a central theme of the voter choice.

Mr MELHAM—And they lost on both counts.

Mr Toyne—Yes, they certainly did.

Mr SNOWDON—The vote was about 80 per cent against them?

Mr Toyne—Yes. As I walked in, you were talking about the Northern Territory government opposition to land claims. I think you will find, in the 1998 *Hansard* of our appropriation sitting, that we asked for and got a complete list of expenditure on land claim court cases.

CHAIR—Peter, I am sorry. There was a misunderstanding. I did not realise one of the members had one more question to ask you.

Ms HOARE—I will be very quick, and it can be a yes or no answer. Can a regional agreement framework be built into the current land rights act, in the notion that you were talking about, to provide a more strengthened structure for regional agreements?

Mr Toyne—Yes, it can. There is nothing to stop it.

CHAIR—Thank you again for your attendance today.

Proceedings suspended from 2.41 p.m. to 2.55 p.m.

LECHLEITNER, Mr Ken, Interpreter, Llalutuma Land Trust

MALBUNKA, Hermann, through Mr Ken Lechleitner, interpreter

MALBUNKA, Mavis, through Mr Ken Lechleitner, interpreter

INKAMALA, Davey, through Mr Ken Lechleitner, interpreter

CHAIR—I have some witnesses who have requested a private meeting, and I would like to welcome them here today. Thank you for coming along. Do you have any comments to make on the capacity in which you appear?

Mr Lechleitner—I am nephew of Hermann and Mavis Malbunka.

Mavis Malbunka—I come from Iperla community, west of Hermannsburg.

Hermann Malbunka—I come from Iperla. I just came in from my community.

Davey Inkamala—I came from Pitjantjatjara area.

CHAIR—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 are recording everything that is said today. We will send you copies of what you say when we ask you questions. Would you like other people to be able to read what you are going to tell us today?

Mavis Malbunka—It is okay for people to have access to the documents and read the documents.

CHAIR—Thank you, Mavis, Hermann and Davey. I understand that you want me to be able to let people read what you say today. This is supposed to be a private meeting. Are you happy for the other people to be in the room?

Mavis Malbunka—Yes. I invited Raelene and Daniel.

CHAIR—Before we ask questions, I think Ken wants to explain his position today.

Mr Lechleitner—On this particular occasion, I am probably wearing several hats as a family member to try to get the message through clearly on behalf of the family, and also as a caretaker on my uncle's side, because of my mother's relationship. I am here to ensure that you guys can at least clearly understand what my family members are trying to present today from their positions and for them to understand the categories of the questions. Perhaps questions and so forth could be held until later, after they have had their little spiel. We have a spiel organised and that is why we have prompt sheets.

CHAIR—That is fine. You just relax and talk to us as you want to, and we are happy to listen.

Mr Lechleitner—This is the way we would like to run these proceedings: I have prompt sheets for Uncle Hermann and I will ask him in our language to give us a spiel or the outline in regard to this topic. I will ask him what his thoughts are and he will reply in his language, and I will interpret that accordingly.

CHAIR—That is fine.

Mr Lechleitner—The first question is: how do you feel about the creation of small land councils?

Hermann Malbunka—It feels good having small land councils because, with the big land councils, we find it really difficult to get our issues met. We want to be able to maintain our own culture and do our own work. We have to do our own thing. We have been sitting on our land trust and doing nothing.

One scenario I would like to share is that I got a title deed for the land trust that I come from, but that was pretty much taken off me as well. That happened in 1982 when two elders passed on and automatically I became a deed holder, but some kind of mix-up happened and they got rid of me as the deed holder for the land trust.

Mr Lechleitner—Aunty, do you want to add anything?

Mavis Malbunka—In the Areyonga scenario, I am not only the wife of Hermann Malbunka but also the caretaker for that area as well. Areyonga itself is a land trust for the Aranda people. The Pitjantjatjara people are living there because of the missionary settlements and things like that.

In this situation, the land council gave powers to the Pitjantjatjara people to stay on the Aranda land. But they do not see that as a problem. The traditional owners—the Arandas—are quite happy with the Pitjantjatjara people staying there because they work together in a cultural sense. But what they are a bit disheartened about is that land councils put wedges between them. They want the Pitjantjatjara people to stick with the land councils in overriding the Aranda people within that area and say, ‘If you don’t stick with us’—the land council—‘the Aranda people are going to take over your position or push you out of your area.’ But, in this case, we actually work together closely, and it is not a problem.

In this scenario, when it comes to electing members, land councils elect people from other tribes. They do not select people from within the land trust to carry out duties for their own land trust. With that, the land council has the upper hand because it is a majority rule. The minority has no say in anything because of the voting process and so on when it comes to decision making. The traditional owners do not have a say.

It is a known, common practice with the land council that, when they are actually passing a decision on a certain land trust or on a certain project for a land trust, they always seem to have a meeting elsewhere on another piece of land where people cannot get to the

meeting to have a say. So it is always voted out. Culturally, it is incorrect for people from another land to make decisions on a particular project or on an idea that a certain land trust wants to pursue. That is why we are in favour of small land councils—so that we can determine our own future and our own destiny within our own area, and we can have our say within our own land.

With this process, real traditional owners feel that they are not really heard properly by the lawyers and the anthropologists in regard to certain activities on the land. The response is always, 'We have to take this to the full land council meeting and come back with a decision.' Yet, as I alluded to earlier, that process of decision making by other people is incorrect in regard to decision making for that particular area. With that scenario, people do not feel happy about the decision making.

A scenario in regards to an event on 25 October 1987 was when Pat Dodson was a consultant or administrator and he went to the Hermannsburg area and spoke about certain issues. We said, 'Look, we were not really concerned about the money. We were actually concerned about the land because the land itself holds law, order and all that structure.' Money was not an issue; it was the land issue.

Within this Land Rights Act we see that the act itself works within the mainstream system and the mainstream philosophies. It does not include the Aboriginal processes in looking after land and working with the land. A lot of old people today are really concerned about this issue where a lot of the land based situation is not being adhered to. In fact, they are actually struggling to get a lot of their young people on to the land, too, to ensure that there is a future generation conforming to those rules.

Mr Lechleitner—That concludes the first topic with regards to creation of small land councils. Those are some of the views that have been presented.

CHAIR—Just before you move on, Ken, could you clarify for me whose names are on the land trust that I understood Mavis to say, her family should be on but some other people are on now? Can you just try and clarify that for me?

Mr Lechleitner—The listed names were: Baden Williams, Warren Williams, Freddy Malbunka, Bevan Malbunka and Alice Ngankal. They are all members of the land trust. Uncle Hermann is actually the leader, the elder, of this lot but he is not on the list.

CHAIR—Was he on it at first?

Mr Lechleitner—He was originally on it but then he was taken off.

CHAIR—Right.

Mr Lechleitner—The feeling has been expressed that the land council, because Uncle Hermann spoke strongly in regards to some issues that land councils should be doing, chose to erase him from the list because he spoke up against them.

Mr MELHAM—How did they do that? I just want to clarify this. You tell us.

Mavis Malbunka—The process that happened was that the names of the land council or the members were done without his consultation. At no time did the land council go back and inform Hermann what was going to happen—whether his name was going to remain on the list or whether it would be taken off.

Mr MELHAM—Can you confirm with him whether he is still receiving Mereenie royalties, Palm Valley gas royalties, and pipeline rent for oil and gas pipelines? How he is receiving that if his name has been taken off?

Hermann Malbunka—I am concerned that with the land trust, as the governing body, my name should be on that list because the recipients of royalties are the people on the list. But, as for the land trust itself, I should have been on that land trust as the committee or the governing body.

Mr MELHAM—How are you receiving royalties if your name is not on a list somewhere?

Hermann Malbunka—The payout is similar to everyone else's. That is from the Aboriginal land trust. The land trust is a statutory body.

Mr MELHAM—We will get some clarification on this.

CHAIR—I understand that now. I did not before, so thank you.

Mr Lechleitner—We will move onto the next topic which is looking at the Northern Territory Aboriginal Council.

Hermann Malbunka—With this situation, the support for the Northern Territory Aboriginal Council has the emphasis of being run by traditional men—traditional men being in the position of taking care of land issues or handling issues of debate. There are two issues here in regard to the Northern Territory Aboriginal Council. They also have a body that consists of tribal elders that then encompasses the traditional owners. So they have a point of communication or channel of communication in a culturally appropriate way as well.

The NTAC, which is the Northern Territory Aboriginal Council, in close cooperation with the tribal elders council, would be able to make decisions and work closely in relationship with the Northern Territory government and the Commonwealth government on issues relating to law and order and those kinds of issues that are the grey areas. By having that structure, you can then have a position where the Territory government or the Commonwealth government can actually talk about an issue or a topic to a body that is recognised within the system as the tribal elders. So it is a two-pronged approach, with the Northern Territory Aboriginal Council as a peak body working in conjunction with the tribal elders, who then control the law and order process—setting standards in regard to visiting other people's areas. With the current land council system, people do not have the time or the ability to understand this kind of talk or this kind of process.

Mr Lechleitner—The next issue is the permit system.

Hermann Malbunka—I am in favour of the permit system because it allows for control. I operated a small tour within my area which allowed people to travel from town onto Aboriginal land and then on to the community as a destination. We were able to control that kind of movement and then, within the community, we were able to be responsible for what sites and so forth people were allowed to visit or what areas they were not allowed to visit. The permit system allowed us to work it to our advantage in controlling access and having utilisation of the area by the land trust itself.

Mr Lechleitner—That is a brief response on the permit system. We will now move on to the actual mining provisions.

Mavis Malbunka—With the mining provisions, the negotiation process is seen as an important process for the traditional owners to have their say in regard to the process. When exploration licences come up for renewal, they should go back to the people for renegotiation. The dissatisfaction is that, after the first negotiation takes place, it is all within the land council's area and they make the decisions in regard to the renewal of licences, so people do not feel that they have a say in the renewal of mining or exploration licences.

Mr Lechleitner—We will move on to the next issue, which is the Aboriginal Benefits Reserve.

Mavis Malbunka—With the benefits reserve, the traditional owners want to see the benefits from the reserve go into the regional land council so that they are actually resourced as they carry out their functions.

Mr MELHAM—I just want the record to show, Ken—and correct me if I am wrong—that your English, in terms of submissions to the committee, is not an exact interpretation of what Mavis is saying; is it? I am not saying that you are misrepresenting what she is saying—

Mr Lechleitner—The interpretation for this particular forum is that I am addressing it to the audience.

Mr MELHAM—I accept that; I am not having a go at you. I just did not want the record to show that you are giving an exact interpretation of what Mavis was saying. I take it you are working off a document as well?

Mr Lechleitner—Yes.

Mr MELHAM—But that you are adding to what she is saying. I am not criticising you for that. I am not passing judgment; I know the difficulty. It is important, if my observations are correct, that you are not doing an exact interpretation of what she is saying. You are trying to put the best interpretation on it and also add in other stuff that you know is on the piece of paper, for instance.

Mr Lechleitner—I have explained your request to Mavis. If she elaborates, I will elaborate accordingly. That allows her to answer the question and it will be within the parameters of the question.

Mr MELHAM—I accept that it is within the parameters, I am not suggesting otherwise, Ken. What I am suggesting—for the record—is that it is not an exact interpretation of what she is saying. You are obviously aware of what she wants to say, and that you have got a document that you are working off. That is correct, isn't it?

Mr Lechleitner—Yes.

Mr MELHAM—That is okay; continue, do not stop.

Mavis Malbunka—In relation to the benefits reserve, we do not see it working correctly with the land trust. It impacts on the trustees being able to make the right decisions on our land trust utilising the benefits reserve.

Mr Lechleitner—We are moving to the next question—the final criterion—which is the operation of Territory law on Aboriginal land. The scenario is compulsory acquisition of Aboriginal land and how the law works.

Mavis Malbunka—There are Telecom lines or poles within our land trust. We were not involved with the negotiation for these. We do not know whether these took place with the land council or who pays rent for the Telecom lines or for the Territory public school that is based on our station. We were not made aware of the process or the negotiations that took place with regard to those issues that we raised—the telephone posts and the school that is in our community. Who receives the rent from these?

Mr Lechleitner—There is a certain point within the compulsory acquisition process where they can negotiate—they are happy to be able to negotiate that a compulsory acquisition should stay within the community—the sites for the powerhouse, police station and things like that.

Mavis Malbunka—We feel quite happy about negotiations taking place prior to compulsory acquisition processes with regard to powerhouses or police stations being put in. We are happy for that to stay in as a negotiation point.

Mr Lechleitner—That concludes all the comments from Hermann and Mavis Malbunka's point of view. I think old Davey wants to have his say as well. On this, old Davey chose to deal with the questions himself, separate from aunty and uncle. He wants to have his say in regard to his own views. The first question is along similar lines—his thoughts on the creation of small councils.

Davey Inkamala—I feel it is good to have small land councils, and the place would be okay. With the support for the small land councils, I feel that they are in control in dealing with their own little issues in their areas, whereas it is very complex for the bigger land councils to enforce the views of the people from the land trusts.

With the current process with the large land councils, I feel that I am not being heard with regard to dealing with certain issues. The example that I am using is the Petermann Ranges where certain negotiations took place. I felt it was overloaded with many people from other areas, and they should not have had any particular say in that area to come up

with a decision. The land rights act says that anyone who is an Aboriginal person can have a say within the area because it is under the Land Rights Act. It does not allow for the actual traditional people to have a say.

Mr MELHAM—Do you understand that if that is your argument you are really arguing against what Mr Reeves is recommending?

Davey Inkamala—That is stating what has been in the past.

Mr MELHAM—Do you understand that that is what Mr Reeves is recommending as well—that you do not have control over your assets or royalties?

Davey Inkamala—Previously that did not happen where people were actually deleted. Now it is starting to happen slowly.

Mr MELHAM—Are you aware that you need approval from the minister to do that, that the land council does not have the power to do that on its own and that, under section 8 of the land rights act, if there is a termination of appointment of a member of a land trust, the minister has to be satisfied that the request is reasonable before the appointment is terminated? The land council does not have the power to do that on its own.

Davey Inkamala—When you go to a land council meeting, or when someone speaks in regard to land council meetings, your statement or request is not stated with your name as well. Apparently that was before, but today it is starting to get a bit better and they are starting to record people having a say.

Mr MELHAM—The land councils are starting to get better today, are they?

Davey Inkamala—Yes.

Mr Lechleitner—I will just ask him where he wants to go with this. I am asking him whether he wants to continue here or go to the next question.

Davey Inkamala—Traditional owners do not have the power to be able to implement things or do things in this area.

Mr SNOWDON—Are you aware that, under the proposals from Mr Reeves, traditional owners will have no power? A broad group of Aboriginal people will have power, but individual traditional owners will have less power. Do you understand that decisions about your country will be made by NTAC, not by traditional owners?

Davey Inkamala—I am aware of it. It has been happening with the land council previously as well in regard to the traditional owners being suppressed from making a statement or having a say.

Mr SNOWDON—The land rights act is based on what is called informed consent. Traditional owners have to agree before the land council can do anything. Under the proposals from Mr Reeves, that will not happen.

CHAIR—It may not happen.

Mr SNOWDON—If they are implemented, it will not happen.

Davey Inkamala—I am talking about the land council in the past. I want to have my say in this forum and be able to have a say without interruption. The committee, the panel, came to get the story of the people and here I am presenting my story. I am not here to be told things. You are here to hear the story, not the other way around. I want to record my sayings, my language or my statements.

I want to emphasise the fact that I have spoken to the land council within the last 10 years and within 20 years as well. I feel that I have not been heard or listened to in regard to my statements for my area. With the land matters or land issues, I have all the ties with the land connections in my head, as in the stories and in my tongue. I could recite some of the stories and the guidelines that are handed down throughout the customary processes. That is why I see this process as being important, because I must have a say in regard to my knowing the land process and the stories and because of the ties and all the other responsibilities of land.

Others that have a say do not really have that kind of tie. That is why I see it as important that I have my say. Some members making statements and things like that do not have this kind of backing but they still go ahead and make these kind of statements or accusations in regards to land or how it should be done, but without having this kind of knowledge. I feel that with some of the issues that I am trying to address it has been like talking to a brickwall in regard to these matters.

With the favour of small land councils, I feel that people could start working within their own area. At the moment people are not doing anything on their land. There is no work or anything like that, whereas with a small land council they would be able to control their own little area to stimulate work.

With this scenario of ATSIC being involved with the select land council, ATSIC should be separate to the land council because it is the funding body. It should not get involved with the land issues. ATSIC is there to be the funding body, not to deal with land issues. There has been a conflict of members being on the ATSIC board and so forth getting involved in land issues. That is why I am emphasising the fact that it is too bad that the traditional landowners with the story and the tongue do not have a say. With the current situation, I feel that the land rights act actually broke some of the traditional ties and obligations of traditional operation; therefore, it makes it difficult for operation.

I want to move on to the next issue, which is the registrar of traditional owners—section 24. Within 20 years, I feel that, within my area—the Petermann area—there were no family trees or genealogies kept for that area. Today there are still none. There were five anthropologists available at that time and still no result.

With the Northern Territory Aboriginal Council, we have our own leadership structure within the community. We want to be able to select our own people and put them into this sort of structure as landowners.

CHAIR—Voted for by the traditional owners?

Davey Inkamala—Within the cultural context there is no voting system. They have already got a system that they would be able to sort of select a member to be able to sit.

CHAIR—By the traditional owners?

Davey Inkamala—By the traditional structure.

CHAIR—No-one else.

Davey Inkamala—Yes. The traditional owners from the area will select—‘Yes, this one. We want this person to do it.’ We can select him to represent.

The next issue is the permit system. I am happy for the permit system to stay. If there is a tourist coming, we can provide the permit. Even through the regional land councils, we can do the negotiation amongst ourselves and we deal with the permit process.

With the mining provisions, if traditional owners are in an established small land council, they should do the negotiation in regard to the mining within their little regional land council area and agreements. This process would be agreed on because it is actually the landowners themselves making the decision in regard to that area.

I do not really want to say much about the Aboriginal Benefit Trust Account. I want to elaborate on the operation of Territory law on Aboriginal land. Negotiation is the point for making decisions and in negotiation they will be able to reach an outcome to be able to do things.

The next topic, section 23 of the Land Rights Act, is not working properly for the people. With this section, we were all surprised or responded to this issue. With the current land council system and this system, we should have at least worked closely together on issues more appropriately. I feel that our voice or issues were not heard with regard to this section. The large land council did not work efficiently with the traditional owners. That is why we are more in favour of smaller land councils that can deal with these issues at a more local level.

With the 20 years of the Land Rights Act, we have seen the processes, but we want to see a change this time around, so at least we can have an input and then feel good about having control and doing things the way we want to do things. Within the Petermann Ranges, we do not have a representative or a member within the land council. It has been deleted. In the beginning there was, but there is no longer. It was the land council who erased it. I do not know who the leaders are working with the land council that have deleted it. They have deleted the spokesperson, so we do not have a representative. Within section 29 and 29A, I do not feel that we have any representative for the Petermann area. That concludes the statements.

Mr WAKELIN—How long ago in the Petermann Ranges area was the representation deleted? Was it many years ago?

Davey Inkamala—We do not have a record, but the representative of the Petermann area, appointed by the old people, was deleted. There was a process whereby they appointed someone from the Petermann area, but we do not know what happened.

Mr WAKELIN—So it was happening for a while, and then it stopped?

Davey Inkamala—Yes, in the beginning there was, but then it stopped.

Mr WAKELIN—I have another question. I just want to understand—Davey has touched on this, and Mavis has as well—the form the Central Land Council takes. Does it visit or is a meeting announced? Does it meet once a year, or is it twice a year? How often does it meet? I would just like a general description of how the Central Land Council tries to get people to participate.

Mr Lechleitner—Is this question open to the panel?

Mr WAKELIN—Yes.

Mr Lechleitner—I have just elaborated on what you said in regard to how the land council conducts its business, calling the meetings and so forth.

Mr WAKELIN—Are they held once a year or twice a year?

Mavis Malbunka—Just about every month to every three months there is a meeting. We seem to hear about meetings being held almost once a month, but we do not know about them.

Mr WAKELIN—Until afterwards?

Mavis Malbunka—Yes.

Davey Inkamala—The meetings are always held in far-off and remote places.

Mr WAKELIN—Yes.

Mr Lechleitner—They find it difficult without vehicles to be able to attend those meetings.

Davey Inkamala—If we had a fleet of cars, we could do that and we could afford to do that.

Mr QUICK—How many people are there in Mavis's, Davey's and Hermann's area? How many people are we talking about—500?

Mavis Malbunka—Within the Ltalutuma Land Trust we have got six or eight little out-stations. The numbers fluctuate.

Mr QUICK—Is it 500, 1,000?

Mavis Malbunka—There are about 500 family members.

CHAIR—Before I close this private meeting—and we will, of course, publish the evidence—I thank Mavis, Hermann and Davey for coming along today and helping us with our job. We appreciate very much your efforts. I think we have learnt a lot from what you have said. Ken, I particularly pay tribute to you. I have noticed how you have interpreted, and I think you have done a very good job. I have been assisted by you in the way in which you have handled the interpretation of what has been said. You have helped us cover a lot of areas. So thank you very much. We wish you and your people well, and we hope we will meet again. I thank *Hansard* and our staff, particularly, for their help today.

Resolved (on motion by **Mr Lloyd**):

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

Committee adjourned at 4.10 p.m.

