



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON ABORIGINAL AND
TORRES STRAIT ISLANDER AFFAIRS

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

WEDNESDAY, 2 JUNE 1999

CANBERRA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER
AFFAIRS

Wednesday, 2 June 1999

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

Members in attendance: Mrs Draper, Mr Haase, Mr Katter, Mr Lieberman, Mr Lloyd, 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.

WITNESS

WOODWARD, Sir Edward (Private capacity) 550

Committee met at 4.29 p.m.

CHAIR—I would like to welcome everyone to the public hearing for the committee's inquiry into the recommendations of the Reeves report on the Aboriginal land rights act. As many of you will know, the committee is conducting this inquiry because the Minister for Aboriginal and Torres Strait Islander Affairs, Senator John Herron, has asked it to seek people's views about the recommendations in the Reeves report before the minister considers the recommendations he wishes to make to the Prime Minister, cabinet and, ultimately, to parliament.

Members of the committee are from all political parties in the House of Representatives. We are conducting this inquiry with open minds. We are talking with all interested parties and we have met with literally hundreds of people now, and we appreciate the time and trouble they have taken to give us their views. We are consulting as widely as possible and for this reason we have visited many regional centres and communities in the Northern Territory and are, of course, holding hearings such as this one today in Canberra. We will shortly take evidence from Sir Edward Woodward.

This hearing is open to the public and a transcript of what is being said will be made available. If any person would like further details, please feel free to approach any members of the staff of the committee and they will be happy to assist.

Before I call Sir Edward to the table, there is a formal matter that the committee is required to outline to all witnesses, as all other committees do in the parliament. Although the committee does not require witnesses to speak under oath, witnesses are required to understand that these hearings are legal proceedings of the Commonwealth parliament and, as such, evidence that is false or misleading is a serious matter and may be regarded as a contempt of the parliament.

[4.31 p.m.]

WOODWARD, Sir Edward (Private capacity)

CHAIR—Welcome, Sir Edward. Sir Edward, you are a distinguished person and a distinguished Australian. The committee is honoured to have you here today and has been assisted already by your submission, which we will be talking about shortly. I would like to just mention that Sir Edward is currently Chancellor of the University of Melbourne, a member of the Victorian Judicial Remuneration Tribunal, Chairman of the Australian Banking Industry Ombudsman Council and in another life was the royal commissioner for Aboriginal land rights from 1973 to 1974. He is a learned and respected judge of the Northern Territory Supreme Court and the Federal Court. We are indeed very happy to have you here, Sir Edward. We have received your submission and it has been authorised for publication. It is now on the public record and has been widely circulated throughout the parliament and Australia. I just wonder if you would like to add some comments yourself before we get on to questions?

Sir Edward Woodward—Could I just say two or three things. The first is that I discovered last night, I am afraid, that I have to correct an erroneous use of language in my submission to you. It is the last word in paragraph No. 62. The word as it appears is 'heterogeneous'; it should be 'homogeneous'. I must have changed the emphasis at some time and did not carry through with it. What I meant to say was that many of the populations of the areas that I speak about are heterogeneous or, another way of putting it, which I finished with, was 'far from homogeneous'.

I would like to make two other points. The first is that I have tried to stress in the opening of my submission to you that I am yesterday's expert. I am very much out of touch with recent developments in the Territory and I cannot really hope to assist the committee very much with those. But I felt I should respond to your invitation to come in case there was anything that you wanted to ask me about the reasoning behind my original report which led to the present act of parliament, or the first act of parliament, which, of course, has been to some extent amended since.

The only really positive reason for my wanting to be here was that there is one aspect of the Reeves report with which I strongly disagree, and it is a very important aspect, and that is the fate of the Northern and Central Land Councils. Having read carefully what he has written, and approaching it as judicially as I can, I simply feel that he has not made out the case for it. I have tried to set out the reasons for that in my submission.

The other matter I have dealt with at length is the question of traditional owners. That is partly because I see it as being tied in with the question of the land councils, as against regional councils, and partly because there might have been a certain amount of wounded pride in the way in which Mr Reeves not only has said that I am wrong now—which I would quite readily admit—but also has condescended to the view that I was wrong at the time that I made the original report and so were all the anthropologists who gave evidence to me. As I say, there is a certain amount of wounded pride in my objection on that score. The only major issue I want to push, and which I have pushed in my submission—and I do not really have anything to add to it, except by way of answering questions—is the one about

the fate of the Northern and Central Land Councils. I do not think the case for their abolition has been made out at all.

CHAIR—Thank you, Sir Edward. Can I just say that it is quite a unique experience for me, and I think for the committee and the parliament, to have a distinguished royal commissioner who was responsible for legislation supported by both sides of parliament that was enacted 25 years ago to come along now. It is almost Sir Edward in retrospect, and I find it rather nice to be sharing that moment with everybody and you, Sir Edward.

As I have been involved in this inquiry over the last few months I have uncovered a fair bit of concern, and I wonder whether Reeves himself might have picked this up and expressed it perhaps in a different way than others might have, over the future rights of the different levels of Aboriginal society. The traditional owners clearly have a very dominant role under the legislation, based on your royal commission recommendations, but if I may refer to them colloquially as the ‘community Aboriginals’, the ones who do not have traditional land right rights, as I understand it they are the dominant number in the Northern Territory. There has been a migration of Aboriginal people into the Northern Territory, or from other parts of the Northern Territory, and I think that reflects the fact that land has been acquired for Aboriginal people. I guess that must give them a sense of security and homecoming, so that is a positive outcome.

In the contemporary sense of looking to the future, there is a worry in my mind as to whether the legislation adequately takes into account the interests, rights and aspirations of all the levels of Aboriginal society. It is looking into the crystal ball a bit but, moving on a bit now from your recommendations, I wonder if you could give us some insight into whether you think parliament should endeavour to try and spell out and strengthen the legal rights of community Aboriginal people with respect to these lands?

Sir Edward Woodward—I find it difficult to answer that for the reason I have stated at the outset—that I am really out of touch. I did envisage in my original report that over time there would be a move of emphasis—and I wanted to allow it to happen—from traditional owners to communities. You probably realise that I even considered the possibility—and seriously considered the possibility—of vesting land in communities. I decided that it was wrong at that time for a variety of reasons, such as the difficulty of determining boundaries and the complex heterogeneous nature of many communities. But I think my main concern then was that my task was to try to find a way of interpreting Aboriginal law and translating it into European law. The way that I did that was to put the emphasis on the traditional owners in their role as trustees. As I have said, I did envisage that over time, particularly as some of the spiritual connections with land become more attenuated and the community becomes a more natural Aboriginal construct and not just something which has in effect been organised by a mission station or a government settlement, that there would be a change such as you have suggested.

I am not sure that that time has yet come and I am not really in a position to be able to advise you on that. I suspect that it has not yet come but this is something on which I am sure you will be listening to the voice of the Aboriginals themselves: if they tell you the time has come then clearly it has. As I see it, your problem will be if you get different messages from different Aboriginal groups, and that may be hard to determine.

CHAIR—Sir Edward, I note what you say and in my mind share it with you and members of the committee. Any recommendation that I might make to the committee for its consideration would always be conditional on it being subject to the consent of the traditional owners in that community. The change might be considered and given legislative authority then by an amendment to that sort of policy.

Sir Edward Woodward—I have always envisaged as a possibility right from the outset that if what the people wanted was title to be given to a community then that is what should happen.

CHAIR—An extension of that, and it is a matter that has been raised by other members of the committee too, is that as we travel around, not just in the Northern Territory, we often find Aboriginal families who are trying to make their own way in life and become independent and free of the shackles of welfare, as it has been described by many people, but they manifest to me signals that they feel constrained and held back and that they are disadvantaged. One young person said to me, not in the Northern Territory, that he would like to go and get a loan from a building society to build a house for his own family—an aspiration that many Australians have—but that he could not get a freehold title to the area of land, which was part of an Aboriginal area. I discussed with him whether he could get a lease and was that acceptable, and of course it was difficult to go into all the details. But it has worried me. Again, subject to the consent of the traditional owners, and not without their consent, would you see your recommendations operating in the next millennium as being put in jeopardy—to hold the land in inalienable freehold—if, with the consent of traditional owners, a freehold fee simple was available in certain areas agreed by the traditional owners to Aboriginal people?

Sir Edward Woodward—I think my main concern with that would be the precedent that was being created. If you see one deserving case, the sort of example you have given, I think the question is: where would it stop? I would also be concerned about the possibility of favouritism—the best sites within the community area being given to people who had the right connections, to the disadvantage of others.

I think that while the individual case might seem unexceptional, I would be a bit concerned about the beginning of a series of events which ultimately resulted in a lot of people having small freehold areas and losing any sense of community. I have always believed that the two main things that Aboriginal people in Australia had going for them were, firstly, their relationship to land, their spiritual relationship to land; and, secondly, their kinship system, their belonging to a supportive group related by blood in most cases. Anything which helps to encourage the maintenance of those ties, the ties to land and the ties of kinship, is good for them, and anything which tends to segregate individuals from others is risky. I don't doubt that in a hundred years the sort of thing you are talking about will be happening, and perhaps in a lot less time than that. I would not like to endorse it today without knowing more about it.

CHAIR—Yes, and seriously qualified, as you have said. I understand that in some nations indigenous people are addressing this issue, and their occupation with European settlement has been a lot longer than ours. In Canada and places like that there is now, in many of these areas, provision for long-term leases, in perpetuity almost, but the freehold

title is still held by the trust. Perhaps that might be a step towards eventual access to freehold, as all other Australians have?

Sir Edward Woodward—I would certainly be more comfortable with that. But, as you say, there is not much difference between a 99-year lease and freehold—

CHAIR—Some Canberra people told me that.

Sir Edward Woodward—If you began to go down that track it would be better to have a lease of a more limited term of 15 or 20 years—I am just plucking figures from the air—so you were not committed if it turned out that the experiment did not prosper.

CHAIR—My last line of questioning before I hand over to my colleagues, because they are all anxious to ask questions themselves—

Mr KATTER—Chairman, I just want to follow up a question on that. Will I wait for my turn?

CHAIR—If it is on the same issue, Bob, please ask your question, because the next issue I am going to ask is about royalties.

Mr KATTER—Sir Edward, the model that you are talking about of community ownership has been a very bad failure in both China and Russia. You are imposing a model of production, because if these people are going to produce something of value that they can stand on their own two feet from then they have to have a mechanism which is attuned to modern society. If you say, 'You must continue to do this because that's your cultural heritage,' you are asking them to continue working with draughthorses instead of working with a tractor.

The banks will not loan them money and unless you have mortgage value you cannot borrow money from the banks for development. The Australian government and the state governments do not have the sort of money that could develop these areas. Further, I think it needs to be said here that there were 200,000 head of cattle on the station properties bought in the Northern Territory; there are now only about 60,000 or 70,000 head of cattle. I would contend very strongly that that is not the fault of the people but the fault of the economic mechanism which you have given them to work under which will not enable the banks to loan them any money, so they cannot buy any cattle if they want to go back and restock. Could you comment on that?

Sir Edward Woodward—There are a number of questions there. I am no expert in agribusiness, but the first thought that occurs to me is that it might be better that there are only 60,000 cattle rather than 200,000 cattle because, as I understand it, there was a lot of overstocking in dry areas which did a lot of damage to the land. So I do not think the fact that the numbers have fallen necessarily means that the operation is any less efficient. But, as I say, I have no knowledge of that; that is just a possible reaction. I certainly agree that individual enterprise should be able to be funded or small group family businesses should be able to be established. I had always hoped that royalty moneys could be used for that sort or purpose by way of controlled loans to anyone who showed the ability and the desire to start

up a commercial operation. I had hoped to have seen a lot more commercial operations going on on Aboriginal land and around the coast than have in fact occurred, as I understand it. But given that there is—or there should be—royalty moneys available, I do not see the banks as the only source of loans.

CHAIR—Thank you. Mr Snowdon has a question on the same issue, and I will return to the royalty issue shortly.

Mr SNOWDON—This is more of a comment, Sir Edward. Firstly, it is a pleasure to meet you. I have been an avid reader of both reports over many years, as I know a number of people in the audience this evening have. I just want to make a couple of comments, if I may. Firstly, the current act provides for the model that the chairman was after. Section 19(2)(a) and (b) provide for leases and subleases to provide for commercial and/or residential purposes. Interestingly, under section 19(9) they are limited to 21 years for residential leases and 10 years for commercial leases, so the sort of proviso you were after is already there.

CHAIR—Did you say ‘limited’?

Mr SNOWDON—Yes. The minister has the discretion, but up to those two points, so that satisfies that interest. Secondly, in the context of pastoral leases, you were right in your assessment of the impact of pastoralism on a lot of the land that Aboriginal people have purchased, and I have first-hand experience so I can identify that there are a number of properties. I can name a number of them that were purchased and were very run-down, and they were deliberately destocked to allow the country to rejuvenate. Thirdly, in relation to raising revenue on these leases, it is possible to borrow from banks for this purpose. I do make the observation that Aboriginal people under this act are able to provide for leases and subleases of a longer period than people are able to on Norfolk Island, for example, under the current arrangements—and although they have some difficulty getting commercial arrangements with banks, the people of Norfolk Island are able to do it. But it is certainly true to say that recent experience has been that Aboriginal people have little or no trouble getting money if they want to borrow it.

CHAIR—Are there any questions on that same issue because I want to turn to—

Mr KATTER—There was a comment.

CHAIR—A quick one.

Mr KATTER—I can produce five from one community alone where they have been knocked back, all of them, by banks, the whole lot of them.

CHAIR—Before handing over to my colleagues on other issues, you made a very significant observation in your submission as to the status of the royalties and said in your view—I think by inference, if not expressly—that you regard the royalties as public money, and Reeves’ conclusion was the same. In the course of our inquiry some witnesses have asserted the opposite and claimed that it is not public money, that it is in fact private money. We have an opinion—from memory, I think it is from ATSIC’s legal advisers—arguing that the money ceases to be public money in the course of the machinery under the legislation

and is in fact private money. Your advice on this issue would be much appreciated. Would you like to expand on the reasons why you conclude that Reeves is correct that this is public money?

Sir Edward Woodward—I would have to say that I did not research the topic. I have sold all my law books or given them away, so I do not have the wherewithal to do legal research of that sort, and I certainly did not attempt it. I have to say that I assumed he looked into the matter with some care and that he is up to speed in such matters so I was happy to accept what he said, because I felt that they ought to be public moneys, or regarded as treated as public moneys, in the sense particularly that there ought to be accountability for their distribution and their use following distribution. The question of who is to get them should be reviewed from time to time and the question of what the people who get them do with them ought to be a matter of public interest. It is really in that sense that I was happy to go along with what Mr Reeves had said.

CHAIR—I wanted that clarified because the learned gentleman who gave legal advice to ATSIC and then to us argued the transition from public to private, and I am not taking a view that he is right or wrong. As chairman of this committee, what was going through my mind is whether, in consultation with my colleagues, we should be recommending to the parliament that the act be amended to state expressly that the funding coming through the royalties mechanism should be regarded as public money and that there ought to be spelt out in amending legislation that principle and then principles of accountability, performance measures and the like. I wanted that clarified and I think you have done that now. I think you are saying that there is a good arguable case for it to be treated as public money and if there are technical legal arguments you have not researched them?

Sir Edward Woodward—No.

CHAIR—Thank you, you have clarified that and I appreciate that very much. Mr Lloyd, do you have questions?

Mr LLOYD—Thanks, Mr Chairman. I would like to just expand on that line of questioning a little bit more, Sir Edward, because it is an issue that I have changed my views on in the course of this inquiry. I supported the view that these royalty moneys were in fact public money, but I have since changed my view to the fact that I believe that once they go into the communities they then cease to be public money. At the same time I have concerns about accountability. I was trying to rationalise along the lines of cooperatives and that sort of accountability. Do you think there is some merit in that line of thought?

Sir Edward Woodward—Yes, I do. It had not occurred to me but I think that the parallel of the cooperative society is really a good one and, as I understand it, cooperatives are required to publish annual accounts and explain what they have done with cooperative money. I think that whatever the basic legal situation may be, there is a lot to be said for proper accountability.

Mr LLOYD—Thank you. That is all at this stage, Mr Chairman; I may have something later on.

Mr HAASE—Sir Edward, I am going to take a question from the book, if you do not mind. You indicated that, in the absence of a Northern Territory Aboriginal corporation, a small committee could be established using the method proposed for the initial appointment of the NTAC board. Could you elaborate on this suggestion and the extent to which such a committee would find acceptance amongst Aboriginal communities?

Sir Edward Woodward—I do not know that I can elaborate very usefully. I threw that paragraph—paragraph 87—in because, having said for other reasons that there ought not to be an NTAC, I felt I was under some obligation to at least put my mind to what would be necessary in order to replace it. I could see that if it was thought, as Mr Reeves obviously did think, that there was inadequate accountability at present and that there were unsatisfactory aspects to the distribution of royalties and other income from mining and other sources, then there was a need for some independent body—probably not the land councils—which had the necessary expertise, or had access to proper advice, to take charge of moneys. I was particularly thinking about investment, about the desirability of seeing that some significant proportion of Aboriginal royalty moneys is invested for the future.

There is certainly no guarantee that royalties will continue at their present level, and there should be some long-term provision which requires, in my view, sensible investment. There ought to be a group which consists of Aboriginal people, in this case probably selected for their capacity rather than elected, who would have access to outside advice about investments and about the viability of schemes that are put to them which they are asked to support financially. That is why I inserted that paragraph, to indicate that I did not have any difficulties with the idea of a body like NTAC, a small group such as I have described, being given the task of protecting both investments and the fair distribution of available moneys for actual commercial usage.

Mr HAASE—Thank you.

Mr SNOWDON—I just make the observation, Sir Edward, that under current arrangements the ABR, the Aboriginal Benefits Reserve, basically operates with that sort of investment strategy. There are obviously hiccups with the processes sometimes. It is an Aboriginal body but at the moment it is currently run under rules which are determined by the minister in terms of investment strategies. So those sorts of things are happening. It seems to me that the issue is not so much the question of those pooled resources which are available for distribution, but what happens to those resources once they are distributed? That is the issue which seems to be at the heart of what Mr Reeves has to say. He is concerned about individual royalty associations.

The perspective that Aboriginal people present to me, and I am certain to this committee, is that once those funds reach those associations they are private moneys and they are to be developed for their purposes in a way they see fit. That means that they are accountable to their communities. We have had representations from one of them, Ngurratjuta, for example, which uses its resources to invest in business. A lot of these associations now invest a large proportion of their funds in business enterprises. I think it is true to say that the major investors in commercial real estate in Alice Springs are Aboriginal organisations who use these royalty payments: Ngurratjuta, for example, owns tourism enterprises and an airline; Centrecorp, which is an offshoot, is an investment corporation set up in central Australia and

owns half the Kings Canyon resort; and as a result of royalties, effectively, Aboriginal people own half of the major Toyota dealership in the Northern Territory.

These things are happening and I think the issue which this committee has to deliberate over is how we come to terms with the fact that when we assume, as we often do, that things are going wrong they may in fact be working properly, except that we may not be party to the decisions which are made and they may not be reporting to us. I think that is what Mr Reeves has his knickers in a knot about, that in fact these associations operate ostensibly, once they receive the money, as private organisations using the money for private purposes.

I think one of the other issues has traditionally been the propensity of Aboriginal people, who, as you are aware, in many cases are impoverished, to want to have instant gratification in terms of the dollars they receive. I think it is a testimony to the fortitude and the strength of a lot of these emerging Aboriginal organisations that they have resisted those sorts of approaches. Many of them now—although some do—do not pay money to individuals. Things have come a long way, and I wonder about the merits of governments legislating to ensure that people use their private moneys properly.

Sir Edward Woodward—I would not have inserted that paragraph 87 in my submission if it were not for the fact that I felt that I had to accept what Mr Reeves had said about some of the unsatisfactory nature. Because I was recommending that there should not be an NTAC set up, but that if it was thought that the existing body was not performing adequately and some other body had to be created, I felt I had to make an alternative suggestion.

But I am pleased to hear what you say, and I certainly understand that in the Centre there have been many very useful investments made. I had thought that that picture was not quite as clear in the north and that it was there that there were more allegations of money being diverted to family groups rather than to communities, whereas it has certainly always been my intention at the time of my original report that money should go to community activities—either the sort of things that you could not expect governments to fund, such as commercial ventures, or even some of the things that basically would seem to be a government responsibility but in the particular circumstance of the case what was being sought would be beyond the norms for Australian society.

Particularly I had in mind things like outstations, small groups of people, not necessarily there permanently, wanting airstrips to be constructed and perhaps even a small school built and things like that where a government might reasonably say, 'We can't put up a permanent structure here, we don't even know that you're still going to be here in 12 months time.' But if the community had moneys of its own that it was prepared to spend, that would not be unreasonable. Those are the sorts of things I had in mind. I certainly had not intended that some families would do very well and other families would be left lamenting.

CHAIR—Can I just add to that point. As I see the committee's role, after reading Reeves' recommendations and hearing evidence from so many people, I believe—and there is no suggestion from anywhere—that the ultimate ownership of the equity, the funds and the use of those funds should always be with Aboriginal people. There is suspicion that if governments get more control over those funds they might substitute those funds for their

own obligations to provide mainstream funding. That has come through to us and I think we can make some recommendations to clear that up and help forge a good strong partnership and trust and all that.

I would appreciate your guidance on another issue. The committee is dealing with a dynamic situation where impoverished people, through various trusts and statutory functions, have vast amounts of money accumulating in investments—which we wish every success and hope that they will be very fruitful—but this is not paid to individuals. At the same time you have impoverished and very poor and disadvantaged people who are living entirely on social welfare, whose applications for continuing social welfare are based on means and income tests and these funds that are supposed to be helping their communities are not counted.

Further, as far as I can ascertain from my research, by and large there is no tax payable on the royalties, on the distribution of the royalties, and on the investment of the royalties. It seems to me that we have a major public policy issue that we are now analysing. That is why the idea of accountability and deeming them to be public funds is probably one that has a fair bit of credibility in my view. If disadvantaged Aboriginal people are going to continue to need substantial non-taxable benefits—that no other Australians can have—for a number of years to come, plus non-asset tested social welfare support, then the Australian community and the Aboriginal community should have a mutual obligation to each other whereby the distribution of those funds is transparent, where the performance of those funds is subject to normal accountancy and accountability and outcome analysis, so that everyone can feel comfortable that worthwhile outcomes are being achieved.

Having made that rather long statement, do you have any observations, Sir Edward? Having clarified firstly that no-one intends that the moneys should not be used for Aboriginal people—that is the condition precedent to the whole debate—do you think that is a valid thing for the community to debate and discuss?

Sir Edward Woodward—There are quite a number of points in what you are saying and most of them are not ones that I have had occasion to put my mind to because I do not think that they were covered specifically in the Reeves report. All that I have done for the purposes of this exercise is to read the Reeves report fairly thoroughly and turn my mind to the areas of it on which I felt I could perhaps be of assistance. There are other areas where the facts alleged are so far beyond my knowledge that I cannot be of any help. I do not really feel properly prepared to answer some parts of your question.

It certainly strikes me that the fact that there are some trust funds available for community purposes, even quite substantial funds, ought not to have any effect upon an individual Aboriginal's entitlement to income support or to social security payments. I cannot see that it would be appropriate to say that those funds have to be dissipated in order to take the place of social security payments or that they should be notionally taken into account in reducing those payments.

As I have said before, I would certainly hope that some of them would be used to encourage people who do not have any form of income to undertake a form of training and, following training, some sort of a small business enterprise that might help them to become

independent. I think that is a very good way of spending royalty moneys. I do not feel able to make any useful comment about the effects on taxation or what funds ought to be taxed. I am afraid I just have not turned my mind to those things.

CHAIR—Yes, I understand that. I realise that the implications of my question are far ranging.

Sir Edward Woodward—They are very far ranging.

CHAIR—It was more to get some benefit of your insight on the question of justifying the argument, if that is to be the argument, that there ought to be a deemed public fund notion requiring accountability, requiring reporting, requiring performance measures, to get outcomes that are beneficial. It is in that context, not to justify switching the tax policy, that I am really pursuing this.

Sir Edward Woodward—A point that seems to me to be important is that whether a royalty payment is available and is there to be distributed, somebody other than the person or the group that are doing the distributing ought to have some oversight to ensure that they are being distributed, firstly, in a transparent way and, secondly, in a fair way, so that, as I have said before, you do not have some people getting great personal advantages and other people getting nothing at all. I think it is in that sense that there is a duty on the part of those in charge of distribution to account for their stewardship in the process of distributing.

CHAIR—Thank you. That is very helpful, Sir Edward, I appreciate that.

Mr KATTER—Sir Edward, I just wanted to continue on that theme. Professor Tyrrell, I think from the New South Wales University, oversighted the research on the cattle-carrying capacities of these areas and I can allay your fears that that is a problem. If they want to restock those areas and get back the 100,000 head of cattle, that is not going to be able to done under \$100 million. I cannot see any government, any instrumentality or any royalties providing anything like that sum of money. And I cannot see any other hope. My electorate borders a lot of these areas and I cannot see any other industry that they have available to them other than the cattle industry, and that is an industry in which they have been magnificently successful. There are examples, such as Pimpabamardi, which would back up what I am saying. I have never seen a cattle station run by a community council successfully anywhere in the world and I do not think it is going to start in Australia. You are giving them a mechanism that is just not going to work.

At Hope Vale in Queensland they divided the whole place up under private ownership with an arrangement with the mission. The bloke who organised the thing, Noel Pearson's cousin, said, 'We're giving them a mechanism for the future. We're not giving them a mechanism to take them back to the last century, my friend'—he was rather aggressive with me. He said, 'You'd like us to live for the rest of our lives on our knees; we'd like to stand on our own two feet and to do that we have to have a mechanism that can take us forward.' That was the argument that he put up. But if we accept that this is the way it was done in the past and therefore it should be done that way tomorrow, then you are imposing upon these people a mechanism of community ownership of cattle stations which if it works, well, it will be the first time in world history that I have seen it work. I do not want to extrapolate

a successful model from Queensland and say, 'Therefore this would be successful in the Northern Territory.' So I rephrase the question in that light to you again, Sir Edward.

Sir Edward Woodward—You make a persuasive argument. Certainly, if in any particular area in the Northern Territory people who have heard of the Hope Vale experience—and preferably perhaps some of them have gone to look at it and talked to the Hope Vale people—wanted to go down that track, then I think that there ought to be mechanisms which would enable them to do so. I do not like the thought of an Aboriginal community incorporating itself and going to the banks and borrowing \$100 million in order to go into a large restocking of their property if in fact at present they are only running 10,000 head of cattle or something like that. I think the right way to go is to do things by stages and to make sure that each stage is a success before you move on to the next stage. I would have thought that could be done through the use of royalty moneys in many instances, but perhaps not in every instance. There may well be cases where if the people want to go down the track you are suggesting, then certainly they ought to be able to—there ought to be a mechanism to enable it to happen.

What ultimately should govern all our thinking in these areas is that people should be able to make their own decisions about their future. They should even be able to make their own mistakes, which, of course, they have and they will. But they should be stopped, or at least delayed, in running headlong to destruction. I certainly do not agree with those people—and I have met and had dealings with some of them in the past—who seem to think that Aboriginal people should be set in aspic and kept for study by later generations and who discourage any use of modern equipment or the use of a rifle for hunting rather than a spear and a boomerang. I think that sort of mentality is quite wrong. They should be able to develop at their own speed, and that will vary from place to place.

Mrs DRAPER—There are just a couple of comments I would like to pick up. I have a few concerns in terms of the ABR—the Aboriginal Benefits Reserve—because I think that once the royalties are distributed and become private money, quite frankly, it is none of my business what they do with their money. As I understand it, if I struck gold in my backyard in Modbury Heights and a mining company came along and I was paid compensation and royalties, it would be my money to do with as I pleased. But there now seems to be—and you have commented on this, Sir Edward—a sense of individuality. The traditional owners who are getting compensation and royalties are doing very well. But this may not be the case next door. My next door neighbours at Modbury Heights would not be very happy if I were a multimillionaire. But in terms of obligation to my neighbours, my obligation is to my family and to myself. I think we are starting to see something which is tending to be exclusive. Where royalties are being paid, some families are doing very, very well, and, as you mentioned before, there are so many others who are impoverished and disadvantaged.

I do not know how we should approach that. The attitude that I see clearly coming through—and quite rightly in some cases—with individuals is, 'I'm entitled to that, they're my royalties and I have no obligation to my community.' This is particularly the case in relationship to land and boundaries and those sorts of things. How we go about looking at and solving that is a grave concern of mine.

Sir Edward Woodward—Of course, it is a very big step that Aboriginal people have been taking over the last 40 or 50 years. They have been moving from a culture in which there was no such thing as private property—other than perhaps a particular spear or something like that; but nothing of any great value that was private property—to a situation where with the mixture of the cultures, the European culture and the Aboriginal culture, naturally the Aboriginal people see the advantages of having private ownership of some things, and they want it. As I said earlier, the thing that worries me is that one of the most important bulwarks of Aboriginal society is the nature of the community—that communities ties are a tremendous strength in Aboriginal society—and the more you encourage division by allowing differential treatment of some people and some families by comparison with others the more I think that you are damaging one of those key aspects of Aboriginal culture.

I think it should be done with great care and the whole subject needs to be approached with a certain amount of delicacy. Simply to say that once the money has been distributed it belongs to the individual who has it and there should not be any challenge to how that was done overlooks the basic concept of community ownership which is so much a part of Aboriginal culture and which, so far as possible, should be supported as long as Aboriginal people want that. If they all say, 'No, let's forget the community, let's each pursue our own personal interests,' that is fine, as long as there is a strong feeling amongst the Aboriginal people that community things matter and that money should be spent on community things. If that is not happening I think there needs to be some accountability.

Mrs DRAPER—Can I just add to that. It seems to me that that is what is emerging, that there is that individualistic approach. Some have said, 'Yes, I have my rights to that,' but it is the ones who are disadvantaged who are saying, 'Look, we want to be part of the community,' and that is where we have the conflict and concerns and problems.

Sir Edward Woodward—It is very natural.

Mrs DRAPER—I am a bit wary about being paternalistic or condescending and those sorts of things. As you say, it needs to be approached very sensitively, but I see that as a big problem and challenge to deal with.

CHAIR—I have another matter I want to raise. As you know, one of Reeves' recommendations is that the permit system be largely abolished and substituted with the Northern Territory trespass law. Everywhere we have gone we have had overwhelming submissions from Aboriginal people that they do not want the permit system to be removed. We respect that and we will obviously be making known some strong views made about that. Do you have any observations, Sir Edward, on how we might address that?

Sir Edward Woodward—The reason I recommended a permit system originally was that it seemed to me that there was a very important symbolism involved—that if you tell Aboriginal people for the first time, 'This is now recognised as your country in perpetuity and it can't be taken from you,' and then a week later they find groups of strangers wandering across their land at will, the appearance would be all wrong and the message that would give would be that there was no reality in their ownership, their native title. I have

always envisaged that experience in matters in every other area about which I made recommendations could dictate changes.

I am interested to hear that there is still such a strong feeling in favour of a permit system. Having read what Mr Reeves had to say about it, it does seem to me that it is important to try and make the permit system more user-friendly, which it seems not to be at present. It ought to be possible to obtain the permit fairly readily, either locally or at some various central points in Darwin or Alice Springs, or on the spot, particularly for the sort of example he gives of an Aboriginal who wants to entertain a white friend and he wants that person to be able to come more often than just once in a while. It ought to be possible for some local arrangement to give that person a permit for a period of months which would enable him to come and go—he might be perhaps taking an oral history from the particular Aboriginal family concerned, just to pluck an example from the air. A person in that situation should not have to apply at some central point for a fresh permit every time he or she wants to do so.

Beyond suggesting that it seems the time has come to simplify the system, it does not sound to me as though there is any case for doing away with the permit system. I am not at all sure that the ordinary laws relating to trespass would fill the bill. For one thing it is a very cumbersome way of trying to deal with someone who just thumbs their nose at a system if you have to take them to court and charge them with trespass every time they are caught picnicking or holidaying on the area where they are not supposed to be, having not gone to the trouble of seeking a permit; whereas if they are there without a permit it is much simpler to take action if action is needed.

CHAIR—It did occur to me—and it is probably too simple a solution and I will therefore have to think it through because it is probably dangerous to conclude it is the solution—that maybe they could have both?

Sir Edward Woodward—Yes.

CHAIR—There is nothing wrong with perhaps the idea of maintaining a user friendly improved permit system and have the Trespass Act apply if people wish to avail themselves of it. That leads me to the next question, Sir Edward, which will be my last one in respect of the Reeves' recommendations—the application of Northern Territory law, which is another important recommendation by Reeves. Do you have any insight as to the sorts of the laws that you would envisage Aboriginal people should be comfortable with accepting as being relevant to their areas?

Sir Edward Woodward—I have always thought that they should be subject to laws relating to noxious weeds, for example, or cattle disease, to anything that protects public health. Those are just a few examples that come immediately to mind. I am sure there are many other areas—for example, weights and measures. If anyone is selling goods in an Aboriginal shop and they are trying to cheat their customers by falsifying their weights or leaning on the scales, the Northern Territory law ought to be able to deal with that. I would think there are a whole raft of laws that ought to apply and it is really only those which are in some basic way inconsistent with what you are trying to achieve that ought not to apply.

CHAIR—You think that core value ought to be the test?

Sir Edward Woodward—It occurs to me as a test. I have not heard the issue debated, and it may be that Aboriginal people might be able to persuade me to a different point of view if I were to listen to them, but that is my reaction.

CHAIR—Do you see that if agreement could be reached by consensus on these matters it would strengthen the partnership that I notice you referred to very much, and Reeves did, and the reconciliation process if all people in Australia perceived that the laws were indeed equal to all men and women and that any differences in the case of the laws were there because there was a core value that was well understood by society in Australia as being appropriate, but subject to that, laws should apply equally to men and women?

Sir Edward Woodward—I would certainly be comfortable with the idea that there would be a presumption that any laws of general application should also apply to Aboriginal land, provided that an exception could be made where the law was inconsistent with some aspect of the land rights legislation.

CHAIR—Thank you.

Mr SNOWDON—I would just make the observation that that already prevails under section 74 of the act.

Sir Edward Woodward—Yes, I think I gathered that from the Reeves report.

Mr SNOWDON—The situation has been discussed or is provided for. All laws of the Northern Territory prevail, except if there an inconsistency, in which—

Sir Edward Woodward—I think that is as it should be.

CHAIR—We have had no real submissions against Reeves' recommendations in those matters.

Mr LLOYD—Sir Edward, one of the problems that was put forward about the permit system is the inconsistency, or the perceived inconsistency, of granting permits—one day a permit may be granted, the next day for the same reason a permit may be rejected. What do you think is the possibility of drawing up guidelines for requirements for permits to give some sort of guide to those people seeking the permit and those people granting the permits? What is your view on that possibility?

Sir Edward Woodward—It sounds to me to be an excellent idea. I cannot see any difficulty about that. As long as the right people are consulted in drawing them up, I do not see any problem with that. As you say, I think it would be helpful to both sides of the equation.

Mr LLOYD—I am trying to relate it back to urban society and even trespass laws. In some way that is a guideline for the permit system we have on freehold land as to who can come onto your property, whether you invite them on or whether in fact they are trespassers.

I believe that there would be difficulties relating it back to the trespass law because of the vast nature of the land we are talking about. Whilst it may not be in legislation, there would be some advantages in at least drawing up some guidelines as to particular cultural difficulties. That would be obviously a reason not to grant a permit. Certainly that would help white society understand the permit system a little bit better and it would give some guidance to the Aboriginal communities as well.

Sir Edward Woodward—As long as the guidelines were not too prescriptive. I think once you try to envisage every possibility you run into difficulties, and there would always be something that you had not thought of. I think they would need to be expressed in fairly broad terms. If they dealt with the most regular types of reason for applying for a permit, the most commonly used occasions, and expressed in fairly general terms the basic philosophy, the sorts of cases in which permits ought to be granted and those in which it would be less likely that they would be granted, then that seems to me to be fine.

CHAIR—Are there any other questions?

Mrs DRAPER—I would like to add to Mr Lloyd's comments, Sir Edward. While we were over at Bathurst Island I made some inquiries about permits for visiting their beautiful beaches and fishing spots. I asked what a permit to stay would cost a mother with three or four children. It was about \$74 for the day. I expressed the view that the price structure of that permit system disadvantaged a sole parent—not on a politician's wage but on a pension—bringing up three or four children, who wanted to enjoy the beauty of the beach, camp or fish. So I again emphasise the point that Mr Lloyd brought up about guidelines and inconsistency. How do you put a price on entry?

Sir Edward Woodward—I agree that it is a difficulty. I would have thought in a case such as the one you instanced that it ought to be possible to negotiate some sort of concessional rates.

Mrs DRAPER—I tried—no, not negotiable.

Sir Edward Woodward—If you are talking about a single mother on a single mother's pension with three young kids, I would have hoped that the Aboriginal people in charge of the permits would listen to that and would make a difference. I suppose that once you accept the fact that Aboriginal title is in the nature of freehold, they cannot entirely be blamed for charging what the market will bear. But it is not in their own best interests to put it at a rate where nobody is going to pay.

Mr SNOWDON—Can I just make a point. It is fair to say that there is no charge for the permit itself and if there is a charge it is for the processing of the permit. So the act of getting a permit is not a cost. It is a question of whether or not people want you to have access. That is just like any pastoral lease in the Northern Territory on which there are big signs which say, 'Trespassers will be prosecuted. Don't come onto this land, the gates are locked.'

Sir Edward Woodward—And there are other stations that run tourists as well as cattle.

Mr SNOWDON—That is right.

CHAIR—Or my backyard where no-one walks on it without asking me first.

Mr SNOWDON—And where you run a tourism operation.

CHAIR—I think members have had a great opportunity, Sir Edward, to talk to you and I would like before closing the meeting to record, without embarrassing you, that this committee has had a unique opportunity to go to the Northern Territory many times and talk to people about your work, the outcome of your royal commission recommendations transmitted into the statute. I think you can be very proud, Sir Edward, that the Aboriginal people of the Northern Territory have a very high respect for your work and they value the recommendations that you made. Equally, we have had the pleasure of talking to many white people in the Northern Territory and I have not come across one person in my informal discussions in the Northern Territory who has any serious misgivings about your recommendations. I guess if at the end of 25 years you can look back and have that sort of feedback for your work you would be justifiably very proud. I just wanted to pass that on to you and say that the committee has a great respect for your work. Today we have been privileged to have the value of your insight, and of course your written submission as well. Thank you, Sir Edward.

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

That this committee authorises publication of the evidence given to it at public hearing this day.

CHAIR—I now declare the meeting closed. I would like to thank Hansard, the secretariat and members of the public for joining us this afternoon.

Committee adjourned at 5.40 p.m.

