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, 23 JUNE 1999

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STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Wednesday, 23 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: Mr Lieberman *(Chair)*, Mr Quick *(Deputy Chair)*, Mrs Draper, Mr Haase, Ms Hoare, 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.

WITNESSES

Committee met at 4.11 p.m.

CHAIR—I declare open this public meeting and welcome members of the public. There are some people waiting outside who should be informed that they are welcome to come in. I will go through some general procedural matters that are always referred to by committees of the Commonwealth parliament in hearings.

This is a further hearing into the recommendations of the Reeves report on the Aboriginal land rights act. As many know, the committee is conducting this inquiry at the request of Senator the Hon. John Herron, who has asked us to seek the people's views about the recommendations in the Reeves report. We are consulting widely and have spoken to literally many hundreds of people now, both in Canberra and in the Northern Territory. We have one further set of hearings in Canberra next week and that will conclude the inquiry. The committee will then deliberate. We hope to report to the House of Representatives by late August. The hearing is open to the public. A transcript will be available. Anyone that would like a copy of the transcript should please let our staff know. We would be happy to arrange for one to be sent to them.

TAMBLING, Senator the Hon. Grant

CHAIR—Turning to the business at hand, I have much pleasure in welcoming the Hon. Grant Tambling, Senator for the Northern Territory and a parliamentary secretary. Welcome, Senator Tambling. Before we ask questions of you, do you have an opening statement? You have already made a submission and that has been authorised.

Senator Tambling—Thank you, Mr Chair. Might I just make a couple of points before we go into some discussion. I would like to make it clear that I am appearing in my elected capacity as Senator for the Northern Territory, reflecting on the various issues that have been raised with me by Aboriginal constituents and various other interest groups in the Northern Territory. I am not appearing at all in my capacity as a parliamentary secretary of the government. I am not speaking for the government as such but purely because of my long association with the Northern Territory.

I have been a senator since 1987. I did have a previous term in the House of Representatives, between 1980 and 1984, and a previous term in the Northern Territory parliament. Therefore, over nearly 25 years now I have been visiting many communities right round the Northern Territory, on a very regular basis. I believe that all we representatives from the Northern Territory, including Mr Snowdon, receive a very wide cross-section of views and opinions on issues that certainly affect the Aboriginal affairs portfolio.

When I first came to the Senate in 1987, in the period between 1987 and probably the election of 1993 I had cause, in the various Senate estimates committees, to look very seriously and continually at the administration of what was initially the Department of Aboriginal Affairs, which subsequently became the Aboriginal and Torres Strait Islander Commission, and other statutory bodies such as the Northern Land Council and the Central Land Council, in their reporting to the federal parliament. As a result of those estimates committees, I probably developed a bit of a reputation as somebody that was always looking very seriously at issues of accountability and administration, as well as measuring policy objectives in those areas. There is a lot on the public record from that period.

Certainly as a result of that there were a number of Auditor-General's reports, some of which are reflected in the notes that I made available to your committee at that time. It has always concerned me that, over that 13-year period, not a lot has changed in many of those areas that demand constant scrutiny. Sometimes I feel that is very unfair on many of the Aboriginal communities and Aboriginal constituents that I represent, in that the organisations around them have periods of very vexed and tough administrative hurdles—all the tougher because they have got legislative responsibilities to this parliament and some to the Northern Territory parliament.

To comment briefly, I would say that certainly in the late 1980s and early 1990s I was very concerned. I did not believe that the Aboriginal constituency was getting good value for the dollars of funds that were made available through the then ABTA and the land councils. If you look carefully at those charts of the nearly $500 million that was distributed, you will see various things that I am sure other people have pointed out to you, particularly the grants that were made available to the land councils under section 64(7), which were in effect the

top-up funds. There are some strange coincidences for people that want to go and visit the particular years when there were very high allocations under those top-up funds. I say 'strange coincidences' because the large dollops of money that were made generally appeared in the months or the year before federal elections. In that sense, there were huge amounts of money injected into the land councils in those particular years, which do reflect that, and I am sure that political point would have been made to you by others.

However, the main concern I have is for value from the dollars—$500 million—and trying to measure the objectivity of what was achieved, when over half of that money was spent on administration by the two large land councils. In general terms, the Tiwi and Groote Eylandt land councils have acquitted themselves very well with much lower amounts of money. You could try to measure the benefit by relating the type of activity on those charts to the sources of funds from the various mining activities in the particular areas—the ones that stand out are uranium, bauxite and manganese—and then looking at the flow of cash, both to the local communities through their grants and to the land councils. Not much else has happened in the way of continuing economic activity that has then been stimulated by the administration of the land councils.

In effect, I would argue, many of the anthropological and legal issues that were pursued by the land councils in that period ended up in just drawing the maps and so on. They did not result in increased economic activity for the benefit of the Aboriginal people themselves in those areas. Certainly, when you look at the distribution of royalty money, you see that far too much of it ended up in income support payments rather than in supporting and stimulating major economic activities. There is no real record of commercial activity in the communities themselves that came about as a result of either the royalties or the land council administration. There is also very little in the way of roads or transport industry involvement or construction activity that would have led to increased employment for Aboriginal people. I am not aware of the land councils themselves creating, other than a couple of mining ventures, any joint venture arrangements that, with commercial activities, would have advanced in that period. So I am critical of that very large expenditure.

If we look at the employment opportunities over the period and try to measure them, sadly there has been too little advancement for Aboriginal people in areas of economic activity. Whilst the land councils did focus a lot of their activities on cattle station issues, that has not resulted in a great deal of economic stimulus in that particular area. We do need to look very carefully, I believe, at the judging of land councils from that perspective. If you read the land council reports—I have been watching them being tabled in the parliament for 13 years—they really are just a regurgitation of much of the same from year to year of the administrative based activities. Whilst there are a lot of words in them, they really do not stack up.

The final point I would make, looking at your terms of reference, is that I think it is important to note that—I am talking about a 13-year period that I have been in the Senate—it is a matter of also measuring what other activities are happening to assist Aboriginal people in the community. Whilst ATSIC is now up and running as a different form of self-managed administrative area, there is quite a deal of controversy within the various regional councils and the commission itself. Local government in the Northern Territory has a very limited role in most Aboriginal communities and whilst it exists under a form of Northern

Territory local government administration called community government, the activities in those communities do not seem to have developed a partnership relationship with the land councils. If you are looking at your terms of reference where you refer to self-management, the role of traditional owners, the structure and functions of that administrative area and then looking at mining access and laws, I really do not see value for dollar in those particular areas.

Mr SNOWDON—I am interested in your observations about the legal and anthropological costs of the land councils. Are you aware of how many cases the Northern Territory government took to the full Federal Court and the High Court?

Senator Tambling—I am certainly aware that just about every land claim has been tested in that particular area. That has resulted in a lot of legal activities because of the nature of not being able to settle it by negotiation or by compromise.

Mr SNOWDON—That is not what happened at all. But I do not want to pursue that point in that sense. Are you as critical of the Northern Territory government for its expenditures on legal and anthropological costs for the same period?

Senator Tambling—I believe the Northern Territory government as a sovereign government has to exercise its proper responsibilities on behalf of all the Northern Territory. Where there are to be significant changes in the land tenure or the economic activity of any community, then it is the responsibility of any government—federal, territory or local—where they think it is necessary to test those claims, to do so.

Mr SNOWDON—Even though I disagree with your hypothesis—but let us assume I do agree with it—do you think it is reasonable that Aboriginal people should seek to protect their interests in the courts when they are challenged?

Senator Tambling—I think it is quite reasonable for them to do so. In many of the cases, it is a matter for other people's judgment, including the Auditor-General's, as to the extent of the funds and the preoccupation of that level of funding that was necessary in so many of those cases that you refer to.

Mr SNOWDON—But isn't it also true that, certainly, in the late 1980s and early 1990s, there was a time when the land councils referred to the CLP government of the Northern Territory as a vexatious litigant?

Senator Tambling—I am sure that was the opinion of some people. But I do not think the Territory people held that view. And I am well aware of many Aboriginal people and communities who did not share that view.

Mr SNOWDON—I am not aware of many. I want to make the observation, if I may, that you have made a harsh judgment on the rights of Aboriginal people to protect their own interests and represent themselves in court and the cost that implies—and the real cost that it means to their organisations in terms of dollars. But you do not make the same criticism of the Northern Territory government which, in most cases, initiated the action.

Senator Tambling—I think, when you look at the total budget expenditure and outcomes of governments or land councils, what I am being critical of is the $500 million and nearly $200 million or $300 million of that that has gone in land council administration. If you measure it against the improvement in conditions and economic opportunities and advantages, if you compared any government's costs of legal expenses right across their whole range of social and commercial policies, the percentage certainly would not be 50 or 60 per cent of the total expenditure.

Mr SNOWDON—But what this reflects, Senator Tambling, as you and I are both well aware, is the political attitude and the ideological attitude which was adopted by the Northern Territory CLP government under successive CLP chief ministers until very recently in terms of ensuring they challenged every land claim. And there was no negotiation, as you are well aware, in the sense of trying to resolve outcomes by negotiation. To imply that the administrative costs were too high because of legal and anthropological costs when they resulted from Northern Territory government challenges to Aboriginal persons' rights through the land rights act is, I think, totally unfair and unreasonable.

Senator Tambling—That is your view and it is different from mine.

Mr SNOWDON—I want to make sure that you understand that, if you are a critic of the land councils for the costs that they incurred and the proportion of those costs which is reflected in the administration of the land councils, you should also be as critical of the Northern Territory CLP government. I think it would also be relevant for you to look at the number of cases which the CLP government pursued and how many of those they were successful in.

Senator Tambling—It is up to the Auditor-General and to the electorate to make those judgments of government. When it comes to the administration of the land councils, it was a matter for Mr Reeves in his report to assess that from the communities' point of view and it is a matter for your committee as it seeks views and opinions of the community to get that on the record.

Mr SNOWDON—Is it true that the land councils are subject to the Auditor-General?

Senator Tambling—Yes.

Mr SNOWDON—You made comment about the reports to the parliament from the land councils, basically saying they do not stack up. That is not the view of the Auditor-General, is it?

Senator Tambling—The Auditor-General on a number of occasions has put in qualified reports. There were special Auditor-General's reports, particularly as a result of work that I did in the Senate estimates committees, that resulted in a very major review of land councils in—I am just not quite sure of the year—1992 or 1993. In fact, the Auditor-General made some 56 recommendations in one particular report that required very significant follow-up and major changes to the operations, particularly, of the Northern Land Council.

There were also, of course, as a result of Senate estimates work and other work from ATSIC or the Department of Aboriginal Affairs, the reports of the special auditors, Walter and Turnbull, who were brought in to look at the very significant changes that were made in the royalty accounts in the early 1990s which were very adverse reports, and certainly did not assist Aboriginal Territorians.

Mr SNOWDON—We can debate those issues but I make the observation that, unlike a lot of non-government agencies and unlike the CLP government in the Northern Territory, the land councils are subject to the Auditor-General—they are subject to review by this parliament.

I make the observation that if the general revenue grants made available to the Northern Territory government by this government for use for the advancement of all its citizens were put under the same scrutiny as the land councils are put by this government then we would get a very awful picture of the way in which the CLP has mishandled funds. I make that observation.

Senator Tambling—The Northern Territory Auditor-General of course reports on the Northern Territory government's expenditure and I do not believe there is any undue or harsh criticisms by the Northern Territory Auditor-General in—

Mr SNOWDON—I am sure there is not.

Senator Tambling—the areas that you refer to.

Mr SNOWDON—I am talking about Commonwealth general purpose payments.

Senator Tambling—The general purpose payments are paid through the Northern Territory Treasury and disbursed by government.

Mr SNOWDON—And they are not audited by the Commonwealth.

Senator Tambling—They are audited by the Northern Territory Auditor-General.

Mr SNOWDON—They are not audited by the Commonwealth. Terrific! But I want them audited by the Commonwealth and you would be aware there have been a number of calls recently—

CHAIR—Mr Snowdon, I do not want to—

Mr SNOWDON—Just let me finish this point. There have been a number of calls recently—

CHAIR—Please make it a question rather than a statement. I do not want to interrupt your flow—I know it is very passionate but—

Mr SNOWDON—It is very passionate but it is also very personal.

CHAIR—Please let us make it a question. If you have to explain the basis of the question, that is fine. Try to limit it to that.

Mr SNOWDON—I appreciate that, Chairman. I actually will not pursue that point but I will take it up at some other point. I want to take you to page 2 of your submission and the second last paragraph in which you say, and I quote:

I consider that the current process of Northern Territory Grants Commission distribution inadequately assesses the priorities and fairness between the many conflicting service-delivery agencies and areas of land council overlap;

Could you explain what that means?

Senator Tambling—When I was talking earlier about the various lots of funds that are made available for the benefit of Aboriginal people in the Northern Territory, those were obviously Commonwealth programs, obviously the work of the many ATSIC and other Aboriginal organisations and also Northern Territory government areas. A considerable look needs to be taken at the areas where many of the administrative functions, whether they are done by land councils, ATSIC or government departments and agencies at either the Northern Territory or Commonwealth level, are in effect duplicating. You and I know from visiting Aboriginal communities how confusing it is to so many of them. Government officials, politicians and various people are constantly making demands on them that many small towns in other parts of regional Australia do not get subjected to. I believe there are two aspects to it: the impact on those residents and the impact on the communities themselves.

It is also important to note the recent initiative that the Minister for Aboriginal and Torres Strait Islander Affairs has put in place with regard to the review of ATSIC and ATSIC grants, whereby the Commonwealth Grants Commission is now going to have a role in assessing the relativity of various Commonwealth programs to each other—particularly ATSIC programs—in Aboriginal communities. I have long advocated that, across both state and Commonwealth governments, there needs to be a much more rational approach to assessing the priorities. I think there is a considerable degree of overlap.

Mr SNOWDON—I do not dispute that, but I want to make this point. Firstly, I made the observation about this review under the Grants Commission. It will also apply to the specific purpose payments made to the Northern Territory government under section 96 of the Constitution. It will allow us to look at the 23 per cent of the Northern Territory's budget, which is by way of specific purpose payments, and how it is spent.

Senator Tambling—You can do that at any time you like through the fora of the parliament.

Mr SNOWDON—I am saying to you that the Grants Commission now has the power to do that because that is what this act has done. I would like to ask this question: what services—I understand your point about agencies—are you talking about in terms of land councils?

Senator Tambling—If you read the annual reports of the land councils, they comment a lot on the issues of improving Aboriginal health standards and the living conditions in the various communities on Aboriginal land. There has been a heck of a lot of service delivery in the way of education facilities where all bodies involved overlap in their various advice.

Mr SNOWDON—As I read this, though, aren't you saying that the Grants Commission has no role with the land councils? The land councils do not deliver health services, educational services, housing or community infrastructure. They do not provide those services. They are services which are provided by ATSIC, the Northern Territory government or other Commonwealth agencies through the Northern Territory government. I frankly agree with your assessment that there is an inadequate assessment of the priority of fairness, but I ask the question again: what are the services that the land councils provide that should be assessed by the Commonwealth Grants Commission?

Senator Tambling—What you are quoting from is my letter to Mr Reeves in which I comment on what he was setting out to do under his terms of reference and where he was looking at the various operations. I made the point, on which you have concurred, that this is a view and opinion about where there are conflicting and overlapping areas, and I invited Reeves to look at those particular areas. In education and training you certainly had the area of involvement in Batchelor College, the Abstudy review and the role of the Grants Commission. We have too many people running around creating too much confusion in those areas. So my comment was in the context of writing to Reeves and saying that this is an area that he ought to pursue in his report.

Mr SNOWDON—You do not dispute the fact, though, that the land councils are not responsible for providing those services.

Senator Tambling—They are certainly not service providers. I think there was confusion in their own ranks at various times in their growth as an organisation about where they ought to be influencing matters. That, in turn, was passed on in their administrative costs which required additional top-up funds over many years.

CHAIR—Could I just come in and then I will hand it to my colleagues. I wanted to get some core questions to the senator in view of his long experience in Northern Territory matters.

Looking to the future and assuming hypothetically that the land claims for new land have been concluded—if you could get that snapshot in your mind—and looking then at the role of a land council, whether they be five or 18 or 12 or whatever, would you give the committee the benefit of your advice as to the function and role of a land council in the Northern Territory in that position?

Senator Tambling—It is a very difficult question to answer in full because of the maturity that is now very apparent in Aboriginal communities. There is a changing leadership role that I have observed in 25 years, and particularly in the last 13 years, where Aboriginal leadership is increasing at the local government level and in the commercial involvement in Aboriginal communities. It is also in the areas of what Mr Snowdon and I

were just talking about, in service delivery, in health, in education, and in the provision of facilities by local employment.

We get too caught up often in Aboriginal affairs in using fashionable words, whether it is self-determination or self-management or whatever. I would rather say that with the maturing of Aboriginal people with additional educational skills, they will be able to exercise the more routine and normal government and community decision making roles that happen in any other community, recognising that there are always special issues that relate to Aboriginal heritage, to Aboriginal culture and to Aboriginal land.

Those three areas are the areas that I believe we need to focus the attention of the land councils on and have other structures and organisations in the more normalised areas as far as possible. When you are doing both this retrospective and prospective look, you can only look retrospectively at the $500 million and where it was spent. It had certain rules attached to it, one of which was the 40 per cent to the land councils from the source of funds.

Then there were the top-up funds. The top-up funds, I would contend, and Mr Snowdon would take a different view from me, were used for various purposes in shortfalls. There was $50 million over the period on the chart attached to my letter. There were some very considerable amounts in those top-up funds. That meant funds that ought to have gone to community based groups and community organisations for commercial and social reasons did not go there. It went to the land councils and was gobbled up in administrative areas.

If we look prospectively to the future—and this is what I think Reeves was grappling with—we have got to come back to that culture, heritage and land type focus and allow local government, education, health and other agencies at Commonwealth or state levels to operate properly and effectively. It is drawing that focus back.

I know that within the Aboriginal maturing process there is often an argument that the land councils were seen in that period as often giving leadership to much of that process. I would now argue that whilst there were very many good anthropologists and lawyers attached to the land councils, the Aboriginal people in many of these institutions can now take that leadership totally to themselves. I have seen many organisations in the community now where that is working very effectively.

CHAIR—I am not sure whether you have read Mr Viner's evidence to the committee on Wednesday, 9 June. I understand you would not have had the opportunity to do that. When I invited Mr Viner to comment, he was trying to project his mind to the future. He said that he could see the attraction of the idea of taking the management of the land out of the land rights act and allowing the Aboriginal owners to run it according to how any other Australian group of owners of land might elect to do so. He conceded—I am paraphrasing, they are not his exact words—that this was a radical view that he had come to. Whilst he did not argue it as being a strong recommendation, he raised the question.

Again looking prospectively, assuming the land acquisition has been completed and the role of councils is to work in harmony with local government and other state and territory Commonwealth agencies in health and education and other matters, and if they are to concentrate purely on land management, which I think is what you are saying, would you

see the need for a land rights act covering the machinery of the land councils to enable them to continue to operate? Do you see any potential in giving the Aboriginals a right to do their own thing?

Senator Tambling—I do not want to appear patronising because I think the most important thing we must reflect on is that any changes of this nature must come from within the Aboriginal constituency itself, not from Mr Viner, myself, or Mr Snowdon.

CHAIR—Absolutely. I should have predicated my question by saying that was Mr Viner's view, too.

Senator Tambling—It is very clear that any changes in culture, heritage and land matters must be driven within the changes. I think it is probably a bit premature because I am not hearing that call yet. As I wander around and talk to the various leadership groups in Aboriginal communities, I think they are much more focused at the moment with regard to the land rights act on the issues arising from the use of the royalties.

The royalty funds that are available in there and which ought to be predicated on helping assist economic development still need the land rights act as such, whether it is a Commonwealth act or a territory act, if the Northern Territory achieved statehood and it was transferred. It would still need certain guarantees and protections constitutionally as part of that transitional arrangement.

With the royalties from the major mines that did get under way in the late 1970s and are basically embraced by the land rights act, it is unfortunate that the land councils have not driven, administratively, the opportunities available in wider mining, tourism and other commercial development. To me, this is a tremendous lost commercial opportunity in that area, even down to the administration of stores in Aboriginal communities.

In that particular area at the moment, unfortunately, we have no competition whatsoever. Usually there is one store in each community. There are awful histories relating to the management and the health delivery associated with that store. If we could get some competition and some proper commerce or joint ventures or arrangements of subleasing—whatever the Aboriginal people want in those communities—I think we could get far better economic activity.

So there is the associated economic activity that is with the land council that I think must be more focused prospectively where in the period which you are probably reviewing in detail it has been more with regard to the land claim process. That is what Mr Snowdon and I were disputing earlier—

CHAIR—I thought you had common ground, even though you were coming from different—

Senator Tambling—There is a lot of common ground but there are also some differences.

CHAIR—You were both lamenting that those vast sums of money had been spent. You were saying they had to be spent. Mr Snowdon was saying they were forced to spend them.

Mr SNOWDON—Exactly.

CHAIR—But the core issue is that retrospectively it is a sad thing that a lot of money has been spent. That is the issue.

Mr SNOWDON—And it need not have been spent.

Senator Tambling—My other point is that far too much of the royalty money flowed into income support—which is what we would call it, payments—which were dissipated rather than garnered in a way that produced a proper capital and economic base for the communities from which it was derived.

CHAIR—Finally, do you think that we have a unique opportunity now—you being a distinguished senator and member of parliament for many years—to open a new page, unlock the future and put behind us the dissension and controversy of the past and endeavour to find a new partnership relationship between all the players in the Northern Territory in whatever form, a form that is by informed consent adopted by everyone, idealistically? Do you think this is the time to draw a line in the sand?

Senator Tambling—I think the line in the sand was drawn about four or five years ago by Aboriginal people themselves who showed that determination themselves and have taken the leadership in many of these areas. If some historian sifts back in time and starts to look carefully at various changes in policy—federally by the Labor and Howard administrations and in the Northern Territory—I think I can see a period where there was a massive social change in attitude. It may be that some of us old croaks are getting further out of the picture, but by the same token there is a huge opportunity to achieve that. We ought not to walk away from the fact that politics is always controversial. It is a testing of philosophies and ideologies. It is patronising to suggest that Aboriginal people are not as political as we are.

My argument with many of the land council administrators over many years has been that they have been just as patronising as us politicians in the way in which they have moulded Aboriginal views and opinions. I would hope that with the land council executive—or whatever structure we are able to achieve with however many councils or whatever in the future—we will see the power resting with the authority of the councils and not with the lawyers, the advisers and the anthropologists, who, maybe for good reasons, have had to draw the lines on the maps in order to achieve the sanctity of the Aboriginal land. That is in place. I think we can only go forward from here. But Aboriginal people will themselves be as equally controversial as we are in trying to reach community decisions.

CHAIR—I have noticed that. I am learning.

Mr WAKELIN—Senator Tambling, in the 23-year period from 1976 when the legislation came in, what would have been the main step forward in terms of the land rights legislation itself? What stands out in that period? You have, as the chairman was saying, a

fair breadth of experience, like me. What stands out for you in terms of the achievements of the land rights act—the Viner act? What would be the main one, two or three things?

Senator Tambling—Quite frankly, very little, because I am so critical of the value of the cash for dollar which is essentially for administration, but I have not got anything to compare it with. If the land councils had not been there and the function had been done—God forbid—within the Department of Aboriginal Affairs or ATSIC, it would not have been achieved.

Probably the point that is recognised is that land rights are on the map. Aboriginal land has achieved its sanctity that was properly due. I have always been an advocate that there is a place within the proper area. In effect, the Aboriginal land rights act of the Northern Territory was a precursor to native title in many respects. There are a lot of differences in other areas too, but that identification of land is probably the other issue. Certainly, the royalties have not flown in as they should have to achieve any long-term investment and security for Aboriginal people.

Mr WAKELIN—What do you think became of the royalties? You and Mr Snowdon have discussed the issue of lawyers and all that sort of thing. But what really became of the royalties? Did they go to a very narrow group of Aboriginal people?

Senator Tambling—A lot of it is not known. I did challenge Reeves to look more specifically than he was able to do. I think there was obviously a shield beyond which he could not go because, once the royalties are paid into the individual royalty trust accounts, they are no different from the trust accounts that your solicitor and mine have on our grandmothers' estates.

Mr WAKELIN—It is a private matter and that is it?

Senator Tambling—It is a private matter. When you go to the communities, you cannot see the advantage of any of that flowing. You cannot find businesses, many of which should have accumulated many millions of dollars, that ought to now be very transparently available in economic models and in particular communities. I think most of it went to what I call income support—just ordinary spending by many people. By making cash available at that level, unfortunately, it just got spread like butter on bread and did not achieve any real result. I think that is changing.

A future inquiry for your committee may well be to look at that royalty account area or participation in royalties elsewhere. Over the years I have been one of the ones pointing the bone in that area and saying that there ought to have been more transparency. I have often had Aboriginal constituents come to me with complaints about their particular area, and all I could do was pass it back to the land council and occasionally raise it to see whether it would be transparent. If you did an inquiry into where the Aboriginals Benefit Reserve Trust Account—as it is now known, the old ABTA—cash went over the years, I think you would find that there were short-term advantages but no real long-term advantages.

Mr WAKELIN—The ANAO process really does not allow us to—thus far and no further. The land councils—

Senator Tambling—The trouble with all audits is that it is usually just a green tick, that it has been paid as dictated by legislation or by something else. It does not measure the effectiveness or the efficiency. Exactly the same judgment could be made of your family or mine if we did not invest or spend grandma's estate in an appropriate way. That is a matter for each family. Unfortunately, the families of Northern Territory Aboriginals are big and diverse. I cannot look into that expenditure chart of the royalties and see anything that is really worthwhile.

Mr WAKELIN—You mentioned the maturation of the process over 25 years, and I accept that. But also in the last three months I have seen an enormous amount of what I regard as confusion. There is one group of people out there, particularly the land councils, who are putting an interpretation on Reeves. In a lot of the discussion there did not seem to be anyone else out there with a balance to that. Even with the best will in the world, a lot of Aboriginal people basically had the land council information on Reeves and that was about it. So I take your point about maturation, but I also became acutely aware of what I regarded as the significant power of the land councils in terms of their spread on the ground and their ability to get information out to people. What would be some methodology to give an alternative view to the land council, to perhaps, if you like, present minority views more effectively for Aboriginal people, to give a voice and an alternative to the land council for some people—not to be in opposition to the land council, but as an alternative view to it?

Senator Tambling—I think that it will take a lot longer time than we probably have available in our parliamentary spread. As I said, I can recognise a maturing process, but it is one that is still very different from mainstream decision making in other communities. In many Aboriginal communities, group decision making, family decision making, is still vitally important. There is a great deal of nepotism, and I do not mean that disrespectfully. You assist the people closest to you as part of the process. I am certainly well aware of that, not only from the electorate but from family involvement. That is part of it.

There is also a dependence on strong leadership. Whether the strong leadership is in a community, in the land council or politically, there becomes a bond of dependency. Sometimes it is a dependency on me and sometimes it is a dependency on Warren Snowdon. It does build up in particular communities. I have to step back two paces and say that that is part of the maturing process. I have a fundamental belief that television has radically changed many of the perceptions and the understanding of political accountability and decision making in Aboriginal communities. Since television has been within reach in communities, you can now see much more involvement in that community decision making process. So perhaps we should be funding more some of the announcements Senator Alston put on the table yesterday or looking at the education processes in those particular areas.

Mr WAKELIN—Do you agree with me that there is a degree of confusion about Reeves in the community?

Senator Tambling—Yes, very much so. People came and spoke to me years ago, which I reflected in what I put to Reeves. Then you see that people who spoke to Reeves at his fora said various things, but then they came to the committee and said different things as part of that conversational process. Some of it is because people have moved on the issue while others have organised it. That happens on our side of politics, too. Community based

groups do work that way. Yes, there is confusion, but there is also—going back to the chairman's point—a hope that we are all working towards something a bit better.

Mr WAKELIN—Listening to John Reeves last Tuesday evening in Darwin, he very clearly put on the table in public evidence that land rights had perhaps reached its zenith: it had run its race over a 25-year period. Certainly, there are some steps to go, but perhaps it is really getting to a point where it has gone as far as it can go. The next stage for Aboriginal people is around issues of social justice, health, education, employment—all those sorts of things that you would have heard many times. Are you able to comment on what was in public evidence from John Reeves? We have a land rights movement that has flourished and achieved its 50 per cent of the land mass of the Northern Territory for Aboriginal people. Perhaps, as the chairman is suggesting, it is now time to look forward and look even beyond land rights per se to those other areas of great disadvantage these people have?

Senator Tambling—That is what I think I was trying to convey earlier. I see the scope of the role in the prospective view of the land councils—and I have no problem in saying this—in looking at the economic opportunity and the investment responsibility for very long-term benefit for the Aboriginal people rather than spending the money on questionable administration. We want to be guaranteed that, in the future, decisions are made by Aboriginal people with long-term views in mind.

I think it is the role of governments in other places to look at those issues of social justice, health and education. Given that land in the Australian society generally is the driver of economic opportunity and sustainability for the people who own it or who are associated with it or who live in a community, that has to be the challenge, in this instance, for the role of the land council. It is the economic priority that I think is the challenge over the next 10 or 20 years. Governments have already done some things. There is the Indigenous Land Corporation and the commercial development wing of ATSIC. Those are some momentums but they need not necessarily be governments; they should be run by the Aboriginal people.

Mr WAKELIN—I was specifically trying to understand the land councils a little better. I accept that it was raised earlier but Reeves put it so clearly: it has really run its race. I am interested in that comment. Do you believe land rights, in a sense, has run its race? The chairman has acknowledged that it is at its end. How do you see that period?

Senator Tambling—Mr Snowdon said earlier that the Northern Territory government tested most of the land claims in court. I think most of that and the principles and the rules are now there, but that is the Northern Territory. Those of you who live in other parts of Australia now have to go through a very lengthy and tortuous process of native title as similar systems are brought into place in other parts of Australia. It may well be that the Northern Territory and the land councils will be able to be pioneers, based on their experience, and say, 'This is a certain degree of leadership that we can give.' The other important part is that 25 per cent of the community in the Northern Territory electorate are Aboriginal, and there is not probably another electorate in Australia—with respect to yours and a few others—that has that percentage. I think there is a special place for the Aboriginal Land Rights (Northern Territory) Act into the future.

Ms HOARE—When Reeves was first commissioned by the government to do this report, in your capacity as a member of the government frontbench and a senator representing the Northern Territory, did you ever question the minister as to whether or not this review could have been carried out more effectively and more efficiently by this standing committee, or was it just accepted that Reeves had been commissioned to do this review of the land rights act?

Senator Tambling—My understanding was that, in commissioning Reeves, there was quite a wide community discussion with various Aboriginal groups, and certainly with the Northern Territory government and with ATSIC, about what ought to be addressed in the timeliness of the Reeves review. There have been previous reviews, as you have no doubt noted, by Justice Toohey and others. It had been some considerable time since the land rights act had been reviewed.

There have been—and you have probably seen the phrase used by either the Northern Territory government or different groups in the Northern Territory—aspirations of breakaway land councils for some time. In effect, the Tiwi was an evolution that happened slightly differently, but Groote Eylandt was the result of a very tough and arduous period when south-east Arnhem Land and Groote Eylandt were addressed as a change and a breakaway. Groote emerged because of decisions of the government of the day—I think it was Minister Tickner.

There are six or seven other very large communities around the Northern Territory that constantly, within the Aboriginal community, say that they want to be outside the clutch of either the Northern Land Council or the Central Land Council. All of those issues keep cropping up. The government certainly gets representations. I cannot remember the dates and times of various discussions. I certainly remember discussing it with Senator Herron a couple of times in putting together the terms of reference. I am pretty sure Senator Herron consulted very widely in choosing Reeves's terms of reference.

Ms HOARE—Retrospectively now—and I am sure that some of my colleagues here would agree—from the hearings and meetings that we have had with the Northern Territory people whom this legislation affects, a lot of those messages that we are getting could have come to us initially rather than going through the expense of having the Reeves inquiry. We would have been able to conduct that inquiry for a lot less expense. I will just leave that as a statement.

There is one matter which my colleague Harry Quick asked me to pursue with you. In the letter dated 11 November which you wrote to John Reeves, you addressed most matters except for a couple of statements in the last paragraph, which talk about community leaders who would appreciate the opportunity to participate. You go on to say:

Aspirations of a number of Aboriginal leaders keen to "break away" from the dominance of the NLC and CLC should also be taken into account.

Did you provide those names to John Reeves eventually?

Senator Tambling—I met with Mr Reeves. That letter was dated 11 November. I think you have got a copy of some notes I had at that meeting held on the 22nd of the 12th. At that meeting, I did tell Mr Reeves of the communities and particular people who had been talking to me over the years. I am sure he had a very wide consultation program around the Northern Territory, which gave all of those people the opportunity to present to Reeves.

I have not had any people come to me subsequently to say they have been missed by Reeves. In fact, since the Reeves report has been out, there are probably a few I should have gone back to and said, 'What were your reactions or responses?' I have not done so specifically on that. I am sure that, given the publicity that both his report and your inquiry have attracted, you should be hearing some of those views, anyway, if they are still current.

Mr HAASE—Last Friday, we had the opportunity as a committee in Darwin to take evidence from the Aboriginal Resource and Development Services from East Arnhem. They put a view very strongly that they had the correct anthropological interpretation of the original association between Aboriginal people and the land. I personally felt that it was a shame we had not had that evidence in front of all of the other evidence we had received.

I do not know whether you are aware of the particular evidence or the particular point of view, but basically it outlined a responsibility, firstly in the very small family or clan group, expanding with interaction into other family groups, forming basically language groups, and then, by association, forming a third tier which was a defence of the country and trade group.

The evidence given was that this was a very clearly understood system with specific responsibilities at every level, a clearly defined responsibility of individuals within that. Outlined specifically in that idea was a paternal inheritance right. My concern was that to reintroduce such a system of administration, to associate that traditional style with a more Western style, comprehensible to Western law and Western culture, would be impossible inasmuch as so much time has passed. Could you please give some comment? If you wish to have further information from me to understand what I am getting at, I will be pleased to give it. Could you give us your point of view as to whether or not we can go back and try to interrelate a traditional system of administration with a system of administration that we may impose today.

Senator Tambling—I am aware of quite a bit of that work that has been done in East Arnhem. I do not know if one of the people appearing before you was the Reverend Djiniyini Gondarra. I have certainly, over the last few years, seen in different fora, with regard to the republican debate, with regard to the statehood debate, with regard to constitutional issues across a whole range of different discussions, various work coming up. It often has the title 'demystification' on it, as a process.

There is some excellent work in a lot of that which gives you a very deep understanding of the processes of decision making by the Aboriginal people of East Arnhem Land. That is not to say that that is identical to or universal in other parts of the Northern Territory or elsewhere in Australia. I think it is very significant to that part, and there are a lot of areas of commonality, and it has to be appropriately recognised. I think that that particular East Arnhem group are articulating it in a way in which we can understand it, so it is being put

in good English and, therefore, it is an easy thing. I am sure there are many other anthropologists who would argue in their backgrounds that they have argued for other reasons, other places and other regions similar things but we have not taken notice of it. Certainly, that East Arnhem Land group has it.

Whether you can transpose it into our system of government decision making or into our system of government poses some very perplexing problems for us constitutionally and legally in getting legal issues right. I think there were some submissions on some of the native title legislation that picked up some of that point as well. I think it will tend to, during what I call the maturing process of Aboriginal participation in mainstream government, start to colour. There is no reason why, if local government formed in that particular area or regional administration areas, many of those concepts of doing things a bit differently should not emerge for the particular region for which it has an identification and which it affects.

But I think we ought not to be saying, 'That's the gospel that we can spread right across the Northern Territory or elsewhere in Australia,' necessarily. It is giving due credit and recognition where it is appropriate. It is hard. There are compromises on both sides. A lot of it can be achieved very much administratively. Many of the issues with regard to law—l-o-r-e and l-a-w—we can achieve by negotiation. I think that is one of the processes where I am seeing particularly government agencies and departments wrestling with that—I am seeing it in health—and I think it is a good move. If it is to be affected by your terms of reference, then I think the terms under which it needs to be looked at is in identifying areas where regional councils might be more appropriate than the existing two land councils, which really do embrace a number of those cultural systems.

My answer is not quite direct. I think there are aspects of it that should and could be picked up. There are other aspects of it which just would not apply. There are some things in it which, frankly, the United Nations would not let us do in some of our more human rights type legislation.

Mr HAASE—In Reeves's report, you would be aware that he has made reference to the fact that the processes of election and decision making might be different in different areas according to local lore. Do you believe that he was cognisant of such anthropological evidence when he suggested that there ought to be this opportunity to change the routine locally?

Senator Tambling—I am sure that any of us who have had exposure to Northern Territory Aboriginal communities would be well aware of that. Certainly, Mr Reeves, as a former member of the House of Representatives and as a practising Territory solicitor, must have come across that on a number of occasions. I think any of us that are exposed to northern Australian traditional Aboriginal cultural systems have to take that into account.

Mr HAASE—He has proposed a system involving a greater number of land councils and an overarching group—the NTAC body. The perception I have is that the majority of the evidence we have taken is critical of that proposition. I reiterate comments from Barry Wakelin that there seems to be but one point of view disseminated through the communities and that is a point of view that in the main has been communicated by both Northern and Central Land Councils. I think that is very regrettable because the evidence we are getting

tends to be informed by one side of the argument only. My concern relates to item 7 of your evidence to Mr Reeves. It suggests a topic for discussion:

Aspirations of a number of Aboriginal leaders keen to "break away" from the dominance of the NLC and CLC should also be taken into account.

You raised an issue there that it 'is important to identify the areas and the interest groups keen to change'. Is it perceived as access to funds or as genuine concern with administration? You raise a number of issues that might question why communities would break away. I would like you to extrapolate a little about this breaking away because, generally, communities have put the point of view that they are very happy—in official evidence, this is—with what is being done by the Northern Land Council.

Senator Tambling—I think when you talk about the Reeves recommendation for one umbrella organisation, you should ask the question: what have you got now? You have essentially got two. There are two small ones, the Tiwi and the Groote. I am not including them as being in the overarching body. But I am saying there are two very significant and large historical land councils who have had most of the say and most of the clout for a lengthy period. Reeves is obviously recommending one because of the nature of the functions that would apply to that and then he is applying the rest to the number of regions. I do not consider myself an expert to tell you whether there should be four, 14 or 18 in the subgroups.

Mr QUICK—Despite having 28 years experience in the Northern Territory?

Senator Tambling—It is not for me; that is for Aboriginal groups and organisations to tell us at the end of the day at that level, and I think it is this dichotomy—

Mr QUICK—Yet with respect to John Reeves's recommendation to the Chief Minister, he has probably spent a similar amount of time to the amount of time that you have spent and he is coming up with a thousand-page report basically saying the Chief Minister and the Aboriginal affairs minister should have the capacity to appoint 15 people.

Senator Tambling—I do not have a problem with the one overarching body, but the number of groups that are then formed at the regional level I think is the dichotomy. The regional aspects must be driven by Aboriginal politics and must be allowed to form in appropriate ways at that particular level, and I think it is that dichotomy—as I said, I think you would only be transposing two into one in the NTAC for the broader type issues of where we are now heading with what the next 10 or 20 years will be looking at and that can be properly done. But it is then a matter of getting regional. The land councils have historically said, 'We are going to regionalise.' You go back and read their reports of six or seven years ago; they tell you that they had six or seven subregions and 25 per cent representation in those areas. You can read the reports five years later where they said that is what they were going to do. You read the reports last year and they are still saying, 'Yes, we are going to do it.' They still are. In effect the two large mainland councils are very monolithic.

I think it is this dichotomy, in which the East Arnhem group, the group at Ti Tree, the Jawoyn around Katherine or the group somewhere else, are currently seeking to negotiate an appropriate form for their area. They have made different submissions to different places. They have got a different vision in the Jawoyn that is very sophisticated and I think somehow we have got to allow that process. I do not see the need for two big ones. I think you could have the one there.

Mr QUICK—Would you be worried, Senator Tambling, that this one big council—

CHAIR—Excuse me, I am quite happy to give you the call, but I am not sure whether Mr Haase had finished that line of questioning and I think I should let him do that if you do not mind.

Mr QUICK—Right.

Mr HAASE—Mr Chairman, you give me great opportunity. I am very happy with the senator's response and if my colleague would like to proceed now I would be happy for him to do so.

Mr QUICK—Thank you. My apologies for ducking in and out, but there are a lot of meetings on. In the Senate on 28 February 1995 you stated:

Instead, we get a land council that is preoccupied with politics and ends up far too often, as it did in the past until it turned the corner a year or so ago, just another arm of the ALP left wing faction.

We have heard evidence from the Northern Territory government about the politicisation of the land councils. Would you be worried that, if we did have NTAC and the 15 members, rather than being appointed according to Reeves, were elected by the indigenous community, this super supreme NTAC would be even more political and even more of a thorn in the side of the Northern Territory government and possibly the federal government, whether it was Liberal or Labor?

Senator Tambling—I accept totally the politics that are going to be played. I think it is different from defining what are the objectives and the rules by which we judge the operation of the land council or the operations. I think it is for us to argue in other committees and other places and for the parties themselves to get out and sell themselves better. I accept that responsibility on the part of my side of politics. Mr Snowdon does a far better job than I do.

Mr QUICK—No. I do not think you are answering my question—that sounds like a Senate estimates answer. Would you be concerned because, as I said, you stated in 1995 and while you did mention that things have turned the corner—

Senator Tambling—That was after the audit report.

Mr QUICK—Yes, but as I said, the evidence from the Northern Territory government is that their big concern was that the Northern Land Council and the Central Land Council were involved in the political process that they saw was giving them a hard time. If NTAC

is elected by the Aboriginal community—and we recommend that that is the best thing—do you see that as more of a thorn in the side both of the NT government and of future federal governments?

Senator Tambling—No, I do not.

Mr QUICK—You don't see it?

Senator Tambling—There will always be politics in the issue but, in the area of getting a better system, I am more attracted to the Reeves portfolio of more regional councils and the one overarching.

Mr QUICK—Currently, we have four. There is some concern that the two are too small, especially the Anindilyakwa Council. I can understand that, having been out that way recently. If we accept the recommendation and have 18, obviously they will need to be resourced, otherwise they will be like small councils in Tasmania—they are going to end up not being able to provide the services, and they are going to fail. There are people out there who, as soon as people fail, will be casting aspersions about their being hopeless and about 18 not working so, therefore, we need to go to 12, six or whatever. In your mind and with your great experience of having lived up there—and I know you said that you were not too sure of the number—would you rather have eight fair dinkum ones that are going to work or 18 that are going to place it in jeopardy? I am talking hypothetically.

Senator Tambling—My personal view is that 18 is probably a figure that is too expansive at this point in time, but I think it is wrong for us to patronise and to say to the Aboriginal people what the number is. That has to be evolved by the Aboriginal people themselves. It is a bit like—and I will probably bait Warren here—the current vote that we are engaging in and participating in as observers in Timor as to whether it is autonomy or integration. You made the judgment that maybe Groote Eylandt and Anindilyakwa is too small. The original proposal was to have it incorporated with part of south-east Arnhem Land, but Mr Tickner took that part out. He said no. On Groote Eylandt, there were political reasons as to why that decision was made back in that particular period, but we must allow the Aboriginal people themselves to identify the boundaries for those issues that are appropriate to them. My hunch is that it is for others, not the Northern Land Council and the Central Land Council. They are just as paternalistic because of their geography as even one big overarching.

Determining the regional basis is a bit like how we allow local government to evolve or change. If it is going to be appropriate regionalisation, there will be some communities that will be very well resourced because of their proximity to mining. There will be others that will be very well resourced because of a proximity to fishing or to tourism. There will be others that might have a very good claim to be a particular region but have absolutely no resourcefulness. I think that—and I do not know whether Warren would back me on this—the Ti Tree area is one where there is a very genuine desire by a group of people in that particular area to take control within themselves. So I am not arguing for a number, and I think we have to have a process of determination.

CHAIR—You would rather leave it to us, Senator?

Senator Tambling—No—

Mr QUICK—Would it be important to ensure that, whatever number is decided upon, they are successful for at least 10 years, otherwise the thing is going to be in turmoil?

Senator Tambling—Yes, and that is the difference in their access to funding, if they are very small, and what the division of responsibility is, too.

Mr QUICK—On the bottom of page 2 of your letter to John Reeves you state:

Various Aboriginal communities are concerned about the administration of permits to visit, or reside, on Aboriginal land. This matter needs clarification.

With respect to your vast knowledge, if we abolish the permit system and introduce, as John Reeves says, a system of trespass, considering the huge size and the isolation of a whole lot of communities, the scarcity of police in those huge regions, their lack of transport and their perception of 'them' and 'us', how could Aboriginal communities adequately police that trespass?

Senator Tambling—It is very difficult and it is very different from region to region. In Central Australia, there are areas that are very relaxed about it and which would not police and do a thing even now. They never question who comes and goes. That applies to some communities. There are others that are very insular and self-protective that want it. There are others—and I will name Maningrida as one—where there is a huge dogfight constantly going on between various sectors in that community and the Northern Land Council about the way in which the permit system is administered. They want much more local say.

It is often down to the base level of trying to get someone out of the community and have the permit withdrawn rather than issued. It is a very complex and hard task in that area. It is coming back to white fellows being so patronising that we say the only way you can have it is to have a special little permit. The principle of law of trespass on property is more attractive in the sense that it is a policing problem of the community.

Mr QUICK—We were in Maningrida the other day, assuming the trespass law is operating.

Senator Tambling—All of you were free from a permit because you were politicians, but to get a tribe of staff there—

Mr QUICK—You need a permit.

Senator Tambling—I think a politician does not need one.

Mr QUICK—We needed a permit from the Northern Land Council.

CHAIR—I think we applied for several.

Senator Tambling—That is good.

CHAIR—That included the fascination of being assisted to complete the application form by a very courteous and attractive young Irish girl.

Senator Tambling—At the land council or at Maningrida?

CHAIR—I will not say where. I will leave it to you to contemplate what the chairman thought in regard to unemployment of young Aboriginal people.

Senator Tambling—If you had obtained your permit in Darwin, it may not have been what the people of Maningrida wanted.

CHAIR—We were not in Darwin.

Mr SNOWDON—I am interested in this issue of patronisation because we have had a couple of views expressed this afternoon about the land councils dominating the discussion in the bush. I refer specifically to the patronisation aspect and also the politicisation stuff. I am not going to comment on he personal allegations you make here, by the way. I do want to ask a question about your knowledge of the land councils and land rights in the Northern Territory. Senator, do you recall the campaigns waged against the ALP in the mid-1980s by the land councils?

Senator Tambling—I was very inactive politically in the mid-1980s. I was probably aware of it. In that period between 1983 and 1987-88, I retreated to being a newsagent rather than a news maker.

Mr SNOWDON—Let me refresh your memory: in 1984-85, there was a proposal for uniform national land rights. That proposal was advocated by the Hawke government and supported by the various state and territory leaders. The Hawke government put what was called its preferred national land rights model into the federal parliament. It was opposed vehemently by Aboriginal people in the Northern Territory, who organised people from around Australia to demonstrate at the Old Parliament House. They blackguarded the government, blackguarded the ALP, and blackguarded Clyde Holding, who was then the minister. It was not a question of whether or not they voted for the ALP. What they were doing was campaigning against people who were perceived to be attacking their interests.

I suggest that the way to look at Aboriginal politics is to look at their self-interest. Aboriginal people are sophisticated in the way in which they judge politics. If they perceive they are being attacked, they will fight back. It is wrong to conclude, as I feel is being concluded by the discussion this afternoon, that somehow or other the ALP and the land councils are joined at the hip. That is just wrong. History demonstrates that it is clearly wrong. Let me just say, by the way, that I know about these second things I want to talk about because I was a senior policy adviser.

CHAIR—Is this a confession or something?

Mr SNOWDON—No, I just want to make it very clear. You should understand the history of this. I was a senior policy adviser at the Central Land Council at the time. I was working with Pat Dodson, who was then the director. John Ah Kit was the director of the

Northern Land Council and subsequently Mick Dodson was. Our job was to come down here and prevent the ALP government from emasculating the land rights act without fear or favour. I suggest that, when you make assumptions about the politics of Aboriginal Australia in the Northern Territory, you understand that the guiding principle ought to be how Aboriginal people perceive their self-interest. In that context, I want to ask this question about patronising attitude.

Given the history of land rights in the Northern Territory—I am not talking about the CLP, the ALP or anyone else—it is little wonder that the dominant view is one which is supportive of the land councils. The land councils are perceived by their clients, the people for whom they are responsible, to have delivered. You were asked a question about what the outcomes were and you said you did not think there were any. If I were an Aboriginal person—and I am not—I would have thought that there were very significant outcomes. The most significant outcome is the acquisition of land. By any measure, the land councils will be regarded by Aboriginal people as successful and as giving them value because of their success in achieving and acquiring land. You also made the observation about royalty associations.

CHAIR—Warren, I do not want to be rude, and I know that this is a matter of passion, but we have a time problem and I would like you to get to the question.

Mr SNOWDON—I just want to go across this issue. I have raised the issue of politicisation. We had a discussion in this committee, prior to venturing anywhere, about who should be informing Aboriginal Australia about the contents of the Reeves report. We agreed that it should not be the land councils. We agreed that it was the government's responsibility. We should not hide behind the fact that Aboriginal people have a view nor suggest that it is just the view that they have been given. We saw amply demonstrated on two or three occasions that Aboriginal people had divergent views.

The question I want to ask you is about land trusts and moneys. As well as making the point about no outcomes for Aboriginal people in terms of the success of the land rights act, you also made the point that you can see no long-term investment outcomes. You talked about some joint ventures and I assume you were talking about the Jawoyn joint venture for Mount Todd and others. Are you aware of the investment strategies which have been implemented by some of the land trusts? Are you aware of the Ngurratjuta investments? Are you aware that Aboriginal people own half of Kings Canyon Resort?

CHAIR—We will take one at a time. Give the senator an opportunity to answer.

Mr SNOWDON—He knows what I am talking about.

CHAIR—Well, the chair does not.

Mr SNOWDON—He does. That is the point.

CHAIR—I have to try to get some form into it. Let the senator quickly respond. I am informed that there is about to be a division called in the House of Representatives, so we are in real crisis mode.

Senator Tambling—I will try to address a couple of those points and anticipate what Warren was getting to as well. The point of the general thrust where I was questioning the amount of money—and the $200 million to $300 million for administration—is on the effectiveness of two land councils with most of that money and whether they could have done the job better than numbers of solicitors or lawyers in achieving land rights. That is a moot point for political discussion.

Mr SNOWDON—Except by lawyers.

Senator Tambling—With regard to the trust, it is important to know that a number of years ago the Northern Land Council and, I think more recently, the Central Land Council stopped reporting the various moneys that were being paid to the numerous trusts in the schedule parts of their annual reports. I think some 40-odd trusts used to appear in the Northern Land Council and, therefore, you had some measure of knowing the expenditure and where it is. I accept that it is the ownership rights of those people who are the beneficiaries of those trusts but there is no general accountability of that area. I am certainly aware that some of the trusts—some independent of land councils and some within the ambit of land councils—have developed investment strategies in more recent years. Certainly, in the period when I was very active in the estimates in the early 1990s, there was good cause to be very seriously concerned about the dissipation of funds from many of those trusts in a number of incredible ways.

It is unfortunate that it is one of those areas of privacy—which I respect—but, at the same time, there is a degree of public interest, particularly when constituents keep saying, 'I'm aware and it is not there.' There is no openness in that regard. So that is why I addressed it in the way that I did with Reeves by saying, 'I think it is an area that does need a bit more accountability and transparency.' It is no different from the Maningrida store—if I can use that as an example—which is a cooperative totally owned by the community. Under the cooperative legislation it has a $5 million turnover and its economic record is lousy. The community gets nothing from it because of the nature and way that—even qualified audit reports go to an annual general meeting—people sign off and accept them. In more sophisticated communities they would not do so.

So there is a very hard and vexed issue about being too paternalistic but, at the same time, making sure that no-one is being diddled in many of those particular areas. I would like to see more work in that area to somehow make it more transparent.

Mr SNOWDON—I accept that. I am not arguing that there should not be more accountability. I am responding to your observation that there was no investment. The fact is that there are investments and they are quite sizeable investment strategies. Half of the Alice Springs CBD is owned by Aboriginal organisations. Kimber brothers is half owned by Aboriginal organisations as a result of investment strategies as a result of royalties. So I just want to make that observation.

Senator Tambling—Some of them are within land councils and some of them are not.

Mr SNOWDON—None of them is with the land councils. Centre Corp is an investment agency, and the land council has some membership of it, but it does not control the money.

It has nothing to do with it. A point on which I concur with you is the context of the evolution of regional councils or regional structures. If we all concurred, we would not be discussing the Reeves recommendations because we would be accepting that this has to be something which emerges from the grassroots, not something which is imposed. Unfortunately, what Reeves does is impose a structure which will not work. The fact is that Aboriginal people are quite able and are sufficiently sophisticated to make these decisions themselves, and they will in their own good time and at their own good pace.

CHAIR—That is the committee's view. We all agree on that.

Senator Tambling—Mr Snowdon referred to a matter that I had referred to him about the Hansen case, which is currently before the Northern Territory Supreme Court. I had not commented about that this afternoon, but there are a lot of issues in that case that should be addressed by your committee when Justice Angel hands down his judgment in due course. I have seen a number of the submissions that have been handed up. All I want to flag to the committee is that, either in this review or subsequently, the seriousness of some of the issues that were raised in that case should be addressed in the longer term by the committee. There are some very vexed and particularly serious issues that were addressed in one part of the case, but it must rest because of the nature of the case at this point.

CHAIR—It is sub judice.

Mr SNOWDON—You accused me, though, comrade! I will not take offence because none of it is true. You can always move a substantive motion.

CHAIR—The chair is going to insist that the sub judice rule apply and it does. Senator, on behalf of the committee, I would like to thank you for your time. The evidence has been engaging, of great interest and helpful. To have your insight and advice is much appreciated by the committee. We wish you well in your work and look forward to the new chapter being opened up, and we hope we can make a contribution to that. Thank you very much, Senator, and we wish you well.

[5.40 p.m.]

ALTMAN, Professor Jon Charles, Director, Centre for Aboriginal Economic Policy Research, Australian National University

LEVITUS, Mr Robert Ian, Research Officer, Centre for Aboriginal Economic Policy Research, Australian National University

CHAIR—I now welcome Professor Jon Altman, who is a frequent witness to our inquiries and a good friend. We apologise to you, Jon, for the delay. You saw the need for it; it was very valuable to the committee. It is rare to have a senator of so many years experience offering his advice and overview. I do not propose to go into formality, Jon; it is over to you. At my request, you accepted the invitation to perhaps offer some information to the committee on the question of royalties, and I am most grateful for that. We will probably be interrupted in a second, so if you would not mind kicking off, and we will play it by ear after that.

Prof. Altman—Okay, I will start off. I am accompanied by Robert Levitus.

CHAIR—Sorry, Robert, I should have welcomed you as well.

Prof. Altman—Apologies from David Pollack. He is unwell today, so he will not participate. He was ill yesterday as well. Mr Chairman, you alluded to the fact that I talked to the committee on 31 March, and I offered to come back to discuss issues to do with the financial framework of the Aboriginal land rights act, which is something that I have been looking at now for approximately 20 years, despite my youthful looks. They are obviously very complex issues.

You raised with me six issues which I am going to try to address. The first was the rationale for providing mining royalty equivalents; the second was the distribution of mining royalty equivalents; the third was the accountability of royalty associations; the fourth was the treatment of other moneys, which is something we do not hear much about—negotiated payments, park rentals, et cetera; the fifth was the rationale and operation of the mining withholding tax, which is something we have not heard a lot about, I do not think; and the last, which is probably a very important issue, is the issue of any parallels that exist between mining royalty equivalent distributions under the Aboriginal land rights act and Native Title Act treatment of native title holders and claimants and their receipt of compensation.

I would like to try to answer those six questions. The way I would like to do that is by starting off with history, because I think that is something that is extraordinarily important. As I have listened to you talking to Senator Tambling, I realised that, over the last three months, you have talked to a lot of people, and obviously your level of understanding on some of the issues is much more sophisticated than it was three months ago. Nevertheless, I thought it might be useful to visit some historical issues and basically try to highlight to the committee some of the progress that I think it can make in reforming the financial framework of the Aboriginal land rights act to make it a more workable model.

In my presentation and in my discussions, I will do my best to avoid the 'R' word, because I think that our critique—

Mr SNOWDON—The republic? It is all right, mate, after today's High Court decision.

Prof. Altman—I think that there has been enough discussion of Reeves from our viewpoint, and in some ways, what I would like to focus on—

CHAIR—I am looking to the future; that is what I am interested in.

Prof. Altman—Yes, the future and, I guess, the statute as it stands and how that might be made more workable. I will start off by saying that the land rights act's financial framework has never been based on sound economic principles or even logical accounting, let alone clear and transparent policy messages or even directives to indigenous interests in the Northern Territory. With the benefit of hindsight, it is clear that Mr Justice Woodward tried hard to accommodate pre-land rights vested interests in his royal commission recommendations that were largely incorporated into the 1976 act. We also know that Woodward never intended for his financial framework to remain unaltered, by and large, for 25 years.

I have researched the Aboriginal land rights act's financial framework for some 20 years and I have gained an understanding of contemporary and, I believe, intractable tensions in the land rights act's financial framework by always starting with the Hasluckian vision and model of 1952. Here was the genesis of well intentioned and then progressive, but illogical, policy.

While the idea of a double royalty levied on the Aboriginal reserves was apparently benign, it lacked logic because these dollars, which were then pounds, were to be provided to Northern Territory Aborigines generally, not necessarily to those on affected reserves. This was broad compensation to facilitate the then policy of assimilation. The notion of direct compensation for any loss was not considered until 1963 when the House of Representatives select committee responded to the original bark petition.

Policy remained well intentioned and a bit more logical when in 1971 government decided that areas or regions affected would be guaranteed 10 per cent of royalties raised on their lands. The reason for this change was largely because after the Yirrkala Aborigines lost the Gove case, to add insult to injury, under the Hasluck model they were not guaranteed any returns from mining on their reserve land.

To simplify it a little, let me conflate Woodward's 1974 recommendations and the Aboriginal land rights act of 1976 and look at three more pieces of well intentioned bad logic that now largely constitute the land rights act's financial framework. The land rights act fundamentally divides statutory royalty equivalents—a term we often use but we are basically referring, as I will explain later, to near equivalents and not actual equivalents—by an institution, as you know, called the ABTA, or now the ABR.

These moneys are divided in three ways. The first way, which I refer to as good intent, bad logic and too much historical precedent No. 1, is that Woodward and the land rights act

increased royalty payments to areas affected from the pre-land rights days from 10 per cent to 30 per cent while also allowing the negotiation of additional payments. This addition is due to the newly recognised rights of traditional owners and the existence of right of consent or right of veto provisions in the law that did not exist, obviously, prior to the land rights act.

But there are a number of inconsistencies and problems here. Firstly, traditional ownership is recognised but the law is careful not to earmark statutory royalties to traditional owners only, but also to other residents. The law does not define areas affected, and nor are people affected defined. This is determined by land councils.

The law gives no guidance as to how moneys should be spent, and the law does not specify why moneys are paid. If payments are compensation, then yes, they should be directed at the region, but they should not be linked to royalties. And if they are intended as minimal rent sharing, the profits that are generated by a mine, then they should be directed at land owners, not to residents. If they are intended as both then they should be clearly differentiated. That is the first bit of confusion I will highlight.

The second bit of what I call good intent, innovation and bad logic No. 2 is that another 40 per cent was earmarked to fund the operation of land councils, the Aboriginal statutory authorities established to claim land and to represent traditional owners' interests in land. The reason for funding land councils from royalties was to ensure their independence from annual budgetary processes, although their budgets have always required ministerial approval. Funding land councils from royalties also gave the impression that they were relatively cheap, funded from revenue forgone, rather than being an extra impost.

But this mechanism too is problematic. Forty per cent from the outset was an underestimate of costs, given statutory functions, and actual costs, as has been highlighted, have been closer to 50 per cent. Royalties fluctuate and therefore so do the incomes for land council budgets. Bureaucracies are sticky downwards, both in size and expense.

Mr SNOWDON—Say that again, Jon.

Prof. Altman—Bureaucracies are sticky downwards, both in size and expense. The 40 per cent that was meant to finance land councils was inexplicably taxed at source at 6.4 per cent by the mining withholding tax. So, in reality, it was not 40 per cent that land councils were eligible for, but actually 37.4 per cent, which is a significant difference when one looks at dollars.

Finally, whenever the 40 per cent was exceeded, land councils ran the risk of conflict with their constituents who felt that land councils were spending too much of the royalties cake. That is problem No. 2.

The third problem which I refer to as good intent, too much history and bad logic No. 3 is that another historic vestige was the decision to continue to provide a share of royalties for the benefit of the Northern Territory Aborigines generally so that non-landowners would not fall too far behind the rest, or so that those with land but no mine would not be second class landowners.

The proportion that was meant to be earmarked for Northern Territory Aborigines generally was meant to be 30 per cent, down from the Hasluckian 100 per cent, or from the 90 per cent from the early 1970s. Unfortunately, the logic of this percentage is most unclear.

'Benefit' was undefined, but was dependent on recommendations to the minister from an Aboriginal advisory committee. 'Beneficiaries' were undefined, but traditional owners of land, and even recipients of areas of affected moneys, were not and have never been excluded. The financial policies stipulating expenditure or investment were absent from the statute, leaving the ABTA open to criticism for doing either, that is spending, or doing both, spending or investment, and doing those too badly or too well. The lack of overall logic in the framework is highlighted by the fiction of what is still often referred to as the 40:30:30 formula. This formula has never operated, not in one financial year, since supposedly initiated in 1978-79.

This lack of logic has made Aboriginal interests in the Northern Territory very vulnerable on two broad fronts. One front is generally non-Aboriginal political interests, wider public scrutiny and independent review. In the absence of transparent policy logic and expenditure guidelines, a negative representation of how resources are expended is always possible. Hence, land councils could be criticised for exceeding a very arbitrary 40 per cent of royalties, irrespective of performance. Associations in areas affected could be criticised for not ameliorating social impact if the logic is compensation, or for not delivering economic development or socioeconomic improvement if rent sharing was the logic, although if this was the case, improvements should be targeted at traditional owners and not others.

The ABTA, holding the residual, could be criticised for spending too much, or not investing enough, or investing badly, or for making grants for vehicles or for the purchase of pastoral stations that accord too closely with Aboriginal priorities. In all these areas, Aboriginal interests faced a lose-lose situation. In such situations there is really little incentive to perform.

The second broad area that I think the financial framework is vulnerable to is from within the Aboriginal polity because there is constant tension in the division of the royalties cake. The discretionary nature of payments to Northern Territory Aborigines and land councils, especially after supplementary funding options were introduced in 1979, put these two new institutional forms in conflict, despite the fact that land councils nominated ABTA advisory committee members. I think it is important to understand that tension because they are fighting over similar statutory payments.

At the bureaucratic level, land councils were keen to attract budgets adequate to fund their statutory functions, while the ABTA was constantly bemoaning its lack of access to 30 per cent. People in areas affected, generally represented by traditional owners, bemoan the fact that what they regard as 70 per cent of their royalties are not directly available to them, or else bemoan the fact that their mine is less valuable than another, with a smaller impact, or that one royalty regime is inferior to another.

Of course, we have to be aware that we are looking at a situation in the Northern Territory where we have got three royalty regimes. You have the Northern Territory profits

royalty regime, a regime that governs uranium mining, and you have got a regime that covers oil and gas.

CHAIR—We will have to pause here as a division has been called in the House of Representatives.

Proceedings suspended from 5.55 p.m. to 6.09 p.m.

CHAIR—Jon is now going to address the six questions in the context of the introduction he gave us.

Prof. Altman—I was just going to address those questions very briefly. I think I have said enough about the rationale for providing mining royalty equivalents and I have shown some of the historical precedent there. Similarly, with the distribution of mining royalty equivalents, I talked about the 40:30 or 30:40:30 formula, and I have distributed some material to the committee that tries to show that in diagrammatic terms and also in terms of expenditure out of the ABR.

The third question—accountability of royalty associations—is something that is obviously complex, but I certainly think that there is room for a great deal more accountability by royalty associations.

CHAIR—That seems to be across the whole consensus. I cannot think of anyone that has even hinted that that should not be the case, that there is not a lot of work to be done in that regard. Woodward, the other day, confirmed it, and I think Viner as well. That is beyond argument.

Mr Levitus—David Pollack from the centre actually circulated a questionnaire to a number of royalty associations and one of the questions he asked was: do you think there should be greater accountability by royalty associations to their members, land councils or government? We had, from memory, three royalty associations respond on that point: two of them argued that they were sufficiently accountable to all three of those bodies, and the other one argued that they would be happy to be more accountable to members and government but not to land councils. At the level of the royalty associations, you might find some argument.

CHAIR—You got three responses out of how many?

Mr Levitus—Probably about eight, I think.

Prof. Altman—There were only about eight. From my point of view, as long as land councils continue to make a determination, the accountability has to be to them. This is in relation to the royalty equivalents, the areas affected moneys. The associated issue there is: how should other moneys be used? That is a fairly complicated issue because in some cases there are negotiated payments that are quite substantial and these may include payments in relation to mining, but also in relation to national parks. Again, I would certainly be in favour of a high degree of accountability there by associations that receive those.

But the mechanism might be a little bit different. You may, in fact, look for that accountability to come through the mining agreements themselves, stipulating a little bit more carefully how those payments should be utilised. One of the best agreements that has been completed to date is the Pancontinental or Jabiluka agreement that actually stipulated quite clearly how moneys should be utilised. There is an issue there that one needs to differentiate between the mining royalty equivalents which may be regarded as public moneys and these negotiated payments that are far more private in nature.

CHAIR—For my benefit, the Jabiluka agreement that you mention as a good model is over and above the other royalties that are distributed a la the Woodward model?

Prof. Altman—Again, it has two components. It has a statutory component which is the statutory royalty at the time of 2½ per cent ad valorem, and it has two per cent negotiated on top of that.

Mr SNOWDON—Perhaps I could put it this way: whatever happens, the royalty which relates to the mineral—in this case, uranium—will be paid. If I am getting access to your land, I am going to negotiate with you—which is direct. There are two partners.

CHAIR—And that is the Jabiluka agreement that you are talking about. Thank you for that. I wanted to clarify that in my mind. That is not subject to the 40:30:30?

Prof. Altman—The 2½ per cent is, but not the two per cent.

CHAIR—The 2½ per cent is, but not the rest.

Mr SNOWDON—The renegotiated royalty is not.

Prof. Altman—We will get on to this when we start comparing with the Native Title Act, but one of the important things to understand about the land rights act is that some of the incentive for traditional owners to consent to a mine is provided by statutory royalties foregone by the state. In other words, government, if you like, forgoes a proportion of their royalty in favour of Aboriginal interests. Under the Native Title Act, you do not have that. All the income that will go to native title parties will come from the mining company. There is no provision for statutory royalty equivalents to be paid to traditional owners, native title holders or claimants under the Native Title Act.

CHAIR—Because the Crown is entitled to receive 100 per cent of it and there is no equivalent or anything like that.

Prof. Altman—Yes, which it receives in the Northern Territory. The Commonwealth gives the equivalent from consolidated revenue.

Mr SNOWDON—The other point is that native title is a coexisting title, whereas freehold title of the land rights act is not.

CHAIR—You can have one or the other, but not both.

Mr SNOWDON—You can have both, but the statutory model provides you with greater strength.

Prof. Altman—It is a stronger property right—the land rights property right as distinct from the Native Title Act's property right. The next issue was the one about the rationale and operation of mining withholding tax. Frankly, for a long time now, I have never seen any logic to that tax, particularly when it is levied out of all payments out of the ABR. In other words, if a royalty equivalent is paid to administer land councils, that tax is levied, but those moneys are paid to a statutory authority, and its employees pay tax. So it is not a logical impost.

The reason for the mining withholding tax was a concern in 1979 that individual Aboriginal people would receive royalties, as has happened in some cases, which they would not pay tax on, that they would be outside the tax system, particularly if they were living in very remote locations. Since the late 1970s, more and more Aboriginal people have got tax file numbers, so they are now within the income tax net. Basically, fewer and fewer Aboriginal people are getting cash payments. This is something that has tightened up quite considerably over the last 20 years.

I can see absolutely no rationale for having a mining withholding tax. In some ways, I think one of the things that the mining withholding tax does is provide a perverse signal to individuals that, if they receive moneys, they can just spend them and it is tax free money. I think that it would make much more sense to just abolish the mining withholding tax, hence alleviating the financial problems of land councils and giving the signal that these moneys should not be paid to individuals but should in fact be paid for community benefit. That is something which I think this committee could take on board.

Mr SNOWDON—How do you describe community benefit?

Prof. Altman—I guess I would describe community benefit as payment made to an incorporated body which basically has defined purposes that are beneficial. For instance, I notice—and I was not going to mention Mr Reeves—there is a perception that—

Mr SNOWDON—In that report.

Prof. Altman—There is a perception that Aboriginal people do in fact receive individual cash payments. This is something that has happened with respect to the expenditure policy of some royalty associations, but increasingly, royalty associations do not make payments to individuals in cash. But you do have organisations like Ngurratjuta—and I think you may have talked to them briefly—that make payments to groups for specified purposes which they define as policy. It does not make sense to me that whatever those groups get for their community benefit is taxed. I do not see why they should get four per cent less than they would have otherwise. It is not a huge tax but it is nevertheless an impost.

CHAIR—But if any individual was getting a benefit, then the argument of tax would still apply.

Mr SNOWDON—They would have to pay it, anyway.

Prof. Altman—They would have to pay income tax.

CHAIR—Do they?

Prof. Altman—They do not now because with the mining withholding tax, the cash they get is tax free, but if they did not have the mining withholding tax, then they would be required to pay tax.

CHAIR—We were in a community the other day—I cannot remember where; sometimes we get these anecdotal things and I cannot accept them as being entirely accurate, but you try to think about it—where there was a suggestion that some people were purchasing goods for personal use, I suppose clothes and things like that, booking it up and the bill was being sent to the community organisation, which was being funded through a royalty distribution.

On the face of it, you have people getting tax free benefits in the form of goods, yet ostensibly no individual getting benefits, and certainly no accounting. That was suggested a few times, but short of having the power of a royal commissioner and a year to carry out this inquiry, it has been physically impossible for us as a committee, as Warren would understand, to delve into all of those allegations.

Prof. Altman—It surprises me to hear that because one of the cases I certainly am aware of is Ngurratjuta. I would not call what they have a book-up, but I think their system is that if there is an agreed community expenditure, then the arrangement is certainly that people do not get cheques or cash to buy goods, but that the organisation is invoiced. Nevertheless, that is an organisation that has got PBI status—it is a public benevolent institution—that would not be liable for sales tax. The basis under which it has got that is that its members are impoverished and these expenditures are meant to be for their wellbeing.

CHAIR—Again, by innuendo—it is not proven—these people are in receipt of 100 per cent of entitlements to social security. There is no income or means testing taking place on the deemed benefits, and the organisation distributing it is free of tax because it is a benevolent organisation. If that is true—and I do not know whether it is—there are lots of worries involved in that sort of system. You would be a bit hard pressed to say, if that is true, that those organisations should not have to bear the burden of the withholding tax.

Prof. Altman—I think that organisations could certainly be given the option of withholding tax or paying income tax on benefits to individuals. The key point with the withholding tax is not its levying on royalty associations. I think the key point is on the other 70 per cent that is paid to land councils and via the ABR.

CHAIR—It is across the whole board.

Prof. Altman—Yes. It is applied across the whole board. In some ways it could be argued that, as statutory authorities, land councils are the only bodies that pay a tax on their income and it does exacerbate their budgetary problems in terms of meeting that 40 per cent ceiling.

The sixth point related to any parallels between mining royalty equivalent distributions under ALRA and the Native Title Act. We have already alluded to that a little bit. The key point I would make is that, in terms of some of the concerns I have heard this committee express about payments being channelled just to traditional owners, I think it is important to note that mining royalty equivalents paid under section 35(2) are paid to traditional owners and residents of areas affected, whereas under the Native Title Act, what we have seen from a number of agreements now—the Century Mine agreement at Yandicoogina in Western Australia and also now with Woodside in the Burruck Peninsula—is that you have got multi-year agreements, 20 years plus, and fairly substantial benefits are paid just to native title holders and claimants, not to other people in the area affected. I would argue that, in terms of that concern, the land rights mechanism is superior to the Native Title Act's mechanism.

CHAIR—Yes. I think that is a preliminary conclusion that I have reached—that it is more equitable to use the operation of the Northern Territory land rights act. Its legal outcome, as I understand it, is that the traditional landowners, as you say, cannot claim 100 per cent legal ownership of those funds because I think the act is expressed in such a way that there is a clear trustee situation so that potentially all Aboriginal people in the Northern Territory have an interest in it. That is where there is a bit of confusion in the act that might lend itself to some redefinition.

Prof. Altman—Thirty per cent is for the benefit of—

CHAIR—Yes.

Prof. Altman—It is actually not defined in terms of 30 per cent, though; it is a residual.

CHAIR—Yes, but the rest of the Aboriginal people—those who are not traditional owners—living in the community also have a clear equitable interest in the royalties by virtue of the operation of that act. That certainly is a stronger position than the native title situation which is a very defined path. Heaven help us if someone decides to go and argue this in the court one day.

Prof. Altman—I guess that, in some ways, with the land councils making the determination, they will need to wear the legal consequences of that, in much the same way, though, as looking at the other way. Under the land rights act, if a new group of traditional owners turn up and say, 'We should have been beneficiaries of this agreement,' the land councils indemnify resource developers against any action. So, in some ways, the land rights act system provides greater certainty than is potentially available under the Native Title Act.

CHAIR—Okay. I am sorry to have interrupted—keep going.

Prof. Altman—No, I am very happy to take any questions.

CHAIR—Put your mind forward: how would you reconstruct the legislation to deal with the problems that you outlined so eloquently from your 20 years of thinking about this issue?

Prof. Altman—One of the things that we have been discussing at CAEPR is having a mechanism for more realistically funding land councils. There are certainly arguments for

and against funding them directly from consolidated revenue like with native title representative bodies, as distinct from funding them from mining royalty equivalents. I personally believe that mining royalty equivalents provide a sense of independence and that makes it quite a good source of funding of land councils. Nevertheless, I think history over the last 20 years has shown that 40 per cent is not adequate. It is my view that that proportion should probably be changed to 50 per cent. That is certainly one change that I would be looking to.

CHAIR—Could I cut across you there on that point, as I did with Senator Tambling: project your mind to the day when there will be relatively few, if any, land claims, so that the function of the land council—no matter how many there are—will be whatever is agreed to be its function, which I think we can all guess has to do with managing the land and interfacing with the various communities and all that. Do you see that, in the future, the need for substantial budgets will be as great as I concede it probably is now because, as Warren and Senator Tambling graphically illustrated, of the huge legal costs? Removing that out of the annual budgets of the land councils, are we still looking at enormous sums of money for administration of a new model, a new millennium land council getting on with the job and not being worried too much by the legal stuff because it has all been resolved, so to speak?

Prof. Altman—I would say yes.

CHAIR—Why? Tell me.

Prof. Altman—The only estimate I have seen of the resources that land councils put into land claims is in the region of 20 to 30 per cent of their budgets.

CHAIR—Yes, a big slice.

Prof. Altman—A big slice, but the land base is expanding and land management will become an increasingly significant role for land councils. In fact, one could argue that over the last decade land councils have been underresourced in that part of their activity. That may well be one of the reasons why the report's concern about lack of development on Aboriginal land has occurred. I would argue that what we need to do is look at the activities that land councils undertake and are required to undertake, as representatives of traditional owners and as institutions that need to resolve potential conflict between traditional owners in relation to land use, and project out what sort of workloads one might see those organisations having. The Northern Land Council—I am quite familiar with their structure—have two to three staff with the responsibility for land management and conservation of approximately 100,000 square kilometres of the Top End.

A better question might be: how do we benchmark those institutions against mainstream institutions, for instance, Territory Parks and Wildlife, and what sort of resources do they have to manage tracts of non-Aboriginal national park? I think what you would find is that land councils are currently underresourced. I suspect that they could do with substantial increases in their budgets into the future. But, having said that, I am not suggesting for one moment that there should not be a high degree of accountability for land council budgets—

CHAIR—And self-sufficiency?

Prof. Altman—Self-sufficiency for land council budgets?

CHAIR—Yes.

Prof. Altman—I do not think there are any problems with land councils having income generated roles. But in some ways I would argue that, as with a lot of governmental or paragovernmental activities, which is what you have statutory authorities undertaking, there is often a public good element to these activities and I would not see user-pays necessarily operating. For example, if Aboriginal landowners want to undertake activities to deal with problems to do with mimosa pigra infestation or cane toads et cetera, should they be required to pay that or should that be paid from the public purse? I would argue that just like the parks authority are paid from the public purse, so should land councils be, from the mining royalty equivalents.

CHAIR—I am not disagreeing with you, but I will put the question because I need to have it expanded: would a private landowner faced with the infestation and the need to eradicate it be entitled to the same public subsidy in principle that you advocate the land councils should possibly be able to get?

Prof. Altman—I would differentiate the private landowner. I would see the private landowner as being the traditional owner, and I am not suggesting that the payment for the cane toad eradication goes to the traditional owner. What I am saying is it goes to a statutory authority that has a land management function. The analogy with the private landowner would be the sorts of access he may have to programs like Landcare or the assistance the state department of environment might provide to him. That is the analogy. It is not the land council.

Mr SNOWDON—If I can pick up on this, perhaps I might ask the chairman a question, if you will excuse me, Jon.

CHAIR—That is a bit dangerous!

Mr SNOWDON—I am interested in what you mean by self-sufficiency, because at the moment land councils cannot enter into direct business associations. The land council is not a joint venturer with anyone—

CHAIR—I am aware of that.

Mr SNOWDON—and I think the public interest is potentially best served if they are not. So self-sufficiency, in the context of them going out and making commercial arrangements as a land council, as a corporate entity, is probably bad public policy. I think we need to be very clear on this. I personally believe there is a real issue here about potential conflicts of interest, as a public policy issue, and I think we have to think very carefully about asking that these organisations be self-sufficient. They ought to be funded directly out of either the public purse—which I do not think should be done in terms of the consolidated revenue fund, that is, by the annual budget process—or the royalty payments, which I think are the best way to go. Even there, there is a potential conflict of interest, at

least perceived by some, in that it is in their interests to make sure mining happens so that they get a revenue stream. That is why I asked what you meant by self-sufficiency.

CHAIR—I think it is a reasonable question. My mind is projecting down to the days when groups of Aboriginal communities, having already, through their traditional owners, obtained title to an area of land, go ahead and proceed to develop activities, in an agreed way, for their communities which, hopefully in some cases, produce economic benefit. In that sense I would be looking at the self-sufficiency benefits for those groups of people and therefore categorising them in the same way as other landowners in other parts of Australia. I might say many farmers struggle in other parts of Australia with vermin and noxious weeds and other things, and they do get direct and indirect public assistance, although increasingly states are starting to use the user-pay system as well—it is a moving landscape. But that is the concept that I had in mind.

I do not personally see the land councils as being anything other than a trustee body. I am looking towards the day when you see groups of individual Aboriginal communities coming together and running that part of the country in the way they want to and getting on with life. That is what I hope we can achieve.

Mr SNOWDON—I think that is already happening.

CHAIR—In parts it is, yes.

Prof. Altman—It is, yes. I do not think we need to leap in too quickly. I think you are dealing with groups of people, some of whom have received land rights very recently. If we were holding this inquiry in 25 years time, I think we may have a much stronger basis for making those sorts of arguments. But I still think we are dealing with some constituents of land councils who are not really in a position to negotiate in equal terms with other commercial interests for the use of their land. We do not want to overlook that. I refer you to large mining companies, tourism interests and others. Some groups are very effective in their negotiation techniques. For example, the Jawoyn Association has done it very well on their own behalf.

Nevertheless, we also do not want to overlook the fact that the land councils do indemnify commercial interests if things go wrong and I think that sort of indemnification is very welcome by commercial interests. This is something that has been a bit problematic with native title negotiations. New groups of native title claimants can come along and there is concern that you may not, in fact, be talking to the right people. We have just got to be a bit realistic. I know you have been to some very remote parts and have seen the organisational support and the conditions people are living under. You know it is not a level playing field out there as yet.

CHAIR—Yes. I accept that; I think we all do. The worry that many of us have is that there appears to be a lack of a plan to assist those people to lift themselves out of what appeared to be degradation and gross disadvantage, and I think that is the conscious point that I am focusing on.

Mr SNOWDON—I will just make this observation, and perhaps Jon or Robert could comment on it. Under section 23 of the land rights act, the functions are very broad. But the land councils, by and large, have kept to the main game, being acquisition of land and management of land. But because of the way in which services are provided in remote Australia where ATSIC, the various state and territory government agencies—in this case the Northern Territory—have withdrawn services, there has been a demand upon the land council to be a substitute provider of services. And even though they could interpret the land rights act as saying they could provide those services, they do not. There is an increasing demand upon them whereby people will come up and say, 'Well, look, how do we get access to a school?' Well, it is not their job to get them access to a school, frankly. But the problem arises because of the attitudes of government, not because of the attitudes of the land councils or the traditional owners. Whilst their functions are broad, and you could interpret the land rights act so that they could provide educational services, the fact is that they have not because they are not funded to do it and the organisations that are funded to do it do not have the representation on the ground that the land councils have. Therefore, the lender of last resort is always the land council.

That is why you get this perception that somehow or other the land council is failing to provide services. Well, it is not their job. If you look at the structure of both the Northern and Central Land Councils and how they divide their administration, you can see very clearly that they have got teams working in regions based on land use and land management principles and local representation—not on education or health. I think that is where there is an element of confusion and it needs to be addressed.

CHAIR—It is a very serious element.

Ms HOARE—Just to make a comment there, one of the clear messages that has come out when we have been travelling around talking to people who live in remote communities is that, although they want greater autonomy in the way they control their own day to day lives and the royalties associated with that, they did not want their own land council. They still see the two major land councils as their umbrella land managers, having the overall picture as well as being their political and commercial clout and providing that kind of umbrella service. That message came across quite clearly to us as we were travelling around.

Mr Levitus—Just to add one thing to diversify the sense of this argument from applying solely to questions of mining development, if you look at issues of more pure land management like conservation issues around Maningrida and the Arafura swamp, for example, the number of organisations that Aborigines in that local area have to deal with include the Environmental Research Institute of the Supervising Scientist, the Bushfires Council of the Northern Territory, the Cooperative Research Centre for the Sustainable Use of Tropical Savannas and the Northern Territory University.

The Northern Land Council Caring for Country unit has a legitimate role there, if only to make sure that the local people understand what these various scientists and academics are putting to them. It is an issue that has to do with things like fire management and the sustainable exploitation of wetland resources and so on. The NLC has as important a role there in mediating between the local people and these outside bodies as they do in mediating with the traditional owners and a mining company, in the case of a mining development. I

think it is a function that, if anything, will increase with the expansion in the range and the kind of land management projects that local Aboriginal communities are dealing with.

CHAIR—Jon, I have a question for you but I am not going to push you on it if you are not comfortable, so please understand that. I will not be offended. Having effectively intellectually dismantled the present formulas for arguments that are very compelling, how on earth are we going to come up with a model to distribute equitably the royalty streams which we all hope will continue for a hell of a long time to come—and increase? How do you think we ought to do it?

Prof. Altman—Unlike other commentators, I see the financial framework of the land rights act as being highly workable but sub-optimal. Nevertheless though, it was interesting to listen to Senator Tambling in terms of some of the experience, for instance, of royalty associations. I think the point that Warren was making about these associations being investors in parts of the Northern Territory that private capital would not touch is often overlooked. At times they have been highly unsuccessful and at other times they have been very successful. This is venture capital and there is a high degree of risk.

I would think the mechanisms that are in place in the land rights act do provide avenues for future development of Aboriginal land. My own personal view is that the best way to get a result from royalties and the statutory royalty equivalents is to ensure on the one hand well-resourced land councils. This view might be somewhat idiosyncratic to some that you may have heard but, nevertheless, I believe institutional strengthening of land councils is the way to go, not dismantling. I think it benefits the Northern Territory government interests and commercial interests to have strong land councils, to have large jurisdictions for land councils and to have them well resourced. So I would have absolutely no problems in earmarking 50 per cent of the royalty equivalents to land council budgets into the future—again, subject to ministerial approval as you currently have in the statute.

I would look to earmark the other 50 per cent for areas affected, and I would do that on two grounds. One is that I believe that the granting role of the ABR is anachronistic. I do not think that what is done with those section 64(4) grants fulfils any particularly useful function above what government is doing. Looking at ATSIC's budget in the Northern Territory alone, the scale of those payments, which are currently limited to $5 million per annum, represents about three per cent of that budget. So, to some extent, I wonder why we continue to have grants. I will not be making any friends with ABR, but I wonder why we continue to have this granting function which dates back to 1952.

On the other hand, I think that the signal has to be made stronger to traditional owners to approve development on their land, be it mining, tourism or whatever. The way you do that is that you increase the proportion of the royalty equivalents you earmark to them. In other words, you give them a stronger incentive to allow development on their land. This is not dissimilar to a recommendation the Industry Commission made in 1991, except that they changed the funding of land councils. They said that that should come from consolidated revenue. Traditional owners should get 70 per cent. I am not going to that extent; I am saying that 50 per cent should go to traditional owners and 50 per cent to land councils.

We also need to have mechanisms to channel any surplus funds that land councils may have. If we have a take-off, for instance in mining royalty equivalents, there may well be a surplus, which is something some of us were predicting 15 years ago by doing projections on royalty streams. If that happens, I think that those moneys need to be channelled, again, into beneficial development for Aboriginal people. One of the avenues I see for that is through the land council development corporations. Certainly, in relation to the CLC and the NLC, you have Centrecorp and NAIC, and I think that both could fulfil a very useful function in terms of development of Aboriginal land. But I would like to see those organisations operating a lot more transparently and a lot more accountably to their constituencies.

CHAIR—Subject to getting a surplus, which you said could be distributed generally, assuming that we do not have a surplus for the next X years, the 50 per cent and the 50 per cent that you have just put forward would mean that you would no longer have money available for Aboriginals generally in the Northern Territory. So it would be for those only in areas affected, plus the traditional owner system. How would we justify leaving Aboriginals out of the income stream they have now become used to for 25 years? Goodness knows how many of them have got it and where. I have no idea. Four months into the inquiry, I still do not know to this day what Aboriginal people outside of the land council areas have received, or why and when.

Prof. Altman—Have you asked the ABR to provide you with those statistics? They should be able to provide you with a breakdown of grants they have made on the basis of people's residence, be it on Aboriginal land or off Aboriginal land.

CHAIR—We will do that tomorrow.

Prof. Altman—The point I was making is that, even if the $5 million that the ABR currently grants per annum was paid solely to non-traditional owners, that represents only three per cent of ATSIC's current budget in the Northern Territory. What I would argue is that those people who generally would live in urban areas should be the beneficiaries of normal government services. They should not be dependent on income that is raised on Aboriginal land to improve their level of living.

CHAIR—So Woodward was wrong?

Prof. Altman—I think that Woodward was trying to be accommodating. He was trying to shift from 100 per cent, generally spread, down to 90 per cent, which is what happened in 1971, but he was not willing to go the rest of the way. I also think that one has to put Woodward in his historical context. You did not have ATSIC. You had the Department of Aboriginal Affairs as a fledgling department. You did not have government commitment to providing mainstream and special programs to Aboriginal people on an equitable basis with other Australians. These are all shifts that we have seen in the last two decades.

Mr SNOWDON—I want to pursue this a little bit. It would be a worthwhile exercise to ask ABR how they spend that $5 million. I am not sure what happens in the Northern Land Council, but I know the Central Land Council have set up five committees, an allocation is made and the committees deal with the sub-allocations into the particular parts of the sub-regions. It is seen as a very important source of discretionary money, because they know

they are not going to get it from ATSIC because they are limited in their budgets and treat the other organisations the same; and it is seen to fulfil a very important community function. Even though it is a minimal amount of money, it has the appearance of being a lot of money for those people who apply for it, and if there is $5 million there might $20 million worth of applications.

Maybe there is some way of dealing with it in which you do still provide some allocation for those purposes—not 30 per cent but, say, 10 or five per cent—sufficient to ensure that you get an amount of money which people will see as not being unusually small being dealt with in that manner and not going to traditional owners. It seems to me that there is now a general acceptance that the community generally should benefit. The criticism that I have certainly heard about the land rights act is that people say that the community has not benefited. I think the community has benefited substantially—

Prof. Altman—The general community?

Mr SNOWDON—Yes, absolutely, as a result of the land rights act.

Prof. Altman—One of the statistics we also do not have from the Northern Territory is how many Aboriginal people who are long-term residents of the Northern Territory are traditional owners somewhere.

Mr SNOWDON—In the Northern Territory or elsewhere?

Prof. Altman—Yes, in the Northern Territory or elsewhere, but let us say in the Northern Territory. The other question that one also then has to ask—and there are wider equity issues here—is: if an Aboriginal person moves from Queensland to the Northern Territory for five years, should they be a beneficiary from the ABR which gets mining royalty equivalents from the use of Aboriginal land?

Mr SNOWDON—Surely the question should be: why should we make a rule? There are people who travel, as you and I both know; they cross the borders. They might spend a lot of time in Western Australia or the Northern Territory or South Australia, but they might be domiciled—their home address for electoral purposes or whatever purposes—somewhere in the Northern Territory, and in fact they might also be seen as someone who is legitimately part of another community elsewhere. It seems to me that you should not prohibit those people getting access to the benefits that might flow as a result of a general community fund. Surely the ABR, given the nature of the Aboriginal polity, can make their own rules about how that money is—I mean, it seems to me that we have to be very careful that we do not prescribe something which, as individuals, we would not prescribe for ourselves.

Prof. Altman—I am sympathetic. I have heard a lot of arguments over the years from Aboriginal people that the $5 million discretionary from the ABR is the best thing that has come out of land rights for them. They recognise also that that is a bit of a lottery: they do get $20 million worth of applications every year, so the chance of winning is one year in four you will get something out of ABR. Having said that, I think the challenge for us as people trying to set up sound policy is, firstly, should there be just a $5 million—

Mr SNOWDON—Slush fund.

Prof. Altman—yes, slush fund in the Northern Territory; and, secondly, how do you get your best returns for dollars? In some ways it seems to me that if, for instance, we pick up this issue of socioeconomic activity and socioeconomic improvement, then the way you are going to get that is by keeping, if you can, lumps of capital together to buy hotels, to make larger investments or else to empower the land council to be making commercial deals on behalf of traditional owners. It seems to me that the worst way to spend your money is to break it up into little parcels that you grant to people for, sure, very legitimate purposes—some of them are cultural, some of them are social, some of them are economic.

Mr SNOWDON—In terms of the externalities of funding arrangements, how would you economically determine the social benefit which derives from someone who lives somewhere south-east of Borroloola somewhere on the Cape where there is no resource development and who is given access to a boat for fishing? It seems to me we have got to be very careful because, yes, in purely economic terms, we could say that having a lump sum of money here, investing it, getting 10 per cent and then buying another property, blah blah, is all very well; but in terms of what the local community perception and understanding of the benefit is, and how you account for that benefit, that seems to me a radically different thing.

Prof. Altman—That is true. There are a couple of other comments we need to make about ABR grants. One is that they are not made to individuals.

Mr SNOWDON—No, to corporations.

Prof. Altman—They are always made to incorporated bodies. The second thing is that, in the broader scheme of things—and this is certainly something that came up when I chaired the review of ABTA in 1984—we do not know to what extent the Northern Territory is missing out on $5 million that it might be getting, say, in terms of ATSIC discretionary allocations because of the existence of the ABR grants. In other words, to what extent does that granting activity—

Mr SNOWDON—Substitute?

Prof. Altman—yes, substitute for, for instance, commercial development corporation activity?

Mr SNOWDON—I recall, and I am sure you do too, the Toyota days—and I am sure it still exists. But, given the way in which ATSIC's funding is now screwed down, although regional councils have some discretion there is very little room, it seems to me, for the sort of little bits of money that ABR can provide as an alternative source of grant moneys. I see your point about substitution. I think the valid question to ask is: whose responsibility is it to fund these organisations? Nevertheless, whilst we are having that debate, people might be going without tucker because they do not have a boat to go fishing.

Prof. Altman—I think that is a legitimate concern. I suppose I am trying to make some simplifying strategic suggestions for streamlining the act. I may never be allowed back in the Northern Territory. The other thing we have got to look at is how those grants are utilised.

Certainly when we did that fairly thoroughly in 1984 for the use of ABTA grants, what we found was that the vast majority went to support out-stations in some ways. Again, that is a very important activity; nevertheless, arguably that is local governmental responsibility—these are small communities.

Mr SNOWDON—In terms of the discretionary funds, what are the investment guidelines for the investment moneys which ABR retains? What do they use that dough for? Apart from providing $5 million each year for these general purpose grants, what is their investment portfolio?

Prof. Altman—Do you mean how much have they got in there?

Mr SNOWDON—Yes. Is it $50 million?

Prof. Altman—Close to $50 million, yes.

Mr SNOWDON—There are ministerial guidelines as to how much they have got to keep in that bucket, are there not?

Prof. Altman—Yes, a minimum of $26 million.

Mr SNOWDON—What can they invest it in? They can invest it in property.

Prof. Altman—No, they are restricted by—

CHAIR—In cash—it is in bonds and all that, isn't it?

Prof. Altman—That is right. It used to be the Audit Act, but I think it has changed now. Basically, they have got to put it—

Mr SNOWDON—It has to be subject to it, yes.

Prof. Altman—That has been quite a contentious issue because the rate of return on those investments is not very high. Again, this is an issue we have not really raised—the investment strategy of the ABR. Nevertheless, there is no statutory requirement for them to invest. This has always been something that has been ministerially determined.

CHAIR—The other one is the investment strategy of the community organisations who have bought, for example, real estate, an office block or something like that. What is happening to the rent?

Prof. Altman—The rent to date goes to paying off the properties.

CHAIR—Pyramiding.

Prof. Altman—Yes. Nevertheless, a number of associations, and I suppose Gagadju is a good example, need to face the question of, once they have paid off their mortgages on these properties, what they then do with the benefit from those investments.

CHAIR—Can I confide in you that in another capacity last year, in another inquiry, I was told by certain directors—this is not Aboriginal royalty type money; they had received grants and loans from ATSIC—that they had almost paid off their initial cash cow investment, which was doing very well.

I said innocently, 'I guess you will be putting the dividend stream into some local community programs,' because they had the highest rate of youth unemployment of any community I had come across in the previous two weeks. They said, 'No. We are looking around desperately for another investment so we can use the equity to borrow, we will double the asset and it will take us another 10 years to pay that loan off. So we will not have to distribute.' That was their business plan. So it was pyramiding. I do not know how many examples of that exist, but that has worried me enormously—not that there is anything wrong with the notion of building up assets. But you should have an action plan, an objective to benefit the people you are supposed to be working for.

Mr SNOWDON—I think it is fair to say, though, that Ngurratjuta obviously has an investment strategy, and I am certain that Centre Corp has. So their objective is to distribute benefits.

Prof. Altman—The thing with Ngurratjuta is that its policy is to invest 50 per cent but to still distribute 50 per cent. It does not do it to individuals; it does it to community benefit.

CHAIR—In health, education and training?

Prof. Altman—It assists in all those areas.

CHAIR—What is this argument about not using royalty money for health, education and training? That is what we heard repeatedly from certain strong advocates of land councils. It was outrageous to suggest—

Prof. Altman—I think it is outrageous to suggest it is a requirement.

CHAIR—No, no-one suggested that it be a requirement. We were getting hammered in the early times of the inquiry when it was said, 'Don't you dare even think about the notion of any of the royalty money ever being used for any purpose that a government should provide.'

Prof. Altman—I think that is a reaction to some of the substitution that some of these bodies have experienced.

CHAIR—The suspicion thing, yes.

Prof. Altman—I think it is also a reaction to the Reeves report's suggestion that it will be mandatory to spend moneys in those areas, taking the discretion out of how people can utilise those moneys.

CHAIR—So we have got to defuse the situation to get back to reasonable relationships, partnerships and mutual responsibility?

Prof. Altman—Yes. If you talk to any executive of a royalty association—and I have talked to quite a few—certainly their aspirations are to use moneys for the benefit of their members. You often hear people talk about education scholarships, and you saw those in agreements at Mount Todd and McArthur River.

Mr SNOWDON—And training agreements. Most of those commercial arrangements now have employment and training outcomes as part of them.

CHAIR—I am sure they exist, but the spokespeople for some of the land councils certainly put up a different vision.

Prof. Altman—In some ways what you have there is a policy position, not an issue of the practice of the organisations but just that substitution should not be encouraged.

CHAIR—Yes, I understand.

Prof. Altman—It is also fair to say that—and I have Robert sitting by my side here so I have to be honest—the Gagadju Association had a children's trust which they used to put the equivalents of any cash pay to adult members into. Their intention was—and they were very well intentioned—that when people turned 18 they would have $20,000 or $25,000 that they could use to enhance their education. But there have been many instances where people got their $20,000 or $25,000 and just distributed it to their families—or worse—and did not use it for the intended purpose.

Mr Levitus—Motor car money.

Prof. Altman—Yes.

Mr SNOWDON—We have been a bit coy about discussing Gemco, but I think if there is anything that needs to be examined it is the way in which Gemco royalties are distributed. That is a specific instance where, whenever royalty payments are due, the second-hand car dealers come out there in truckloads.

Prof. Altman—One of the things that surprised me when I was sitting there reading before was that the Anindilyakwa 64(3) payments are higher than those in the whole CLC area.

CHAIR—Just one other thing that I more or less make as an observation. If the formula is to be recommended for change and it is accepted, it seems to me that we are going to face some huge legal claims for compensation.

Prof. Altman—It depends on how you change it.

CHAIR—Yes, I know.

Prof. Altman—I do not think if you change 64(4) that—

CHAIR—If you go fifty-fifty, there is one group that is out straightaway, and that is the other Aboriginals in the Northern Territory.

Mr SNOWDON—Yes, but they are not a legal entity and they do not have any—

CHAIR—They could take a class action.

Prof. Altman—It would be very difficult because it is not stipulated what they will have. There is no statement. Woodward said 30 per cent, but the statute actually refers to the residual that can be granted for the benefit.

CHAIR—Up to.

Prof. Altman—Yes.

CHAIR—So if you took a class action and said, 'Your Honour, here's the evidence for the last 25 years of what has been distributed and because of this amendment that has gone through we don't get it now. Average it out.'

Prof. Altman—But some of those people taking the class action might be traditional owners who are in fact benefiting—

Mr SNOWDON—On the other end.

CHAIR—Or even worse: lawyers representing them.

Mr SNOWDON—They would be the ones taking the class action.

CHAIR—Exactly.

Mr Levitus—I have a couple of comments. On the issue of substitution, I think the position being put by these spokespeople that you refer to is motivated, at least in part, by a realisation of how serious this problem of substitution can be. For many years the argument about substitution was based on anecdote and suspicion and just wondering how funding bodies were really making their decisions. I think in the last two or three years we can more convincingly say that substitution has occurred on a serious scale, especially in western Arnhem Land, in the Kakadu area, in the area affected by the Ranger uranium mine. The Study Advisory Group of the Kakadu Region Social Impact Study accepted that substitution had occurred in that area to the extent that mining development had probably not resulted in any net material benefit for the people of that area at all, which means that after 19 years of mining they have not got any net benefit from the Ranger uranium mine.

The work that Jon, Kingsley Palmer and Dan Gillespie did a couple of years ago on outstation resource funding in the western half of Arnhem Land showed a radical deterioration in the amount of money that was available for resourcing outstations the closer you got to the Ranger uranium mine. In other words, if you look at what was paid to Maningrida, then look at what was paid to Oenpelli and then look at what was paid to the Jabiru area, the decrease was so drastic that it actually suggested the even more alarming

possibility that the people of the Kakadu area were actually, on balance, worse off by virtue of having received mining royalties.

CHAIR—So the NT government was the one principally involved in the alleged substitution?

Mr Levitus—And I suppose ATSIC.

Prof. Altman—Because ATSIC funds outstation resource agencies.

Mr Levitus—That is just a sad and preposterous situation to arrive at, especially considering the historical importance of that area as being one in which major aspects of the financial package of the land rights act were pioneered.

CHAIR—Ironically—and I am not defending what you have told me; I am very disturbed—in our electorates back in white man's community we constantly get people complaining that, as they earn more, they lose social benefits and family support allowances. They argue that they should still get them even though they are earning more. You try, as a member of parliament, to say, 'Hang on. If you get on in life in Australia and you work hard and you do well, this is something we rejoice about and there is a mutual obligation, surely, for you to start picking up a bit of the tab.' People then say, 'Yes, Mr Lieberman, but that's not fair. If I stop working I wouldn't have to do it, would I?' Barry, you would be familiar with that. We all get it.

Mr Levitus—Those sorts of reductions of social welfare are usually calculated on a one for two basis, as in the case of old age pensions. In the case of substitution, you are dealing with an underlying psychology which is very difficult to quantify.

CHAIR—I am sure your figures are much more graphic. I am only talking about the concept. You cannot argue that all the substitution that has occurred is necessarily due to a capricious, scheming and unprincipled government funding decision. It may well be due to the fact that there has been an improvement in the income level, in the funding level, in the economic dynamics of the area, which should make them less dependent on disadvantaged funding.

Mr SNOWDON—But in the case of the area concerned, the organisations employed their own doctors, their own nurses, and had their own school. These are people who should have access to public education and public health. In fact, in this particular instance they provided the doctor who supplemented the work of the single doctor in Jabiru. So there was a broad community benefit achieved, and a broader substitution, as a result of them investing their resources into the health of their own community.

Prof. Altman—You are quite right, that there certainly has been a perception that people in the Kakadu area are well off. But these have been ATSIC funding decisions which have been made quite equitably on a perceived needs basis. But having said that, there is probably a lack of understanding that the areas affected moneys are meant to be compensatory. They are not meant to be income streams, they are meant to be payments that compensate for negative social impact. If you want to call those payments economic rent, that is a different

issue, but if you call them compensation then basically all they are doing is taking you back to square one. Therefore, you should be able to apply for moneys like any other person.

Mr SNOWDON—Which is a significant argument being put by the senior traditional owners of Jabiru for the Jabiluka claim.

Prof. Altman—That is one of the problems that we then have, which is a legitimate perspective. But the other problem Australia has is that this is an area that is very open to international scrutiny. In terms of international perceptions of Australia, here is an area that is meant to be benefiting from mining that has a national park which is owned by Aboriginal people. However, any visitor, be that from a UNESCO mission or anywhere else, can go to an Aboriginal camp and see people living in absolute abject poverty. Australia is very vulnerable, and I think it is bad public policy.

Mr HAASE—I have been very patient and quiet, haven't I? That is simply because I am learning so much and I am always quiet when I am learning. But despite having learned so much, there are still a great number of unanswered questions in my mind.

I am aware of the huge dilemma as we sit here and debate the merits or otherwise of great paternalism. We are indeed extremely paternalistic in looking at solutions, be they on this hand or that hand, or should we do this or should we do something else. We discuss vast sums of money that have been paid by miners and then substituted, certainly, but then distributed. We agree wholeheartedly that we can go to many, many communities and see extremely substandard education, health, housing and employment, despite there being an assumption that these funds are to cover those facilities.

I have heard our chair inquire whether or not you, with your vast experience in the distribution of these funds, have a solution, an alternative. You have quite openly criticised the existing situation—which I accept from your evidence is flawed—but you have not proposed, with your vast experience, a solid solution that will perhaps in the future remove the poverty, the lack of hygiene and the lack of education. That greatly disturbs me, and I wonder if you could take one last effort at correcting that for the record.

Prof. Altman—You are asking me a different order question here which I would answer, but without reference to Aboriginal land rights.

Mr HAASE—I accept that.

Prof. Altman—My answer could take quite a long time. The first thing I should do is tell you that I am the director of a research centre that has many staff and many publications that look at these issues. You are certainly very welcome to come and visit us at any time and talk to the people there about some of the policy solutions that they have to some of these problems that are probably, in the short term, retractable. Nevertheless, they are problems that are a function of a historical legacy, a function of where people live, a function of the fact that Aboriginal people were excluded for a long time from the mainstream provisions of the Australian state. We do not want to confuse the relative socioeconomic disadvantage of Aboriginal people as a group or in a particular context with issues to do with land rights, because my argument is that land rights is but one string to

how you might improve the socioeconomic status of some people who choose to live on Aboriginal land.

Nevertheless, if we want to address all those things that you are referring to—health legacies, housing, employment, education, et cetera—we have to recognise that they are the result of a historical process and they will take time to ameliorate. I am certainly not a person who, unrealistically, would put a short time frame on dealing with that disadvantage. I would be talking decades. I am certainly somebody who thinks, statistically, that we have shown improvement over the last two decades, despite how horrific some of these communities look. I think fixing these problems in the short term, in a holistic way, is well beyond what any Australian government is willing to commit to.

Part of the solution that we might see in the short term is to look at the activities of, for instance, state and territory government expenditures in indigenous affairs. In the next two or three years, there is going to be an inquiry by the Commonwealth Grants Commission—

CHAIR—Yes. It went through the House of Representatives this week.

Prof. Altman—into Commonwealth state financial relations in indigenous affairs. One of the things that may come out of that inquiry—I think it is something that needs to be documented—is how equitably the states and territories fund their disadvantaged Australian citizens. I think that is one of the things that we might slowly find out. For instance, a recently completed study showed that, on average, health expenditure on indigenous people was 17 per cent higher than on average Australians, yet their health status resulted in people dying 20 years earlier.

I do not think that some of these expenditures address the problem with the sort of urgency that is required. Having said that, I am not going to advocate in some sort of ideological way that government and government expenditure are going to provide the solution. I think, in the short term, there can be ameliorative action but, in the long term, Aboriginal people need to structurally position themselves in a way in Australian society where they are better able to look after themselves. To some extent—I may be sounding a little bit old-fashioned, but I personally have a very strong belief in this—this statute, like the land rights act, in the longer term will provide that new structural relationship. It is institutions like land councils, properly resourced and properly negotiating at the governmental level on behalf of indigenous people, that will do that.

I have been visiting Aboriginal communities myself for many years in many parts of Australia. Yes, the immediate impact can be shocking. I was with the UNESCO Mission when they went to Mudginberri in Kakadu National Park, and Europeans were horrified at what they saw there. I said to them, 'Why are you so horrified? There are many Aboriginal communities that look as bad or worse than this. This represents the current state of indigenous Australians. This is where people are at the moment.' It is not something that one is comfortable with. One of my concerns with Reeves was the attempt to sheet home what is a legacy onto one statute with very limited resources to address those sorts of problems.

CHAIR—I understand what you are saying, but I think in fairness you can see why he had zeal to focus on it.

Prof. Altman—I cannot, actually, as somebody who lived in the Territory for 20 plus years. I am surprised by his zeal.

CHAIR—I am not trying to defend him. It is not my role to do that. What he has tried to do is say that you cannot have an organisation with land management roles of this magnitude unless it is part of the whole fabric of dealing with all these other big issues. Therefore, if you do not have statutory power to look at some of the funding issues in health and other things, he was not saying, 'Provide all the health from land funds,' as I read it. I thought he perhaps did not articulate it clearly, but I thought he was trying to say that everyone involved has to accept a responsibility for helping to address the social, economic and health issues. That is what I understood Reeves to be trying to argue, not that, 'This is the answer if you do it.' Goodness me, it is obvious that it is not the answer.

Prof. Altman—I agree with what you are saying, and I agree that one would want to see land rights and the institutions created by the land rights legislation moving indigenous socioeconomic status in the right direction—in other words, up and not down. But I am not quite sure how that was to be achieved by destroying the institutions that had been created which, again, in my opinion, have structurally altered the political bargaining power of indigenous Australians in the Northern Territory. I think they are extraordinarily important in that sense. Instead of institutional strengthening, he was into institutional destruction, but then he wanted to create a new institution that would somehow answer the question that you asked me, which is: how do we deliver socioeconomic wellbeing? We will deliver it with an organisation that has nominated members coming from NT and Commonwealth governments and that is somehow linked to the land rights act.

One of the most telling statistics to my mind in Reeves's report is the fact that, when he tried to outline the resources that would be available to this new institution—NTAC—if the Commonwealth and the Territory were willing to give all these resources to this institution—he was plus or minus $200 million. He could not even put a figure to the resources that this institution would have, which tells us a lot about how little we know about what is actually being spent on what we all accept are the most needy members of the Northern Territory population.

Mr HAASE—To finish off, you have been very patient, I believe, because we have gone a long way into the night. You have done a fair bash at explaining that it is a huge philosophical question. I do not believe you addressed the very first part of my question, which questions this necessary process of making decisions on behalf of Aboriginal people and yet, at the same time, being quite overtly paternalistic. It is something of a conundrum. I just wonder how you would defend yourself if you were us.

Prof. Altman—I do not see anything overtly paternalistic in the current mechanism. We have statutory authorities that represent traditional owners of land. I can see that, in 25 years time, those statutory authorities may not need to fulfil that role. At the moment, I believe that that is a genuine need, but there is nothing that prevents traditional owners representing themselves at the moment.

CHAIR—They can opt out.

Prof. Altman—Well, people can do again what the Jawoyn did at Mount Todd, which is negotiate through their own organisation in their own way, but nevertheless it was done with the support of an umbrella organisation.

We are dealing with a land ownership system that is culturally fundamentally different from ours. There is need for certain special provisions to deal with that fundamentally different land tenure system. With time that land tenure system—inalienable freehold title held communally by land trusts—may change. In 20 years time we may want to freehold that land. I do not think that at the moment we are at the right point in history to be doing that. I do not see paternalism there.

Mr HAASE—So you believe you can practically explain our current position, morally, that we need to be doing what we are doing?

Prof. Altman—Yes. I would argue that through strong statutory representative institutions we are providing support to people who, as you described, are badly off in terms of health, education, employment and resources. What we have set up is an institutional structure to provide them, without charge at present, with legal assistance, with assistance in terms of managing their land, and with assistance in terms of giving them advice about whether to enter into commercial arrangements in relation to their land. This is not a term that is popular in the Northern Territory but it is a paragovernmental role that I think is currently quite legitimate.

Mr HAASE—Professor Altman, I do not want you to try to answer this in full or justify it but I would like a yes or no answer, if you can. The question is: would all the things we wish to achieve be achieved to the greatest satisfaction in a shorter or longer period of time if we chose to pursue a form of law and governance that is more akin to the traditional, or would we be achieving greater things faster if we were to quickly bring Aboriginal people into line with a more Western style of governance in law?

There must be a great temptation to tell me over an hour exactly how you feel. Where should we jump? Should we try to reconcile and accommodate Aboriginal people as quickly as possible, or would we have a better outcome in the longer term by prolonging the agony—my words—by sticking with the traditional way as much as possible?

Prof. Altman—Tradition, from an anthropological perspective, is forever changing. Nevertheless, I think that the Aboriginal ways of doing this are very distinct. Accommodating those ways is going to be much more productive than imposing new ways or destroying those ways to introduce new ways. I have got history on my side because we tried to introduce radical new institutions, historically, under an assimilation policy, which were not successful. That is part of why we have the legacy that we have got today. So I certainly have no doubt that if you are not patient with the current process I am just not confident that you will get a better outcome through your processes. I do not know if that answers you.

Mr HAASE—You have answered me in a short time. I am happy with that. Thank you, Mr Chairman.

CHAIR—Might I add as an observation that, if you stay with the traditional rights that Aboriginal people have fought for for years and respect them but, by partnership, get a mutual contribution from all players, that will accelerate what I think Barry is looking at.

Prof. Altman—I guess the thing that plays on my mind—and it certainly played on my mind as I was sitting there—is what a much better and unique place the Northern Territory might have looked today if, with self-government in 1978, the Northern Territory government had not been committed to opposing Aboriginal interests and been involved in confrontationist politics, if you like, with land councils in relation to almost every land claim. There was a cost both to the Northern Territory government, subsidised by the Commonwealth Grants Commission, and to indigenous interests from that sort of confrontation—supposedly in the public interest. What a special place the Northern Territory might have looked today if we had had that partnership 21 years ago.

CHAIR—A profound observation.

Mr Levitus—Mr Haase, your question reminds me of an issue that I heard the committee discussing during, I think, the session with the anthropologists a couple of months ago where you were looking at the Reeves proposed model of regional land councils and the fact that that model leaves an organisational vacuum at a level below the proposed regional land councils. The committee was interested in the question of why a white man's committee should worry about imposing an organisational structure at a more local level below that of these proposed regional land councils—for example and specifically, the local incorporated royalty associations. Is that the sort of thing you were thinking about when you talked about taking a paternalistic attitude?

Mr HAASE—No, I am being extremely general inasmuch as we sit and make the decisions into the future. Sure, we have taken evidence, but it seems that we have this assumed right to make all the decisions, set them in concrete and deliver them. That concerns me, but what possibly concerns me more—if I am truthful—is the indefensible criticism that we may cop as a result of that perception. So, no, I am not referring to the point that you are raising specifically.

Prof. Altman—In some ways what we have discussed today suggests to me that there is plenty of incremental change this committee can make, that history will judge you positively in terms of making the land rights act work better. But history may not give you the accolade of actually solving indigenous socioeconomic disadvantage in the Northern Territory on the back of land rights in one or two terms of government. I think those sorts of deeply entrenched problems will take longer than that. I do not know whether that gives you any solace.

CHAIR—But you can do a lot of the nuts and bolts work. For instance, the other day we were watching some dedicated community health workers in a very busy community health centre, but there was no community hygiene program in that same community. With a bit of good management and leadership, it would be amazing what could be done in a day by simply saying, 'That will not continue any longer. You will develop such a program and it will be an everyday part of this community. That is it.' That is what is lacking. It is so obvious.

Mr SNOWDON—I want to go back to a couple of points. It seems to me that the essential element of the land rights act which is its strongest feature is the accountability of the land councils to the traditional owners. The informed consent provisions of the land rights act make sure that the land councils cannot arbitrarily act on someone else's land. There is no other piece of legislation that I am aware of which makes government or anyone else as accountable as the land councils are to the people for whom they are responsible. It is not paternalistic to say that we should reinforce that responsibility.

Prof. Altman—They are also accountable to government, though.

Mr SNOWDON—They are—both ways. My point to the question which Barry raised is that if you are reinforcing the strength of the act so that the accountability downwards to those people who own the land is strengthened then I think you have done a beneficial thing.

CHAIR—And if you make the act clearer in the sense that the traditional landowners' trustee obligations are spelt out more clearly so that the opportunity for capricious decisions by a traditional landowner can be minimised. That is a thought I have had for a while.

What a marathon. I thank you all again for your very valuable input into this difficult issue and wish you well in your work. We will take you up on your offer, Jon and Robert, to come out and visit when we have a little less pressure on us. We would like to do that. I would like to thank Hansard for their patience in staying with us, our staff, the secretary and my colleagues who stayed.

Resolved (on motion by **Mr Haase**, seconded by **Ms Hoare**):

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

Committee adjourned at 7.35 p.m.