



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, 5 MAY 1999

KATHERINE

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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

**Wednesday, 5 May 1999**

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

**Members in attendance:** Ms Hoare, Mr Lieberman, Mr Melham, Mr Quick and Mr Snowdon

**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**

**MACKINOLTY, Mr Chips, Research Officer, Jawoyn Association . . . . . 469**

**WALSH, Mr Paul, Legal Adviser, Jawoyn Association . . . . . 469**

**Committee met at 8.54 a.m.**

**MACKINOLTY, Mr Chips, Research Officer, Jawoyn Association**

**WALSH, Mr Paul, Legal Adviser, Jawoyn Association**

**CHAIR**—I welcome you all to this public hearing. This hearing is a further hearing into the recommendations of the Reeves report. I think everyone knows that Senator Herron has asked this committee to visit the Northern Territory—and we are doing that several times—to get the views of people so that Senator Herron, the government and the parliament will have a report, we hope in late August. The government and the parliament can then debate the issue and make some decisions.

I want to emphasise that the committee is made up of members of all political parties and while we, obviously, have some views privately, the committee as a whole has not made a decision—it has an open mind and wants to hear everyone's views. We encourage vigorous and robust input. We appreciate that very much. The hearing will be recorded in *Hansard* and made public. We will make copies available to any members of the public present. If you would like to have copies, please contact our staff.

I am glad to welcome witnesses from the Jawoyn Association. We had the pleasure of talking earlier in Darwin. I want to mention to members of the public that we did receive a very comprehensive written submission from the Jawoyn Association prior to us arriving here yesterday, and that submission has already been authorised by the committee for publication and is now part of the public record. It will be published throughout Australia for people who wish to examine it as well.

Although the committee does not require you to speak under oath, you should understand that these hearings are legal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter, and may be regarded as a contempt of parliament. Our Hansard editors will be making a transcript of what is said today. Before we ask you questions, having regard to the fact that you have made a detailed written submission, do you wish to make an opening statement as well?

**Mr Mackinolty**—Firstly, I would like to apologise for the absence of our chairperson, deputy chairperson and executive director. Unfortunately, our executive director, Robert Lee, whom you met previously, is in hospital with tuberculosis. It is not life threatening. Over the last two weeks, there have been three major deaths and, unfortunately, I heard this morning another one is on the way. People have been attending wall to wall funerals and so are not able to attend this morning.

**CHAIR**—We convey to your deputy chair our best wishes and to your community our sympathy on the deaths. We understand your position.

**Mr Mackinolty**—Thank you. What I propose to do in the first place—and I will be able to get an electronic copy of this to you—is to run through a brief slide show that has been prepared by the executive director and myself giving a brief history of how the Aboriginal Land Rights (Northern Territory) Act 1976 has worked in this region over the last 20 years.

It seemed to us, from reading newspaper reports and so on, that the process has often been very negative because of attacks on the Reeves report. The committee may not have had a great chance to hear how things have worked well under the current legislation. I will run through it, if that is okay with you.

**CHAIR**—How long will the slide presentation go?

**Mr Mackinolty**—About 10 minutes.

*Overheads were then shown—*

**CHAIR**—Thank you for that presentation.

**Mr MELHAM**—Chips, a lot of this has been done with the assistance and under the umbrella of the Northern Land Council. How has that worked?

**Mr Mackinolty**—All the land claims that we have been involved with have been run through the land council. That was the original Katherine Jawoyn land claim, which effectively ran between 1977 and 1989. Then the same went through with the Manyallaluk land claim, which was part of the Mount Todd agreement, and again with the Gimbat land claim.

In addition to that, the land council, especially in the early days, assisted in incorporating the Jawoyn Association. The land council still provides assistance when asked. Over the last seven or eight years, we have been able to develop quite a strong secretariat here. The land council is freed up to serve its other constituents because we can do a lot more ourselves.

**Mr MELHAM**—Has that been working reasonably well?

**Mr Mackinolty**—By and large, yes. You have the occasional disagreement or argument. I imagine this committee does too.

**Mr SNOWDON**—No!

**Mr Mackinolty**—I am amazed!

**Mr MELHAM**—One of the options of Reeves is that we break up the major land councils; another option is regionalisation. This seems to be another way of doing it, where you use the NLC as an umbrella organisation and rely on their resources to some extent but have your own autonomy, independence and decision making in the way you seem to be evolving.

**Mr Mackinolty**—Yes. There are a number of models and I do not think it is possible to legislatively prescribe the models that are going to work in all areas.

**Mr MELHAM**—Each area would be different, I would imagine.

**Mr Mackinolty**—Yes. Some areas, because of very low populations and low resources, are going to be dependent on larger groups for a lot longer periods. That goes through to all areas of governance, not just Aboriginal people under the land rights act.

**Mr SNOWDON**—Would it be fair to say that, if you amended section 28 of the act, which is the delegation power under the current structure, and freed up the decision making at a regional level, that would be of assistance to the Jawoyn Association?

**Mr Mackinolty**—Sure. As you are aware, under the current act we are moving towards an independent land council but, certainly, we made suggestions in both our regional submission to Reeves and our written submission to you about a form of amendment to section 28 which would allow a major delegation into regional areas. At the moment, no matter how willing the land councils might be to give powers to regional organisations or regional councils, they cannot do it. I understand that the current minister, when approached by the land council to allow that delegation, refused.

**Mr MELHAM**—Do you know when that was?

**Mr Mackinolty**—October 1997.

**Mr MELHAM**—Would you see that delegation as being under ministerial approval or consent?

**Mr Mackinolty**—Ministerial consent—I cannot remember the exact wording of—

**Mr MELHAM**—It is not there now, but I am talking about a proposed amendment that would allow delegation. It seems to be—

**Mr SNOWDON**—It would be simple enough. It just means amending the act to allow on request that the land council delegate or have that—

**Mr Mackinolty**—In section 2.4.4 of our original submission to Reeves, which I understand you have got copies of, we proposed amendments to section 3 as well as to section 28. That does involve the written consent of the minister to do that, and that allows for the delegation of all powers of the land council, except the power of delegation itself, to what we have termed ‘approved body corporates’, which would allow for models other than, say, a regional land council, as is currently envisaged.

**Mr MELHAM**—What do you see as the guidelines that would be required for ministerial approval? Is there a framework for what would be considered?

**Mr Mackinolty**—In terms of the Jawoyn moves to the independent land council, we have made it quite clear in direct representations to the minister for Aboriginal affairs and also in our various submissions that we think that the powers to create new land councils under section 21 are not tight enough. We have suggested in our written submission that we gave to you yesterday that in fact you might like to look at the provisions in the Native Title Act for representative bodies, to look for the levels of administrative accountability before



such a body could be recognised either as an independent land council or, indeed, as an approved body corporate, if that was the model to be taken.

**Mr SNOWDON**—I read the submission briefly last night, Chips. You strongly endorse a principle of informed consent, though.

**Mr Walsh**—Yes. We see that as the underlying preface of the act. Many of the sections—the pages and pages of the mining provisions in part 4, for example—appear on the surface as being quite complex but, when they are stripped down, the sole purpose to be achieved is that, when traditional owners make a decision, it is on an informed consent basis whether they are saying yes or no.

**Mr SNOWDON**—You mentioned mining. I noticed in your submission that you mentioned the issue of disjunctive and conjunctive agreements. I am not sure if the Jawoyn are associated with the Stockdale agreement but it is worth while, I think, Chips, if you can explain to the committee what happened in relation to Stockdale. The thrust of your submission, as I read it, is to allow commercial relationships to develop unfettered by government intervention between Aboriginal traditional owners and private enterprise. Is that correct?

**Mr Mackinolty**—We regard quite a number of the provisions, especially in the chapter on mining, as being restraint of trade, effectively, against Aboriginal interests. Our position is that, as long as two parties are fully informed and they reach an agreement that is not contrary to the law itself, such as environmental laws or provisions of the mining act and so on, they should be allowed to reach such an agreement. If the two parties want to have a disjunctive agreement and they are both happy about that, it seems outrageous that that should be prevented, as happened over the Stockdale case.

Jawoyn interests were involved in Stockdale where an agreement we had reached with a South African diamond miner was overturned in the Supreme Court in the late eighties because it was held that it was against the land rights act, despite the fact that both parties—the Jawoyn, the land council and Stockdale—were perfectly happy to enter into that agreement.

**Mr SNOWDON**—Can you tell us who took the action in the Supreme Court?

**Mr Mackinolty**—I believe it was the Northern Territory government. I could not be sure on that.

**Mr SNOWDON**—It was the Northern Territory government.

**Mr MELHAM**—I am wondering, Mr Chairman, if Chips could go into a bit more of an explanation. I know that he and Warren have got knowledge on Stockdale, but I think it might need to be fleshed out for the public record and for other members of the committee—disjunctive and conjunctive agreements, what that actually means and what the issues were.

**Mr Mackinolty**—I am not a lawyer.

**Mr MELHAM**—Just in simple English. Maybe you, Mr Walsh.

**Mr Mackinolty**—He is a lawyer!

**Mr Walsh**—The land rights act at the moment requires an agreement being negotiated at the exploration stage, and that is when a so-called veto or the right to say yes or no comes in and exploration can be refused. If exploration is accepted and a deal is done, there is no ultimate right to then refuse at the mining stage. It is a conjunctive agreement in the sense that—

**CHAIR**—No ultimate right to refuse at the mining stage by whom?

**Mr Walsh**—There are still negotiation rights on the terms and conditions of mining, but there is a process built into the act where you can get to the mining stage without further right of veto. If you agree at the exploration stage, you are potentially ultimately agreeing to mining. You have to use your one and only chance to veto a mining project at the exploration stage. The Stockdale agreement, which was reached between the mining company and the traditional owners, built in a second chance to say no at the mining stage. There was an agreement to explore and there was a provision to come back, in the event that mineralisation was found, to then negotiate a mining agreement. There was a right to say no at that stage. The courts struck that down as essentially involving a double veto.

The land rights act, as presently structured, does not allow such a double veto. One of the obvious difficulties of that is that traditional owners are being asked to look far into the future. At the very beginning of a mining operation, the exploration stage, there is no knowledge about what even may be found and, if something is found, whether it might involve an underground mine or an open-cut mine, for example, which have vastly different effects on the landscape.

**Mr Mackinolty**—That has particular effects for clan groups whose physical geography is quite small. They may be only tens of square kilometres. Members of that clan may think, 'If it is just a hole in the ground and it is going to cover a square kilometre, we can wear that.' But then they might find they are up for a major bauxite open cut, which strip mines their entire clan estate. At the moment, there is absolutely no incentive at all for Aboriginal people in that situation to ever say yes to exploration because they know, as soon as they say yes to exploration, they have got the lot. That is why the Jawoyn position is that, as long as the agreements are mutually come to and both sides are fully informed about what is happening, we should be allowed to have agreements like that. It seems a restraint of trade to do otherwise.

**Mr SNOWDON**—The power to withhold consent under section 41 or 43 of the act—I think it is 41 or 43—is not an absolute right. We need to make that clear. It is not a veto; it is a power to withhold consent for a period when you get revisited after five years.

**Mr Walsh**—Yes. If consent is withheld, the exploration proposal effectively goes into a five-year moratorium, which leads to another difficulty because, at the end of that five-year period, the original miner, and only the original miner, is at the head of the queue again to renegotiate.

**Mr Mackinolty**—That has led to the problem of warehousing, where you get a number of mining companies, which have either no particular interest in even going through the negotiating stage or no particular interest in exploring this century or in the next couple of decades, being able to lock up large areas of Aboriginal land by just continually rolling over these five-year moratorium periods through the mechanism, for example, of making offers to the traditional owners that are clearly ludicrous and inadequate. People are not stupid; they say no, so it goes on another five years and those mining companies control—again, we argue as a restraint in trade—large areas of Aboriginal land for that purpose. We would be arguing that a mechanism has been developed whereby the DME—the Department of Mines and Energy here—and its minister can be empowered to knock back applications from people who are clearly warehousing country.

**Mr SNOWDON**—Is this the matter that was raised by the Industry Commission in its report?

**Mr Walsh**—It is also currently before the competition policy review conducted by Dr Manning, and we have made a similar submission to that.

**Mr MELHAM**—Is that not just Jawoyn making that submission? Do you have the support of the land councils in that regard?

**Mr Mackinolty**—The land councils have identified that since the late 1980s, since the whole provision came in. I will not name the companies, because at least one of them has changed its spot since then. A company would come in and put ludicrous proposals together for what an exploration program might mean on people's country. People would say no, but then when those people said, 'But can we talk to a mining company that we like or a mining company that might offer a much better deal in terms of the environment?' for example, they were legally prevented from doing so.

**Mr MELHAM**—Have there been any attempts by government to legislate? I know that there were the 1987 amendments.

**Mr Mackinolty**—This thing only arose post 1987 because the moratorium did not exist until the 1987 amendments came in. It was predicted at the time but, to be charitable to the then Hawke government, I think we would see it as an unforeseen circumstance or consequence.

**Mr SNOWDON**—You are more charitable than I would be.

**Mr Mackinolty**—I am more diplomatic than you, Warren.

**Mr MELHAM**—That is not hard!

**CHAIR**—I will just put a few questions. Firstly, for the record, what is the Aboriginal population of the region your association operates in?

**Mr Mackinolty**—Around 1,800 adults.

**CHAIR**—How many of those are identified as traditional owners?

**Mr Mackinolty**—About a third of that number are Jawoyn.

**CHAIR**—Traditional owners?

**Mr Mackinolty**—Yes, but that does not necessarily mean that they are all living on country. Some people, for example, are living at Bulman or Jilkminggan, which is on other people's country, but they would be included in terms of the calculation of who are traditional owners.

**CHAIR**—How would you describe the other two-thirds? They are Aboriginal people, but how would you describe their status in Aboriginal society?

**Mr Mackinolty**—It varies from individual to individual, although they would all hold country in their own right elsewhere and be traditional owners of land contiguous to, in many cases, Jawoyn country and in some cases much further away. That is a result of last century's history of diaspora—people being moved around either for work or by government authorities and so on.

**CHAIR**—They are regarded as bona fide permanent residents of the region.

**Mr Mackinolty**—Yes.

**CHAIR**—Secondly, in the region that is covered by the area of the Jawoyn catchment, are there any outstanding claims for land under the act?

**Mr Mackinolty**—Yes, there is the Goodparla land claim, which is in the south-western part of Kakadu, and the southern and south-eastern section of that is Jawoyn country. At least three other land claimant groups are involved in the northern and north-western parts. We are currently in negotiation with the federal government, the Northern Territory government and the Northern Land Council to have those lands scheduled so as not to go through the process of a land claim. It is all inside Kakadu National Park; it will all remain part of the national parks, so it is not being alienated from the Australian public in that sense.

**CHAIR**—Legal claims have been lodged and the anthropological and legal work associated with that is being done by the Northern Land Council on behalf of the Jawoyn people.

**Mr Mackinolty**—Yes, on behalf of the claimants. It has been pretty baseline anthropology and so on at this stage, but our indications would be that it is sufficient to have the land scheduled rather than go through the very expensive process of a land claim.

**CHAIR**—Of the land claims that have been granted, leading to a trust being established under the act, do the owners registered on those trust deeds approve of and support the thrust of your submission for a separate land council?

**Mr Mackinolty**—To be honest, I do not have a list of the members of the trust with me. It certainly would not be the case with the Arnhem Land land trust because, although there is Jawoyn country there, there has never been a Jawoyn member on the land trust. From memory, all our trust members are either on the council of elders or on the executive of the Jawoyn Association and both those bodies, as well as last year's AGM, have endorsed moves towards the establishment of an independent land council. Without having the individual names, I could not be precise about who those people are.

**CHAIR**—If you made an application to the minister under the existing provisions of the act—

**Mr Mackinolty**—No, we have not done that yet.

**CHAIR**—No, I said 'if you did'. If you did, would you accept that one of the criteria the minister would have regard to would be whether the traditional owners registered in the land trusts support the application or have reservations about it?

**Mr Mackinolty**—No, absolutely not. Two things about this process are that, as I alluded to earlier in terms of the tightening up of provisions under section 21, we will not be going to the minister—we have told him this and it has never been a secret—until we have ascertained the potential boundaries of the land council and ascertained whether there is very substantial support, not only from traditional owners but also from other Aboriginal people living in that region. Finally, and just as importantly, we need to know that the organisation will be capable administratively and be accountable to that region to be able to take the role on. It is a very strong view of our executive director, Robert Lee, that new land councils are not the sorts of things that you get off the shelf at Woolies. They have to be organisations that have the capacity to do the job. It is a statutory authority and it is responsible to the Commonwealth parliament. They have to be able to do that and, to do that, you have to have substantial support.

**CHAIR**—I am not in disagreement with that. I am trying to lead us now to some dialogue on the record as to what things need to be done to the existing legislation to clarify the minister's role, the community's role and everybody else's position in relation to a new application for a land council. Do you believe that some amendments might make the path a little bit easier and spell out some principles?

**Mr Mackinolty**—We are in this odd position of not wanting to make it easier. In fact, we propose making section 21 tighter than it currently is. I cannot remember the exact words of section 21—

**Mr Walsh**—It refers to 'a substantial majority' and 'an appropriate area'. Whenever you use such phrases or words, interpretation issues obviously arise. Whether you could describe more tightly what 'an appropriate area' is in a vacuum or what 'a substantial majority' is, is a moot point.

**CHAIR**—I just want to flesh this out. I think it is a very important path to go along. I want to get some views from you as to the sorts of things you think should be factored in to an application, either by an amendment to the act or by other means. You have made it clear

in your submission—and I commend you for your submission; it is a very well-written one about your vision for the future—that you want to see a separate land council. I am asking you, as people experienced on the ground, to give this committee your views as to the sorts of factors and things that a minister should have regard to and look at either in the existing act or in the approved amended act or otherwise. It is not a trick question. I am genuinely interested in exploring this.

**Mr Mackinolty**—It is probably worth Paul putting in his two bob's worth here as well because he has actually done an analysis of all the applications for separate land councils thus far. I will just draw your attention to page 6 of our submission, which we gave to you yesterday. About halfway through the second paragraph we say:

The Jawoyn believe that the tests should remain high and submits that, in addition to the existing criteria of substantial majority support and appropriate area, should be added the specific criteria of economic and organisational viability and accountability, and that these criteria should be elevated to equal status with that of the other two.

So we are actually calling for an amendment to section 21 along those lines. We have suggested that this committee might have a look at sections 203AD, 203AI and 203D of the Native Title Act, which is quite explicit on the levels of accountability required for native title representative bodies. While I am personally not wild about the Native Title Act, because I think the land rights act is far superior, we might be able to borrow a little bit from it to strengthen that whole thing about new land councils.

**CHAIR**—I will pursue that a little further. One thought in my mind as chairman—it is not my final thought, so please do not read into it anything that would indicate it is—is that, if there were to be an application for a new land council under the existing legislation, it would obviously have to be economically viable, as you have pointed out here. But to determine viability you would need to examine what the role of that land council would be in the future, once it is created. Then you would have an idea of what the cost of running such an organisation would be.

If, say, a new land council could be created in the Northern Territory and if there were no further remaining land claims to be made in that region, or if there were any identified in the future by agreement they would be made by an umbrella organisation such as the Northern Land Council, if you established that a new land council should therefore be solely a land manager and solely entrepreneurial, as you have put in your presentation, then that would substantially reduce the question of how much income you would need, would it not?

**Mr Mackinolty**—As a quick aside, we do not actually see a land council as being involved directly in entrepreneurial activities, because there are great problems with potential conflicts of interests there. In a moment, I will tender a document which might explain how different organisations in a region could work together given different roles. Some are social/cultural; some are economic; some are to do with broader areas of infrastructure. Then there are the roles of the land councils. The roles of the land councils are pretty clearly spelt out in the act as it stands. This is what is so absurd about the Reeves thing, where he just says, 'We'll have 18 new land councils that will all cost \$400,000 a pop.' That is a figure that has been grabbed out of the air. But with research, we could work out whether there are outstanding land claims or not and how much it would cost to run a land council. Again, that

would vary from area to area and, again, as I pointed out, a lot of areas would have no intention at the moment of moving in that direction and may not have in future.

**CHAIR**—Do I take your response to be that you believe that a land council of the new millennium could be one that would be mean and tight in its objectives; its financial needs for running its affairs would not involve the employment of vast numbers of staff—anthropologists and others—in respect of making land claims; and it would be a functional organisation?

**Mr Mackinolty**—You do not need anthropologists just for land claims. There is ongoing stuff which is equally important about further developments on country, and so on; whose country it is.

**CHAIR**—I am going to be blunt now. Who is going to tell this committee what it is going to cost to run a land council under the vision that you are putting forward? Can you tell us what it will cost? If you cannot tell us, why not? What further work needs to be done?

**Mr Mackinolty**—We do not propose getting up for at least 12 to 18 months in terms of making submissions to the minister. That is the kind of work that has to be done before we buy into it. We have not had the resources on side to be sitting down and mapping out a detailed budget for a new land council. That is one of the processes that have to be done, and done responsibly and accountably.

**CHAIR**—But you do say from your knowledge that you believe Reeves' conclusion that each new land council would cost a minimum of \$400,000 is arbitrary and not sustainable.

**Mr Mackinolty**—He actually half admits it in that document.

**CHAIR**—Do you believe that that is not a sustainable figure for this committee to accept, as a rule of thumb guideline?

**Mr Mackinolty**—I am not trying to be a nuisance; I just think it would vary enormously from region to region. There is no packet you can get off the shelf that says, 'This is 60 grams of land council and it is going to cost 2s 6d.' It is going to vary enormously. For example, if there were to be a separate land council in the desert, it is likely to occupy very large areas of land and involve substantial costs just on vehicles. Likewise, parts of our area which are under water for three months may well involve extensive use of planes. I am just saying that you cannot get things put into tidy little boxes. My feeling is that \$400,000 would probably not be enough if there was a high level of economic activity in the region.

**Mr SNOWDON**—Perhaps I can help, Chips. In terms of section 23 of the act on the functions of land councils, would you agree that it would be very difficult to ascertain what the demands on your budget would be until you had ascertained what the interests of the landowners might be? The function of a land council is to consult with traditional Aboriginal owners; it is not to make up opinions of its own and go and do things. Section 23(b) makes it very clear that their job is 'to protect the interests of traditional Aboriginal owners'—and

this is what is quite important in the context of the chairman's question—and section 23(c) says:

to consult with traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council with respect to any proposal relating to the use of that land.

There may be no proposals, and there may be no interests. On the other hand, there could be a very large number of proposals and a very large amount of interest.

**Mr Walsh**—As Chips said, the level of economic activity in a region and the number of people you have coming to you with proposals for Aboriginal land will drive that agenda, and that function kicks in and has to be done.

**Mr SNOWDON**—If I could make an observation. That \$400,000 would equate roughly, I would think, to about five employees at an ASO6 level with no infrastructure and no other capital.

**Mr Mackinolty**—I would also point out that, for example, our annual general meetings, at which we probably get two-thirds of our adult membership, cost \$55,000. That is the one time each year when we can get people together to talk about major policy issues. It is not uncommon, because of distance and stuff like that, and especially during the wet season, for a meeting in our area to come to \$20,000 to \$25,000 just to get the meeting happening and together and so on. Going on from what I said, if there were a higher level of economic activity, proposals from developers or proposals from traditional owners about things they want done, you could run through \$400,000 pretty quickly without even having the—what was it—four or five ASO6s.

**CHAIR**—What did it cost to run your organisation last year?

**Mr Mackinolty**—About \$1.6 million, but that includes social welfare activities and entrepreneurial activities. For example, we run an age care program on Jawoyn country which this current year is projected to cost \$125,000. We do that without any government assistance at all, but that is included in that \$1.6 million. At this stage, I could not possibly tease out—

**CHAIR**—Subject to the work being done over 18 months, are you proposing in principle that all of those multidisciplinary activities that you are referring to be also taken on board by a new land council?

**Mr Mackinolty**—Can I formally submit that diagram?

**CHAIR**—Yes. But answer the question first.

**Mr Mackinolty**—I want to allude to the diagram.

**CHAIR**—Can't you say yes or no?



**Mr Mackinolty**—I think you misunderstand; I may not have expressed myself well. In the process of developing an independent land council, it is necessary—and this is what we are working on—to define those parts of the organisations in the region that have particular responsibilities. As I mentioned, I do not believe the land councils should be involved in direct investment style entrepreneurial activities.

**CHAIR**—What about age care?

**Mr Mackinolty**—Exactly—

**CHAIR**—Should they be involved in age care?

**Mr Mackinolty**—No. Their responsibility is to the land rights act, which has nothing to do with those things. That is why the document that I would like to tender makes clear that there are at least four strands of organisational types in the region, of which the land council would be one.

**CHAIR**—The committee accepts the diagram tabled by the witnesses as a committee exhibit.

**Mr Mackinolty**—That diagram makes it clear that an independent land council would have responsibilities and so on as a statutory authority under the current act. I know what you are talking about in terms of the high costs of a land council and so on. Because we would obviously be a lot smaller but also because it is the way the Jawoyn Association has behaved, the land council would probably be buying in much more outside expertise on a contract basis rather than full-time employment of lawyers, anthropologists and the like as being a more efficient way of doing it. The Jawoyn Association would be responsible for welfare and cultural interests. The Nyirrangulang working party would have responsibility for infrastructure and local government and so on in the region. Then there would be another umbrella organisation dealing with commercial operations—or a series of commercial organisations, for that matter—which would be run as viable businesses. They would be responsible to the Australian Securities Commission and so on.

**CHAIR**—That is for a population of 1,800 people. On top of that, you will have your local government, the Northern Territory and the Commonwealth government.

**Mr Mackinolty**—No. We have just received a grant from your colleague the federal minister for local government in terms of looking at local government governance on a regional level to achieve not just cost savings but efficiencies in terms of cooperation between local governments in our region. We are looking at ways of getting rid of duplication that a lot of government departments are involved with and increasing Aboriginal employment through taking on a lot of those functions that are currently taken on by government blokes in shorts and long socks.

At the moment, the effective unemployment rate is extremely high in this region. A lot of jobs that are currently being held by whitefellas over time can and should be held by the Aboriginal people of the region. The independent land council would certainly have to be

separated from the welfare and commercial operations for the simple reason of problems with conflict of interest and so on.

**CHAIR**—I have one final question—and Ms Hoare has been very patient waiting for the call. Is there a regional office presence of the Northern Land Council in the Jawoyn Association area?

**Mr Mackinolty**—There is the Katherine regional office of the Northern Land Council here in Katherine. Is that what you meant?

**CHAIR**—Is that the regional office closest to the activities of the Jawoyn Association?

**Mr Mackinolty**—It is 100 yards away.

**CHAIR**—Do you see that as being an effective regional organisation?

**Mr Mackinolty**—It is very effective for those groups who have not got the infrastructure and resources to be able to carry out activities. I think the people who gave evidence yesterday indicated ways they would like to see it improved and so on. Jawoyn have certainly often said that they want greater resources put into the regions, but the Jawoyn Association has fortunately been able to take a lot of pressure off the Northern Land Council by doing a lot of things itself.

**Mr Walsh**—I might make one final comment on funding, if I may. It is my understanding that, when the other two small land councils, Anindilyakwa and Tiwi, were created, they received a proportionate share of the Aboriginal benefits reserve money, which was formerly divided up between the two larger land councils in proportion to either their land area or people—I am not too sure which. One would expect that, if Jawoyn were created as an independent land council, the same result would flow. There would be apportionment of ABR money to the new land council, which should balance out with Jawoyn taking over the functions that the NLC formerly did in this region. The ABR money that comes to Jawoyn would balance that out.

**CHAIR**—Would they be obtaining it from someone else? Does this region—

**Mr Walsh**—It is currently divided up between the four land councils. If there were five land councils, there would be a different dividing up.

**CHAIR**—Yes, but Northern Land Council relies on the ABR income for its activities in its area of responsibility. You are saying to cut your area out of Northern Land Council in time and create a separate land council, a smaller one. That would leave the Northern Land Council with less revenue.

**Mr Walsh**—But fewer functions to spend that revenue on.

**Mr Mackinolty**—It has been made quite clear, by Robert Lee, for example, that he would see two things happening. Firstly, the independent land council would purchase services from time to time from larger organisations like the Northern Land Council.

Secondly, any independent land council would form part of a powerful federation of land councils to carry out the sorts of political and representative functions of the land councils. It would really be a recalculation, just as they did when Anindilyakwa was established, on a per capita basis. That is revisited, I think, every four or five years by the minister and by the ABR on how those funds are carved up.

**Mr QUICK**—You mentioned age care. Which of those four groups do you see as having responsibility for age care, health or education? Where do they fit into that model, or don't they?

**Mr Mackinolty**—Hopefully, under the Nyirranggulong working party/regional authority heading. I am sorry I did not run off copies of this; I was not expecting to have to tender it. We have to do things on a regional level to make rational use of resources because of the sorts of distances involved and, as the chairman pointed out, the relatively low rate of people up here. There are a number of individual age care activities in various communities. We would be looking, especially in the area of training, for age care workers to do that on a regional level as a rational way of using resources for that kind of thing.

The Jawoyn Association itself, under this model, would become considerably smaller and concentrate on the core business of the Jawoyn people. The Nyirranggulong working party—there is a diagram in the folder that I gave people last night—has community representation rather than representation of traditional owners, which would look after things like health, age care, education and so on. We are currently working on a regional health strategy and a regional education strategy, especially for kids from ages five to 15 who are really missing out. They are the future.

**Mr QUICK**—Do you see the possibility of the commercial operations cross-subsidising health and education?

**Mr Mackinolty**—Absolutely.

**Mr QUICK**—Who has overall control? Who says, 'Our commercial operation has raked in \$5 million profit last year. We can afford to put some of that back into some of the other things'? At the moment, all the arrows are up and we do not have any arrows across or—

**Mr Mackinolty**—If you look at the top at the boxes above 'Jawoyn Association and Nyirranggulong working party' under 'Fundings sources', both of them carry budgeted grants/donations from commercial operations. We certainly see the commercial operations as contributing to the welfare of people in this region. For example, in a proposal that we are working on at the moment, to do community stores in the region—for many communities this is the only economic enterprise available—we are hoping that, through rationalisation and increased purchasing power plus the use of technologies such as scanning and the rest of it, that will generate enough profits to employ a full-time nutritionist for the region. They would work with the schools, the stores and the parents on nutrition not only for kids but also for adults in the region because, as you know, that is one of the major problems in Aboriginal health.

**Mr QUICK**—Will there be a fifth group to oversee these four groups so as to make sure that you maximise what you have in your mission statement?

**Mr Mackinolty**—I think the peak body in a lot of ways is going to be the regional authority, the Nyirranggulung working party. I do not think there is a reason for incorporating yet another body. Going over to the commercial operations—

**CHAIR**—Would you pay yet another body?

**Mr Mackinolty**—I do not see that there is any great need to create some sort of overarching fifth body to look after all these things.

**CHAIR**—On top of the Commonwealth government, ATSIC, the Territory government and local government?

**Mr Mackinolty**—I have already discussed local government as being a regional issue in any case. Certainly, the move in this area is to try to become independent of government.

**Mr QUICK**—Have we got to the stage where the working party regional authority has said to the NT government, 'Whatever funding you get from the Commonwealth for supplying education to the Jawoyn peoples, you can fund that through us and we can set our own contract rate for teachers because of the isolation, et cetera?'

**Mr Mackinolty**—That stuff in the health area has already been trialled west of Katherine and also on the Tiwi Islands through the coordinated care trials.

**Mr QUICK**—I understand that. I am on the committee looking into indigenous health.

**Mr Mackinolty**—Those may well be the models where people take over a lot of the functions of government, as I mentioned earlier, and, in the long run, they not only save government money but also give people a far greater independence and a sense of control over their lives than has been possible in the last 100 years.

**Mr QUICK**—I am just trying to pick your brain.

**Mr Mackinolty**—It does many things. For example, you are looking at some kind of crystal ball gazing on what is essentially a privatised health service in the region through something like a coordinated care trial, and that may well extend to education. I point out, too, that it can also be done in partnership with government; it is not necessarily a take over thing. I point out that we have been involved for the last 18 months in developing a law and justice strategy for the region. That has involved having a New South Wales police member in uniform in the office for the last 18 months working with communities on night and community warden schemes and on night patrols. The intention is for the entire Jawoyn region to have an all-Aboriginal police force, with fully qualified constables taking over the Maranboy police station to work with traditional law people and customary law to try and move away from some of the dysfunctional problems with social behaviour due to grog, petrol sniffing and so on.

**CHAIR**—Are ATSIC state, ATSIC regional and ATSIC Canberra also involved in this working party process?

**Mr Mackinolty**—Local ATSIC members have attended Nyirranggulong meetings. ATSIC federally are very supportive of the police and justice strategy, for example. We are having a few problems with ATSIC in terms of funding at the moment, but that is a separate issue. Our people who are members of regional ATSIC have been involved on the ground in these processes. At this stage, there has not been any formal funding going into this regionalisation process. We are looking for private support for these things, too, through foundations to use as seed money to get things rolling. For example, on the law and justice strategy, we look like getting a donation from a company of a vehicle that can be used in the training program over the next five year.

**CHAIR**—The Jawoyn Association is the driving force behind these initiatives, is that right?

**Mr Mackinolty**—People on the ground, yes.

**CHAIR**—You are trying to capture the interest and support of the various other players both in the private sector and also in Commonwealth, state and local governments. Is that a generalised view?

**Mr Mackinolty**—We have always seen working with government not as a matter of going with your hands out, but as looking for a helping hand from time to time for long-term processes that are getting away from those days of welfare dependency.

**CHAIR**—Perhaps I am oversimplifying it, but do you agree with me that the irresistible conclusion one would have to make from hearing you talk is that there are so many organisations—Commonwealth, state, territory, local government and community—that they would act as a retardant to the successful outcome of those very worthwhile goals that you have outlined?

**Mr Mackinolty**—I would say that, over time, as we move away from—

**CHAIR**—What about now?

**Mr Mackinolty**—At the moment, it is not possible. Slowly, slowly—we are not looking for the vision splendid to turn up tomorrow and knock on the door.

**CHAIR**—Have you got time? The Aboriginal people's health is not good and unemployment is in a serious position.

**Mr Mackinolty**—What do you mean by, 'Have we got time?'

**CHAIR**—Isn't this an urgent issue that should be addressed?

**Mr Mackinolty**—Of course it is an urgent issue.

**Mr QUICK**—Would the impediments and retardants be removed as—

**Mr MELHAM**—There should be a royal commission into the Territory government.

**Mr SNOWDON**—There should be a royal commission into Territory government, and there is a question which I think needs to come out of this. The reason why organisations form in the way in which they are formed in these Aboriginal communities is the lack of performance by government. The fact of the matter is that, in the context of northern Australia, the Northern Territory government has been abysmally poor in the delivery of services to Aboriginal communities. That is why Aboriginal community based organisations are out there looking for alternative funds. If you want to ask questions about the delivery of services, let us ask questions of the people responsible for the delivery of services, not the respondents. The people responsible for the delivery of these services are governments, not Aboriginal organisations like the Jawoyn Association.

**CHAIR**—As chairman, can I clear the situation up. This committee has a very deep commitment to improve the situation for indigenous Australians and will, when it has the opportunity to meet with community leaders representing indigenous people on the ground, without fear or favour take every opportunity to try to identify road blocks and impediments to achieving the best outcome possible for indigenous people. That is the basis on which I am asking questions.

**Mr Mackinolty**—All right, Mr Chairman. It is the position of the Jawoyn Association that we are moving towards wanting to establish a regional authority in this area and be funded directly from the Commonwealth for all the functions that that regional authority takes on, something like the model on the Torres Strait where there is far less red tape involved in the TSRA accessing both Commonwealth and state governments and bypassing, I understand, the state government to some extent. We would like that for the simple reason that less money sticks to people's fingers on the way past.

**CHAIR**—And it comes from the ground up.

**Mr Mackinolty**—Precisely.

**Ms HOARE**—I have a couple of quick questions to clarify things in my own mind. If you cannot provide simple answers, just say so and that will be fine. I understand the time limits. This is on the history of the Jawoyn Association. You provided us again with a summary of the Jawoyn achievements. What proportion of those achievements was done solely by Jawoyn or in conjunction with the Northern Land Council?

**Mr Mackinolty**—I do not have that list in front of me, although I wrote it a couple of years ago.

**Ms HOARE**—Has it been a partnership all the way through?

**Mr Mackinolty**—There has been a partnership in areas where the land council is involved by virtue of its functions under the act which are to do with giving land back, mining agreements and stuff like that. In those areas where it involves non-Aboriginal land

or land held under forms of tenure, we have tended to take it on, but we have often sourced advice and assistance from the land council anyway. Some of the things in that list we have quite clearly done on our own like developing the five-year plan and the mining policy, although again with the mining policy, that was very much based on quite long experience with and without the land council. It has been a partnership in those areas where under the act the land council has its area of responsibility.

**Ms HOARE**—With the finalised claims and the land claims still in abeyance, you stated before—and correct me if I did not interpret this correctly—that one-third of the Jawoyn people are traditional owners. When the claims were lodged in partnership with the NLC, I would presume with advice from the Jawoyn Association and the traditional owners, how much involvement was there from non-traditional owners in relation to the land claims?

**Mr Mackinolty**—Do you mean people like lawyers and anthropologists and stuff like that?

**Ms HOARE**—No. I mean the affected community, the Aboriginal community.

**Mr Mackinolty**—If you look back at the original Jawoyn land claim, quite a lot of evidence was given by non-Jawoyn people who have ritual relationships or knowledge of country with Jawoyn people. Certainly from the perspective of the traditional owners, for example, during the Mount Todd agreement, which was not under the act, when we were negotiating with the mining company there, they originally wanted employment and training strategies to be put in just for Jawoyn people. The Jawoyn elders who were involved in those negotiations said, ‘No. It has to be for Aboriginal people. There are a lot of non-Jawoyn people who we are married into, we share ceremony with and so on.’

There is another diagram I gave you about the function and role of the council of ceremonial elders. A lot of those people are not Jawoyn; they are senior people living within the region who have ritual knowledge and, indeed, have to be consulted under Aboriginal law over developments. A very little thing is that, as you are driving into town, there is a logo of a barramundi on a concrete thing just near the council. That design was initially approved by a senior Jawoyn person, but he had to go and talk to non-Jawoyn custodians of the barramundi design before final approval could be given. In a funny way, ‘affected people’ is a weird construction in the act which does not explain that people live and work with each other cooperatively because they want to and they have to under their law.

**Ms HOARE**—Sure. How many traditional owners are members of the Jawoyn Association?

**Mr Mackinolty**—By definition, all adult Jawoyn are members of the association. Of people who can get through, say, the land commission, you are probably looking at about 300 or 400 people. There are other members of the association who probably would not get up under the definition of the act as being traditional owners but are nevertheless included in the association as well.

**Ms HOARE**—Are there any members of the association who are members of the Northern Land Council?

**Mr Mackinolty**—Yes. There is our deputy chairman, Andy Andrews, who is actually on the executive of the Northern Land Council. Robert Lee was before him. Jawoyn have had executive members on and off probably since about 1979, plus there are always Jawoyn representatives on the full council as well.

**Ms HOARE**—Thank you for that.

**CHAIR**—Mr Snowdon has a question, then Mr Quick. We will have to finish on Mr Quick's question.

**Mr SNOWDON**—I actually have a couple. The first one is that I want to ask a question about regional authorities, as you mentioned it and it was discussed by the chair. Has the Jawoyn Association had any discussions with the minister on the issue of regional authorities?

**Mr Mackinolty**—Only informally. When it came up to that review—I think it was last year—we ended up not putting in a submission, again because we felt we were too far away from it yet, but we are certainly working towards it. What is it? I cannot remember the section.

**Mr SNOWDON**—You are not aware of the minister's approach to the Jawoyn Association about setting up a regional authority?

**Mr Mackinolty**—When we have spoken to him, he has said it is a thing he supports. He has certainly told the same thing to people from the Tiwi Islands—that he supports that principle—although I believe he knocked them back when they made that application.

**Mr SNOWDON**—He has not offered any money to the Jawoyn Association for assistance to develop a regional authority?

**Mr Mackinolty**—No.

**Mr SNOWDON**—He has not offered, as he has done with the Ngaanyatjarra people in Western Australia, to take a group of people to the Torres Strait to look at the functioning of a regional authority?

**Mr Mackinolty**—No.

**Mr SNOWDON**—I just want to place that on record. I want to ask a question about the establishment of land councils.

**Mr Mackinolty**—I should say that we have not asked him either.

**Mr SNOWDON**—No. For background and for your information, I mentioned to members of the committee last night that the government has a proposal on the books discussing, within Prime Minister and Cabinet, the breaking up of the Aboriginal and Torres Strait Islander Commission into 17 regional authorities. That is why I asked the question. The person from PM&C could ask his boss when he goes home.



About the establishment of land councils, I noticed in your reference to page 6 what should be changed in terms of section 21. I noticed your extensive discussion about the issue of traditional ownership. In the context of proposals to amend the act, could you tell me whether you would support a proposal which would amend section 21(3)(a) or (b) or put a new section 21(3) in, which would include the necessity for the minister to ensure that there is informed consent from the traditional Aboriginal owners within the region for which the proposed land council should be established?

**Mr Walsh**—In place of or in addition to ‘substantial majority support’?

**Mr SNOWDON**—I think it should be in place of, but it might be in addition to.

**Mr Mackinolty**—I have not got any instructions on that really. Sorry.

**Mr SNOWDON**—The reason I asked the question is that it would be at odds with your general view about the strength of Aboriginal traditional ownership and the need for informed consent to have people make decisions about how land will be managed without informed consent.

**Mr Walsh**—It would be. From my analysis of the many applications for new land councils that have been tried and have failed in the past, it has been substantially for that very reason that the substantial majority that was alleged or put up was not accepted as being a substantial majority. Lying behind that, of course, is that it was not informed consent of the people affected.

**Mr SNOWDON**—The reason I asked the question is that there is no requirement on the minister to get the informed consent of traditional Aboriginal owners under the current act.

**Mr Walsh**—That depends on what the minister interprets ‘substantial majority support’ to mean, I presume.

**Mr SNOWDON**—It is very clear. It says ‘substantial majority of Aboriginals living in an area’. It does not say ‘substantial majority of traditional Aboriginal owners of an area’.

**Mr Walsh**—And where there is a divergence in the area—

**Mr Mackinolty**—Our position would be that we would only proceed when both those things have been satisfied.

**Mr SNOWDON**—The reason I think this is important is that we are looking for amendments to be consistent, and part of the act is a contradiction to other parts of the act which make it obligatory for land councils, once they have formed, to operate on the basis of informed consent. Yet it appears that currently, under the legislation we are working with, the minister does not need to have informed consent of the traditional owners of an area of land to form a land council.

**Mr Mackinolty**—We would not go to the minister unless we believed that was achievable.

**Mr SNOWDON**—I understand.

**Mr Mackinolty**—I want that on the record, too.

**Mr QUICK**—Chips, is the draft you gave us of the four groups dated late last year?

**Mr Mackinolty**—That was produced for and endorsed at the AGM of the Jawoyn Association.

**Mr QUICK**—Have you moved in the last six months further down the track to finetune, hone and put administrative set-ups and some financial ballpark figures to each of those four things or have you not got that far yet?

**Mr Mackinolty**—We review our five-year plan every six months, for example. This sort of stuff is now being fed as a developing document into the five-year plan. What we are doing at the moment, for example, is working out both the legal and other ramifications of hiving off all the commercial operations and discussing things just like you raised before, where the Jawoyn Association would submit a budget to two of the commercial operations and say, 'We would need this for the next year to run our social/cultural activities.'

**Mr QUICK**—Is there any likelihood in the next month of an updated document that we might have access to prior to writing our report?

**Mr Mackinolty**—It was probably easier to crystal ball about 20 years ago than for the next month. If anything like that comes up, I will certainly get it down to you.

**Mr QUICK**—Thank you.

Resolved on motion by **Mr Quick**, seconded by **Ms Hoare**:

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

**CHAIR**—Unfortunately, the time has come to close this public hearing as we are due in another place shortly. I would like to thank everyone for their attendance yesterday and today. Thanks to our staff, the secretariat and our Hansard staff for the wonderful work that they have done. I thank members of the public, community and media for their interest. We hope our paths will cross many times. The meeting is now closed.

**Committee adjourned at 10.09 a.m.**

