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

FRIDAY, 18 JUNE 1999

DARWIN

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

INTERNET

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

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

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

Friday, 18 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 Haase, Mr Lieberman, Mr Melham, Mr Quick, Mr Snowdon and Mr Wakelin

Terms of reference for the inquiry:

The Committee shall inquire into and report on the views of people who have an interest in the possible implementation of recommendations made in the Reeves Report. In particular the Committee will seek views on:

(1) the proposed system of Regional Land Councils, including

  (a) the extent to which they would provide a greater level of self-management for Aboriginal people, and

  (b) the role of traditional owners in decision making in relation to Aboriginal land under that system;

(2) the proposed structure and functions of the Northern Territory Aboriginal Council;

(3) the proposed changes to the operations of the Aboriginals Benefit Reserve including the distribution of monies from the Reserve;

(4) the proposed modifications to the mining provisions of the Act including the continuing role of government in the administration of these provisions;

(5) proposals concerning access to Aboriginal land including the removal of the permit system and access to such land by the Northern Territory government; and

(6) the proposed application of Northern Territory laws to Aboriginal land.

The Committee shall make recommendations on any desirable changes to the proposals made in the Reeves report in the light of the views obtained.

WITNESSES

Committee met at 9.08 a.m.

CHAIR—I declare open this public hearing for the committee's inquiry into the recommendation of the Reeves report on the Aboriginal Land Rights (Northern Territory) Act. As many people would know, the Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon. John Herron, has asked this committee to seek people's views about the recommendations in the Reeves report. The minister has told us that we can suggest changes to those recommendations.

This is the last public hearing in this inquiry to be held by the committee in the Northern Territory, although we will be holding further hearings over the next two or three weeks in Canberra. We are hoping that we can table the report of our findings in late August.

This hearing is open to the public, and members of the public are made very welcome today. A report of what is said at the hearing will be available to anyone who would like to ask our staff for a copy.

RISK, Mr Bill, Spokesperson, Larrakia Nation Aboriginal Corporation

CHAIR—Welcome. The committee is obliged to advise witnesses throughout Australia, appearing before this committee and other committees of the parliament, of the following. Although the committee does not require witnesses to speak under oath, all witnesses 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.

The committee has received a submission from your association, and it has been published. Would you like to make an additional opening statement before we proceed with questions?

Mr Risk—No, I think that the committee is aware of the Larrakia's long struggle to be recognised under the land rights act in the Northern Territory. This is just a further submission to highlight our concerns with the Reeves report.

CHAIR—I will open the questioning. The Reeves report, as you would know, talks about the role of different members of Aboriginal communities and how much input they can have into decision making and having a say about what matters and what happens on the land. Mr Reeves makes some recommendations about the way in which that could occur. I would appreciate your opinion as to the difficult question of how a modern society, moving into a new millennium, can ensure that the views, wishes, aspirations, rights and obligations of all sections of Aboriginal society are given proper consideration and that outcomes of policy are equitable.

We have the traditional owners; we understand, from the evidence we have been receiving over the last few months, their important role in Aboriginal law. We have also the members of the Aboriginal communities who live and are part of the communities, although they are not traditional owners as such. Would you give us your advice, please, on how those issues should be addressed by a modern nation like Australia, trying to do the right thing and to respect people at the same time.

Mr Risk—With regard to those questions, I would like to say that we believe the current model that we have—the land rights act—gives us more autonomy and more ability to express those desires and wishes. We have seen the current land rights act working for us up here in regard to regionalisation under the act, in regard to our particular area, which is called the Darwin Daly Wargite. The NLC, as I see it, is moving towards regionalisation within its own organisation. It is establishing regional land councils in such a way that representatives from regions such as ours and other regional areas that are set up under the land rights act, such as the Darwin Daly Wargite, are better able to assist and help Aboriginal people with their duties of looking after their country, of giving permission for whoever might want to come onto their land.

Within the submission here today, which I will hand up later, we talk about Aboriginal people making decisions from their own land bases and from their own structures that have been in place for thousands upon thousands of years. Also we talk about the traditional owner status and the bosses of the land.

The model talked about in the Reeves report of the NTAC, the Northern Territory Aboriginal Council, would take away a lot of the obligations and the say that Aboriginal people have—and the way that they say it—from them. Just wrapping up the question there, we would like to see the current land rights act stay in place but be monitored. Perhaps more work should go into the regionalisation and the resourcing of the regional committees as set up through the land claim.

CHAIR—And you would see that as giving adequate recognition to the needs of the Aboriginal people, whether they be traditional owners or residents of the communities in those areas? Is it your perspective that that would happen if the regional role of the councils was beefed up?

Mr Risk—Yes, that is right. I further go on to say in the submission I have prepared that traditional owners would have a major role to play on the regional committees. The Aboriginal communities themselves within those regional areas under the regional committees would have a governing body, if you like. In the major communities you would have town clerks and members on the committees, et cetera, and they would have input from a community level as well.

CHAIR—Mr Risk, I do not want to interrupt you, but I thought from your introduction—perhaps I did not hear you clearly and it is my fault—that you were not going to be making an additional written submission to the one that has already been received and published. I have now been informed that you have a document, a copy of which has just been handed to me, so I would like to ask you, if you do not mind: do you have a submission that you now wish to table, and is that the document that I have here?

Mr Risk—Yes. I did state that I had additional materials and submissions to submit to the committee.

CHAIR—I will just have to deal with it as a matter of formality.

Resolved (on motion by **Mr Quick**, seconded by **Mr Wakelin**):

That the document be accepted as a submission into the inquiry and be authorised for publication.

CHAIR—Mr Risk, I want to share with you some part of the role I have as chairman, if you do not mind. I have an obligation today to hear evidence from other people, and because members have to return to their electorates and connect up with planes in other parts of Australia this hearing will not be able to go beyond a certain time today. I have no flexibility. I am not being discourteous. I am worried that it is 20 minutes past nine, and I have to finish your segment—I have no flexibility—no later than a quarter to 10. I will leave it to you to ensure that the presentation of your submission and some time for questioning is accommodated in that period.

Mr Risk—Thank you.

CHAIR—Thank you, Mr Risk. It is over to you. If we work together we will achieve those ends, I am sure.

Mr Risk—I think so. I will read through the written submission we have prepared for you. It is a bit lengthy.

CHAIR—It is up to you, but why don't you speak to it rather than read it? The document is now part of the record, and members can read it and absorb it. You might just like to highlight some of the key features of it. If you feel you do not want to do that, you can read it. It just means that at a quarter to 10 that is it.

Mr Risk—Basically, I give some background about the Larrakia people and Darwin and the surrounding areas that the Larakia people once occupied in great numbers and still occupy today. In the early stages of the written submission I have given to the committee this morning I talk about assimilation and the fact that I feel the Reeves report is pushing Aboriginal people once again towards a structure where non-Aboriginal people pull the strings, if you like, or try to direct and control the Aboriginal people who, as a body, are trying to do their best to look after their country, their culture, their self-determination, et cetera.

CHAIR—I might come in a couple of times just quickly to help the flow. When you talk about self-determination, you are not talking about being separate from Australia as a nation?

Mr Risk—Not at all.

CHAIR—Your people want to remain part of the proud nation of Australia?

Mr Risk—Absolutely.

CHAIR—You do not want your words to be misinterpreted by some commentators as arguing that you want to be a separate nation?

Mr Risk—Not at all. When I talk about self- determination, I talk about Aboriginal people farming their land, ensuring their economic development, determining their own direction and future and movement on their land and—

CHAIR—A bit like what the people where I come from like to try to do in their own communities.

Mr Risk—Yes, look after their families.

CHAIR—Sometimes they succeed; sometimes they do not. But generally they want to.

Mr Risk—Yes, that is correct.

Mr SNOWDON—Does it also mean, working within the framework of the legal structure of Australia, asserting an identity?

Mr Risk—That is absolutely correct as well. Part and parcel of self-determination is being who you are as a race of people. I am sure people agree with me that Aboriginal people are a separate race of people within this country, as we have been here for thousands

of years. The attachment we have to our own identity goes hand in hand with self-determination, I think, because as a race of people and as free-thinking people we should be allowed to move in a direction that would not only suit us and look after us but maintain our culture, identity, religion, et cetera. I believe that is something we are able to do in this country.

Mr SNOWDON—Does it also mean, within that framework, setting out your own rules and regulations about how you might live together?

Mr Risk—Yes, I believe that is also a part of what we are talking about here today. I am also part of another committee called the Aboriginal Justice Advocacy Committee of the Northern Territory, and my role on that committee is to go out and talk to Aboriginal communities about law and how Aboriginal law can fit in with European law, et cetera. So those things are all part of the self-determination that I talk about: traditional law and how it can fit in, and how the Aboriginal people of the Northern Territory are able to walk and work with the European laws in relation to Aboriginal laws.

Mr QUICK—In the paragraph headed '2. Regional Land Councils (chapter 27)' on page 4 of your submission, it states:

> Mention was made above of our desire for a more decentralised model . . . We see no need to eliminate the existing Councils if an appropriate regionalisation program under their umbrella is developed . . . Under our vision, the existing land councils would act as more as resource centres to local and regional bodies as well as to the Council.

Can you explain where you see land councils 20 years down the track? We have had them in place for 23 years. Have they served their purpose once all the land is sorted out and there are no more hassles about land? Do you see their role as basically a resource centre, the peak group to fight the feds or the Territory government?

Mr Risk—I think there is a role and I have said it before. I do not think the larger land councils should merge because the Northern Land Council and Central Land Council should have their own autonomy. They should be separate and keep the jurisdictional areas that they have. I am not too sure about the Central Land Council, but the way the Northern Land Council are regionalising and setting up councils, such as the Darwin Daly Wargite which services our particular region—

Mr QUICK—Can you explain how that was set up? Did you people or the Northern Land Council initiate that, or was it a joint agreement?

Mr Risk—The land council themselves look at the regions—these are just my perceptions—and the people who live in those regions and how they coexist. I suppose it is taken on the historical terms and the fact that they were moving together in culture as well as land, visiting their neighbours, et cetera, so I suppose the councils were broken up into regional areas such as that. I remember that the councils came out and talked to people in the regions to see whether they felt comfortable and happy with that. I cannot talk too much about that background of how they were set up. You would probably have to talk to the land councils about that.

The way I see it is that that is the way we should be going, keeping those regionalised committees such as ours in place. We need the land councils to keep the structure they have for the future so that, as you say, if there were major legal problems or litigation, the Aboriginal people could turn to those northern and central councils as resource agencies. But, basically, most of the decisions would fall back down into the regional areas such as the Darwin Daly Wargite committee with representation from those areas. There need to be traditional owners or people of some authority put on those councils to give direction and stability to those councils.

Mr QUICK—You mentioned under permits that over time you would like to see more permits issued at the local level and greater monitoring of them. The current system is that you have to apply to the NLC, and there has been mention of hassles. Obviously you would like to have a little bit more control of the permits? How do you see that working?

Mr Risk—The system of the permit works okay now but sometimes they are not able to contact the relevant people to give permission. I suppose it slows a process down for people who want to go on to Aboriginal areas.

CHAIR—I suppose that causes some misunderstandings and irritation, and perhaps it acts as a negative in relationships between Aboriginal people and people wanting to enter. Is that so?

Mr Risk—It can do. It can cause frustrations, I suppose. You have to understand that the regionalisation has to have more resources and probably has to grow a bit better so that the permit system can be handed down for the general areas. I think they are best served to contact the relevant people for the permits to be sent out. What was the other thing that you said, Mr Quick?

Mr QUICK—About it being issued at the local level and you having greater power to monitor what is going on.

Mr Risk—When I talk about monitoring I suppose I am talking about the permit system as opposed to the trespass service that would be put on people. The permit system, Aboriginal people I am sure would believe, works much better because they are aware of who is coming onto the land, their movements and the times and dates that they are coming onto the land. You have got to understand that quite often there are roads cut off for ceremonial business. If people were able to wander willy-nilly anywhere they liked and they were slapped with a trespass notice after the act, who knows what damage they would cause or what danger they could be putting themselves in. In respect to the trespass part of the Reeves report, that is a fact that happened after the act was committed if you like—the trespass act. Permit systems come down to the people. They can monitor them and they know who is coming—that is what I was talking about there.

Mr QUICK—Okay. Has the actual format of the permit system changed in the last 20-odd years? Is it still basically the same form? If you are a frequent traveller into a certain community, do you get a monthly or a six-monthly permit, or is it that every time you go in you have got to do the paperwork? Has the system changed over the last 20 years?

Mr Risk—I do not think it has changed.

Mr QUICK—Should it?

Mr Risk—No, I do not think it should change. The Commonwealth government, the police and, again, state and federal departments and people who work for them, get permits as long as their work takes them out into Aboriginal land. I know of many government employees who hold permits to enter Aboriginal land for work for many years. You might have contractors that need to work at an area and go backwards and forwards for six months or 12 months and they will be issued a permit for that duration.

Then there are people who come up for recreational purposes. They might go to one area and only be allowed to stay there for a number of weeks, or perhaps that might be extended. It really varies according to your need to go up and the reasons for it, whether it be recreational, work, et cetera. Does that answer your question?

Mr QUICK—Yes. The reason I am asking that is because I do not think we have had on the record exactly how the system does work.

Mr Risk—I think it is a good system, a simple system. People will go to the Northern Land Council as it is today. They will say, 'I want to go up into Coburg or into Arnhem Land,' and the Northern Land Council people will say, 'What areas do you want to go in?' They need to state all the areas, the dates, the duration, what vehicle they are travelling in and how many people are going, and it is generally very efficient. The land council get on to it and ring the relevant community or the people, whether they be out there in Darwin or wherever and they sign it and—

CHAIR—Bill, I think you will realise that the members of the committee are getting a lot of benefit out of your responses to their questions and they will be able to study your written submission, too, so I think we are achieving a mutual goal and I hope you feel comfortable with that. Do you?

Mr Risk—Yes, I do.

CHAIR—I am very conscious of the fact that you are not going to have a lot more time.

Mr WAKELIN—Just following from Mr Quick, I would like an opportunity to put about three questions to do with the permit system. It has been suggested to us by responsible groups over the last 20-odd years that gradually the permit has changed its nature. I think that one of the mining companies suggested that it created some irritation in terms of a tightening of the permit system in certain areas, and that sort of thing. So over 23 years there has been some suggestion of that and I just wanted to put that on the record following Mr Quick's questioning. Would you want to make a comment on that—that in certain areas there has been some change in the way people have seen access to land?

Mr Risk—Are you talking about the changes to the form or—

Mr WAKELIN—No, I am talking about the general principle of access to land in terms of popular recreational areas or, I suppose, some fishing spots and that sort of thing.

Mr Risk—In regard to that, I suppose I would say that I listened to the Aboriginal people from the areas where there were concerns over access, if you like, and that is a fact of life, I think.

Mr WAKELIN—Okay, that is fine. I just wanted to get a response.

Mr SNOWDON—Keep going. You finish and I will then ask my question.

Mr WAKELIN—That is fine. I just wanted to get a response. With respect to the general principle of land rights over the last 20-odd years, what do you see as the main benefit? Could you name two or three main issues around land rights? How have Aboriginal people actually benefited? I am sure there are cultural benefits as well as economic ones. From your perspective, having listened to Aboriginal people, what have been the main steps forward in the granting of land rights across the Northern Territory?

Mr Risk—Overall, the greatest benefit for Aboriginal people since the concept of the land rights act is that they are able, through getting access back to their land and ownership of their land, to maintain who they are as people, as a race, and as an identity which is separate from others. The point that is of paramount importance through the land rights act is that Aboriginal people are able to maintain and hang on to who they are through land.

Mr WAKELIN—I note in point 2, with respect to the regional land councils, it is stated that administration costs need to be kept within an acceptable range—10 or 20 per cent. I am on the public record as saying that 40 per cent seems to be a large amount of money in terms of the amount of money that land councils are absorbing having regard to the total amount of money coming through the benefit trust. I am interested in that figure of 10 to 20 per cent—take the middle as being 15 per cent—which is a little lower than what is being utilised in administration now, as I would understand it. You could see, if I have taken that correctly, perhaps some streamlining and efficiencies in the administration of the land councils.

Mr Risk—I believe that warrants some looking into—the efficiency of land councils.

Mr SNOWDON—I go to the last question first, because I want to illustrate why the costs are so high in land councils. We do not want to go into the detail of the cases, but with respect to the Kenbi land claim—and you might tell the committee what that is about—what do you think the costs of that have been to Aboriginal people so far, in millions of dollars?

Mr Risk—I suppose it is twofold. The cost is personal, a human cost, and there is also the dollar factor. The Larrakia people, as I mentioned at the last hearing, have been fighting the Kenbi land claim, which is a land claim across the harbour which stretches from the Cox Peninsula around to the back part of the harbour. In dollar terms, that has been a huge expense, at a personal level and at a monetary level, for Aboriginal people. I have heard of a figure of about $20 million in litigation from just one side.

Mr SNOWDON—That is money which has got to be supplied through the land council?

Mr Risk—Through the land council.

Mr SNOWDON—The point I am making is that, when you look at administrative costs, it must be understood that it involves the full functioning of the land council. These legal cases which have been forced on the land council by the Northern Territory government have represented a huge cost. I want to put on the public record that my own view is that the land councils operate administratively very efficiently in comparison with other organisations, given the range of functions they fulfil and, in particular, given the vituperative way they have been dealt with by the Northern Territory government over many years, and what it has cost taxpayers generally through the Northern Territory coffers, the Commonwealth coffers and the land councils. When we talk about administrative efficiency, we need to understand what the costs have been.

I will ask another question, Bill, because time is running on. I want to go again to the question of permits. I want to pick up your point and make an observation. Perhaps you could respond. You talked about the overuse of land. The permit system is an effective land management tool, is it not?

Mr Risk—That is correct.

Mr SNOWDON—Because there are a lot of places that are public land in the Northern Territory that have limited access because of overuse. So with respect to the claims by people who live in mining towns that they cannot access a particular plot of land or a particular place, it is often for legitimate land management purposes and not for any other reason.

CHAIR—Is that perhaps not as well understood and could it be part of a modern permit system in the future if there were more effort made to provide educative means for people to understand the benefits of the permit system?

Mr Risk—Yes. I could have elaborated further when I was asked those questions to explain those reasons. I think it was understood that those were the reasons.

CHAIR—So you agree with Mr Snowdon. Do you think that a modern, streamlined system could also pick up the idea of selling some of the attributes and benefits of the permit system so that the whole community understands the benefits that derive from good management of sensitive, fragile country and the like?

Mr Risk—Yes, I think that could happen, but I would also like to say that when people apply for a permit to go into an area that is overused and exploited, I think it has been explained to them at that point that, 'You can't go here. There's a waiting list. There's only X number of people who can go into this particular area because of the impact on those areas.'

Mr HAASE—Bill, can you give a further explanation about an earlier comment you made about your fear, as a collective people, of losing control of your future and your

culture—I suggest you mean—in moving to an administrative model as suggested by the Reeves report? Before you answer, the Reeves report talks about the creation of NTAC and it has been highlighted in the Reeves report that the structure of NTAC would be elected by federal and Northern Territory governments. He goes on to say, however, that he would also accept persons being elected to NTAC by Aboriginal people from land councils, from regional councils, or whatever name you give those groups. Could you explain to me why you are fearful of losing control if Reeves states that he would be happy if NTAC personnel were elected from grassroots?

Mr Risk—I suppose you need to look back in history, at where we have come from, where we are going and where we could be going back to. The land rights act gave Aboriginal people what they were not able to access prior to that in many areas, in the same way that we have been able to access our lands. The structure that was set up was based on talking and consulting with Aboriginal people so that a suitable model could be put up which Aboriginal people were happy with. There may be, of course, some parts of it that Aboriginal people from different areas are not too happy with, or do not agree with. But, basically, that model is the one that we wish to have because it is the right model. The right people are at the top and are being consulted. You have the councils who are elected from the different areas.

The NTAC model would be top heavy, if you like, because of that model of the NTAC, with the traditional owners and the people who have the right to have a say over the country being right at the bottom. There are other people making decisions over their land. It is a model based on the European style. It is not an Aboriginal model. It is not the model that was set up with consultation with Aboriginal people. Does that answer your question?

Mr HAASE—Yes, it certainly does, from a theoretical point of view. I would simply mention that the impression I have received from listening to people giving evidence, like you, is that the important thing about the Northern Land Council and the Central Land Council is that they are powerful bodies, and to divide them would be to water down their effectiveness. I make the suggestion to you that, with respect to the Reeves suggestion about one umbrella group representing all of the Northern Territory Aboriginal communities, I would have thought you would recognise that as being more powerful, therefore?

Mr Risk—Not at all. It is quite the opposite, actually. The strength is in the councils' respective northern and central areas. It is the people who make it up from the country, who talk for their country, who are bosses, who know about their country, know what they can and cannot do and all that sort of stuff; it is a model that is far stronger than the NTAC. To Aboriginal people, the NTAC model seems like a conspiracy to take us over and rule us once again. It seems like it is a ploy by the NT government, and a lot of people still think that Reeves was put in there and put things in his report that Aboriginal people did not even say, such as removing the permit system.

Mr HAASE—So rather than analysing the Reeves report and all that it says, you are talking with the preconception that there is a conspiracy between Reeves and the Northern Territory government?

Mr Risk—No. I say that people think that. A lot of people talk about what is contained in the Reeves report and what is reflected in the general Aboriginal community—what is in the report and what Aboriginal people say is sometimes far off the mark.

Mr HAASE—Thank you for your answer to it.

CHAIR—Bill, we have gone over time. I am sorry, but I will let you wrap up in a minute. Can you wrap up in a minute, Bill, anything you have to say? I must say you have been an excellent witness. You have given good answers.

Mr Risk—All I would like to say, I suppose, to wrap up, is that there are some areas of the land councils that perhaps need to tighten up in line with efficiency. The models of regionalisation that the land councils are putting forward is in consultation with the Aboriginal people from their respective areas. I see that that move towards regionalisation from the land council point of view and what they are putting in place now is a far better model than what is put forward in the Reeves report.

Aboriginal people want to retain their own decision making process that is in place now. To put NTAC into place and to move a lot of the content of the Reeves report into Aboriginal society again, and change it and turn it around, is very confusing, particularly for older Aboriginal people who live out in the communities in the bush and do not have an understanding of the European way of life, their system, their culture, if you like. They are used to what is there as well. They are able to understand it because it was done in consultation. It was put there by Aboriginal people and they can work with it quite effectively.

If you bring in the NTAC model, it totally removes the whole concept away from Aboriginal society as we see it and makes it top-heavy. Basically, it gives decision making and all that goes with it back to a group or a body of people who should not necessarily have the say on such important things as what happens on land, and who can and cannot come on it and everything else.

CHAIR—Thank you, Bill. We have benefited from your submission and we will study it closely. We wish you well. Thank you.

[9.50 a.m.]

GONDARRA, Reverend Dr Djiniyini, Chief Executive Officer, Aboriginal Resource and Development Services Inc.

McMILLAN, Mr Stuart John, Community Worker/Educator, Aboriginal Resource and Development Services Inc.

TRUDGEN, Mr Richard Ian, Educator, Aboriginal Resource and Development Services Inc.

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr Trudgen—I am a community educator with ARDS.

CHAIR—I have a formal matter that, as chair of a committee of the Commonwealth parliament, I am required to bring to the attention of all witnesses. Although the committee does not require you to speak under oath, you should understand that these hearings are legal proceedings of the Commonwealth parliament. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

Hansard reporters will be taking a record of what is said today and we will be happy to make available a copy of any of the transcripts to any member of the community or witness. Please let our secretary know about that. We have received the detailed submission. We thank you very much for that. That has been made part of the record and has been published.

I would just like to mention some constraints about today on the question of time, if you would not mind. We have to close the hearing at 10.30 today. The reason is that I, as chairman, am obliged to ensure that members are able to return to their electorates. They have to connect with certain planes in other parts of Australia, so the constraints of time are there.

Obviously, you would not want to read your submission, as it has already been published. In view of the constraints of time, I leave it to you to make whatever statements you like. I think you want to make a presentation but you should be conscious of the fact that by 10.30 we will have to wrap it up. If you could leave a little bit of space for some questions, that would be great. Thank you for your cooperation in regard to that.

Rev. Gondarra—Thank you, Mr Chairman. As you have already indicated, the submission from the Aboriginal Resource and Development Services has been tabled to you. We will be focusing our discussion on this submission and assure you we will be brief in a lot of the things we want to say. We are not going to repeat a lot of the things that have been done by your committee in public hearings in the remote communities and other areas that you have visited. We will be taking some of the things that we believe are part of the work that we have been involved in in education. We have been able to listen to people very

carefully, particularly Aboriginal people, people who have a system of law, people who have assented to their own law, the source of law for them.

It is very important for them that that also needs to be shared with you, so that you know what people are saying when they say something to you in the language or in English. What we call the intellectual language of the people has been missed out in a lot of those reports. We wanted to pick up some of those things so that you know what the people have been saying. Our organisation stands with the people and their concern. One of the things to do with that new model in the Reeves report has been to bring it to the attention of particularly the two councils, and to try to model a new model. We believe he is taking it back to a welfare system model, which is going back in time and people will be worse off than they are now. What I am saying is that that model will bring people into dependency. That is one of the things that many of our people have been saying—'We are sick and tired of always depending on something'—and that is something that is destroying our people, destroying our law.

Also, in that new model the people who are going to represent different clan nation are picked out. They are being picked into that, not the real leaders, and it would not be the voice of the people. That is the sort of system that is being operated, the model that has been established by the government. You have got the ATSIC model. You have got the land council model. They are really a foreign sort of system or model which takes away a lot of the elements and formula of what I would say is customary law, the law of the people. In customary law or the traditional law of the people there are three basic elements: peace, order and good government; the consistency of the law; and that a citizen or the community clan nation assent to the law. They have been assenting to the law for the last 100,000 years.

We want to indicate some of those things to you today, so that you understand what people are saying, because it was our very important language, the intellectual language, that the leaders were using, particularly in this place last time when they came here with the land council. A lot of that really important language was not picked out by the interpreter or translator at Yirrkala. I was at Yirrkala last time, and there were some interpreters who missed out very important things that people were saying. That is part of our field. We help people to really understand about the language of the law and many other things that our people were saying, because they are saying that as a people with the law—law that they have been assenting to for many, many years. That is very important for us.

You heard already what people were saying about these two books. For them, this is garbage. It is not on. It does not seem to be helping them. You heard them saying very clearly that they would like to see the present land council operate. But I think there are some steps that the land council is taking to give more empowerment to the regional councils and I think that promise will probably be mobilised in the near future. Establishing another body is going to just make people more victims of the system that is so foreign to them.

As you said, we have not got enough time. We are going to go through with you the submission that we put before you. This is a submission that does not come from us but is what we hear old people, people of the law, say to us, and we have listened and we put that into here.

Mr Trudgen—Mr Chairman, just to help the flow of this, what we are saying, in a very tight way, is: do not reinvent a new system. Let us move back to the law that has been there for thousands of years which does create a security of tenure, which creates a rule of law and the things that Djiniyini has already talked about. Let us find out what that system is and use what is already here and make this stronger so that the people will be really empowered at that grassroots level.

To help us do that, we want to, as Djiniyini has already said, mention some of the things that were already put before this committee last time they were in Darwin and just unpack it a little bit more, then allow you to ask some questions on it. I will ask my colleague Stuart to read what one old man said in a translation we have done of what he said, not an in depth translation but picking up on the main legal words.

Mr McMillan—I am just picking up on some of the points that were not necessarily contained in the *Hansard* record on 2 March because it has not been translated as yet; I appreciate that.

Rev. Gondarra—This is not criticism or anything. These are our feelings from listening to the people and from what we have picked up—

CHAIR—It is noted on the record that your association is not criticising the interpreters or anyone else. It is not a criticism at all; that is understood.

Mr Trudgen—To help explain that, there are no dictionaries that even exist in English to language. Where Italians and other ethnic people have dictionaries English to language, they do not exist for the people of East Arnhem Land at the moment, especially for legal terms.

Mr McMillan—Beginning with Gawirrin Gumana from gan gan homeland centre, Gawirrin said, 'From gan gan and our parliament, we come to your parliament. Balanda do not recognise'—that is, we do not recognise—'our law, our parliament. That is why I bring these representations from the parliament. That is why I bring these Madayin Wapidji, these objects that are like the mace.

Rev. Gondarra—That was in here last time when they came.

Mr McMillan—There were two ceremonial poles.

Mr Trudgen—So the Wapidji is what we usually see whenever we look at traditional law. We just see it as a cultural thing. In Gove, every time the word 'Madayin' law was used, it was translated as culture because people do not see that the dominant Western system has a system of law that is akin to their system of law. They see that system of law more like a dictatorship. That is the reality. So they have trouble translating Madayin into dominant cultural law or Australian law because they do not see the similarities and so the term 'culture' is used in most cases.

The Wapidji is like the mace. It is used to open the traditional parliament. These Wapidji that were brought here were the same ones that were used to open the Gove land case. In the Gove land case, they were not recognise.

Mr McMillan—One of them was.

Mr Trudgen—One of them was. It was not recognised then and the other law objects, the title deeds that the old man brought forward at that stage, were not recognised as title deeds because it is a different form of reading. These things can be read. They are an encoding and they are an encoding of law. The old people thought that bringing this before the judge—Blackburn, in that case—and bringing the Wapidji before you, being people of law, you would recognise this as a system of law and not invent a new one. But, continually, it is just seen as sticks and feathers and all that sort of stuff. It is not seen as an encoded system of law.

CHAIR—Could I just ask a question about what you just said. It is not seen: not seen by who?

Mr Trudgen—We continually say that we accept Aboriginal culture. We think it is lovely and all that, but it is never recognised when it gets to the parliamentary level. We will recognise ambassadors from other nations and we will give them legal status and we will even set up legal diplomatic arrangements between our nation and other nations, but we do not recognise the legal nations within that have been here for thousands of years. There has never been any diplomatic talk between those two systems of law. The system of law that is recommended by the crest on this law, the land rights law, has never recognised formally legally the luku-dhulang or the crest of the traditional clan nations in East Arnhem Land—never formally recognised them.

Mr SNOWDON—Nor do they comprehend it.

Mr Trudgen—That is the problem: we do not comprehend it; therefore it is not recognised.

Mr McMillan—The irony of that is that the crest for the Northern Territory has a representation from the Pitjantjatjara and Arrernte people of the centre, a representation of their legal system akin to this Wapidji that we are talking about from Eastern Arnhem Land, under the eagle on the crest of the Northern Territory. As citizens of the Northern Territory, we do not even recognise that that is what it is.

Mr Trudgen—Djiniyini has already said that the Madayin system of law has three main elements. Firstly, Magaya is like the term shalom: a place where there is no hassle, no conflict. In other words, there is a system where you can work it through quietly, peacefully, without getting into conflict. Secondly, there is Dharpirrk—in other words, law must be consistent from the beginning of time. As we see in Westminster law, law must be consistent. Rights cannot just be washed away, especially private property rights cannot be just washed away. Yet, when Reeves discusses this, he discusses it as though there is no legal system there. He says people just wandered around and they used land anywhere. That is the dominant culture, the naming of Aboriginal society which has been very destructive to

Aboriginal people right from the turn of the century in East Arnhem Land, when people fought for their lands. They threw two pastoral companies off their lands twice and fought Japanese pearlers and others. The system of law that they fought for and won battles over has never ever again been recognised and it has not been recognised in this document.

Rev. Gondarra—Aboriginal people have used Wana lupthun for many years.

Mr Trudgen—Wana lupthun is a ceremonial process whereby people use the other Wayuk, or acts of law. When it comes out of the chamber of law, that whole clan enters into the water and submerges themselves below the water when the objects are held above it. In other words, everybody is under the law, assenting to the law. People have physically assented. The clan nations in East Arnhem Land physically today still assent to their traditional law, which is thousands of years old. Academics in this country do not even know about it. Legal people in this country do not know about it. If you do not know about something, you are not recognising it. It is just verbal recognition without actual recognition.

Rev. Gondarra—That was one of the things during the time when we had statehood and constitutional convention in the Northern Territory and the customary law was being adopted by the—

Mr Trudgen—The conference adopted a motion which says that we would look at customary law and recognise customary law as a source of law, like British common law. Of course, that is only a motion at the moment, still on a draft document.

Rev. Gondarra—A draft document at the moment. Those lawyers who were working with us were able to see something of the three elements of the law that Aboriginal people in East Arnhem Land still practise today. They are not dead; they are still alive.

Mr Trudgen—The system of law is alive, but it is in opposition. Many times even in direct opposition to this act, the Aboriginal Land Rights (Northern Territory) Act. In other words, the parliaments, the systems, that are there are not recognised even by the land councils. Sections 74 and 77A are a very strong part of the act and go to consent, which must be the basic thing when it comes to property ownership. It says that consent will be taken to have been given:

in a case where there is a particular process of decision making that, under the Aboriginal tradition of those traditional Aboriginal owners or of the group to which they belong, must be complied with in relation to decisions of that kind . . . .

Where that system exists in traditional law, that is the system that should be used to get consent or non-consent. I am afraid it is not being used.

Rev. Gondarra—There was only one person, Justice Blackburn, in the Gove Peninsula case, who saw that there was some sort of a law that Aboriginal people had and he said, 'Yes, I can see: not the rule of man; I can see a rule of law.' That is what Aboriginal people's law is. It is a law that is born out of djalkirri.

Mr Trudgen—To help you understand it, we need to unpack Bapurru and Ringitj—which the old people are talking about a lot—so that you can see it more clearly. Bapurru is

the paternal clan ownership. There could be up to 40 clans in the East Arnhem Land region. Bapurru is the paternal land owning system; in other words, from your father's clan, you are a landowner. They are what we call the Yirralka-watangu or the estate owners and clearly understood by Yolngu law. From the Yolngu law perspective, nobody else should make decisions over that Yirralka—no council, no structure, nobody else. They are the ones who should be making the decisions.

The next level is a federation, which is what we call the Ringitj or a federation of those clans. That Ringitj, funnily enough, can be spread over a great area of land. For instance, if we draw up a Ringitj in East Arnhem Land, you could have estates divided from many hundreds of miles away. These clans are then connected in what we call a Ringitj alliance or a federation, as we would understand it. At this level there is a common army. There is ownership of the subsurface. There is a common law bond between those people, a Madayin structure, or we would see it as a common constitutional base like that which brings the federation of Australia together; in other words, a common body.

Rev. Gondarra—This is what the anthropologists, their work, has not picked up.

Mr Trudgen—Anthropologists have missed most of this. A lot of the land ownership that is still being used by land councils is the dreaming tracks, because that fits more into our understanding of traditional law. The dreaming tracks, from our research, show very clearly where the trading tracks went and where other minor alliances exist; where other minor Ringitj exist; where people had alliances over many different elements of things, maybe around different animals. Of course, just like other nations in the world have used animals on their crest—even back to European nations, and we use them even in our parliaments today still—Aboriginal people usually have an animal which is represented on a crest around their systems of law. That is the Bapurru, the paternal clan, the owner of that estate.

That estate is broken up in many different areas—that Yirralka. It can cover water and land, and all those areas have farming areas within them. The garul is the yam garden where people actually planted—that is new stuff to most non-Aboriginal people—they dug and then replanted the yams. Sometimes they would leave the yam for one and two years—I use the same method today in my own garden—the yam rots and the yam you get next year is twice as big or three times as big because it creates its own fertiliser.

Rev. Gondarra—Yet we have this naming, that Aboriginal people are hunters and gatherers. We have been able to discover, and I as an Aboriginal person have been able to discover, that we were the natural farmer of this land.

Mr Trudgen—Each area is named. If there was an egg hatchery out on the sand spit in a particular place three eggs had to be left in that nest. We keep asking the old people, 'Why did you do this? Why did you leave three eggs?' They say, 'To reproduce the animal. What is wrong with you? Is there something wrong with you, you Balanda?' We have even discovered lately—it was a shock to us, not a shock to Djiniyini; he knew all about it but he didn't know it was important for us—that Aboriginal people were seeding oysters and clam shells up until just after the turn of the century along the north coast of Australia. That is why the natural pearling industry died in about 1936. Nobody could work out why.

Around Milingimbi at one stage there were 50 boats, with 800 Japanese on those boats around Milingimbi islands, pearling. There were so many pearls on the Macassar prows, one prow was carrying 25 kilos of pearls back to Macassar—one prow. All that stopped because the trade with Macassar was stopped. British people moved into those areas and saw those pearls as belonging to nobody because Aboriginal people supposedly did not own anything. Aboriginal people were so disgusted with the rape and pillage of their estates that they stopped seeding any more and they have not seeded from that time.

There is a system of law out there which we should be returning to rather than to a more paternalistic system of law that removes the control of tenure further from the people, because if we remove the control of tenure further from the people we get less security of tenure for the people of East Arnhem Land. They are less interested in development because they are frightened to enter into development arrangements. We know people out there want to be rich just like everybody else, but they are frightened to enter into agreements; one of the last agreements that people entered into was over pearling. The old men are saying to us, 'We did not understand it. We are still frightened about it. We are getting in trouble with other Rringitj—alliance—groups because they were not negotiated with. We did not have time.' And we find, Mr Chairman, that it all boils down to language and the confusion over language.

Rev. Gondarra—You know, Mr Chairman, that this has been created by two things—by the church and by the welfare, to bring the people into one called mission station and in that they do not know that they were the clan nation before they had law—they had Rringitj, alliance. And I think it is very important that you note that the people you are talking to are people who already have been put in a station or a mission. But there is probably only one clan nation within that community who are really the nation of that community, and I think that is one of the very important things to be noted.

CHAIR—Any more questions? You have done very well. I congratulate you. In what circumstances, however, are the traditional customs and laws changed or modified by the Aboriginal people? As time has passed there have been instances of modifications and changes. Could you enlighten me a little bit as to that process?

Mr Trudgen—There have been many changes. Parliaments have not been recognised—parliaments have not been open as often as they should be. I mean their chambers of law which they call Ngarra, but old people are even saying we are interested even in changing the sanctions, just like any other system of law. Most non-Aboriginal people are concerned about traditional sanctions but, just as any system of law is dynamic, this system of law is also dynamic. I have personally been involved in many of those processes, even trying to get the Attorney-General of the Northern Territory involved in those processes because people are looking for new levels of sanctions. They do not just want the ones that are a hundred years old.

But the biggest process change that is occurring is that we are getting in communities now a completely lawless group of people who are involved in drug running and so on and the old men have no control over them, because they are using white law, white fellow law, to protect them. They say to the old people and certain other cronies who are running out there controlling communities and so forth, 'If you touch us, you old people, and bring us

under your rule of law and any sort of corporal punishment, we will go straight to the police and put you in gaol.' And many old men are in gaol at Berrimah, including Aboriginal policemen, for trying to stand up for their law system.

Rev. Gondarra—The word we use for those people is Djungaya.

Mr Trudgen—The Djungaya are the policemen. The Djungaya term is used right down in Borroloola, right down to Katherine and right through Arnhem Land.

CHAIR—A lot of Australians—Aboriginal and non-Aboriginal people—share the concern about the disadvantage that Aboriginal people suffer in Australia: the very serious health problems, the tragic mortality rates, the unemployment situation and the reliance on welfare. We all share this as brothers and sisters. Have you any suggestions that you could make as to how we could improve the situation for Aboriginal people without offending Aboriginal people as white men coming in and saying, 'You must do this. You must do that'? How can we do that better?

Rev. Gondarra—As I said before, the Aboriginal people who were a clan nation, or where they came from on their own traditional land, were happy. They had their law. They had all the systems to do with health, managing the land and looking after the lifestyle of that particular clan nation. I know that there is a problem today because many people are saying, 'I wish we had have been left alone.' The new system of law that would have come to the community, they would have listened to us and heard what we were saying about what our law required and what those laws were trying to protect. There are also systems of laws that are to do with the economy, social life, commerce, the trades and many things that have been practised for the last 100,000 years by our people.

The people who came said, 'This is the only law. If you want to be a citizen, follow the Westminster system of law. You are a citizen of the Westminster system of law.' We ignore it. We do not understand about that. We were told, 'You have to adopt our law because this is the way that you can be better in health. You will have your business. You will have your council. You will have your own education. You will have everything.' They did this without really searching and finding out what the people's lifestyle was and what the law of the people was before the invasion.

A lot of the Aboriginal problem today is not caused by our law. It is caused by the Westminster system of law. It is the law that they do not understand. I am saying this as a traditional Aboriginal person who speaks about 15 or 16 languages. What the people are saying today—and it is not only the young people, but the middle-aged—is that there is no law. The balanda law is just a law that you can go and help yourself.

Mr QUICK—Are we too late?

Mr Trudgen—No. You are not too late.

Rev. Gondarra—You are not too late. What we are trying to say to you is that there should be dialogue between the government and the people.

Mr Trudgen—The people's government, not the pseudo system.

Rev. Gondarra—My government, not a pseudo government.

Mr QUICK—We have the Commonwealth government, the state government and the Territory government.

Rev. Gondarra—Where does all this government come from? It comes from the common law of this land.

Mr QUICK—Yes, but you are talking about all these various small groups, then they get together at another level. We could take the step of talking, and Reeves suggests NTAC. How many do you say? Can we get together collectively?

Mr Trudgen—Can I answer that another way?

Mr QUICK—Yes.

Mr Trudgen—To have development, you have to have security of tenure and a rule of law. East Arnhem Land and other traditional Aboriginal people have got neither of those. They have not got security of tenure because tenure does not represent the tenure they understand that has been there for thousands of years. It does not represent their chambers of law. It does not represent their title deeds that are there in concrete and can be seen, understood and verified as real title deeds for that land.

They do not have a rule of law. For instance, we have just had an interpreter inquiry. When they go before a court, they do not understand what is being said to them and they do not understand the court procedure. They see the judge not as a middle man, but they see him as following the police or the prosecutor. Therefore, they do not see a democratic system of law; they see some sort of dictatorship. So they are saying, 'The white fella system of law is anarchy. It is no law. Help yourself. Whoever has got the most power wins.' We have to return to a system of law and a security of tenure from the people's perspective, not from the dominant culture's perspective.

Rev. Gondarra—And where do you see that? You see it in the Aboriginal leaders right across this nation. They are not leaders that have been chosen by the law. I am talking about the traditional law. They are leaders that have been picked out, and they turn out not to be leaders to bring the people together. They really are a dictatorship and that is what is happening today.

Mr QUICK—Assuming we chuck Reeves out and we still have the land rights act, what suggestions do you have for us in the next couple of seconds? I have just said to the chairman that we need to talk to you people again. Forty or 45 minutes is ridiculous. This is the first I have heard of this in such detail and with such clarity, and a lot of it impinges. If we chuck Reeves out and we make some recommendations, what do we put into that Westminster land rights act of 1976?

Mr Trudgen—Sections 77A and 71 are the only two parts of this act that reflect something back to the people's law. We cannot understand why people wanting to do doctorates are not knocking down the door to understand this law that is thousands of years old and has some fantastic stuff in it. But it is language. The people who have come in the past have been anthropologists, not lawyers. Anthropologists do not really know law and they have reflected their view of the law. I am not knocking anthropologists. They are just a different discipline.

We are out there every day talking to old guys and old guys are saying, 'We want to understand the Western system of law right now in East Arnhem Land.' Elders have been meeting with us and having workshops, and even meeting with former Justice Toohey—and I do not know if he will like me saying that—and Tom Paulling, the Solicitor-General of the Northern Territory government. We are saying to them, 'Don't do anything until you understand this.' I am only a fitter and turner. You won't listen to yolgnu or themselves, so if we have to listen to some high-powered legal people from the Western dominant culture, let them come out, assess and analyse. We can help with translation and they can recheck and recheck. Let us see what we are dealing with.

CHAIR—It has always been the chairman's view that a good lawyer can sort it out.

Mr Trudgen—I wonder why?

CHAIR—At this stage, I have to interrupt the proceedings.

Mr SNOWDON—Before you close, could I just ask one question? I will be very brief.

CHAIR—I am sorry. I really have great difficulty, because I have an obligation to have the people on the plane and I have no flexibility. If you can do it in five seconds, and you can answer it in five seconds. That is all.

Mr SNOWDON—We have had continual representations about bilingual education. You have emphasised the importance of language, culture and law. Unfortunately, when people talk about bilingual education, they are talking about literacy and numeracy, not comprehending the importance of language totally. Do you have a view about the importance of language?

Mr Trudgen—Language is the university of the people. The old people say, 'You take away our language, you take away our university because it holds our commerce. It holds our legal language and it holds our social, medical and intellectual language. You take that away, you take everything away from us. We cannot think or contain knowledge without it.'

CHAIR—On that note, may I thank you very much for your valuable input and congratulate you on your work. We do wish you well and your submission will be of great help to us. Before I close the public hearing, I would like to record the committee's thanks to the public, the people of the Northern Territory, Aboriginal and non-Aboriginal people who over the past few months have been of enormous help to us in our inquiries here. We will do our best to unlock the future.

I would like to particularly thank *Hansard* for their splendid work for the committee over the past few months in the Northern Territory in very difficult circumstances and to our secretariat headed by James Catchpole. Thank you very much for all your work, and to my colleagues who have travelled from all parts of Australia on many occasions to support me in this work.

Resolved (on motion by **Mr Wakelin**, seconded by **Mr Quick**):

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

Committee adjourned at 10.30 a.m.