

**Submission to the House of Representatives Standing Committee on
Aboriginal and Torres Strait Islander Affairs on the Reeves Review of the
*Aboriginal Land Rights (Northern Territory) Act 1976.***

By the Board of the Ngurratjuta/Pmara Ntjarra Aboriginal Corporation

Background:

The Ngurratjuta/Pmara Ntjarra Aboriginal Corporation (henceforth the Ngurratjuta Aboriginal Corporation or NAC) was incorporated under the Commonwealth *Aboriginal Councils and Associations Act 1976*. It is an association whose members are largely residents and traditional owners of areas deemed to be affected by oil and gas production operations at Mereenie and Palm Valley.

Ngurratjuta has a documented and regularly updated list of over 2,000 western Arrernte (Aranda) and Luritja members residing at about 70 major and outstation communities in a large region in the west of central Australia that is bounded by communities like Papunya and Haasts Bluff in the north, Mt Leibig in the west, outstations within Watarka National Park and on Tempe Downs in the south and the Stuart Highway on the east.

The NAC was established to receive ‘areas affected moneys’ under s.35(2) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)* as determined by the Central Land Council (CLC). The Association's members also receive mining moneys paid with respect to the Mereenie Oil and Palm Valley gas projects under s.35(3) and s.35(4) of the ALRA. These payments include private ‘royalties’ negotiated under the Mereenie and Palm Valley Agreements, and access to statutory gas pipeline and mining lease payments. In the period since 1985, the NAC has received approximately \$10 million in mining (areas affected moneys) via the CLC and has been the conduit for an estimated further \$1 million of negotiated and other mining-related payments.

While initially the NAC was a so-called ‘royalty association’ its activities had by 1992 broadened significantly (see Marshall 1993: 126) to include:

- royalty trust account management (that is disbursement of a proportion of areas affected moneys and negotiated payments);
- the development and management of an investment portfolio made up of a diverse set of assets;
- tourism project support services;
- accounting services for Aboriginal client communities and others; and

- an outstation resource agency service for about 14 outstations representing an estimated 15 per cent of the NAC's membership.

The NAC is a service body whose functions are underwritten by royalty equivalents, but whose primary objectives are related to community development and betterment. Its activities are broadly outlined as:

- a clearing house ensuring that royalty benefits flow to the right people for community benefit;
- operator of an accounting service and an outstation resource agency and owner of an airline Ngurratjuta Air;
- owner of the Glen Helen Lodge purchased in 1992 for \$1.75 million, but with outstanding debt of \$1 million to ATSIC's Business Funding Scheme,
- holder of a small interest (4%) in the Kings Canyon Resort;
- investor in a residential sub-division in Alice Springs and owner of two commercial properties in Alice Springs; and
- holder of a major Namatjira Art Collection housed at the Araluen Centre.

One of the most complex, but fundamental, aspects of the NAC is its role as a clearinghouse for mining moneys. The NAC fulfils two quite distinct roles. On one hand, it receives moneys, after CLC determination (under s.35(2) of the ALRA), that it applies for the benefit of people deemed to be affected by the Mereenie and Palm Valley oil and gas projects. On the other hand, the NAC distributes a proportion (25%) of negotiated agreement payments and statutory lease and rental payments to traditional owners. Two quite distinct and highly workable arrangements have been established to utilise these moneys.

In 1994, the NAC Board and senior staff participated in an extensive strategic planning exercise facilitated by Neville Smith of NIS Australia Pty Ltd. The Strategic Plan defined the NAC's **mission** as follows: To utilise royalty funds to build an active investment base, which will:

- protect accumulated royalty funds;
- provide a growing income base for the member communities; and
- stimulate job opportunities and/or venture activity for members, while actively supporting community development activities and infrastructure improvements in member communities.

According to the Strategic Plan, the **vision** of Ngurratjuta is [to establish] financially independent Aboriginal communities with inter-community co-operation. The Plan states:

‘the leaders of Ngurratjuta see a future in which, as a result of judicious use of a share of royalty funds, enterprises which provide return to member communities are established and managed within the Ngurratjuta Corporation’ (NIS Australia Pty Ltd 1995: 1).

In 1998, in collaboration with ATSIC, the NAC part-sponsored a major independent organisational review undertaken by Jon Altman and Diane Smith. A great deal of detailed information about the NAC is available in this review report. The recommendations of this review have recently (March 1999) been considered and a committee has been established to oversee the timely implementation of recommendations. The NAC is committed to continual organisational improvement.

The NAC Submission to the Reeves Inquiry

The NAC prepared a very detailed two-part submission to the Reeves Review and made oral presentation to Mr John Reeves QC on 26 February 1998 in Alice Springs. The major issues raised by the NAC, as outlined to Mr Reeves by Chairman of the NAC Board, Mr Gus Ntjalka Williams can be summarised as follows:

- the NAC supports the CLC and does not seek any break up of the Land Council; the NAC believes that the two organisations can work cooperatively together;
- the NAC and its member communities want to take a more prominent role in the economic and social development of their communities;
- the NAC believes that the economic development prospects of its membership could be enhanced if a larger proportion of mining royalty equivalents (beyond the current 30%) paid with respect to oil and gas production on land owned by NAC members were returned to the NAC; and
- the NAC wants to see no change in compulsory acquisition terms, mining provisions or erosion of any other rights conferred on aboriginal people by the ALRA.

Reeves’s Findings and Recommendations that directly impact on the NAC

The findings and recommendations of the Reeves Review potentially impact on the NAC both directly and indirectly. The NAC is concerned that while there was some mention of the NAC as a successful royalty association in the Review (Reeves 1998: 366), there was no recognition that the Reeves ‘vision’ for royalty associations is identical to what the NAC has been doing for some 14 years.

The NAC believes that Mr Reeves unduly emphasised all that is wrong with royalty associations. In particular, he suggests that:

- royalty associations lack appropriate accountability to government, land councils and their members (Reeves 1998: 352-8);
- that royalty associations pay a substantial proportion of their income to individuals (Reeves 1998: 2, 361-2); and
- that royalty associations lack investment policy direction (Reeves 1998: 366).

Subsequently, Mr Reeves recommends (1998: 368) that:

- the statutory formula whereby royalty associations like the NAC have received a proportion (30%) of mining royalty equivalents for communities and incorporated groups in areas affected by mining should be abolished;
- that instead Regional Land Councils (RLCs) should receive these moneys for the benefit of communities that can establish an actual adverse impact on the community in net terms, taking into account receipt of negotiated payments and any countervailing benefits obtained from mining; and
- that ABR funds should either be invested or be expended by the proposed Northern Territory Aboriginal Council (NTAC) or RLCs on programs for the cultural, social and economic advancement of Aboriginal Territorians.

NAC critique of the Reeves recommendations

The NAC is both confused by and highly critical of the Reeves analysis and recommendations. For example, it is unclear why the issues raised in the substantial NAC submission to the Reeves Review were not addressed. The NAC made a strong case for greater resourcing from mining moneys and devolution of economic and social development programs to existing, efficient and effective regional organisations like the NAC. We do not need a new form of organisation –the RLCs – to do this for us. Without open debate or adequate explanation the NAC case is dismissed. It is very unclear to the NAC

- how its membership that is spread across five proposed RLC jurisdictions will be served more efficiently or effectively than our organisation;
- whether the negotiated payments that NAC members now receive both via the NAC's Trust 2 arrangements or via the CLC will continue; and
- how actual adverse impact, which have already been assessed for us numerous times, will be assessed and by whom, and if assessed who will be responsible for administering ameliorative programs.

The NAC is concerned that the Reeves Review misrepresents the diversity of activity undertaken by royalty associations like the NAC and ignores our outstanding record over many years. Some examples of such misrepresentation include the following:

- the NAC has developed a system for distributing a proportion of royalty equivalents under its Trust 1 arrangements that are both effective and accountable. While allocations are made on a per capita basis, these moneys can only be used for community purposes, with invoices paid by the NAC as an effective monitoring mechanism. The NAC does not distribute royalty equivalents to individuals;
- the NAC has maintained a consistent financial policy over many years that results in an initial deduction from areas affected moneys for NAC administration with the balance allocated 50/50 between community distribution and investment. The NAC has a sound financial policy;
- the NAC has maintained a mixed investment portfolio that has included commercial real estate, tourism ventures, Aboriginal art, and real estate subdivision. We revise our approaches to investment on an ongoing basis by encouraging external independent review. The NAC has an investment policy, although its investment policy have not always been successful; and
- the NAC has provided both its members and other Aboriginal people in central Australia with a range of services including outstation support, an airline, aircraft maintenance and an accounting service. The accounting service in particular has generated significant additional income for the NAC. The NAC provides a range of services for the socioeconomic betterment of its members.

The Reeves Review, if implemented, has the potential to destroy the NAC, one of the NT's oldest royalty associations with stable leadership and representing the interests of over 2,000 Aboriginal people in central Australia. This is because the activities of the NAC have been carefully predicated on a future royalty stream that has been estimated by the Association in its submission to the Reeves Review NAC 1998: Attachment D). While the NAC is aware that it is the CLC that determines which incorporated organisation will receive areas affected moneys, by representing a large, regionally-representative membership and maintaining a high degree of accountability, the NAC has been and remains confident that it will continue to receive such payments under current land rights law.

It is unclear to the NAC why a review that purports to support principles of Aboriginal regional self management, and is supposedly committed to a focus on future Aboriginal economic development and empowerment would make recommendations that jeopardise the NAC's commercial interests some of which have been nurtured since 1985. Nor is it clear to the NAC Board why the establishment of a new regional institutional form, RLCs, will provide services and opportunities for socioeconomic advancement that are superior to those provided at present by one organisation, especially as NAC members will be spread across five RLCs.

Summary and recommendations

- The NAC has prepared this submission as an initial response to the many recommendations in the Reeves Review that are directly counter to the NAC's interests. The NAC Board is very keen to have another opportunity to make a direct presentation to the House of Representatives Standing Committee when it visits central Australia in April 1999.
- This submission is based on NAC research undertaken when preparing a submission to the Reeves Review in 1998 (NAC 1998) and also uses material contained in the recent comprehensive and independent review of the organisation (Altman and Smith 1998).
- The NAC's initial position remains unchanged: a higher proportion of mining royalty equivalents should be paid to the NAC; our preference as outlined in submission to the Reeves Review is that the NAC receives 60% of mining royalty equivalents, with that proportion currently paid to the Aboriginals Benefit Reserve being paid to the NAC, and the balance being paid to land councils for administration. As a fallback though, and certainly as a fallback position in preference to Reeves's draconian and unjustified recommendation, the NAC would be willing to maintain the status quo.
- The NAC also believes that the land councils system should remain unchanged and believes that it will face significant operational difficulties if it had to operate over five RLC jurisdictions.
- The NAC has not, as yet, engaged legal counsel to assess the legality of the Reeves recommendation that would preclude the NAC receiving mining royalty equivalents as it has done since 1985. As a organisation representing over 2,000 Aboriginal people who completed mining agreements in the early 1980s on the understanding that financial benefit would flow directly to regional communities from mining through their own incorporated organisations, the NAC condemns the Reeves Review for its attempts to undermine the rights and interests of members of our organisation. The Reeves Report makes recommendations to deny, not enhance, our right to self determination.
- The NAC ends by noting that it is a responsible and highly accountable Aboriginal organisation that unambiguously aims to deliver socioeconomic benefit to its membership from moneys generated by our established rights under the *Aboriginal Land Rights (Northern Territory) Act 1976*. The NAC realises that it does not operate perfectly. Consequently, it is committed to periodic organisational review and change, where appropriate. The NAC is also open to

external and independent assessment and is committed to the highest standards of accountability, both financial and to its membership.

- The NAC does not believe that any externally imposed change that is not based on consultation and negotiation will achieve much except alienate Aboriginal people in central Australia. The NAC is proud of its performance on many fronts in the past 14 years including service delivery, community development, infrastructure development, enterprise development and investments. The NAC is determined to continue to deliver outcomes to its membership as an efficient and effective Aboriginal royalty association.
- In 1974, in an oft-quoted passage, Mr Justice Woodward noted ‘There will be no immediate and dramatic change in the Aborigines’ manner of living. In truth the granting of land rights can only be a first step on a long road towards self-sufficiency and eventual social and economic equality ...’ (Woodward 1974: 138). In 1999, some 25 years later, the NAC believes that it is assertively taking these first steps and will continue to do so into the 21st century. Any serious consideration of recommendations in the Reeves Review will hamper or even halt our progress.

References

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