

Chapter 4

Governance

Tiwi Land Council

4.1 Aboriginal land councils in the Northern Territory are established under part III of the *Aboriginal Land Rights (Northern Territory) Act 1976*. The legislative functions of a land council are numerous and include:

- To ascertain and express the wishes and opinion of Aboriginals living in the area of the land council;
- To protect the interest of traditional Aboriginal owners of, and other Aboriginals interested in, land in the area of the land council;
- 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 use of that land;
- To negotiate with persons desiring to obtain an estate or interest in land in the area of the land council, and
- To assist Aboriginals in the area of the land council to carry out commercial activities.¹

4.2 Each land council is a body corporate and the Chair, Deputy Chair and members of each land council are deemed to be directors of the council for the purposes of certain provisions under the *Commonwealth Authorities and Companies Act 1997*.²

4.3 There are currently four Aboriginal land councils in the Northern Territory: the Central Land Council, the Northern Land Council, the Anindilyakwa Land Council and the Tiwi Land Council.³

Membership and structure

4.4 The Tiwi Land Council was established in 1978 under Part III of the *Aboriginal Land Rights (Northern Territory) Act 1976*. The composition of the Tiwi

1 *Aboriginal Land Rights (Northern Territory) Act 1976*, s. 23.

2 *Aboriginal Land Rights (Northern Territory) Act 1976*, ss 22 & 22A.

3 Australian Government Online Directory, available: <http://www.directory.gov.au/osearch.php?ou%3DNorthern%20Territory%20Land%20Councils%20Cou%3DOther%20Portfolio%20Bodies%5C%2C%20Committees%5C%2C%20Boards%20and%20Councils%20Co%3DFamilies%5C%2C%20Housing%5C%2C%20Community%20Services%20and%20Indigenous%20Affairs%20Co%3DPortfolios%20Co%3DCommonwealth%20of%20Australia%2C%3DAU&changebase> (accessed 30 June 2009).

Land Trust and Land Council were finalised in 1979, with membership initially based on twelve clan groups comprising traditional owners.⁴

4.5 In 1981, the traditional landowners agreed to collective representation. In 1987, the Minister for Aboriginal Affairs approved the TLC's membership structure with each clan group represented by a total of six representatives, including the land trustee. This was subsequently reduced to five people in 1999.⁵

4.6 Currently, the TLC comprises eight clan groups.⁶ The land council has 40 members, five representatives from each of the eight clan groups.⁷ This membership structure seeks to ensure that 'the interests of all Traditional Landowners are equitably represented'.⁸ Each clan group nominates a trustee, who is regarded as the senior landowner of the group, to represent them on the land council.⁹ In turn, each trustee nominates another four representatives from their clan group, resulting in the five representatives of each clan group who are members of the land council.¹⁰

4.7 The TLC advised the committee that the process of choosing members of the land council is a traditional process approved by the Minister for Indigenous Affairs:

...a nomination process of each land owning group nominating their "leader" or leading family representative. That leader or "Trustee" nominates four others from group families to serve with him on the Land Council. It is a process that has been clarified and maintained by successive Ministers.¹¹

4.8 The Tiwi Management Committee is the executive of the land council and comprises the Chairman, Deputy Chairman and four managers¹², elected from and by the membership of the land council. The current Chairman is Mr Robert Tipungwuti and Mr Maralampuwi Kurrupuwu is the Deputy Chairman. Mr Cyril Kalippa, Mr Andrew Tipungwuti, Mr Matthew Wonaeamirri and Mr Walter Kerinaiaua are the

4 Tiwi Land Council, *Submission 34*, p. 7.

5 Tiwi Land Council, *Submission 34*, p. 8.

6 Tiwi Land Council, *Submission 34*, p. 8.

7 Tiwi Land Council, *Submission 34*, p. 8.

8 Tiwi Land Council, *Submission 34*, p. 8.

9 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 2.

10 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 2.

11 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 2.

12 Tiwi Land Council, *Annual Report 2007-2008*, pp 8-9, available: http://www.tiwilandcouncil.net.au/Publications/Publications_all.htm (accessed 16 June 2009).

other members of the management committee.¹³ The management committee is supported by a secretary, Mr John S Hicks.¹⁴

4.9 The Aboriginal Land Rights Act requires the Chair of a land council to hold that office for a term of three years. The Act also provides for a Chair of a land council to be eligible for re-election at the expiration of their term.¹⁵ Election of the Chair is conducted by the Australian Electoral Commission.¹⁶

Administration and employees

4.10 The Tiwi Land Council employs 24 staff, 20 of whom are located on the Tiwi Islands and four of whom are located at the land council's office in Darwin.¹⁷

4.11 The committee was advised that the Chairman was located on Bathurst Island and the four managers of the TLC are located 'at each of the four communities on Melville and Bathurst'.¹⁸

Funding

4.12 The TLC receives federal government funding under part VI 'Aboriginals Benefit Account' of the Aboriginal Land Rights Act.¹⁹ In 2007-08, the TLC had an ABA approved budget of \$2.10 million and received \$1.93 million in ABA funding.²⁰ The Tiwi Land Council was able to generate, through cost recovery and private resource funding, the difference of \$170 000 between the approved budget and the ABA funding.²¹

13 *Proof Committee Hansard*, 19 May 2009, p. 1 and Tiwi Land Council, *Annual Report 2007-2008*, pp 8-9, available: http://www.tiwilandcouncil.net.au/Publications/Publications_all.htm (accessed 16 June 2009).

14 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 1.

15 *Aboriginal Land Rights (Northern Territory) 1976*, s. 30.

16 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 2.

17 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 9 September 2009).

18 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 9 September 2009).

19 *Aboriginal Land Rights (Northern Territory) Act 1976*, part VI.

20 Tiwi Land Council, *Annual Report 2007-2008*, p. 19, available: http://www.tiwilandcouncil.net.au/Publications/Publications_all.htm (accessed 16 June 2009) & FaHCSIA, *Annual Report 2007-2008*, available: http://www.fahcsia.gov.au/about/publicationsarticles/corp/Documents/2008%20Annual%20Report/13_10.htm (accessed 30 June 2009).

21 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 9 September 2009).

4.13 In 2007-08, the self-generated income of the TLC was largely derived from 'private investment in development of land'.²²

Decision-making, consultation and communication

4.14 Section 67B of the Aboriginal Land Rights Act allows land councils to lease or enter into agreements for the use of Aboriginal land. The Act requires land councils to only enter into such agreements if they are satisfied that traditional Aboriginal owners understand and consent to the land use; there has been public consultation; and the terms and conditions of the agreement are fair.²³

4.15 The structure and decision-making processes of the Tiwi Land Council are intended to enable traditional owners to 'make their own decisions'.²⁴ The TLC stated that the:

...decision-making process empowers the Traditional Landowners by allowing them to decide, collectively as a group, how their land is utilised. These processes are recorded at 854 meetings from 1977 to 2009, and include 353 meetings with an average of 33 landowners in attendance at every meeting directly discussing forestry, mining and land use. In addition to these records are records of meetings and discussions between each land owning group (8) discussing their own land use and funds management. These meetings total on average 20 per annum.

The Tiwi Land Council has been very active in its role and facilitates advocacy and representation of the Traditional Landowners through various strategic committees and workshops that it has initiated.

...

The decision-making process is thoroughly consultative not only of the Traditional Landowners but also of other residents and technical specialists such as environmental engineers, various government bodies and other advisers to ensure decisions are well-informed.

The process is transparent and the Tiwi Land Council is highly accountable to the public, the Federal Parliament and importantly to the Tiwi Islanders.²⁵

4.16 With specific regard to decisions made about forestry on the Tiwi Islands, the committee heard that the TLC seeks approval from traditional owners following 'comprehensive formal approval protocols and processes'.²⁶

22 Tiwi Land Council, *Annual Report 2007-2008*, p. 19, available: http://www.tiwilandcouncil.net.au/Publications/Publications_all.htm (accessed 16 June 2009).

23 *Aboriginal Land Rights (Northern Territory) Act 1976*, s. 67B.

24 Tiwi Land Council, *Submission 34*, p. 10.

25 Tiwi Land Council, *Submission 34*, p. 10.

26 Tiwi Land Council, *Submission 34*, p. 16.

4.17 In its submission to the inquiry, the TLC discussed the importance of consultation with and seeking the approval of traditional owners in 'the grant of an estate or interest in land to forestry business operators'.²⁷ The council outlined a checklist that it follows 'to ensure that all members of the Tiwi Land Council involved in the process are fully aware of the approval process requirements':

- (i) Background information sufficient to explain the context of the transaction, i.e. who are the parties, what is being sought and the expected benefit for Aboriginal people.
- (ii) A description of the transaction including a short summary of the key elements of any agreement, term, payments, and special conditions.
- (iii) Details of the manner in which the Tiwi Land Council conducted consultation with, and obtained the consent of the traditional Aboriginal owners as a group, including the manner in which notice of the meeting were given, dates of meetings, attendance at the meetings and resolutions coming out of the meetings. Details will also need to be included that, where consent was provided, this decision was made by the group in accordance with the traditional decision-making process or, where no such process existed, that the traditional Aboriginal owners agreed to a process and that process was followed in the group coming to a decision.
- (iv) Details of the manner in which the Tiwi Land Council conducted consultation with other Aboriginal people, the manner in which notice of the meetings were given, dates of the meetings, attendance at the meetings and resolutions coming out of the meetings.
- (v) A statement that the Tiwi Land Council is satisfied that the terms and conditions of the proposed licence/lease are reasonable, and that it has agreed to those terms and conditions with the proposed licensee/lessee.
- (vi) Any other information that the Minister should have regard to in considering whether or not to give consent or approval.²⁸

4.18 The TLC also follows a formal protocol titled the 'Plantation Land Use Request and Consultation Process' which is implemented when approval is sought from traditional owners.²⁹

4.19 The request and consultation protocol involves:

- Assessment and recommendation through the Tiwi Islands Natural Resource Management Committee (a committee of 12 Tiwi Land/Marine Rangers, Tiwi Land Council leaders and land trustees).

27 Tiwi Land Council, *Submission 34*, p. 16.

28 Tiwi Land Council, *Submission 34*, pp 16-17.

29 Tiwi Land Council, *Submission 34*, p. 17.

- Analysis by the land owners themselves through consideration and analysis of LURFs (Land Use Request Forms) that are assessed in conjunction with the advice of skilled environmental scientists, officers and landowners identified by the Tiwi Land Owners Register.
- Public open days for discussion with "other Aboriginal people who may be affected" by the proposed forestry developments.³⁰

4.20 The approval and consultation processes outlined by the Tiwi Land Council appear to fulfil the legislative requirements of the Aboriginal Land Rights Act.

4.21 However, despite these approval and consultation processes, the committee heard evidence from some Tiwi traditional owners that consultation about forestry decisions had been lacking:

I am really disappointed with how the land council and the Great Southern went about doing their own business, which is clearing the trees. They only consulted with certain people, not the whole landowning groups. It was just the people behind the land council. They are the ones speaking for the people; they are the ones doing the deals. But the local people do not see the paperwork.

...

I am really disappointed because the Great Southern and the land council should have been consulting the whole lot of the land use people, the people who own the land. You have to consult them before you go ahead and do things.³¹

And:

...when the forestry originally came over to the islands and they first put their proposals forward to us, people up at Garden Point put in a bid to get forestry happening up there. Do you understand that there was not enough shown in their proposal? We were just told an x amount of hectares. We are not farmers—we are footballers and we are hunters and gatherers. We do not know anything about a hectare. So they came and just told us that x amount of hectares were going to be cleared—there was not much actually shown in their proposal of what they wanted to do. There were concerns among the people as the land was cleared and they realised that more land was going to be cleared than they first thought.

There were no minutes to show how the meetings were conducted and what was said at the meetings. There was no process in regard to that. Then the forestry mob that came in then directly told us that it was going to happen whether we liked it or not.³²

30 Tiwi Land Council, *Submission 34*, p. 17.

31 Mr Adam Kerinaiua, *Proof Committee Hansard*, 20 May 2009, pp 13-14.

32 Mr Manyi Rioli, *Proof Committee Hansard*, 20 May 2009, p. 14.

4.22 Other witnesses including Peter Robertson, formerly of the Environment Centre of the Northern Territory, also indicated that they had been approached by Tiwi Islanders with concerns about the adequacy of consultation processes:

There was a strong message that most Tiwi were not adequately informed about, or could not understand, the deals that underpinned the project, or who the various companies involved were, or what the real benefits, if any, would be to Tiwi.³³

4.23 The TLC was adamant that the Tiwi people had been properly informed:

The majority of people, as you have already heard this morning, had an earlier meeting at Maxwell Creek. There has been a process of consultation with the people. People know. And it is not a majority of people; it is only a minority of our people who sometimes do not, perhaps, attend meetings and the information does not really go out to those minority people. There are not a great deal of people who do not know about the information.

...

No, I am sure that if you go through the submission and the land council records, you will see there have been a number of consultations that have occurred between Great Southern and the Tiwi people. There is no way that you can say there is no record of people knowing what has been happening on the islands. People are quite aware.³⁴

4.24 Ms Liddy, who was opposed to some of the forestry plantation establishment, did indicate that there was significant participation in some of the meetings that made decisions to go ahead with the plantations:

Senator CROSSIN—Great Southern Plantations gave us a map yesterday and I noticed that on the map in your land area group, the Yimpinari, some forestry started there and trees were planted in 2006. More trees were planted in 2007 in your area. Did Great Southern talk to people in the Yimpinari group before that forestry happened?

Ms Liddy—Yes, I attended those meetings at that time.

Senator CROSSIN—Can you remember what they told you?

Ms Liddy—They said that we would be getting some money from the planting of the trees on that land.

Senator CROSSIN—For the rent of the land?

Ms Liddy—Yes, and to give it up for 33 years. I was the only one against it, but I was outvoted at the meeting.

Senator CROSSIN—How many people do you remember went to the meeting?

33 Mr Peter Robertson, *Submission 26*, p. 1.

34 Mr Marius Puruntatameri, Member, Tiwi Land Council, *Committee Hansard*, 19 May 2009, pp 11 & 12.

Ms Liddy—... I did not take much notice, but there would have been a lot.

Senator CROSSIN—Was there a big mob or a little bit?

Ms Liddy—There were plenty of them.

4.25 The TLC also indicated that the minutes of council meetings were readily accessible by members of the community:

Senator CROSSIN—And the minutes of the meetings are made public?

Mr Hicks—The minutes of the meeting are held in the managers' offices of the land council. The minutes are kept and bound and recorded each year.

Senator CROSSIN—Are they public documents for anyone on the island to look at?

Mr Hicks—No. There is a confidentiality clause in the land rights act that allows the landowners to decide. Generally, minutes that are printed out get around the community.

Senator CROSSIN—So if you wanted to know what was happening at a land council meeting or see the minutes you would need to ask one of the trustees.

Mr Hicks—No. You could walk down to Cyril Kalippa's office, Walter's office or the office at Milikapiti—

Senator CROSSIN—And look at them there but not copy them?

Mr Hicks—I do not know that we have had a request to copy them.

Senator CROSSIN—But you could actually ask to see them if you wanted to? If you were a member of the community you could ask to see the minutes?

Mr Hicks—Absolutely, and people do, don't they?

Mr Puruntatameri—That is right.³⁵

4.26 The committee notes that subsection 31(11) of the Aboriginal Land Rights Act requires a land council to make the minutes of its meetings available to the local community:

A Land Council must allow the following persons to inspect, at any reasonable time without charge, the minutes of its meetings (other than any part of the minutes that relates to an excludable matter):

(a) the traditional Aboriginal owners of Aboriginal land in the area of the Council;

(b) any Aboriginal living in the area of the Council.³⁶

35 Mr John S Hicks, Secretary, Tiwi Land Council and Mr Marius Puruntatameri, Member, Tiwi Land Council, *Committee Hansard*, 19 May 2009, p. 6.

36 *Aboriginal Land Rights (Northern Territory) Act 1976*, s. 31(11).

4.27 It is unclear to the committee whether the approval and consultation processes outlined by the TLC have been communicated to and are understood by Tiwi people who are not members of the land council. The committee notes that, in preparing its report on timber industry arrangements, Oakton found that

the origin of the decision for land use rental money to be paid to family owners is unclear. TLC could not provide evidence showing when this was agreed upon.³⁷

This suggests that the transparency of decision making and minute-taking processes may not be entirely adequate.

4.28 The committee does not believe that the availability of minutes being limited to Land Council offices is conducive of transparency. Minutes must be more easily available. It is also unclear to the committee whether the information required as part of the land council's approval process for forestry projects, such as descriptions of transactions and details of consultation, is easily accessible by interested parties outside the land council or has been widely, easily and appropriately explained, in particular to the Tiwi people.

Relationship with other entities

4.29 Paragraph 23(1)(ea) of the *Aboriginal Land Rights (Northern Territory) Act 1976* states that a function of a land council is:

(ea) to assist Aboriginals in the area of the Land Council to carry out commercial activities (including resource development, the provision of tourist facilities and agricultural activities), in any manner that will not cause the Land Council to incur financial liability or enable it to receive financial benefit³⁸

4.30 The Aboriginal Land Rights Act thereby prevents land councils from being commercial entities. This has meant that at least one commercial entity has been established in the area of each Aboriginal land council, to engage or invest in commercial activities for the benefit of traditional landowners. Pirntubula Pty Ltd is such a commercial enterprise.

Pirntubula Pty Ltd

4.31 The Tiwi Land Council described the establishment of Pirntubula Pty Ltd:

Pirntubula was established at the behest of the Northern Territory government in 1986 when they realised that the land council could not engage in commerce and they needed a vehicle to transfer the assets of pine

37 Oakton, *Tiwi Land Council Timber Industry Arrangements: Review 2008/2009: Final Report*, Report to Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, February 2009, p. 7.

38 *Aboriginal Land Rights (Northern Territory) Act 1976*, paragraph 23(1)(ea).

trees to a Tiwi entity. The distinction between the land council, which is a statutory authority established for the benefit of the land owners, and Pirntubula, which is a trustee company established for the benefit of the landowner's commercial interests, goes back to 1986. It is not a creature of the land council. The land council has no shares in it. It is wholly owned and structured by the landowners. Yes, the land council does provide suggestions of things to invest in, like the health board, the training board, the marine ranger program, ceremony, culture and some books that the leaders would like to give you before you leave. But all those things are part of their initiative, and the land council has neither the resources nor the legal capacity to be involved in those.³⁹

4.32 The TLC advised the committee that the directors of Pirntubula Pty Ltd were Mr Matthew Wonaeamirri, Mr Cyril Kalippa, Mr Andrew John Tipungwuti, Mr Ian Silvester (formerly Chief Executive Officer of Perkins Shipping) and Mr Craig Phillips (Great Southern Pty Ltd).⁴⁰ The Australian Securities and Investments Commission (ASIC) also list Mr Walter Kerinauia in addition to the directors identified by the TLC.⁴¹ Mr John S Hicks is the company secretary of Pirntubula Pty Ltd.⁴²

4.33 Mr Matthew Wonaeamirri, Mr Cyril Kalippa, Mr Andrew Tipungwuti and Mr Walter Kerinauia are also members of the TLC Management Committee.

4.34 The Tiwi directors of Pirntubula Pty Ltd are entitled to a payment of \$10 000 each per annum, however, the committee heard evidence that 'Looking back through the last audit I do not think each has had \$10,000 for a number of years'.⁴³

4.35 ASIC records show that Pirntubula Pty Ltd has eight shareholders.⁴⁴ Each of the shares is non-beneficially held; that is, the shareholder is not the owner or beneficiary of the share but rather holds it in trust on behalf of another party.

4.36 The committee understands that Pirntubula is 'wholly owned...by the landowners'.⁴⁵ Of the eight shareholders of Pirntubula Pty Ltd, some are land trustees whilst others are not but 'All are representatives of the eight Tiwi landowning

39 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 7.

40 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 8.

41 ASIC, *ASIC Historical Company Extract ABN: 93009633934*, 16 June 2009, p. 2.

42 ASIC, *ASIC Historical Company Extract ABN: 93009633934*, 16 June 2009, p. 4.

43 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 8.

44 ASIC, *ASIC Historical Company Extract ABN: 93009633934*, 16 June 2009, pp 4-5.

45 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 7.

families'.⁴⁶ The shares 'are held non-beneficially for the benefit of those listed as adults on the Tiwi landowners register'.⁴⁷

4.37 The committee heard evidence that in the past Pirntubula Pty Ltd had provided funding for the Tiwi Health Board, the Tiwi Training and Employment Board, the Tiwi Education Board, the marine ranger program and Tiwi Resources.⁴⁸ The funding of these had subsequently been taken over by government.⁴⁹

4.38 Currently, Pirntubula Pty Ltd contributes to an education trust fund and funding for the Tiwi College.⁵⁰ The TLC informed the committee that Pirntubula Pty Ltd had recently sold assets, such as Tiwi Tours, in order to raise income to meet its funding commitments:

Senator CROSSIN—How does Pirntubula get its money to exist, essentially?

Mr Hicks—Now it gets it from having to sell assets. The demands on Pirntubula through the years have been significant. It currently has an income of around \$360,000 a year. \$300,000 of that is rent from the port and the Tiwi commitment to the Tiwi College is \$300,000 a year for the support of the Tiwi education board. The other \$60,000 comes from a number of bits and pieces.

...

Mr Hicks—We have had to sell Tiwi Tours to raise \$200,000 for a contribution to the college. The Mantiyupwi landowners, who now own Nguiu or Wurrimiyanga, purchased it.⁵¹

Tiwi Resources Pty Ltd

4.39 Tiwi Resources Pty Ltd was established in 1991⁵² and was described to the committee as a private company whose main business 'is to receive funds from

46 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 7.

47 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 8.

48 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, pp 1 & 3.

49 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, pp 1–3.

50 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 3.

51 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, pp 8–9.

52 ASIC, *ASIC Historical Company Extract ABN: 87054667051*, 16 June 2009, p. 1.

activity on Tiwi land and distribute those funds in a transparent and accountable way to the landowners, whose land those funds are related to'.⁵³

4.40 There are two directors and eight shareholders of Tiwi Resources Pty Ltd.⁵⁴ Seven of the eight shares are non-beneficially held. The sole beneficially held share belongs to Mr Bernard Tipiloura.⁵⁵

4.41 Three of the non-beneficial shareholders of Tiwi Resources Pty Ltd, Mr Walter Kerinauia, Mr Cyril Kalippa (aka Rioli)⁵⁶ and Mr Matthew Wonaeamirri, are also directors of Pirntubula Pty Ltd as well as members of the TLC executive.

Tiwi Enterprises Pty Ltd

4.42 Tiwi Enterprises Pty Ltd 'is owned by Traditional Owners of the Tiwi Islands with a charter of developing business and jobs for Tiwi People' and 'was created by the Tiwi Traditional Land Owners in late 2007 with a specific brief to engage as a contractor to the Forest Industry on Melville Island'.⁵⁷ Tiwi Enterprises Pty Ltd is now engaged in a range of activities in addition to forestry, including:

a Motel and Housing Office for the Mantiyupwi Clan in Nguiu; A 'Business Incubator' support in Nguiu for small business, A Marine Barramundi Farm at Snake Bay; A bus service to support both the Forestry workers & the Tiwi College and to re-establish Remote Indigenous Broadcasting Service (RIBS) with local participation⁵⁸

4.43 There are eight directors and eight shareholders of Tiwi Enterprises Pty Ltd.⁵⁹ All of the shares are beneficially held.⁶⁰

4.44 Two of the directors and shareholders, Mr Cyril Kalippa and Mr Wally Kerinauia, are directors of Pirntubula Pty Ltd and members of the executive of the TLC.

53 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 13.

54 ASIC, *ASIC Historical Company Extract ABN: 87054667051*, 16 June 2009, p. 2.

55 ASIC, *ASIC Historical Company Extract ABN: 87054667051*, 16 June 2009, p. 3.

56 Mr Cyril Kalippa has also been known as Mr Cyril Rioli; see Mr John Hicks, Executive Secretary, Tiwi Land Council, *Estimates Hansard*, 2 November 2006, p. 58.

57 Tiwi Enterprises Pty Ltd, *Submission 3*, p. 2.

58 Tiwi Enterprises Pty Ltd, *Submission 3*, p. 2.

59 ASIC, *ASIC Historical Company Extract ABN: 97128240184*, 16 June 2009, pp 2-3.

60 ASIC, *ASIC Historical Company Extract ABN: 97128240184*, 16 June 2009, p. 3.

Mantiyupwi Pty Ltd

4.45 Mantiyupwi Pty Ltd was established in 2008⁶¹ and is 'the commercial arm representing the Mantiyupwi Land Owning Group of Traditional Owners for southern Bathurst and Melville Islands'.⁶²

4.46 Mantiyupwi Pty Ltd has five directors.⁶³ Pirntubula Pty Ltd is the ultimate holding company of Mantiyupwi Pty Ltd, beneficially holding the sole share in the company.⁶⁴ Mantiyupwi Pty Ltd currently owns Tiwi Tours, the sole tour operator on the Tiwi Islands.

Port Melville Pty Ltd

4.47 Port Melville Pty Ltd was registered in 2003.⁶⁵ The three company directors, Mr Cyril Kalippa, Mr Andrew Tipungwuti and Mr Matthew Wonaeamirri are all members of the TLC executive.⁶⁶ Mr John S Hicks is the company secretary.⁶⁷

4.48 There is a single share in the company which is held by Pirntubula Pty Ltd.⁶⁸ The committee has heard evidence that this is purely 'for convenience only' and that 'The share is only held by Pirntubula on a temporary basis whilst trust arrangements are established'.⁶⁹

4.49 Port Melville Pty Ltd was established to facilitate construction of the deep sea wharf at Port Melville. Funding for construction of the port came from Pirntubula (ABA funding) and from Great Southern Ltd.⁷⁰

Tiwi Islands Training and Employment Board

4.50 The Tiwi Islands Training and Employment Board (TITEB) was established by the TLC in 1999 'after recognising that enterprise development on the Islands could supply real jobs for the Tiwi but only if they were trained'.⁷¹ The committee

61 ASIC, *ASIC Historical Company Extract ABN: 41129310710*, 16 June 2009, p. 1.

62 Mantiyupwi Pty Ltd, *Submission 6*, p. 1.

63 ASIC, *ASIC Historical Company Extract ABN: 41129310710*, 16 June 2009, pp 1-2.

64 ASIC, *ASIC Historical Company Extract ABN: 41129310710*, 16 June 2009, pp 2-3.

65 ASIC, *ASIC Historical Company Extract ABN: 80106954134*, 16 June 2009, p. 1.

66 ASIC, *ASIC Historical Company Extract ABN: 80106954134*, 16 June 2009, p. 2.

67 ASIC, *ASIC Historical Company Extract ABN: 80106954134*, 16 June 2009, p. 2.

68 ASIC, *ASIC Historical Company Extract ABN: 80106954134*, 16 June 2009, p. 2.

69 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 7.

70 Mr John S Hicks, Secretary, Tiwi Land Council, *Proof Committee Hansard*, 19 May 2009, p. 8.

71 TITEB, *Submission 10*, p. 2.

understands that, whilst established by the TLC, TITEB is 'self-governing and separately incorporated'.⁷²

4.51 TITEB is a registered training organisation (RTO) and group training organisation (GTO).⁷³ It has been managed by the chief executive Mr Norm Buchan since its inception.⁷⁴

4.52 The committee was informed that approximately '350 Tiwi participate in some form of structured, accredited training each year through the RTO' and that there are currently 81 apprentices in training through the GTO.⁷⁵

4.53 Funding for TITEB comes from a variety of federal and territory sources. At present, funding is provided through the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Department of Education, Employment and Workplace Relations (DEEWR), the Northern Territory Department of Education and Training (DET), Job Network agencies and TITEB's charitable trust.⁷⁶

Payments of royalties from forestry

4.54 Under the agreement with Great Southern it was intended that, when harvesting of the plantations commenced, there would be an income stream of royalties that would need to be distributed to Tiwi Islanders. These would comprise a two per cent cut of the Net Harvest Proceeds, and a third of Great Southern's Management Entitlement. For a 3000 hectare annual harvest, the value of these royalties was estimated by consultants to be around \$693 000 per annum.⁷⁷

4.55 The *Aboriginal Land Rights (Northern Territory) Act 1976* states that the Land Trust holds lands 'for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the area of land comprising all the lands so granted whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission'.⁷⁸ Oakton consultants indicated that the 'benefit' of Tiwi could

72 Tiwi Land Council, *Submission 34*, p. 9.

73 TITEB, *Submission 10*, p. 2.

74 TITEB, *Submission 10*, p. 2.

75 TITEB, *Submission 10*, p. 2.

76 Mr Norm Buchan, Chief Executive Officer, TITEB, *Proof Committee Hansard*, 19 May 2009, p. 28.

77 Oakton, *Tiwi Land Council Timber Industry Arrangements: Review 2008/2009: Final Report*, Report to Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, February 2009, p. 12.

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have several meanings, including 'distribution to all Tiwi people evenly' or 'distribution [only] to Tiwi forest area traditional land owners'.⁷⁹

4.56 Oakton reported that the Tiwi Land Council was concerned 'that possible community conflict could stem from how the money is allocated', and has asked the Minister for Families, Housing, Community Services and Indigenous Affairs to clarify how the benefit provision in the Act should be applied. Oakton shared the Land Council's concerns and recommended that the Minister's Department work with the land council to develop guidelines for the distribution of royalties.

Recommendation 2

4.57 The committee recommends that, consistent with the view of Oakton and the Land Council, that the Department of Families, Housing, Community Services and Indigenous Affairs should work with the Tiwi Land Council and other major stakeholders to develop guidelines for the distribution of money to traditional owners.

4.58 It is reasonable to assume that the collapse of Great Southern and, for now at least, the apparent ownership by the Tiwi Islanders of the plantations may result in a fundamentally different income stream to the original royalty payment system. The committee believes that, regardless of this, the mechanism by which the financial benefits from forestry are distributed will be critical to the integrity of the project and its acceptance amongst Tiwi Islanders.

Concerns raised about the Tiwi Land Council

Female representation on the land council

4.59 Historically, female representation on the Tiwi Land Council has been limited. Since the inception of the Tiwi Land Council, two women have been selected and only one of these served on the land council.⁸⁰

4.60 In 1988, Ms Marjorie Liddy (nee Dunn) was invited to succeed Mr Holder Adams on the land council following his accidental death.⁸¹ Ms Liddy declined this invitation to serve on the land council:

Ms Liddy—I must admit that they asked me if I wanted to be on the council. I said no because I was trying to get my little outstation started at

79 Oakton, *Tiwi land Council Timber Industry Arrangements: Review 2008/2009: Final Report*, Report to Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, February 2009, p. 13.

80 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 6.

81 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 6.

that time. They have asked me a couple of times but some things I did not like that they were doing. For instance, I did not like that pine tree.

Senator CROSSIN—Did you say no to being on the council because you were busy starting your outstation?

Ms Liddy—Yes, I was doing other things.

Senator CROSSIN—Did you not think that if you got on there you might be able to ask some hard questions of other people and make some changes?

Ms Liddy—I think I might not have agreed with some of their decisions.⁸²

4.61 Some time after Ms Liddy was invited to serve on the land council, Ms Michaela Tipungwuti was elected to the Tiwi Islands Local Government.⁸³ The Tiwi Land Council subsequently agreed that 'Michaela could also sit as a member of the Land Council then seeking nominations to fill a vacancy for the Maluwu land owning group'.⁸⁴ Ms Tipungwuti resigned her position on the land council after one council meeting.⁸⁵

4.62 Some witnesses expressed concern about the apparent lack of female representation on the Tiwi Land Council. The committee heard evidence that female representation on the Tiwi Land Council was not precluded by the ALRA and was a matter for the land council to determine:

Mr Roche—It is certainly open for the land council, as a number of the other land councils already do, to provide in their rules for the election of women members to the council. It is certainly not precluded by the land rights act.

Senator CROSSIN—It is not precluded by the land rights act?

Mr Roche—No. It is a matter for each land council, of course. The minister, as you know, has to approve the rules, but in the normal course of events it is the land council which suggests the rules.⁸⁶

4.63 Ms Marion Scrymgour MLA, the Northern Territory Assembly Member for Arafura, within which lie the Tiwi Islands, described the governance arrangements on the Islands as 'grossly discriminatory towards women'.⁸⁷

82 Ms Marjorie Liddy, *Proof Committee Hansard*, 20 May 2009, p. 10.

83 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 7.

84 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 7.

85 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 7.

86 Mr Greg Roche, Branch Manager, Indigenous Programs, Department of Families, Housing, Community Services and Indigenous Affairs, *Proof Committee Hansard*, 14 August 2009, p. 8.

87 Ms Marion Scrymgour, *Submission 41*, p. 2.

4.64 The committee met with a significant number of Tiwi women at Nguiu. These discussions were confidential at the women's request. However the range of concerns raised by these women suggested to the committee that there continue to be some problems as a result of governance practices on the Islands.

4.65 When asked about the capacity for women to be members of the land council, the TLC stated that:

Discussions with the Land Council through the past decade record an acceptance and willingness for women to join their numbers. "Of course women will be members; when we work out how best to do it." (C. Kalippa 2009).

...

Perhaps Land Council discussions with the "strong women" themselves best describes the historical and current difficulties. In answer to the request; "Can you help with your strength to get the kids into school?" the answer was and is, "You know we cannot do anything like talking direct. You know we can't talk with parents about their kids. That not Tiwi woman way. We got that avoidance tradition, you must know that."⁸⁸

4.66 The TLC acknowledged what it perceived to be 'the remarkable foresight of the legislature in drafting the Aboriginal Land Rights (Northern Territory) Act 1976 – for traditional recognition and purpose', thus enabling the Tiwi people – through the TLC – to maintain traditional gender distinctions in decision-making.⁸⁹ Further, the TLC claimed that 'Not permitting the legitimate decision making forums decide matters as fundamental as roles and participation of women can have some very twisted and unfortunate outcomes' and that manipulation of these legitimate decision making forums by 'external non-Tiwi "participants"' resulted in unintended consequences.⁹⁰

Petitions against the TLC

4.67 Through the course of the inquiry, the committee was made aware of two petitions criticising the TLC.

4.68 On 11 September 2006, a petition was presented by the Hon Warren Snowdon to the House of Representatives on behalf of Tiwi residents. The petition expressed concern about Mr John Hicks' influence over the Tiwi Land Council and called for his immediate resignation:

88 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 5.

89 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 6.

90 Tiwi Land Council, *Answer to question on notice*, 14 August 2009 (received 11 September 2009), p. 6.

We, the undersigned, are residents of the Tiwi Islands and wish to bring to your attention the concern of the Tiwi people regarding the actions of Mr John Hicks, the Executive Secretary/CEO of the Tiwi Land Council.

We, the Tiwi people, feel that our interests are not being represented.

After his 20 year involvement in the Tiwi Land Council, we feel that Mr Hicks exercises excessive influence over the respected Elders of the Tiwi Land Council. We, the Tiwi people, are not sufficiently consulted on the decisions made which have a significant impact on our land and our people.

We have little information about the workings of the Tiwi Land Council which makes decisions about our future. We do not have confidence in Mr Hicks playing such an influential role in the Tiwi Land Council and immediately call for his resignation.

The undersigned petitioners therefore ask the House of Representatives to call on the Honourable Minister for Indigenous Affairs to acknowledge our call for Mr Hicks' resignation and to commission an inquiry into the Tiwi Land Council including their administrative procedures, land-use decision making processes and Pirntubula Pty Ltd.⁹¹

4.69 The chief petitioner was Gawin Tipiloura. The petition was signed by 493 Tiwi residents.⁹² Gawin Tipiloura was subsequently sacked from the Council in controversial circumstances, reportedly following a letter from one of the trustees, withdrawing Gawin's nomination. The trustee later claimed he could not read the letter he was told to sign.⁹³

4.70 During February 2007, a petition signed by approximately 90 Tiwi women (the 'Strong Women's Group')⁹⁴ was presented to the Federal Department of Environment whilst Departmental representatives were on the Tiwi Islands investigating alleged breaches of EPBC conditions by the forestry proponent.⁹⁵ The petition called for the cessation of clearing on Tiwi land and claimed that the Tiwi women:

...have no representation on the Tiwi Land Council. We are not consulted properly and never in Tiwi language. We hear promises of jobs and financial benefits for our people, yet have not seen any results. Most Tiwi do not benefit from royalty payments.⁹⁶

91 *House of Representatives Petitions*, 11 September 2006, p. 1.

92 *House of Representatives Petitions*, 11 September 2006, p. 1.

93 ABC News, *Trustee did not understand sacking letter*, 3 April 2007, available: <http://www.abc.net.au/news/stories/2007/04/031888490.htm> (accessed 2 September 2009)

94 TEACA, *Submission 29*, p. 2.

95 ABC News, *Tiwi women petition against forest clearing*, 16 February 2007, available: <http://www.abc.net.au/news/stories/2007/02/16/1849212.htm> (accessed 19 August 2009).

96 Petition signed by Tiwi women.

Conclusion

4.71 The committee clearly noted some dissent and concern about the forestry project, the processes surrounding its approval, the extent of benefits flowing to the communities and the distribution of those benefits. How many of these concerns are due to the substantive matters surrounding the terms of the project and how many are a result of misunderstandings or miscommunications is difficult to determine. Nevertheless, it seems likely that both are factors.

4.72 While some level of opposition is always likely stem from major land use changes, such as the introduction of plantation forestry, the Tiwi Land Council must accept some responsibility for the ability of misunderstandings or misinformation to spread throughout the Tiwi communities, leading to disenchantment with the project.

4.73 With the demise of Great Southern Ltd it is important for the Tiwi Land Council to ensure that all interested members of its community are kept informed of developments and future plans. It is particularly important that they have future employment and income opportunities explained in a realistic way to minimise future disappointments and disharmony.

4.74 The committee also believes the Tiwi Land Council needs to be mindful that the structure of related businesses and entities through which business dealings are undertaken can appear confusing and, once again, lend itself to impressions of secrecy or the spreading of misinformation.

Recommendation 3

4.75 The committee recommends that the Tiwi Land Council and the business entities of the Tiwi people work to ensure that those business entities operate in the most efficient and transparent manner possible.

Recommendation 4

4.76 The committee recommends that the Tiwi Land Council and the business entities of the Tiwi people initiate new communication strategies to ensure that their structures, roles and activities are more widely understood by the Tiwi people.

4.77 With regard to issues surrounding the representation of women and other matters pertaining to the way in which the Council is constituted, the committee is mindful that it has not had an opportunity to address all of the cultural matters this relates, nor seek wider input on these matters, evidence from anthropological experts

or others. The committee notes that it is incumbent upon the Council, relevant authorities, and the relevant Minister to be mindful of some existing community disquiet and of any changes to community sentiment surrounding such matters now and into the future.

Senator Simon Birmingham
Chair