

The Aboriginals Benefit Reserve and the Distribution of Money from the Reserve

Introduction

- 5.1 Aside from establishing processes to grant land to Aboriginal people, one of the major functions of the Land Rights Act is to distribute money to traditional Aboriginal owners, other Aboriginal residents of the Northern Territory and the land councils. The money is distributed through a statutory fund established under the Act called the Aboriginals Benefit Reserve ('the ABR'). The source of these funds and the way in which they are to be distributed from and by the ABR are also laid out in the Act.
- 5.2 This chapter begins by outlining these structures and processes. They are discussed in some detail as a knowledge of how they work and interrelate is necessary if the recommendations of the Reeves Report are to be understood. The terminology is also introduced and definitions given for 'MREs'; the 'MWT'; 'royalty associations'; 'areas affected money'; 'negotiated royalties'; and 'gate money'.
- 5.3 The Reeves Report's recommendations to change the financial structure of the Land Rights Act are then listed. Rather than look at reaction to each recommendation in turn, the focus is on core issues raised by the Report's supporters and detractors. Broadly, the debate about each issue is presented, followed by the Committee's comments and recommendations.
- 5.4 Throughout this chapter (and others), the Committee stresses that its recommendations require the consent of Aboriginal people in the Northern Territory. This is in line with the Committee's core principle that

Aboriginal people should be given as much control and responsibility for their lives and institutions as possible.

Current Provisions of the Land Rights Act

Aboriginals Benefit Reserve

- 5.5 The Aboriginals Benefit Reserve (ABR) is a statutory fund established under s. 62 of the Land Rights Act to receive and distribute money received from the Commonwealth.¹ The money received is roughly equivalent to the sum of the royalties paid to the Commonwealth and Territory Governments by mining companies for their mining activity on Aboriginal land. For this reason, the funds are known as 'Mining Royalty Equivalents' (MREs).
- 5.6 The ABR received MREs valued at \$31 514 000 in 1997-98. The value of MREs varies from year to year and is outside the control of the ABR because of fluctuations in commodity prices. For example, the amount credited to the ABR in 1997-98 was just over \$3 million less than the amount available in 1996-97.² This, in turn, directly affects the amount of money that the ABR can distribute from year to year.
- 5.7 The ABR is currently administered by a section of the Northern Territory State Office of the Aboriginal and Torres Strait Islander Commission (ATSIC) in Darwin, known as the ABR Secretariat.

Distribution of ABR Money

- 5.8 Although the ABR invests money that is surplus to immediate needs, the primary function of the ABR is to act as a clearing house, rather than an investment fund. The ABR distributes MREs under what is often called the '40/30/30 formulae'.³
- 5.9 Forty percent of the MREs are paid by the ABR to the land councils to meet their administrative costs.⁴ The Minister determines what proportion

1 The Aboriginals Benefits Reserve (ABR) is a component of the Reserved Money Fund under s. 20(2) of the *Financial Management and Accountability Act 1997*.

2 ABR, *Annual Report 1997-1998*, p. 2. Unaudited figures for 1998-99 indicate that the value of Mining Royalty Equivalents (MREs) in 1998-99 also declined. ABR Secretariat, personal communication, July 1999.

3 More accurately described as a '40/30/plus residual' formulae.

4 s. 64(1), Land Rights Act.

of the 40% is to be distributed to each land council.⁵ While this arrangement provides land councils with a guaranteed, independent source of income, the amount available will vary from year to year as the value of MREs fluctuates.

- 5.10 Thirty percent of the MREs are forwarded to land councils for them to distribute to Aboriginal organisations in areas affected by mining operations.⁶ These payments are directly linked to the amount of MREs received in respect of mining in the areas concerned and are known as 'section 64(3) money' or 'areas affected' money.⁷
- 5.11 The residual amount, although not defined as a percentage in the Act, covers the following costs:
- a grants program for the benefit of Aboriginal people living in the Northern Territory;⁸
 - the administrative costs of the ABR;⁹ and
 - the administrative costs of land councils where the Minister is satisfied that payments under s. 64(1) are insufficient to meet their administrative expenses.¹⁰
- 5.12 The Act also establishes the ABR Advisory Committee to recommend to the Minister recipients for grants under the grants program.¹¹ The Advisory Committee consists of fifteen members. The Chair is appointed by the Minister while the remaining fourteen members are elected from the membership of the land councils. Under the ABR's Financial Management Strategy, approved by the Minister, a cap of \$5 million per annum is placed on the grants program. This has allowed the ABR to accumulate the residual in a funds reserve as a buffer against any sudden downturn in revenue. Reserves at the end of 1997-98 were just over \$48 million.¹²

5 From 1991, the distribution has been Northern Land Council (NLC) - 22%, Central Land Council (CLC)- 15%, Tiwi Land Council (TLC) -2%, Anindilyakwa Land Council (ALC) - 1%.

6 s. 64(3), Land Rights Act.

7 Or, in some places, as 'local royalties'.

8 s. 64(4), Land Rights Act.

9 s. 64(5), Land Rights Act.

10 s. 64 (7), Land Rights Act.

11 s. 65(1), Land Rights Act.

12 ABR, *Annual Report 1997-1998*, p. 38.

Royalty Associations

- 5.13 As mentioned above, 30% of the funds received by the ABR are directed to land councils for them to distribute to Aboriginal organisations in areas affected by mining operations. Section 35(2) of the Act requires the land councils to distribute these funds to:
- ‘Aboriginal Councils, the areas of which are, whether in whole or in part, included in the area affected by the mining operations...’; and
 - ‘any Incorporated Aboriginal Associations, the members of which live in, or are the traditional Aboriginal owners of, the area affected by those mining operations’.
- 5.14 Incorporated Aboriginal associations that receive areas affected money under s. 35(2) of the Act are often called ‘royalty associations’.¹³ Royalty associations can (and do) receive income or benefits from other sources including:
- commercial agreements sanctioned under the mining provisions of the Act between traditional owners and mining companies that are over and above MREs (often called ‘negotiated royalties’);¹⁴
 - rents and other payments paid by the Commonwealth and Territory governments in relation to certain national parks (often called ‘gate money’)¹⁵;
 - Commonwealth or Territory program funding; and
 - other commercial activities and investments.¹⁶
- 5.15 The Reeves Report identifies eight incorporated Aboriginal associations that currently receive areas affected money and a further three that used to receive them.¹⁷ There are another approximately 45 Aboriginal corporations that receive negotiated royalties or gate money.¹⁸ Under s. 35A of the Act, incorporated Aboriginal associations that receive areas

13 Incorporated under the *Aboriginal Councils and Associations Act 1976* (C’wlth) or the *Associations Incorporation Act* (NT) 1978.

14 See s. 35(3), Land Rights Act.

15 s. 35(4), Land Rights Act. See also ss. 15, 16, 19, 20 & 35(4), Land Rights Act.

16 For example, the Ngurratjuta Pmara/Ntjarra Aboriginal Corporation (‘NAC’), a royalty association, earns revenue associated with ownership of an airline, a tourist resort and real estate. Since 1985, it has received approximately \$10 million areas affected money and \$1 million negotiated and other mine related payments. See NAC, Submissions, pp. S573-79.

17 *Reeves Report*, p. 336.

18 *Reeves Report*, p. 334.

affected money, negotiated royalties or gate money are required to lodge financial records with Land Councils.¹⁹

Reeves Report's Proposals

5.16 The Reeves Report discusses the role of the ABR and the ways in which MREs are distributed in extensive detail in chapters 15 and 16.²⁰ The Reeves Report's recommendations concerning the ABR and the distribution of money from the Reserve are underpinned by other recommendations, already discussed, to establish Regional Land Councils (RLCs) and the Northern Territory Aboriginal Council (NTAC). The focus here is on those components of the recommendations in the Reeves Report that deal with the receipt and distribution of MREs.

The ABR

5.17 For the ABR, the Reeves Report recommends that:

- the link between the ABR's funds and the mining industry should be maintained to underscore the fact that the payment of these funds is based upon unique and historical factors; and
- the Act should be amended to include a clear statement of purposes for the distribution of the funds in the ABR.

Distribution of Money from the ABR

5.18 For the distribution of MREs from the ABR, the Reeves Report recommends that:

- the formula for the distribution of the ABR's funds should be abolished. In its place, NTAC should decide on the distributions based on a statement of purposes set for the ABR;
- Mining Withholding Tax should not be applied to the funds paid to the ABR;
- NTAC should develop an investment strategy, which is aimed at it becoming self-sufficient to the amount of the income from a particular

19 Royalty associations are also required to lodge financial records with the Registrar of Aboriginal Corporations (Commonwealth) or the Northern Territory Registrar of Incorporated Associations as appropriate.

20 See *Reeves Report*, pp. 368-69 for the associated recommendations.

mining resource by the time that resource is estimated to be expended. The balance of the ABR's funds should be expended by NTAC and the RLCs on programs for the cultural, social and economic advancement of Aboriginal Territorians;

- NTAC should only invest the investment component of its funds in commercial investments that are likely to provide a satisfactory rate of return; and
- in future, 'areas affected' money should only be paid to the proposed RLCs in the region for the benefit of those communities that can establish an actual adverse affect from mining on the community in net terms, ie. taking into account the receipt of negotiated payments and any countervailing benefits obtained from the mining.

Royalty Associations

5.19 The Reeves Report recommendations concerning royalty associations are that:

- all expenditure of all ABR funds and all other income from activities on Aboriginal land should be applied by NTAC or the RLCs to particular purposes eg. ceremonies, scholarships, housing, health etc. Conversely, none of these funds should be paid to an individual without a related purpose. Furthermore, any incorporated association receiving ABR funds should not be able to pay those funds to another association that makes individual payments. Measures should also be adopted to remove the perception that the practice of substitution is occurring; and
- a special system of assistance, accountability and transparency should be adopted for Aboriginal incorporated associations to take account of:
 - ⇒ the effect of Aboriginal culture and tradition;
 - ⇒ the undesirability of a multiplicity of such associations; and
 - ⇒ the general lack of familiarity and experience among Aboriginal people with administering such bodies.

Comments on the Reeves Report's Proposals and the Committee's Recommendations

The Role and Purpose of the ABR

The ABR's Source of Funding

- 5.20 The Reeves Report's first recommendation is that the link between mining and the ABR's funds should be maintained. There was no disagreement with this recommendation, and in fact little comment, from any quarter. From a budgetary point of view, the arrangement still suits the land councils because it gives them 'a significant degree of insulation from the vagaries (and political interference) of normal budgetary process'.²¹
- 5.21 The Committee too believes that the ABR should remain a separate statutory fund financed by MREs.

Recommendation 13

- 5.22 **As recommended in the Reeves Report, the Aboriginals Benefit Reserve be retained as a statutory fund financed from Mining Royalty Equivalents.**

Who Should Administer the ABR

- 5.23 The Reeves Report recommends that the ABR should, in future, be administered by NTAC. As discussed in the previous chapter, the Committee does not support establishing NTAC. That being said, the two larger land councils have argued that the status quo should not remain either. Rather, the administration of the ABR should be moved from ATSIC to the land councils. As the Northern Land Council (NLC) described:

We would be happier if the ABR was completely handled by an Aboriginal body. It is the money that we believe comes from our soil. We would be happier if it was not controlled by government

21 CLC, Submissions, p. S1608; NLC, Submissions, p S946.

departments such as ATSIC. It should be independently administered by land councils for the benefit of our constituents.²²

- 5.24 The Jawoyn Association agrees, believing that the ABR should with appropriate forms of accountability be under direct Aboriginal control:

the situation of the ABR being administered under the bureaucratic auspices of ATSIC is an anachronistic throwback... and is no longer appropriate.²³

- 5.25 As a reflection of its core principles, the Committee agrees that Aboriginal people should take as much responsibility as possible for controlling their own affairs. This applies too, for the administration of the ABR. Later in the chapter, the Committee describes a much greater role for the ABR Advisory Committee in the administration of the ABR. However, for the sake of efficiency, the ABR Secretariat should continue to be located in ATSIC. This will be less expensive than establishing a separate secretariat or splitting or rotating it between land councils.

Clearing House vs Capital Fund

- 5.26 The Reeves Report argues that the operations of the ABR have suffered from, among other things, the lack of a clear statement of purpose.²⁴ As it currently operates, the ABR is primarily a financial clearing house, although it has accumulated a comparatively small reserve. The Reeves Report proposes a more significant investment role to see the ABR become self sufficient to the amount of the income from a particular mining resource by the time that resource is estimated to be expended.²⁵ This view is supported by the Northern Territory Government, which believes that the purpose of royalty equivalent payments is confused and that:

the Reserve should be revamped to clarify its objectives and operations and to provide it with a more commercial operation.²⁶

22 NLC, Transcripts, Darwin, p. 44. See also Galarrwuy Yunupingu, Transcripts, Yirrkala, p. 522; CLC Submissions, p. S1609; Territory Labor, Submissions, p. S1053; Tom Petherick, Submissions, pp. S254-55.

23 Jawoyn Association, Submissions, p. S841.

24 *Reeves Report*, pp. 349-50.

25 *Reeves Report*, p. 368.

26 Northern Territory Government (NTG), Submissions, p S92 and S1535; NTG, Transcripts, Darwin, p. 625.

Recommendation 14

- 5.27 **As recommended in the Reeves Report, the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended to include a clear statement of purposes for the distribution of the funds in the Aboriginals Benefit Reserve.**
- 5.28 The principal architect of the Land Rights Act, Sir Edward Woodward, also told the Committee that there is:
- certainly no guarantee that royalties will continue at their present level, and there should be some long term provision which requires, in my view, sensible investment.²⁷
- 5.29 A large capital base will certainly provide a secure income stream in the future – free of the vagaries of commodity prices. However, in the short term at least, it will lead to a reduction in the money that can be distributed as it gets channelled into savings and investments. This prompted the CLC to question why one should:
- expect the poorest group in the country to forego benefits, with the prospect of restoration at some uncertain time in the future?²⁸
- 5.30 Similarly, the Indigenous Law Centre of the University of New South Wales argued that:
- the role of the ABR is to provide compensation for Aboriginal bodies in the Territory. Its purpose is not in the first instance to generate revenue.²⁹
- 5.31 The Committee concedes that there are always likely to be competing calls for the ABR to either invest or distribute more of its funds. It is a matter of balance that the Committee believes is best left to Aboriginal people themselves to decide – through the ABR Advisory Committee. That issue is addressed below in further discussion of the role of the ABR’s Advisory Committee.

27 Sir Edward Woodward, Transcripts, Canberra, p. 556.

28 CLC, Submissions, p. S1612.

29 Indigenous Law Centre, Submissions, p. S396.

Mining Withholding Tax

- 5.32 Under income tax law, distributions made by the ABR are subject to Mining Withholding Tax (MWT) and are taxed at source at a current rate of 4%.³⁰ The tax is paid by the ABR on behalf of the recipients. Not surprisingly, the recommendation in the Reeves Report that MWT should not be applied to the funds paid to the ABR has received broad support.³¹
- 5.33 The Reeves Report does not represent the first time that such a recommendation has been made. Several past reviews of the ABR, or Aboriginals Benefit Trust Account as it was formerly known, have found the MWT to be unfair.³² One of these past reviewers, Professor Jon Altman of the Centre for Aboriginal Economic Policy Research (CAEPR), told this Committee that he could still:
- see absolutely no rationale for having a mining withholding tax... I think that it would make much more sense to just abolish the mining withholding tax, hence alleviating the financial problems of land councils and giving the signal that these moneys should not be paid to individuals but should in fact be paid for community benefit.³³
- 5.34 The Jawoyn Association argues that the MWT is a form of double taxation and that:
- It should be up to the Australian Tax Office to determine if individual tax is payable from the small number of individual recipients of royalty based financial benefits.³⁴
- 5.35 The Committee believes that justification for the MWT no longer exists – particularly on the basis of the tax’s inequity. Aboriginal people and organisations have been increasingly incorporated into the mainstream taxation system and should be taxed in the same way as other Australians and entities. It is also unnecessarily inconsistent (the Committee believes) that the budgets of land councils, as Commonwealth authorities, are taxed at source.
- 5.36 The argument for retaining the MWT becomes even weaker if the Committee’s recommendations are adopted which would improve

30 *Income Tax (Mining Withholding Tax) Act 1979*. The current rate of tax is determined in the *Taxation Laws Amendment Act (No. 3) 1994*.

31 *Reeves Report*, pp. 363-64.

32 *Reeves Report*, p. 364.

33 Jon Altman, Centre for Aboriginal Economic Policy Research (CAEPR), Transcripts, Canberra, p. 806.

34 Jawoyn Association, Submissions, p. S842.

accountability for the expenditure of areas affected money and make it impossible for individuals to receive cash payments.³⁵ Removing the MWT will also reduce the pressure on the ABR as the value of MREs has been dropping steadily since 1996-97. In short, administrative convenience is not sufficient argument for maintaining an iniquitous tax.

Recommendation 15

- 5.37 **The equity and efficiency of the Mining Withholding Tax applied to Mining Royalty Equivalents be reexamined with a view to its abolition.**

The Distribution of ABR Funds

Changing the 40/30/30 Formulae

- 5.38 As CAEPR has pointed out, MREs have never in fact been exactly distributed according to the 40/30/30 formulae. While 30% of MREs have gone to areas affected by mining, closer to 52% has tended to go to land councils and only some 17% has been distributed through the grants scheme.³⁶ For example, in 1997-98, the NLC received \$7.2 million as its share of s. 64(1) money, but also \$1.5 million authorised under s. 64(7) of the Act. Similarly, in the same year, the CLC received \$4.9 million as its share of s. 64(1) receipts, but also \$1.4million authorised under s. 64(7) of the Act.³⁷
- 5.39 Nonetheless, the Committee received several suggestions for altering the distribution ratios of the formulae. Professor Jon Altman argued that there should be a 50/50 split of the MREs – 50% for areas affected by mining and the residual for land councils expenditure.³⁸ This is on the basis that a 50% allocation of MREs to land councils more accurately reflects their budgetary needs and because a 50% share to areas affected would provide a stronger incentive to traditional owners and other residents consulted to

35 For support of this argument, see NTG, Submissions, p. S1536.

36 Jon Altman, CAEPR, Transcripts, Canberra, p. 803. See also *Reeves Report*, pp. 324-25.

37 NLC, *Annual Report 1997-1998*, p. 57; CLC, *Annual Report, 1997-1998*, p. 84. Figures rounded to two significant figures.

38 And for the administrative expenses of the ABR secretariat.

allow development on their land.³⁹ Finally, Professor Altman concluded that the grants scheme is so small in comparison to government outlays to Aboriginal residents in the Territory, that the ABR should lose this granting function.⁴⁰

- 5.40 Others have also argued that the proportion of MREs going to the areas affected by mining should be increased from the current 30%.⁴¹ The Anindilyakwa Land Council (ALC) believes that the figure should be 40%, particularly where mining activity causes the degree of social disruption that has occurred on Groote Eylandt.⁴² The Northern Territory Minerals Council believes that it should be 70%.⁴³ A major mining company in the Gove Peninsula region, region Nabalco Pty Ltd, also told the Committee that:

We are not saying that the broader Aboriginal people should not receive some benefit from the royalties, but the reality is that the local people to whom the mining operation is more visible feel that they do not receive a proportional amount.⁴⁴

- 5.41 The Jawoyn Association, however, believes that the current ratios allow the grants scheme to equitably redistribute some of the MREs to the broader Aboriginal community.⁴⁵ Anthropologist Les Hiatt and Sir Edward Woodward agree, warning against the possibility of two classes of Aboriginal people emerging in the Territory - one privileged and propertied and the other not - based simply on 'accidents in the distribution of mineral and other natural resources'.⁴⁶ Sir Edward continued that he did not want to see:

some people getting great personal advantages and other people getting nothing at all.⁴⁷

39 Jon Altman, CAEPR, Transcripts, Canberra, p. 813. In 1991, the Industry Commission argued 70% of MREs should be reserved for areas affected for the same reason. Industry Commission, 1991, *Mining and Minerals Processing in Australia Report*, Volume 1, p. xvii.

40 Jon Altman, CAEPR, Transcripts, Canberra, p. 813.

41 See Department of Industry, Science & Resources (Commonwealth), Submissions, p. S384.

42 ALC, Transcripts, Angurugu p. 539.

43 By conflating the 40% for land councils with the current 30% areas affected money. The land councils would be need for funded from other sources. Northern Territory Minerals Council, Submission, p. S1716

44 Nabalco Pty Ltd, Transcripts, Darwin, p. 129. See also, Nabalco, Submissions, p. S75.

45 Jawoyn Association, Submissions, p. S852.

46 Les Hiatt, Submissions, p. S1028; See also Sir Edward Woodward, Transcripts, Canberra, p. 559.

47 Sir Edward Woodward, Transcripts, Canberra, p. 559.

- 5.42 The extent to which incorporated Aboriginal associations should be held publicly accountable for their expenditure of areas affected money is a vexed issue which is explored more fully below.
- 5.43 It will always be difficult to balance the competing demands of those living in areas affected by mining and those who are not. Professor Altman labels this 'a constant tension in the division of the royalties cake'.⁴⁸ The Committee acknowledges this tension, but drew on two of its core principles when reaching its own conclusions:
- firstly, that Aboriginal people should have as much autonomy as possible in running their own affairs; and
 - secondly, that the Act should be as flexible as possible to meet changing circumstances and facilitate processes rather than determine outcomes.
- 5.44 The Committee's conclusions, drawing on these two principles, are detailed below.

The Committee's View – Areas Affected Money

Alternative Models

- 5.45 The Committee sees mining activity as one of the major wealth generators in the Northern Territory – for Aboriginal and non Aboriginal people alike.⁴⁹ The Committee's major recommendations to encourage greater mining activity on Aboriginal land are contained in the next chapter which deals with the mining provisions of the Land Rights Act. However, Members of the Committee also considered whether increasing the proportion of MREs reserved for areas affected by mining would also encourage greater mining activity. The Committee considered two options – increasing the proportion of MREs reserved for areas affected from 30% to 40% of the total or maintaining the existing 30% allocation. The benefits of the two alternatives are described below.

Option A: Increasing Allocation of Areas Affected Money to 40%

- 5.46 Government Members of the Committee believe that the proportion of MREs reserved for areas affected by mining should be increased to 40% of MREs. This will provide an additional incentive for traditional owners to agree to mining ventures on their land. However, Government Members of the Committee support this option if the distribution of areas affected

48 Jon Altman, CAEPR, Transcripts, Canberra, p. 803.

49 See the next chapter for further discussion of the mining provisions of the Land Rights Act.

money is made more accountable. Options for improving the accountability of areas affected money are discussed in more detail below.

Option B: Retaining the Allocation of Areas Affected Money at 30%

5.47 Non Government Members of the Committee believe that the Committee has received no compelling evidence that increasing the percentage of MREs reserved for areas affected by mining will encourage further mining. Furthermore, any increase in the amount for areas affected by mining will, in turn, reduce the amount of money available to distribute to other Aboriginal people in the Northern Territory through grants provided under section 64(4) of the Act. This, the Non Government Members of the Committee believe, would upset the balance between the interests of all Aboriginal people in the Northern Territory that the Woodward Report was trying to strike.

The Need for a Project Team

5.48 Members of the Committee could not reach unanimous agreement on whether the allocation of MREs allocated to the areas affected by mining should remain at 30% or be increased to 40% of the total. However, all Members did agree that this issue should be put to traditional Aboriginal owners and to other affected Aboriginal people.

Recommendation 16

5.49 **The issue of whether section 64(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') be amended so that an amount equal to 40% of any amounts paid into the Aboriginals Benefit Reserve is allocated in accordance with sections 64(3)(a) and 64(3)(b) of the Act or the status quo is retained be considered in the manner described in recommendation 22.**

5.50 Possible ways for disbursing areas affected money within the individual areas affected by mining are discussed below.

Land Council Budgets

5.51 Currently, 40% of MREs are guaranteed to the land councils for their administrative purposes under s. 64(1) of the Act. Commencing from July 1991, the then Minister for Aboriginal Affairs, determined the following apportionment of payments to the individual land councils:

- Northern Land Council 22%
- Central Land Council 15%
- Tiwi Land Council 2%
- Anindilyakwa Land Council 1%

5.52 From June 1994, successive Ministers have approved a Financial Management Strategy which has, among other things, broadly capped land council funding from the ABR at 1993-94 levels. Land council budgets are approved by the Minister and their financial statements audited by the Australian National Audit Office (ANAO).

5.53 All Members of the Committee agreed that land council budgets should continue to be drawn from the ABR.

Recommendation 17

5.54 **Land council budgets continue to be drawn from the Aboriginals Benefit Reserve.**

5.55 However, not all Members could agree on whether land councils should continue to receive a statutory guarantee to a percentage of the MREs. Arguments presented by Committee Members are detailed below.

Option A: Removing the Statutory Guarantee of Funding

5.56 Government Members of the Committee had reservations about any statutory organisation receiving its budget allocations based on a mechanistic formulae. Such a formulae weakens what should be a strong association between budget allocations and activity levels. The percentage allocation also leads to anomalies, such as the ALC's belief that its rightful allocation has been rounded down to the nearest whole percentage point while the TLC allocation has been rounded up.⁵⁰ In addition, the Members holding this view strongly suspect that most agencies will be able to justify expenditure up to any fixed allocation of money.⁵¹

50 Don Billett, Manager, ALC, Transcripts, Angurugu, p. 540. The Committee is not judging the merits of this argument, only noting that the perception of inequity exists.

51 In fact, the TLC has not always expended its percentage allocation of s. 64(1) money. When this occurs, s. 35(1) of the Land Rights Act requires that any excess allocation for administrative expenses is to be distributed to Aboriginal organisations in the area covered by the land council.

- 5.57 For these reasons, the Government Members do not believe that the reserved allocation of money under s. 64(1) of the Land Rights Act should be retained – even though land council budgets would continue to be drawn from the ABR. Rather, they would prefer each land council to have to justify its budget estimates on the basis of work-load, business plans and accountability for performance – as other Commonwealth agencies and authorities have to do.
- 5.58 The Government Members believe that the most effective way to reduce any hand out approach by land councils is to remove their statutory guarantee to a fixed percentage of MREs because:
- the land councils regularly spend over their statutory allocation anyway with the Minister’s approval under s. 64(7); and
 - the ABR currently cannot use any surplus s. 64(1) money for investment purposes.⁵²
- 5.59 If the s. 64(1) guaranteed allocation is abolished, land councils could receive more than 40% of the MREs for administrative expenses if justified (as the NLC and CLC do now) – or less if it could not be justified.⁵³ The ABR’s Financial Management Strategy could remain in force and retain a cap (or floor) of \$5 million per annum for s. 64(4) grants to other Aboriginal people in the Northern Territory. This proposal would increase the ABR’s flexibility and place decisions and responsibility for funding priorities in the hands of the Aboriginal people of the Northern Territory rather than in a statute.
- 5.60 Under this option, the Minister would determine land council budgets, based on advice from the ABR Advisory Committee and the Commonwealth Grants Commission.⁵⁴ Land council budgets would be decided on the soundness of their business plans, program objectives and performance accountability. This position is based on the assumption that the ABR Advisory Committee membership is elected and barred to serving land council members. The possible election of the ABR Advisory Committee is explored in more detail below. The role of the Grants Commission would be to provide independent advice to the Minister via the Minister for Finance and Administration on the relative needs of the land councils, based on their functions and responsibilities.

52 On the assumption that the \$5 million cap on s. 64(4) grants remains part of the Financial Management Strategy.

53 In the latter case, particularly if there is a major increase in the value of MREs.

54 On the assumption that the Commonwealth Grants Commission Amendment Bill 1999 received assent.

Option B: Retaining the Statutory Guarantee of Funding

- 5.61 Non Government Members of the Committee believe that the statutory guarantee of funding should be retained in the Act. They argue that there has been no evidence presented to the Committee for the removal of the statutory guarantee for land council funding - if anything, that funding should be increased to 50% of MREs.⁵⁵ Land Councils certainly need to be accountable. However, ministerial oversight, the annual auditing by the Australian National Audit Office, and the annual reporting to the Commonwealth Parliament ensure transparent accountability and sufficient external fiscal discipline.
- 5.62 Non Government Members note that, in developing the formula for funding, Justice Woodward stressed 'the importance of organisations such as the regional land councils having their own secure funds to cover all normal administrative expenses'.⁵⁶ Woodward said further in 1974 that he regarded 'this sort of funding as essential to the proper working of the land rights system'.⁵⁷ In his submission to the Committee, some 25 years later, Sir Edward Woodward acknowledged 'the immense and highly complex' tasks the land councils have performed and the 'expertise and experience' they have developed which are essential to the good administration of the Act.⁵⁸
- 5.63 The Non Government Members also argued that uncertainty of funding for land councils would make it difficult for them to plan operations, recruit appropriately skilled staff and provide efficient services to other stakeholders such as the mining and tourism industries. They pointed out that the land councils play a vital role in facilitating negotiations between traditional land owners and mining companies. The Non Government Members are concerned that mining activity in the Northern Territory could be put at risk if land council funding becomes uncertain. In short, well resourced, secure and professional land councils are necessary to ensure compliance with the Act and to guarantee the certainty of agreements.
- 5.64 Non Government Committee Members believe that the land councils provide the greatest degree of protection for the rights of traditional Aboriginal owners through the requirements for consultation and informed consent. If the capacity of land councils to perform their

55 Jon Altman, CAEPR, Transcripts, Canberra, p. 813.

56 Aboriginal Land Rights Commission, *Second Report*, para. 355.

57 Aboriginal Land Rights Commission, *Second Report*, para. 356.

58 Sir Edward Woodward, Submissions, p. S758.

statutory functions is diminished, it will affect the ability of Aboriginal people to make decisions over their land.

- 5.65 The Non Government Members consider that, at minimum, the current guarantee of 40% funding under s. 64(1) of the Act should be retained and the current financial management strategy, instituted by the Minister, should continue to operate and be appropriately indexed to maintain real levels of funding at 1993-94 levels.

The Need for a Project Team

- 5.66 Members believe that both options should be presented to traditional Aboriginal owners and other affected Aboriginal communities or groups in the Northern Territory for them to indicate their preference. The Committee believes that the project team process already recommended in chapter one above should be used as the mechanism to present the alternative models to Aboriginal people.

Recommendation 18

- 5.67 **The issue of whether section 64 of the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended to remove the guaranteed allocation to land councils of 40% of the amounts paid into the Aboriginals Benefit Reserve or the status quo is retained be considered in the manner described in recommendation 22.**

Section 64(3) – The Distribution of Areas Affected Money

Section 64(3) Money – Public or Private

- 5.68 The Reeves Report notes that MREs are paid to the ABR from the Consolidated Revenue Fund pursuant to a public policy decision of government. Accordingly, recipients of MREs should be required to give an account of the expenditure of the money. In particular, the Report believes incorporated Aboriginal associations that receive areas affected money should be accountable for its expenditure.⁵⁹ In short, the Reeves Report is arguing that areas affected money is accountable ‘public’ money.

59 *Reeves Report*, pp. 351-52, 367.

5.69 This argument is disputed by the land councils, which consider MREs to be ‘private’ money. The NLC believes MRE money:

is money generated on private property so therefore it is private money. Secondly with respect to the royalty associations, what they do with their money is entirely their business.⁶⁰

5.70 The CLC agrees that:

‘the use of compensation payments is a matter for those affected, subject to proper auditing and reporting.’⁶¹

5.71 As was observed before this inquiry was established, the debate on whether MREs are public or private money has long been an issue of debate and remains largely unresolved.⁶²

5.72 Government Members of the Committee agree with the Reeves Report and believe that MREs paid to the ABR are public money. Government Members argue that minerals are owned by the Crown and mining royalty equivalents are just that – not royalties, but their equivalent paid out of the Consolidated Revenue to the ABR. The Non Government Members of the Committee, however, believe that MREs are compensatory and private and that it is inappropriate for governments to direct how the money will be spent. Regardless of their views on this debate, all Committee Members believe that appropriate conditions of accountability on the expenditure of that money should apply.

Recommendation 19

5.73 All recipients of Mining Royalty Equivalent money should be appropriately accountable for the expenditure of the money.

Payments to Individuals

5.74 One implication of the argument that MREs are private money is that royalty associations should be free to distribute areas affected money to individuals as cash payments. The Reeves Report recommends specifically

60 NLC, Transcripts, Darwin, p. 49.

61 CLC, Submissions, p. S1610.

62 Jon Altman & David Pollack, 1988, *Financial Aspects of Aboriginal Land Rights in the Northern Territory, Discussion Paper, No. 168/1988*, CAEPR, Canberra, p. 3.

that funds should not be paid to individuals unless for a specific purpose such as a scholarship or for housing.⁶³

- 5.75 The Reeves Report concedes that most incorporated Aboriginal associations which receive areas affected money have rules which prevent payments to members.⁶⁴ In supporting evidence, the CLC confirmed that 'in the CLC area, at least, no ABR funds have ever been paid to individuals'.⁶⁵ Professor Altman of CAEPR also notes that 'increasingly, royalty associations do not make payments to individuals in cash'.⁶⁶ Furthermore, the bulk of areas affected money is allocated for community development activities and infrastructure improvements for the benefit of all residents living in the areas affected.⁶⁷
- 5.76 Nonetheless, the Committee received considerable evidence criticising the practice of distributing areas affected money to individuals. The debate arising from this issue appears to be a reaction to the amount of money distributed to members by incorporated Aboriginal associations in Arnhem Land and on Groote Eylandt.⁶⁸ The Reeves Report was particularly critical of the lack of financial information available on the activities of the associations receiving areas affected money. This made it difficult for the Report to obtain a definitive idea of the activities and payments made to them.⁶⁹
- 5.77 Regardless of the quantum of money involved, the Northern Territory Government argued that:
- Individual payments are the source of tension in communities and do nothing for the well being or long term benefit of Aboriginal people as a whole.⁷⁰
- 5.78 The evidence taken by the Committee first hand in Yirrkala and Angurugu supports the view of the Northern Territory Government. It appeared to Members that tensions do indeed arise when some traditional

63 *Reeves Report*, pp. 361-63.

64 *Reeves Report*, p. 338.

65 CLC, Submissions, p. S1610. See Ngurratjuta/Pmara Ntjarra Aboriginal Corporation, Submissions, p. S577.

66 Jon Altman, CAEPR, Transcripts, Canberra, p. 806.

67 For example, see Ngurratjuta/Pmara Ntjarra Aboriginal Corporation, Submissions, pp. 573-79.

68 The Amangarra Aboriginal Corporation, Gagudju Association, Gumatj Association, Rirringu Association. See *Reeves Report*, p. 338, Appendix N.

69 *Reeves Report*, pp. 334-38.

70 NTG, Submissions, p. S92.

owners appear to receive access to royalty money while others in the same area affected – including other traditional owners – receive none.⁷¹

- 5.79 Dr Levitus of CAEPR argued that ‘the general level of agitation and anxiety that attends the local Aboriginal experience of articulating with large development projects’ could be reduced if ‘the desire to gain access to individual disbursements, especially of cash and motor vehicles’ ceased.⁷² Dr Peterson of the Australian National University agreed, believing there should be a statutory bar on payouts to individuals or ‘at the very least a low per annual statutory cap’.⁷³ Sir Edward Woodward, advised the Committee that:

it had certainly always been my intention... that money should go to community activities... I certainly had not intended that some families would do very well and other families would be left lamenting.⁷⁴

- 5.80 At the very least, the Committee agrees with the Jawoyn Association comment that the limited number of ‘non purpose related payments to individuals are problematic’.⁷⁵ The Committee, accordingly, agrees with the Reeves Report recommendation that payments to individuals without a specific purpose should be prohibited.

Recommendation 20

- 5.81 **The *Aboriginal Land Rights (Northern Territory) Act 1976* (‘the Act’) be amended so that the entities described in sections 35(2)(a) and 35(2)(b) of the Act cannot forward money provided under section 35(2) of the Act to individuals without a specific purpose.**

Appropriating the Assets and Income of Royalty Associations

- 5.82 The Reeves Report, not only argues that MREs are public money, but goes further and recommends that ‘all other income from activities on Aboriginal land should be applied by NTAC or the RLCs’. The ‘other

71 Galarrwuy Yunupingu, Transcripts, Yirrkala, pp. 526-27; Don Blitner, Transcripts, Angurugu, p.544. See also Nabalco Pty Ltd, Transcripts, Darwin, pp. 131-32.

72 Robert Levitus, CAEPR, Submissions, p. S474.

73 Nicholas Peterson, Department of Archaeology and Anthropology, Australian National University, Submissions, p. S571.

74 Sir Edward Woodward, Transcripts, Canberra, p. 557.

75 Jawoyn Association, Submissions, p. S842.

income' includes negotiated royalties, gate money and presumably the income from other commercial activities such as tourism. Later, the Reeves Report expands on this conclusion by commenting that 'the existing assets and liabilities of the Royalty Associations will be taken over and rationalised, if necessary, by NTAC'.⁷⁶

- 5.83 MREs received by the ABR are legally public money as point of law under the *Financial Management and Accountability Act 1998*. However, legal advice provided to ATSIC argues that the passage of money to royalty associations via the land councils, under s. 35 of the Land Rights Act, changes the legal character of the money so that it technically becomes 'private' money.⁷⁷ This change in character has several implications, namely:
- compulsory acquisition of the assets and income streams of royalty associations by the Commonwealth (the RLCs and NTAC) would constitute, arguable *prima facie*, acquisition of property and require just terms compensation under s. 51 (xxxi) of the Constitution;⁷⁸
 - royalty associations cannot be held accountable by the Commonwealth for their expenditure except under their incorporating legislation.⁷⁹
- 5.84 The Committee accepts that these implications constitute significant legal barriers to establishing the financial base for NTAC and the RLCs – not the least being a likely constitutional challenge. At best, the Reeves Report does not acknowledge the constitutional risk involved in appropriating the assets and income streams of the royalty associations.
- 5.85 In any event, the Land Rights Act should not be used to control the assets of private associations. Negotiated payments and gate money arise from purely commercial arrangements and are strictly outside the ambit of the Land Rights Act. The money should be spent as the negotiating parties see fit – conditional of course on the parties meeting the governance, accountability and reporting requirements of their incorporating or trust laws.

76 *Reeves Report*, pp. 368, 609.

77 Aboriginal and Torres Strait Islander Commission (ATSIC) Submissions, pp. S720-30; See also NLC, Submissions, pp. S909-10; Community Aid Abroad, Submissions, p. S312.

78 ATSIC, Submissions, p. S678. There is some debate about the application of s. 51(xxvi) of the Constitution to the Commonwealth's acquisition of property in the Northern Territory – See NTG, Transcripts, Darwin, p. 633.

79 ATSIC, Transcripts, Canberra, p. 175.

Ensuring Greater Accountability for Areas Affected Money

Alternative Models

- 5.86 While not seeking to control the operations or assets of incorporations receiving areas affected money, Committee Members all agree that this money needs to be distributed to those affected by mining activity in an open and accountable way. Members also agreed that there needs to be improvements to the financial and accountability mechanisms in the Land Rights Act for the distribution of areas affected money.
- 5.87 However, Government and Non Government Members could not reach unanimous agreement on the most appropriate way to ensure greater accountability. The Committee considered two alternative models, and details of the two are outlined in the following paragraphs.

Option A: A Grants Scheme

- 5.88 The option favoured by Government Members of the Committee was the establishment of a grants scheme for each area affected by mining as a mechanism to fairly and openly distribute royalties. However, to be effective, any grants scheme needs a clearly articulated aim or goal.
- 5.89 As a basis for discussion, Members supporting this option propose that the purpose or goal of such schemes could be to ameliorate the adverse effects of mining and/or to take advantage of the opportunities offered by that mining. The traditional focus has been on the negative impact of mining activity. However, Government Members see no reason why areas affected money could not also be used to capitalise on the benefits offered by mining activity, such as training, employment and joint venture business opportunities. Importantly, on the basis of equity, under this option, areas affected money would be for the benefit of all Aboriginal people living in the area affected by mining – not just traditional owners.
- 5.90 Under this proposal, eligible applicants for these grants would be restricted to those nominated in ss. 35(2)(a) and 35(2)(b) of the Act, acting either alone or in joint venture with other incorporated entities.
- 5.91 Government Members thought that the grant scheme for each area affected would be most appropriately administered by the ABR Advisory Committee on the proviso that :
- the Advisory Committee would be elected by Aboriginal people under the provisions of section 29(1) of the Land Rights Act;
 - serving members of land councils would be ineligible for membership of the ABR Advisory Committee; and

- the Chair of the ABR Advisory Committee would be elected by and from the Advisory Committee.
- 5.92 Use of the ABR Advisory Committee could provide an equitable process for allocating areas affected money, while still providing local Aboriginal people with control over individual projects. To avoid the ‘Caesar to Caesar’ arrangements that dog the current close association between land councils and royalty associations, Government Members of the Committee believe that ABR Advisory Committee members should not be able to assess grant applications for areas affected by mining if that is where they reside.
- 5.93 The ABR Advisory Committee already considers grant applications for s. 64(4) grants and is thus equipped to consider similar applications for areas affected money. The Advisory Committee currently takes advice from a sub committee, comprising the executive officers from the land councils, the ABR and the ATSIC State Office. Such a practice could continue.
- 5.94 There are already well established processes for the efficient administration and accountability of grants schemes, including for the distribution of s. 64(4) money by the ABR Advisory Committee. A number of agencies, including ATSIC, the Australian National Audit Office and the Department of Finance and Administration could assist the development of a best practice grants scheme.
- 5.95 Given the passage of the Commonwealth Grants Commission Amendment Bill, the Minister for Finance and Administration could also consider directing the Grants Commission to provide advice to the ABR Advisory Committee on the distribution of these grants within each individual area affected.⁸⁰ The Grants Commission would also be able to devise measures to assess the relative disadvantage of Aboriginal people within areas affected by mining.
- 5.96 The Commission is developing expertise in assessing the relative needs of different communities and reporting on the distribution of funding for meeting the needs of indigenous people. Moreover, it is an independent agency with clear accountability mechanisms that is well placed to provide the ABR Advisory Committee with transparent and rigorous advice. These comments are based on the assumption that the Commonwealth Grants Commission Amendment Bill will in fact provide

⁸⁰ See clause 3, Commonwealth Grants Commission Amendment Bill 1999. There is also a potential role for the Northern Territory Grants Commission to provide advice.

the Grants Commission with the necessary powers to undertake this work. If not, further legislative amendments will be required.

- 5.97 The Northern Territory Grants Commission may also be able to provide similar independent advice.

Benefits of this Option

- 5.98 This grants scheme option would have no impact on the total amount of money returned to each area affected by mining, rather it would address who received the money within the area affected and on what it is spent. If adopted, such an option would provide a transparent and equitable method of allocating areas affected money while still providing local Aboriginal people with carriage of the individual projects. While the conventional focus has been on the negative impact of mining activity, this model would also allow areas affected money to be used to capitalise on the benefits offered by mining activity, such as training, employment and joint venture business opportunities. By implication, the option would not allow cash payments to be made to individuals.
- 5.99 Using an elected ABR Advisory Committee to administer the grants schemes would help to ensure that an arms length independent mechanism was established to distribute areas affected funds to those affected. The model would also remove land councils from any role in the distribution of the money.
- 5.100 Government Members of the Committee strongly supported this model. However, the Non Government Members of the Committee argued equally strongly for an alternative approach.

Option B: The Existing Arrangements with Increased Accountability

- 5.101 Non Government Members believe that areas affected money is compensatory and private in nature and that, accordingly, entitlements should not be conditional on the outcome of a grants process . They also argue that a grants scheme affects the autonomy of Aboriginal organisations to make decisions according to traditional structures by forcing them to comply with culturally inappropriate decision making processes. The Members are also concerned that a grants scheme will favour the better resourced organisations at the expense of those without experience in seeking grants.
- 5.102 The Non Government Members consider that MREs are the entitlement of those people who are affected by a mine and this entitlement goes to the association which represents all of those people, rather than being distributed through a grants process determined by an outside body.

- 5.103 Non Government Members are also concerned that the proposed grants process would create uncertainty for economic development and mitigate against long term financial planning. This in turn would diminish Aboriginal self reliance and control.
- 5.104 Non Government Members of the Committee also believe that the proposed role for the Commonwealth Grants Commission is outside its current functions and inappropriate. The Grants Commission's expertise in relation to Aboriginal people relates to horizontal fiscal equalisation in the delivery of service. The Commission's involvement in the process of distributing area affected money implies a process of assessment which does not recognise the compensatory nature of the areas affected money and may lead to, rather than preclude, substitution of private money for government responsibilities.
- 5.105 Non Government Members also consider that there is doubt over the legal and constitutional validity of distributing areas affected money through a grants scheme because:
- the grants scheme contemplates a possible change of beneficiaries and the additional beneficiaries are not limited to Aboriginal people who currently have a right to such money; and
 - the current recipients may have an entitlement to continue to receive areas affected money, which could amount to a property right. Since the recognition of native title by the High Court in 1992 and subsequent High Court cases, the statutory rights under the Land Rights Act have further protection in common law.
- 5.106 In the view of Non Government Members of the Committee, land council members should also not be excluded from membership of the ABR Advisory Committee, provided that normal conflict of interest and probity provisions apply.
- 5.107 Non Government Members supporting Option B believe that the following reforms would be more appropriate to achieve greater accountability:
- the practicable period for lodgement of financial statements be specified in s. 35A of the Land Rights Act as being 6 months after the end of each financial year;
 - s. 27 of the Land Rights Act be amended to specify that, in the event of financial statements not being lodged in this period, land councils are given the power to withhold all or part of the distribution of areas affected money to offending associations;

- s. 35(2) of the Land Rights Act be amended to allow land councils to enter agreements with incorporated associations receiving areas affected money so that payments or part payments could be made conditional on receipt of financial and performance accountability information in addition to audited financial statements; and
- s. 23 or s. 35A of the Land Rights Act be amended to formalise a role for land councils to provide support, financial advice and assistance to associations receiving royalties.

Benefits of this Option

5.108 This option has the advantage of continuing to allow traditional Aboriginal owners to make the decisions about royalty distributions. It also recognises the compensatory nature of the payments and would avoid turning the ABR Advisory Committee into a quasi Northern Territory Aboriginal Council – the institution proposed in the Reeves Report and rejected by Aboriginal people. This proposal would also deal specifically with the issue of accountability and facilitate long term financial planning and management by royalty associations.

The Need for a Project Team

5.109 While Government and Non Government Members of the Committee could not agree on which proposed model was the most appropriate, they all agreed that there needs to be greater accountability for the distribution and expenditure of areas affected money. Members also all agreed that both options should be reviewed by a project team. The Committee believes that the project team process described in recommendation 2 should be used as the mechanism to present the alternative models to Aboriginal people.

Recommendation 21

5.110 **The issue of which of the two alternative models described in paragraphs 5.88 to 5.107 for the distribution of money allocated under section 64(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* to each area affected by mining be considered in the manner described in recommendation 22.**

Recommendation 22

5.111 Recommendations 16, 18 and 21 be considered by a single project team under the processes detailed in recommendation 2.

Membership of this project team should consist of representatives of the Minister for Aboriginal and Torres Strait Islander Affairs and the land councils.

Conclusion

- 5.112 The Committee wishes to remind readers of the limits of what can be achieved with areas affected money. At approximately \$9 million (after MWT) in 1997-98, this money is equivalent, at best, to just over 2% of the annual expenditure by the Territory and Commonwealth governments on programs for Aboriginal people in the Territory. However, the Committee noted from evidence presented in submissions to the inquiry that no one is able to precisely calculate the expenditure on Aboriginal people by the Territory and Commonwealth governments.⁸¹
- 5.113 While areas affected money can ameliorate the effects of mining and help Aboriginal people take advantage of opportunities offered by mining, they are additional resources, and cannot substitute for normal government services. The Committee has been told by some Aboriginal agencies and communities that past governments (Commonwealth, State and Territory) have taken advantage of the investments made by Aboriginal people with private money in community infrastructure projects by correspondingly reducing public funding to those communities. The process is called 'substitution'.
- 5.114 The Committee has not been able to investigate these allegations. However, the perception of substitution damages the relationships between communities and governments. It also inhibits the development of worthwhile partnerships, a sense of mutual obligation and efforts to assist people to move from welfare dependency.

⁸¹ See ABR, *Annual Report 1997-1998*, p. 4; *Reeves Report*, pp. 613-14. For further estimates of the value of the Territory and Commonwealth governments' expenditure on Aboriginal people in the Territory see John Taylor, CAEPR, Submissions, p. S449; Nicolas Peterson, ANU, Submissions, p. S565. See also ATSIC, Submissions, pp. S1569-70.

- 5.115 Every effort should be made to remove this perception and ensure funding decisions are based on sound principles of public policy, equity and need. They should give appropriate recognition to the mutual obligation principle to all Australians and the urgent need to tackle the evil of welfare dependency.

Recommendation 23

- 5.116 **The Minister for Aboriginal and Torres Strait Islander Affairs ('the Minister') establish the extent, if any, to which private expenditure by Aboriginal organisations leads to the substitution of public funding on Aboriginal land.**

The Minister should publicise the findings.

- 5.117 Having examined the distribution of MREs, the report turns to consider their generation in the first instance and the granting of exploration and mining rights under Part IV of the Act.