

Northern Territory Aboriginal Council

Introduction

- 4.1 The previous chapter described the Reeves Report's proposal for a system of Regional Land Councils (RLCs). As discussed in that chapter, the proposal also involves the creation of an umbrella body called the Northern Territory Aboriginal Council (NTAC).
- 4.2 This chapter examines the role and composition of NTAC in more detail and outlines the opposition to NTAC expressed by Aboriginal people throughout the Committee's inquiry.
- 4.3 The Committee notes that the creation NTAC is predicated on an acceptance of RLCs. It makes its recommendations in the light of the opposition to RLCs described in chapter three.

Reeves Report's Proposal

Issues

- 4.4 As discussed in chapter three, the Reeves Report regards the Land Rights Act as having been very successful at granting land to traditional Aboriginal owners and recognising traditional interests in, and relationships with, that land.
- 4.5 The Report argues that the Act has been less successful in providing Aboriginal people with effective control over their land. The system of RLCs is designed to overcome this fault.

- 4.6 The Reeves Report also regards the past operation of the Land Rights Act as marred by political conflict and the lack of a productive partnership between the Northern Territory Government and the two larger land councils.¹ Moving into the future and now that land claims are being finalised, the Report argues that the Land Rights Act should have a new purpose:
- to forge a productive partnership between Aboriginal and non Aboriginal people and government in the Northern Territory; and
 - to assist in the economic and social advancement of Aboriginal people in the Northern Territory.²
- 4.7 To achieve these new objectives and to act as a peak organisation for the RLCs, the Reeves Report suggests the creation of NTAC.

Northern Territory Aboriginal Council

Membership

- 4.8 No peak body exists within the current administrative structure of the four land councils - they are each completely autonomous.
- 4.9 The creation of NTAC would establish a new organisation with its members, according to the Reeves Report, jointly appointed by the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs and the Chief Minister of the Northern Territory. The appointment would be made from a list of nominations by Aboriginal people in the Northern Territory. Over time, 'when a positive partnership has developed with both Governments and their agencies, and when the Council has established its effectiveness in achieving its purposes', the Report suggests that NTAC could be elected entirely by Aboriginal people.³
- 4.10 Members of NTAC would elect their own chairperson and appoint a chief executive officer (CEO). The CEO would be appointed from a list of candidates approved by the relevant Commonwealth and Northern Territory Ministers.⁴

1 John Reeves QC 1998, *Building on Land Rights for the Next Generation: The Review of the Aboriginal Land Rights (Northern Territory) Act 1976*, AGPS, Canberra, pp. 66-71.

2 *Reeves Report*, pp. 71-77.

3 The Report indicates elections would occur reasonably within five years. *Reeves Report*, p. 607.

4 *Reeves Report*, p. 607.

Functions

- 4.11 The major functions of NTAC, in keeping with the new purpose of the Land Rights Act, would be:
- to co-ordinate and assist the implementation of Aboriginal social and community programs of the Northern Territory and Commonwealth Governments and ATSIC;
 - to encourage Aboriginal Territorians, especially the young, to acquire productively useful skills;
 - to assist in the development of productively useful technologies;
 - to assist each RLC to identify likely regional skill shortages, infrastructure needs, economic opportunities and fund-raising prospects;
 - to support the productive development of Aboriginal land, especially for mining, tourism and specialist primary production;
 - to provide seed-funding to NTAC-approved projects proposed by RLCs;
 - to fund community service obligations arising from policy decisions in support of social and economic advancement; and
 - to provide training and support to the staffs of RLCs and other bodies providing services to Aboriginal communities.⁵

Relationship to RLCs

- 4.12 The relationship of NTAC to the RLCs would be one of 'strategic oversight' of their major agreements, budgets, finance and administration, delegations, expenditures, and the appointment of their CEOs.⁶ NTAC would provide at cost financial, technological and human resource support. The Reeves Report states that RLCs are intended to be autonomous bodies so NTAC's strategic supervision should be limited to the following types of decisions made by an RLC:
- any agreement to grant an estate or interest in Aboriginal land within its region, where it involves an exploration or mining interest, or where the estate or interest extends for a period of 10 years or more; and
 - any decision to delegate any of its functions to another body.⁷

5 *Reeves Report*, p. 611.

6 *Reeves Report*, p. 605.

7 *Reeves Report*, p. 608.

- 4.13 NTAC would house a Congress of RLCs, which would act as a representative body although its powers are unclear.
- 4.14 NTAC would also establish an investment trust and act as a bank for RLCs. Consequently, the Reeves Report suggests that any real assets of 'royalty associations' and other Aboriginal organisations should be transferred to NTAC for investment. All RLCs' net income derived from payments such as negotiated royalties, gate receipts, and licence fees would be deposited into their NTAC account. Withdrawals from these accounts would 'only be allowed for expenditure on purposes approved by NTAC, or for investment in NTAC's investment trust'.⁸

Resources

- 4.15 NTAC's main income would derive from the Mining Royalty Equivalents currently paid by the Commonwealth to the Aboriginals Benefit Reserve (ABR). The Reeves Report recommends that the statutory formula for distributing these funds should be abolished and that NTAC should decide how the monies should be spent. This is further discussed in chapter five.
- 4.16 The Report suggests that ATSIC should dedicate funds to NTAC for its role as the new Native Title Representative Body and to fund the completion of outstanding land claims.⁹
- 4.17 In the interests of partnership between Aboriginal people and Government, funding of the Northern Territory and Commonwealth Governments for social and economic advancement programs (including ATSIC programs) should be channelled through NTAC.¹⁰ In this way, NTAC would run all of the economic and social advancement programs for the benefit of Aboriginal people in the Northern Territory.

Dispute resolution

- 4.18 The Reeves Report states that all disputes arising out of the Land Rights Act should be dealt with at first instance by the relevant RLC by means it sees fit. A person aggrieved by the decision of an RLC would have a right of appeal to NTAC, which again may deal with the question by any means it agrees upon. A right of appeal to the Aboriginal Land Commissioner or some other similar body over an NTAC decision should only be possible

8 *Reeves Report*, p. 610.

9 *Reeves Report*, p. 608. The Committee notes the Northern Land Council's (NLC) comment that Northern Territory Aboriginal Council (NTAC) would not initially fulfil the criteria that a Native Title Representative Body under the *Native Title Act 1993* be representative. NLC, Submissions, p. S115.

10 *Reeves Report*, pp. 613-14.

on a matter of law. Finally, an existing Ombudsman should deal with any administrative complaint against an RLC or NTAC.¹¹

Comments on the Reeves Report's Proposal

Opposed by Aboriginal People

4.19 The creation of NTAC, appointed by the Commonwealth Minister and Chief Minister of the Northern Territory and with the powers proposed by the Report, was strongly opposed by Aboriginal people throughout the course of the Committee's inquiry. Their criticism rested on two related issues:

- NTAC would deny Aboriginal people the ability to make their own decisions at a local level about their land; and
- NTAC's proposed control over decisions relating to land use and management would be contrary to Aboriginal customary law.

4.20 Comment was also made regarding the fact that Aboriginal people had not been consulted about the creation of NTAC, and that this flew in the face of concepts of self management.¹²

4.21 Aboriginal people told the Committee that more decisions needed to be made in the local community not less.¹³ NTAC, particularly because its board would be appointed, was seen as further centralising decision making and placing power in the hands of others in Darwin:

The Minister only got the power to say what people there...you have no say...(NTAC) will be robbing all the money and if we are going to go that way we may as well go back in a humpy...¹⁴

'You mob go this way, go work this way, do it this way'. No, we want this place our way, not government way, our way. We running this place. We managing this place.¹⁵

11 *Reeves Report*, p. 213.

12 See for example comments by Aboriginal and Torres Strait Islander Commission (ATSIC), Transcripts, Canberra, p. 83; Combined Aboriginal Nations of Central Australia (CANCA), Submissions, p. S600; and Ngurratjuta Pmara/Ntjarra Aboriginal Corporation, Transcripts, Alice Springs, p. 390.

13 See for example, Larrakia Nation Aboriginal Corporation (Larrakia Nation), Submissions, p. S1564.

14 Laramba community quoted in CANCA, Submissions, p. S601.

15 Peter Gunner from Utopia quoted in CANCA, Submissions, p. S601.

4.22 Others also saw the proposed NTAC as taking them back into the past rather than into the future.¹⁶ This was particularly as NTAC would have control of all the financial aspects of the Land Rights Act. As Robert Lee of the Jawoyn Association put it:

We want something other Australians have – that is, commercial freedom. We certainly do not want to go from a dead hand over welfare to a dead hand over a centrally controlled marketplace... It [NTAC] is a big leap back to the time of native affairs, when our lives were controlled and directed from morning until night.¹⁷

4.23 In their submission, the Jawoyn Association reiterated the disastrous effect that forcibly centralising the profits of Aboriginal enterprises would have on economic development:

it would actively discourage joint ventures with non-Aboriginal partners as prospective partners would not invest in an enterprise whose Aboriginal partner is effectively controlled by an external non-beneficial entity which has complete discretionary control over investment policy in the joint venture.¹⁸

4.24 The Northern Territory Government, while supporting the concept of NTAC in principle, acknowledged that its control over the expenditure of funds by the RLCs would:

be a significant backward step for groups which already have a large degree of autonomy, such as the Tiwi, and would be a less than attractive option for those groups, such as the Jawoyn and the Anmatjere, which are capable of establishing as land councils and conducting their affairs responsibly.¹⁹

4.25 Even if the members of NTAC were elected not appointed, the Committee was told its control over decisions relating to land management would be contrary to Aboriginal customary law. As Bill Risk from Larrakia Nation Aboriginal Corporation described it, those with the right to have a say over the country are left out of the decision making process: 'There are other people making decisions over their land. It is a model based on the European style. It is not an Aboriginal model'.²⁰

16 See comments by the Tiwi Land Council (TLC), Transcripts, Nguuu, p. 125.

17 Jawoyn Association, Transcripts, Darwin, p. 70.

18 Jawoyn Association, Submissions, p. S840.

19 Northern Territory Government (NTG), Submissions, p. S1533-34.

20 Larrakia Nation, Transcripts, Darwin, p. 762. See also comments by Graeme Smith, Transcripts, Tennant Creek, p. 314.

'Speculative' Reasoning for a Radical Shift

4.26 Apart from Aboriginal peoples' concerns about NTAC, the Committee was told that the economic assumptions underlying the resourcing of NTAC are highly dependent on outside factors. The Reeves Report's proposal that the Northern Territory and Commonwealth Governments channel all their funding for Aboriginal social and economic programs (including ATSIC programs) in the Northern Territory to NTAC would be a radical change.

4.27 As Dr Martin from CAEPR submitted to the Committee, the Reeves Report's resourcing of NTAC is highly dependent upon a 'radical reshaping' of both Northern Territory and Commonwealth (ATSIC) institutional arrangements.²¹ Professor Altman agreed, arguing that the Reeves Report's NTAC model is 'highly speculative':

Reeves assumes that ultimately the Commonwealth and NT Governments will contribute substantial program resources, possibly running to hundreds of millions of dollars per annum, to NTAC. The only justification for such a transfer is that it will be important for the 'partnership' that is the proposed centrepiece of brand new institutional arrangements...²²

4.28 The Northern Territory Government, responded to the suggestion that it transfer its funds for Aboriginal economic and social advancement to NTAC in 'partnership' in this way:

There are a great many assumptions behind this ideal and while it is not being dismissed out of hand, it is an issue that could only be dealt with on a case-by-case over time.²³

Legal Issues

4.29 The method of dispute resolution proposed by the Reeves Report for the RLC and NTAC system may have some legal implications that were not acknowledged (see para 4.18 above). ATSIC suggested to the Committee that the lack of effective legal redress 'is an invitation to instability and strife'.²⁴ The Central Land Council (CLC) and Northern Land Council (NLC) argued that the recommendation, in particular, to limit somebody

21 David Martin, Centre for Aboriginal Economic Policy Research (CAEPR), Submissions, p. S460. The Reeves Report estimates NTAC's funding to be in the range of 448 to 738 million. Of this, only 35 million would come from the Aboriginals Benefit Reserve (ABR).

22 Jon Altman (CAEPR), Submissions, p. S438. See also NLC, Submissions, p. S903.

23 NTG, Submissions, p. S1534.

24 ATSIC, Submissions, p. S306. See also Ernst Willheim's discussion of the validity of the Reeves Report dispute resolution scheme. ATSIC, Submissions, pp. S734-41.

aggrieved by an NTAC decision to legal redress only on questions of law was to deny them natural justice.²⁵

An Alternative Model

4.30 While serious problems with the Reeves Report's NTAC model were highlighted to the Committee during the inquiry, the concept of an umbrella or peak body was not opposed. As outlined above, the strong opposition to NTAC was mainly due to its centralised powers over decision making and unrepresentative composition. Some Aboriginal groups suggested an alternative model of a confederation of land councils.

4.31 This body could act as a strong political voice for the interests of Aboriginal people represented by land councils and could perhaps provide other resource support. The Jawoyn Association explained the concept in this way:

The Jawoyn sees the independent land council and other land councils in the Northern Territory as equal partners and members of a powerful and representative confederation of land councils. Such a body would represent the views and aspirations and common concerns of its constituent members, not seek to control them and dictate to them.²⁶

4.32 The Anindilyakwa Land Council also indicated to the Committee that they would be in favour of a body elected by the constituent regional land councils.²⁷

The Committee's Recommendations

Core Principles

4.33 The Committee believes that Aboriginal people should be able to choose how they wish to represent their interests in relation to land ownership and management under the Land Rights Act. As described in chapter three, Aboriginal people overwhelmingly rejected the RLC system. They have also rejected NTAC as proposed by the Reeves Report.

4.34 The Committee believes, along with Aboriginal people, that for self management to be effective any peak body of land councils must be

25 NLC, Submissions, p. S958. CLC, Submissions, p. S1618.

26 Jawoyn Association, Submissions, p. S838.

27 Anindilyakwa Land Council (ALC), Transcripts, Angurugu, p. 537.

representative. Aboriginal people should be encouraged to develop management and decision making at community level. The management of land should not be confused with the important responsibility of addressing social and economic challenges. Land management can assist in the process but should remain a 'stand alone', specialised responsibility.

- 4.35 While the Committee sympathises with the Reeves Report's desire to simplify the delivery of services to Aboriginal communities into one organisation, it acknowledges that the Land Rights Act is not an appropriate mechanism for social and economic advancement. The Committee hopes however that the recent initiative of the Commonwealth Government to enable the Commonwealth Grants Commission to investigate the issue of funding for services to Aboriginal people will improve the current inefficiencies in the Northern Territory.²⁸
- 4.36 Improved targeting and strategic management of tax payer provided funds will help foster local and regional partnerships between communities and government agencies, specifically tasked to tackle social issues such as health, education, housing, employment, training and education. There should be no reason why land councils and regional committees cannot participate at local level in specific projects, in partnership with other 'bottom up' service delivery organisations.
- 4.37 Obviously the management of Aboriginal land should be based on agreed strategies to ensure worthwhile outcomes. One of those strategies should be to manage the land in a way that will assist Aboriginal people to overcome disadvantages, remove their dependency on welfare, and complement the work of others in that regard.

Recommendation 11

- 4.38 **The recommendation of the Reeves Report to establish the Northern Territory Aboriginal Council (NTAC) as an authority under the *Aboriginal Land Rights (Northern Territory) Act 1976* be rejected.**
- 4.39 As suggested by some Aboriginal groups, the Committee believes that there are advantages to establishing a peak body with the consent of Aboriginal people and made up of representatives of the land councils. Such a body could meet annually to discuss common issues and means of sharing resources. This may be particularly important if more land councils were to be established over time under the Land Rights Act.

28 The Commonwealth Grants Commission Amendment Bill 1999 is discussed in chapter one.

- 4.40 Of course, Parliament's permission is not needed for this to occur. Aboriginal people will make their own decisions and this should be encouraged. If land managers want to arrange a conference and speak with 'one voice' on certain issues, the Committee has no doubt that will happen.
- 4.41 The Committee would like to see Aboriginal people being encouraged to make their own arrangements without, as at present, the undue emphasis on such initiatives only being possible if the Act provides for it to happen.

Recommendation 12

- 4.42 Land councils periodically consider the viability and usefulness of a peak Congress of Land Councils made up of representatives from each land council.**

Conclusion

- 4.43 Both this chapter and the previous chapter have considered in detail the Reeves Report's RLC and NTAC system for achieving greater self management, and the economic and social advancement of Aboriginal people. While the Committee agrees that the Report's stated aims are justified and in need of addressing, its means of achieving those objectives have been rejected by Aboriginal and non Aboriginal people. The Committee has made its recommendations which will unlock the future by delivering greater self management to Aboriginal people in the Northern Territory.
- 4.44 The next chapter outlines the Reeves Report's proposals for the distribution of Mining Royalty Equivalents from the ABR.