



COMMONWEALTH OF AUSTRALIA

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SENATE

FINANCE AND PUBLIC ADMINISTRATION
LEGISLATION COMMITTEE

**Reference: Aboriginal Land Rights (Northern Territory) Amendment
Bill (No. 2) 1999**

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SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Wednesday, 9 June 1999

Members: Senator Gibson (*Chair*), Senator Murray (*Deputy Chair*), Senators Brownhill, Conroy, Ray and Watson

Substitute members: Senators Bolkus and Crossin

Participating members: Senators Abetz, Brown, Colston, Coonan, Faulkner, Harradine, Lundy and Margetts

Senators in attendance: Senators Bolkus, Brownhill, Crossin, Gibson and Watson

Terms of reference for the inquiry:

Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 2) 1999

Senator Herron, Minister for Aboriginal and Torres Strait Islander Affairs, in charge of the bill

WITNESSES

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Committee met at 9.08 a.m.

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TILMOUTH, Mr Leigh Bruce, Director, Central Land Council

CHAIR—I declare open this public hearing of the Senate Finance and Public Administration Committee. On 21 April of this year the Senate referred to this committee for examination and report by 12 August 1999 the Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 2) 1999. The committee has agreed to conduct this hearing through an examination of the individual clauses, and I shall call on them in the order in which they appear in the legislation, after all the witnesses have had the opportunity to make a brief general opening statement if they wish to do so. The committee has received and published five submissions on the legislation, and they are available from the secretariat. I welcome Senator Herron, Minister for Aboriginal and Torres Strait Islander Affairs, the officers accompanying him, Justice Olney and witnesses from the Northern and Central Land Councils, the Northern Territory Government and the Northern Territory Cattlemen's Association. As the minister in charge of the bill, Senator Herron, you might like to proceed with your opening statement.

Senator Herron—Thank you. I welcome the review by the committee and the opportunity to clarify the purpose of these amendments. Suffice it to say, these amendments are not contentious and deserve unanimous support in the parliament. The beginning of this legislation was back in 1987 when legislation was passed to prevent the land commissioner hearing claims over stock routes and stock reserves. In December 1991, the previous government mistakenly included the Elliott stockyards in the grant of land to the Gurungu Land Trust. These amendments rectify this situation.

The amendments also give effect to the parliament's intention that certain traditional land claims should be able to be disposed of in an efficient and fair manner. They will contribute to the workability and certainty of the Aboriginal Land Rights (Northern Territory) Act 1976 for all affected parties, including Aboriginal people, in the Northern Territory. The amendments do not prejudice Aboriginal interests. They are entirely consistent with the amendments made to the land rights act by the parliament in 1987 when the Labor Party was in office.

The arguments for the Commonwealth invalidating the grant of the Elliott stockyards are compelling. It was a mistake brought about by a clerical error. The Northern Land Council,

the Northern Territory government and the Cattlemen's Association had reached agreement that the stockyards were to be excluded from the grant. The second reading speech, when the relevant bill was introduced in 1989, specifically indicated that the stockyards were to be excluded from the grant. The then minister, Mr Hand, said:

In accordance with concerns raised by the Northern Territory, an area used for cattle yards and a dip at Elliott has been excluded from the area to be scheduled.

The previous minister, my predecessor, Mr Tickner, wrote on the subject to various parties in 1993 and 1994. In his letter of 13 April 1993 to the chairman of the Northern Land Council, he wrote:

I would like to inform the traditional owners that it was the will of the parliament that the cattle yards and dip not be granted . . . I believe the traditional owners should surrender the land in question.

In a subsequent letter to the chairman, Mr Tickner wrote:

As long as the matter remains unresolved, it provides a basis for critics of the land council to argue that the council and the traditional owners are now acting in bad faith, given the earlier consent for the yards to be excised from the grants.

In that same letter dated 2 December 1993, the then minister said:

If necessary though, the Commonwealth will need to examine other options for rectifying this error if my preferred approach of negotiation does not succeed.

Although not a large land area is involved, it comprises cattle yards and a cattle dip leased to the Northern Territory Cattlemen's Association. The Gurungu community has understandable concerns about the environmental health implications of the proximity of the cattle yards. The Northern Territory government and the Northern Territory Cattlemen's Association have acted to address any environmental hazards to the community, and the Chief Minister has expressed his willingness to do more, even though the Northern Territory does not have the appropriate legal power to deal with the land. In a letter to me last week he said:

The Northern Territory remains committed to the resolution of these issues.

ATSIC has also funded the construction of a buffer zone. Earlier in the negotiation process, agreement was reached that the land should be surrendered. It is unfortunate that this agreement was not sustained. Further attempts to return the Elliott stockyards by agreement have all failed. I note that in its 21 May 1999 submission to the Senate, the Northern Territory Cattlemen's Association says:

The facility is of importance not only to the Territory cattle industry, but also to Australia as a whole, given the importance of live cattle exports to South East Asia.

While the mistake remains unrectified, the integrity of the land grant process in the Northern Territory remains in question and, as Mr Tickner noted, the land council and the traditional owners are vulnerable to criticism that they have not fulfilled their moral obligation.

The other amendments in this bill are designed to ensure that the parliament's intentions are fulfilled with respect to the disposal of certain land claims. Claims in the following three categories will be disposed of: first, where the claim has been made after 5 June 1997, the sunset clause for land claims proposed by the previous government. The legislation as it is currently drafted does not preclude the lodging of new claims, although any such claim could not be dealt with by the land commissioner. There have not been any claims since the sunset clause came into effect, but the risk remains that such claims could be lodged, thereby affecting the ability of the Northern Territory to deal with the land. A simple amendment now to clarify the legislation on this point may save costly and pointless litigation down the track and will give effect to the original intent behind the legislation.

Second, where the claim is over stock routes or stock reserves and the land commissioner had not commenced a hearing by 1 March 1990. I know that the previous government held the view that stock routes and reserves should be removed from the land claim process. In introducing an amendment bill in 1986 the then minister, Mr Holding, said:

. . . it has been the Government's position that it would be preferable, as a general rule, that claims to stock routes and reserves not proceed . . .

He went on to say:

. . . the Commonwealth will proceed, in this Bill, with an amendment which will prevent a land commissioner from hearing claims to stock routes and reserves, unless a hearing has already commenced . . .

The then government was concerned, as we are, that Aboriginal people living on pastoral leases, and ineligible to make a claim under the land rights act, should have security in relation to community living areas. There has been a protracted history of negotiations on this matter. In 1989 the Commonwealth and the Northern Territory entered into a memorandum of agreement designed both to meet the Territory's concern about stock routes and to guarantee the interests of Aboriginal people living on pastoral leases. The Northern Territory has drafted legislation that meets all the requirements of the memorandum of agreement. The Commonwealth, for its part, proclaimed that the land commissioner could not hear claims to stock routes and reserves lodged after 1 March 1990. However, the legislation failed to finally dispose of claims already on the books and this creates uncertainty for the Territory in its ability to deal with such land.

There is a clear legislative intention that such claims be finally disposed of, and it is unfortunate that the act currently does not make this clear. The amendment in the bill before us will clarify this situation once and for all. I acknowledge that the process of getting the balance between the rights of Aboriginal people living on pastoral leases and those of pastoralists and the Territory government has been a long and painful one; however, the resolution is within reach. The Northern Territory government has fulfilled its part of the bargain. It only awaits this amendment by the Commonwealth before enacting its legislation. It would be unconscionable if the Commonwealth were forced to renege at this stage because we could not get this provision through the parliament.

Third, the other amendment proposed is where the land commissioner is unable to make a finding that there are Aboriginal people who are the traditional Aboriginal owners of land. Currently, there is an uncertainty about how land covered by such claims can be dealt with. It is important that such claims can be finally disposed of by a finding that a traditional owner cannot be identified.

These amendments all address the problem created by claims remaining on the land claim register despite the fact that an Aboriginal land commissioner cannot hear them. It was never intended that they remain alive in this way; rather, it comes about through vagueness in the drafting. The original intention of the legislation has not been fully realised. The consequence of this is frustration for all parties to the land claim process. For Aboriginal people, it leaves claims afoot which cannot be determined, while for the Northern Territory, it means that, because of section 67A, the land subject to the claim is not available to be used for another purpose.

That this problem has arisen is, in the government's view, a drafting omission in the original amendments brought about by the previous government not having due regard to the consequences of section 67A of the land rights act. When these amendments are enacted, the

Northern Territory government will pass amendments to its community living area legislation to enhance the processes for Aboriginal people. These amendments are strongly supported by the Aboriginal Land Commissioner. I note that Justice Olney in his submission of 11 May to this committee stated, 'I fully endorse the proposed amendments to 67A.'

The Senate has recently amended the Aboriginal Land Rights (Northern Territory) Act 1976 to bring the retirement age for Aboriginal land commissioners into line with Federal Court judges, and to schedule grants of land. Such amendments are necessary to provide workability and certainty and were passed unanimously. These amendments serve the same purpose and I commend them to this committee. I am happy to circulate that statement to members of the committee.

CHAIR—Thank you very much, Minister. As I said earlier, I will ask for a general statement from each of the groups in turn and, then, we will move on to the particular clauses. Justice Olney, do you wish to make an opening statement?

Justice Olney—I do not wish to add anything to the written statement that I sent in, except that I must say I have no comment to make about the earlier stockyards issue. That is completely beyond my particular function, and I have no knowledge of the circumstances. The minister has referred to my indication of support for the amendments on which I commented. I would just like to say at the outset that the basis of my support is that I have assumed that the sunset clause is a permanent fixture in the act. If that is not so—and the suggestion has been made that, perhaps, it ought not be—then of course one might have to revisit the views that are expressed. But, on the basis that the sunset clause is a permanent fixture in the act, it would seem that, as a matter of administrative convenience in the administration of the act, these amendments seem to follow logically on the intention of the original amendments.

CHAIR—Thank you very much. The next group on my list is the Central Land Council. Mr Tilmouth, do you want to make an opening statement?

Mr Tilmouth—Mr Chair, our submission is already on the table and we do not wish to add anything further. At this stage we would rather wait until the substance is dealt with.

CHAIR—Thank you very much. The Northern Land Council: Mr Roberts, do you want to add anything?

Mr Roberts—Similarly to the CLC, Mr Chair, our submission spells out our case and we are happy to deal with the issues as they arise.

CHAIR—Thank you. The Cattlemen's Association: Mr Lee, do you want to make a statement?

Mr Lee—Yes, Mr Chair. Apart from what we have said in our submission, I would just like to say that it is a great shame that originally, I think in 1994 or 1995, all the parties were in agreement but the problem with the Elliott stockyards could not be solved due to some sort of legal advice that the then minister for Aboriginal affairs was given which meant that he declined to sign the document and the whole thing fell in a hole. It could have been fixed then.

CHAIR—Mr Jones from the Northern Territory government.

Mr Jones—I will not go into detail over and above the written submission, except to support the comments that have been made here by Senator Herron. The Northern Territory government is of the view that the amendments proposed in this bill are of a workable nature, ought not to be considered controversial and are strongly supported. This bill serves no other purpose than to correct errors of the past. The Commonwealth has acknowledged that stock

routes and reserves were never intended for claim and that the granting of the Elliott stockyards eight years ago was a mistake.

The Territory-Commonwealth memorandum of agreement is now a decade old and has only been partially implemented. Similarly, other problems relating to the final disposal of land claims have been apparent for some time but no solution was provided until such time as this bill was originally drafted. The prompt passage of this bill is essential and the committee is urged to consider the history of events underpinning these overdue amendments, as well as the current substantial impediments to sound land administration in the Northern Territory.

CHAIR—Thank you, Mr Jones. We now move on to the order of business. We are going to go through the bill clause by clause. The first clause to deal with is clause 3, the provision relating to Elliott stockyards. Would anybody like to say something about the stockyards?

Mr Levy—It is probably fair to say that the present situation is a matter of concern to all parties who are present before the Senate committee today. However, we do not agree with a number of matters which have been raised in written submissions and also orally by some parties.

The Cattlemen's Association expresses concern that the matter has fallen into a hole. We understand that concern. However, we do not believe that the reasons it has fallen into a hole can be described as simply a matter of legal advice being provided by the Commonwealth Attorney-General's Department. We think the matters are more complex than that. The situation with this matter is that the agreement was reached between the various parties back in 1995. As a result of that an agreement was drafted. Legal advice was received that said two things. Firstly, it said that the agreement left the Commonwealth open to potential compensation claims. Secondly, the legal advice said that the agreement did not reflect the agreed position whereby the traditional owners would be entitled to certain benefits.

As a result of that, the Northern Land Council had no choice but to follow that advice. If the Northern Land Council had not followed that advice, it would have been open to an action in negligence, or for not properly following its instructions, or some matter of that form. Accordingly, in April 1996, having advised the current minister of the situation, the NLC drafted a new agreement which was intended, firstly, to reflect the agreement that had been reached in 1995; secondly, to reflect the legal advice which had been received from the Commonwealth Attorney-General's Department; and, thirdly, to provide a mechanism which would promptly resolve the matter. That agreement was sent to the Northern Territory government in April 1996. It has never been acknowledged; no response has ever been received. The first time we have received any response directly from the Northern Territory was that provided by Mr Jones today.

However, we are aware that the Northern Territory did approach the Commonwealth minister and there have no doubt been various discussions with the Commonwealth minister attempting to resolve matters and concerns being expressed. He certainly has contacted us and made various indications about certain matters. We have endeavoured to deal with those. But it needs to be understood that the agreement which was reached in 1995 was not that the land be surrendered in return for reliance in good faith that various health, environmental and ceremonial concerns would be reached. The agreement that was reached was that the land would be surrendered in return for those health, environmental and ceremonial outcomes having legal certainty.

The agreement which was drafted by the Northern Land Council in April 1996 does just that. It says that, where there are concerns—for example, about carcasses being buried

properly, gates being closed, tanks being closed so that children cannot get in there and fall into them, and about dust, noxious odours and so forth with the wind blowing into a nearby Aboriginal community—there should be a method whereby that adjoining community can ensure that those things are enforced. What the Northern Territory appears to want—and we are not really sure about this because they have not responded to us—is a situation where, to the extent that there are deficiencies regarding those matters, the traditional owners have to go to the Northern Territory and say, ‘We do not think it is all being done properly. Can you please make a decision to act on our behalf or not, depending on what decision you make?’

What the traditional owners want, as an adjoining landowner to the stockyards, is to be able, if necessary, to enforce those matters themselves. There is nothing unusual about that, leaving aside the issue of two errors. We would say that the first error in this matter was the fact that the stockyards were built in that location. They were built and, of course, the Cattlemen’s Association is concerned about what it says is a later error about how the land was granted. But, from the traditional owners’ point of view—and we would say from anyone’s point of view—if the stockyards were located close to a residential area, people would expect action. That would apply to anybody. None of us would want to live next door to something of that nature. The original position of the traditional owners was to push for the stockyards to be relocated.

There are obviously all sorts of issues which would have arisen if that course had been pushed. But it was not, due to the efforts of various people involved—including the Northern Land Council advisers who were involved at the time—and some other solution was found. We believe the solution has been found. We simply do not understand what is wrong with the agreement we drafted in April 1996. It simply ensures that the health, environmental and ceremonial matters which had been agreed to may be enforced by traditional owners directly. I think I have mentioned some of the health ones—carcasses being buried, noxious odours, dust and that sort of thing. Senator Herron mentioned the screen of trees which ATSIC, in positive efforts to resolve the matter, have agreed to fund. I should describe the ceremonial matters. It is simply that ceremonies are held during December and January. The position of the traditional owners in respect of that, as agreed in 1995, was that the stockyards would not be used if ceremonies were occurring at that time. We do not anticipate that ceremonies would always be occurring at that time but, nevertheless, that was the position there.

There are some other matters, and perhaps the Cattlemen’s Association would have more knowledge in respect of these. There are issues as to exactly what the role of the stockyards is currently. The stockyards used to be located at the boundary of the tick line and were certainly very important in ensuring that the proper dipping of cattle and disease eradication occurred. We understand the tick line has moved further to the north now and the stockyards are not used as much as they once were. Of course, it may be that that situation will change. To what extent that is entirely relevant today I am not sure, but that is an issue which may need to flow into any further discussions, which we hope will occur, with both the Territory and the Cattlemen’s Association.

I emphasise that we have no doubt that this situation can be resolved satisfactorily for all parties. We consider that the approach which is being taken—we understand for the first time ever—to compulsorily acquire Aboriginal land is using a sledgehammer to achieve a result which is entirely unnecessary. There is no reason to compulsorily acquire Aboriginal land when there is an alternative process which will achieve a satisfactory and agreed result, and that should be what should be aimed for. Secondly, we consider—and our legal advice certainly is—that an acquisition of Aboriginal land, even with the attempt to make it

retrospective, will trigger the just terms compensation provisions and it will be necessary that the Commonwealth provide compensation.

The compensation which the Commonwealth will have to provide will undoubtedly exceed the cost of putting in a screen of trees and the cost of enabling the health concerns and so forth to be dealt with in the manner which we describe. We are at a complete loss as to why parliament would even consider such a course when a clear and tenable option is available as an alternative. I am not sure if you have anything to add to that, John.

Mr Roberts—No.

Mr Levy—That is all I have to say for the moment.

CHAIR—Thank you.

Senator CROSSIN—You talk about an alternative process. For the record, could you identify for us what you believe that is?

Mr Levy—The alternative process is that the agreement of 1995 is implemented, namely, that despite the traditional owners' original wish to retain the land and perhaps have the stockyards moved elsewhere, in fact that does not happen, the land is surrendered, but an agreement is signed between the Northern Territory and the Northern Land Council on behalf of the traditional owners pursuant to the land rights act whereby there are covenants attached to the adjoining land—namely, the stockyards land—such that whoever is operating the stockyards is required to ensure that certain health and safety concerns and ceremonial matters are part of how they are operated, and that, if that does not occur, then there is a legal right for the Gurungu Land Trust, being the adjoining landowner to the stockyards, to take action if necessary. We do not expect that would happen because it was contemplated in 1995 and in the agreement which the NLC drafted that there be a liaison committee between the stockyards and the Aboriginal community, so we do not think it would come to that. That is the alternative process.

Senator CROSSIN—It is my understanding that the NLC redrafted that agreement and put this alternative process position to the Northern Territory government back in 1996?

Mr Levy—In April 1996.

Senator CROSSIN—You have yet to have a response to that?

Mr Levy—We not only have not had a response but have not even had an acknowledgment letter saying, 'We acknowledge your draft agreement. We will respond in due course.' We have not had anything. We simply do not understand that.

CHAIR—Mr Jones, do you want to respond?

Mr Jones—We have not heard some of the earlier facts—there is a little bit of history missing. First of all, it is going to be difficult if we engage in some revision of history, but you have to remember what the situation was in the 1960s, and the location of Elliott, and that the sorts of activities in those days were very different from what they are today, particularly in terms of the growth of the Northern Territory and the advent of land rights.

Senator Herron referred earlier to the 1989 memorandum of agreement. Part of that agreement was an acknowledgment by the Northern Territory government that the Commonwealth would be able to schedule a number of areas of land which comprised stock routes and stock reserves as Aboriginal land. The Commonwealth was required to merely consult with the Northern Territory government over the selection of those areas. This saga actually originated out of this process—and I should emphasise that this process at that point

was managed totally by the Commonwealth. There was an agreement then with the Northern Land Council that the public trucking yards and cattle dip, as they were known, would not be included in the grant. Accordingly, the Commonwealth drafted the amendments to schedule 1 of the act, granting the surrounding area as Aboriginal land but excluding the yards. Successive governments and ministers, in writing, have always acknowledged the fact that an administrative error was made.

When the land council makes propositions referring to the acquisition of Aboriginal land, the point is that it was never meant to be Aboriginal land in the first instance. Mr Levy did not mention it in this fashion in his presentation here, but I note that the Northern Land Council's written submission refers to the agreement that was drafted in 1995 as having been drafted by the Northern Territory government. I would emphasise that in fact it was drafted in consultation with the Northern Land Council. From memory, we were up to about version 7 or 9. The agreement was going back and forth. I was certainly the lead officer for that but I am not a lawyer so my versions were going back to our lawyers. The same process was happening at the Northern Land Council where the lead officer was not a lawyer but obviously this agreement was being done with their own in-house legal advice. I need to emphasise too that that agreement was signed under seal by the Northern Land Council.

The agreement was a three-way agreement: it was between the Northern Land Council, the Northern Territory government and the Commonwealth government. The Commonwealth government and the then minister, Mr Tickner, refused to sign the agreement and raised a number of questions. There have been references to the Commonwealth Attorney-General's legal advice on the agreement. We have never seen that legal advice. One thing that Mr Tickner did ask for was an exemption on stamp duty. I think they calculated the stamp duty cost was going to be \$5, and I was happy to pay for it out of petty cash.

Mr Levy now refers to the 1996 agreement. In April 1996, which was immediately following the election of the coalition government and the appointment of Senator Herron as Minister for Aboriginal and Torres Strait Islander Affairs, the Elliott stockyards saga was not a dramatic issue, but it was an issue during the election campaign. In terms of the Northern Land Council's version of the agreement, there was a copy delivered. To the extent that there was any consultation with the Northern Territory government about drafting, it was only to the extent that it came off the original agreement. The Territory government's greatest objection to that draft agreement was its proposal for restrictive covenants, that with all of the issues that were identified in the environmental evaluation, which was an agreed process between the NT government and the Northern Land Council, the recommendations for such things as the burial of carcasses would become restrictive covenants on any subsequent title.

At the risk of offending Mr Lee from the Cattlemen's Association, I should make a point here. There has always been the assumption that the Northern Territory government intended to hand the land to the Northern Territory Cattlemen's Association. Our position has been that this is an issue between governments. It was crown land that was incorrectly granted as Aboriginal land. The resolution of the issue is between the Northern Territory and the Commonwealth governments. The future disposition of that land should not be taken into account in trying to define any of these conditions.

To finish off, concerning this revamped agreement containing the proposal for a whole raft of restrictive covenants, the government—and I apologise to Mr Levy that he never received an acknowledgment—took the view that the agreement was unacceptable. That agreement was forwarded to Senator Herron, who was then a very new minister for Aboriginal affairs. We reminded him of the entire history and the position taken by the Northern Territory government

that it was no longer prepared to negotiate over this and that it was an error of the Commonwealth and it was up to the Commonwealth to rectify it.

CHAIR—Thank you, Mr Jones.

Senator BOLKUS—Were you expecting Senator Herron to reply to the NLC?

Mr Jones—Not necessarily. We expected Senator Herron and the Commonwealth government to fix the issue. Whether that involved them further talking to the Northern Land Council was going to be up to the Commonwealth.

Senator BOLKUS—But you felt no obligation to respond to the NLC?

Mr Jones—There were some decisions taken higher than me. All of the relevant briefing material was provided to the government and the government took decisions after that.

CHAIR—Any further comment on the matter?

Senator CROSSIN—Mr Jones, you are here representing the Northern Territory government and I would just like to further explore why the Northern Territory government did not even inform the NLC that they had passed information on to the Commonwealth. If you were not going to comment on the substantive nature of the draft agreement and if you took the position that it was up to the Commonwealth to solve the problem, why was that not conveyed to the NLC?

CHAIR—Senator, we are now getting into a policy matter and the officer cannot be expected to comment on that. We are really here to examine the legislation which is before us.

Senator BOLKUS—You cannot do one without the other, Mr Chairman.

Senator CROSSIN—We do have representatives of the Northern Territory government here who I am expecting would be able to answer questions that are put to them.

Mr Jones—Senator, I am prepared to answer the question to the extent that I can.

CHAIR—Okay.

Mr Jones—An agreement was despatched. The agreement was examined. A briefing was provided to the government on the nature of the agreement. A decision was taken that the Northern Territory government was no longer prepared to negotiate directly with the NLC.

The issue had started as a matter between governments and that was always the position of the Northern Territory government, that it was up to the Commonwealth to rectify its administrative error. It was only after a couple of years that ultimately there was an agreement—using that word loosely—that we would attempt to negotiate a position on the ground. Having been through all of that process, the government then decided that it was reverting to its original position, that it was for the Commonwealth to rectify an administrative error.

Senator CROSSIN—If the Commonwealth came back to you and said that they would like to have a look at an alternative process and renegotiate another agreement rather than compulsorily acquire this land, what would be your view?

Mr Jones—My advice would be that there would have to be compelling reasons as to why we were being pushed back into a negotiated agreement.

Senator CROSSIN—You do not see an alternative process rather than compulsorily acquiring the land and going down the path of a claim of compensation?

Mr Jones—I acknowledge that in a strict legal sense it can be seen as the compulsory acquisition of land. I prefer to use the words ‘the invalidation of an erroneous land grant’.

CHAIR—Do any other witnesses want to make a comment?

Mr Levy—Mr Chairman, I would like to add one fact for your information. I think I am right in this, and I will be told if I am wrong. Our understanding is that the cattle yards remain in use, as they always have been. There certainly has been no attempt by the Gurungu Land Trust, the Northern Land Council and the traditional owners to prevent that. This is not a situation where the stockyards have been out of use for some years.

Mr Lee—I can confirm that that is so. Also, in response to the previous query by Mr Levy, the yards are still required for the purpose of clearing ‘ticky’ cattle that are moving from the north. There has not been quite so much activity in that regard over the last several years. That is more to do with the fact that cattle have been moving from south to north, rather than the other way around, and it is highly probable that that situation will reverse at some time in the future. The other situation for which the yards will be required, we think, in the future is that we have opened up some new markets in Asia, and they have particular health requirements. Some yards will be needed in the vicinity of Elliott to spell cattle so that they can be shifted straight to the wharf.

CHAIR—I guess you are just emphasising that the error of the past needs fixing.

Senator BOLKUS—You say that there has been some level of activity. Can we get any idea as to how many heads of cattle a year have been going through the stockyards over the last few years?

Mr Lee—I do not have the figures with me but, off the top of my head, I think that last year it was about 4,000 a head.

Senator BOLKUS—You say that you anticipate that there might be a reversal of this declining trend, that there might be a need for stockyards in the vicinity of Elliott. Can you be any more definite than that? Who, for instance, has these Asian markets. Have they indicated an interest in Elliott? Have they indicated an interest in stockyards somewhere close to there? Are they established as stockyards?

Mr Lee—It has nothing to do with Elliott itself; it is more to do with disease control. There is a line which runs across somewhere near Elliott, and cattle, particularly in the wet season, would have to be spelled south of that line prior to going to the ship.

Senator BOLKUS—You said that there would be interest in the stockyard—either Elliott or somewhere near there. Has it been decided that Elliott would be the most appropriate spot or are people looking at alternatives?

Mr Lee—To my knowledge, nobody is looking at alternatives at the moment. But the practicalities of running a yard like that require it to be built somewhere near where people are residing to actually do the work and look after it. If you were to build the yard maybe 50 or 100 kilometres from Elliott, people would have to travel that distance every time something was happening there.

Senator BOLKUS—If you were to build the yard now, for instance, for future markets, would you still use the Elliott location or would another location be more convenient?

Mr Lee—From the point of view of the Asian markets, the most appropriate location is as close to this imaginary line as possible in practical terms, and Elliott is the most appropriate place.

Mr Tilmouth—I might help Bob Lee a bit. He just said that 4,000 head were yarded there last year. That is out of probably 250,000 head, so 4,000 is not a great number. If you are looking at new Asian markets, the majority of cattle do come from Queensland anyway to the Northern Territory. They are spelled mostly at Cloncurry. The Western Australian stuff goes into Broome and Wyndham, and most of it goes through to Darwin. They also have a spelling place out at Batchelor. So most of the cattle going north into Asia is probably the biggest movement, and those coming north are not affected by the tick line. Those coming south are affected by the tick line; that is the reverse. So the dips of the tick yards at Elliott would be in minimal use at any one time. If you are taking cattle into Asia, it is a different argument. And you have spelling paddocks throughout Darwin and elsewhere that the live export people use. So the use of Elliott would be minimal.

Senator BOLKUS—So you are talking about 1½ per cent of cattle going through Elliott. Do you have any information as to why they have chosen Elliott rather than any other stockyard?

Mr Tilmouth—I cannot see why they would use Elliott, because just north of Elliott is probably the biggest exporter—which is Kerry Packer's company—at Newcastle Waters. They have their own facilities.

Senator BOLKUS—How far north?

Mr Tilmouth—About 20 kilometres.

Mr Lee—Mr Chairman, perhaps I should explain several things. Mr Tilmouth has just mentioned that out of 250,000 cattle—

Mr Tilmouth—That was last year.

Mr Lee—4,000 is not a very big number. But 4,000 head of cattle moving from the north to the south is probably very close to 100 per cent of the cattle moving in that direction.

With regard to the Asian markets, the market I was referring to was China in particular, and that country has expressed a preference for cattle from southern Australia. The cattle cannot be spelled anywhere north of Elliott because of blue-tongue requirements. They will have to be spelled somewhere to the south of this imaginary blue-tongue line. Elliott is close to the line. There are animal welfare issues that come into it. The further south you move from the port in Darwin, the further the cattle have to travel before they are loaded on the ship. During the wet season, it will be a requirement that cattle will need to go directly onto the ship; and it becomes a welfare issue.

Mr Tilmouth—Mr Chairman, this is another debate between me and Mr Lee. We have just sent a load of cattle into Asia from Loves Creek, which is at Alice Springs. We have rested all our cattle at Batchelor, at the Meneling depot.

CHAIR—We are not here to examine the practicalities but the use of the land.

Mr Tilmouth—I am just giving you the context of the debate.

CHAIR—Thank you very much, Mr Tilmouth.

Mr Tilmouth—If we were yarding nanny-goats, we would be talking about nanny-goats.

CHAIR—There has been an acknowledgment that there was an error in the past and this is about correcting the error. Do any other witnesses want to make a comment or contribution?

Senator BOLKUS—Mr Levy talked about surrendering as a way to go as opposed, I presume, to this legislation. On what grounds would you be interested in surrendering use of the land?

Mr Levy—The stockyards land?

Senator BOLKUS—Yes.

Mr Levy—That is what was negotiated in 1995—the basis being that the stockyards were needed, bearing in mind the strong views that were held by some parties that an administrative error had occurred and also bearing in mind the traditional owners' view that at an earlier time an error had occurred in that the stockyards were built there in the first place. That was a compromise position which was reached. That is what we have been endeavouring to pursue. If compulsory acquisition is proceeded with, that is a matter we will have to seek instructions about. Undoubtedly, this committee should be concerned that that will lead to a hardening and polarising of positions about the issue which could hardly be regarded as desirable.

Senator BOLKUS—So you are saying that, if this legislation goes ahead and there is compulsory acquisition, you will then consider taking the matter to court?

Mr Levy—We will certainly have to seek instructions from the traditional owners as to whether they wish to take that course. We have obtained legal advice regarding the validity of the proposed bill and we consider that, at the least, it will provide a right for compensation. We consider that compensation would certainly be greater than the things the traditional owners have asked for today. We do not see that this current process promotes finalising either the agreement which we drafted or, alternatively, progressing that further.

Senator BOLKUS—The question then goes back to the minister as to whether we can in any way work towards implementation of that 1995 agreement as an alternative.

Senator Herron—I think we are here because the agreement process has not worked. We have been down that track.

Senator BOLKUS—They have not had an answer for two years from you, Minister. That is part of the problem.

Senator Herron—Could I get Mr Stacey to answer it, because he has been handling it from ATSIC's point of view.

Mr Stacey—I am just getting somebody to check whether or not the minister has taken the matter up with the Northern Land Council. As I understood it, he had, soon after coming into office, through indicating that he would like the matter resolved. But I think that the federal government has reached a view now, keeping in mind that the grant occurred in December 1991, that the agreement process just has not worked and that the error has to be rectified.

Senator BOLKUS—Mr Stacey, I think we have identified this morning that the NLC wrote to the Territory government. They have had no response from whatever government for two or three years now. We have not seen the correspondence, obviously. It would be worth while seeing that. They have been trying to get some agreement process, but it has been frozen for three years. How can you say that that process has not worked when there has not really been any engagement in terms of trying to achieve an agreement over that period?

Dr Kauffman—On the substantive issues of environmental health, ATSIC and the Northern Territory government have attempted to address those issues. As the minister pointed out in his opening address, we have recently received written assurances from the Northern Territory Chief Minister that environmental health issues would be addressed at Elliott.

Senator BOLKUS—So does that mean there is actually an on-the-ground plan or strategy—something we can look at, something they can look at, for instance?

Mr Kauffman—Yes. The Northern Territory government has sent a health plan—I think it is attached to their submission to the committee.

Senator BOLKUS—Mr Stacey, if, on a hypothetical basis, the legislation is stalled in the Senate or if there is an indication it will not go through, what would you do about organising a surrender arrangement with the NLC?

Mr Stacey—It is up to the minister, not up to ATSIC. In response to your previous question about trying to negotiate an agreement, I was going to answer that I was the person who was representing the former minister in those negotiations in 1995. They occurred at Elliott. As far as I am concerned, an agreement was reached to surrender that land in exchange for certain guarantees and benefits being provided by ATSIC and the Northern Territory government. After that, there has been the development of an agreement which has been going back and forth, it would appear, for at least one year, if not longer. Ultimately, the Northern Territory has taken a position that there is no point in continuing to negotiate and that they were not prepared to negotiate an agreement anymore—

Senator BOLKUS—But that was 2½ years ago when the NLC wrote to them. What if the Senate were to defer consideration of this legislation until next year, to give you guys a chance to work out how to finalise the agreement and deliver under it?

Mr Stacey—The problem from the Commonwealth's point of view is that there has already been a significant amount of resources and effort devoted towards trying to reach an agreement and it has not worked. So, as I understand it, the Commonwealth's view is that it has waited, it has sought to have the land surrendered, it has sought to go through an agreement process that has not been achievable and, ultimately, it has decided to proceed with legislation. So, if the Senate was to decide to defer things, I think from the Commonwealth's point of view, it would have grave doubts about whether or not the matter would be able to get resolved.

Senator Herron—If I can add to that, Senator Bolkus, my understanding of it is that this saga has been going on, and I could counter and say that, if in a year's time the Northern Land Council said, 'That's not acceptable to us, we want something more,' we are still in limbo. I think from the Commonwealth's perspective, as in the words of Mr Hand and Mr Tickner, an error was made. I certainly sympathise with Mr Levy. I have had correspondence with the Northern Territory government about the health aspects, and there is no question about that; there is legitimate concern on all sides. But to defer it really allows the opportunity for further claims to be made or other processes to occur which should not because an error was made back in 1991. So we are eight years later.

Senator BOLKUS—I suppose, Minister, from the evidence this morning, the operation is still continuing and you are still getting some livestock through. There does not seem to have been a disruption to activities. Mr Stacey says, 'We have made a genuine attempt to deliver under the agreement.' I think Mr Levy's view is that they are still waiting for delivery. That is why I say, in that context, I do not know whether you can anticipate more claims. There have not been any more claims in the last three years or so.

Senator Herron—There was an agreement reached, as Mr Stacey said. It was signed, sealed and delivered.

Mr Stacey—If I can just clarify, Senator Bolkus: in terms of delivering on the agreement, ATSIC has certainly delivered its part of that agreement, which was a significant amount of money, to construct a buffer zone.

CHAIR—How much are we talking about?

Mr Stacey—As I recall, the amount was in the order of \$120,000. I would not want the committee to go away with the impression that somehow or other ATSIC has not delivered its part of the agreement, because ATSIC did make a substantial amount of money available to do certain things to reduce the environmental consequences of it.

Senator BOLKUS—So what are you waiting for, Mr Levy?

Mr Levy—Firstly, those funds have been made available by ATSIC, although the trees certainly have not been planted yet, pending the finalisation of this matter. So the privacy screen of trees has not been implemented; it is just that ATSIC have committed the funds to it, as they said they would.

Senator BOLKUS—Whose job is it to plant the trees and develop the buffer?

Mr Levy—That, as I understand it, and I can be corrected, will only happen when agreement is reached and then ATSIC will go ahead and do it. That is separate to the agreement with the Northern Territory.

It is important to understand what is driving the players in this matter. The players are the Gurungu people, the Northern Territory and the Cattlemen's Association. Sitting here in Canberra, and certainly speaking personally as a lawyer, it is easy to appreciate the strength of the argument that there has been an administrative error made and that is wrong and that should be fixed because that is not how the legal system works. What is driving the Gurungu people is, 'We've always been here. We live in the middle of nowhere. This is our land. How come this stockyard is here anyway? It's right next door to our ceremony ground and it gets in the way of it.' That is a crucial and fundamental thing which is driving them in this matter—'It interferes with our ceremony activity. We've still got it going. We've still got our traditions. We have to live next door to the stockyards.' That is what is driving them.

In circumstances like that, the only manner in which a negotiated result can be achieved is if all sides are prepared to move. The Gurungu people have been prepared to move because they have dropped their original approach: 'With a bit of good luck we now own the land. Let's keep it, and the stockyards can go elsewhere.' They moved on that position because they believed that the liaison committee would have some input and some control and that undoubtedly it would develop into a cooperative relationship with their adjoining landowner—the Cattlemen's Association. The great difficulty—and this has happened not just in this matter but in other matters—is that the Northern Territory, with respect, always bucks in relation to arrangements whereby traditional owners can directly enforce matters as distinct from having to go to the Territory and say, 'Can you help us here or not?' That is the difficulty, and it is a common difficulty which arises. It ought not to arise because it is not, as we were saying, a big move on behalf of the Territory to make this work.

Mr Lee—There are just a couple of points I would like to add to what Mr Levy said. First of all, the trees were planted, I understand, last year or earlier this year by the Northern Territory Parks and Wildlife Commission. The community was to look after them, and the trees have died. I understand that the trees are going to be replanted and the Elliott town council have agreed to look after them. I understand also that the health issues have all been dealt with—they were dealt with three or four years ago.

I went to Elliott myself and had a meeting with several members of the community and one of their staff. We set up a process by which the community would be able to communicate directly with us if they had any further problems. I have not heard anything since, so I assume that they do not have any problems with the health issues.

Mr Stacey—The only thing that I would correct in what Ron Levy from the Northern Land Council said is that it is my view that the ATSIC grant funds have been spent and acquitted and that the work that was envisaged being carried out with those funds has been completed. That was some time ago. I think there might have been other action proposed by the Northern Territory government with respect to growing trees, which was a separate issue and Mr Lee has given his version of what has happened with that. But I am quite satisfied that ATSIC has met the obligations that we had as a consequence of the agreement reached in 1995.

Mr Levy—I want to pick up a point that Justice Olney has mentioned to me in a note, if that is appropriate, Your Honour. It is simply this, and I think this was discussed back in 1995 and I do not think it was regarded as appropriate: if there is some problem between the Territory and the land trust or the Territory and the land council about these sorts of issues, then an alternative solution is simply for the Cattlemen's Association to have a lease over the land—it can be a long lease, a perpetual lease or whatever is appropriate. The concerns about health which I have raised can be conditions of the lease and the whole thing can be resolved directly with the Cattlemen's Association.

I emphasise I am not suggesting that this is some great opportunity for the traditional owners to extract exorbitant rent and all that sort of stuff. I am not talking about that. I am saying that, if there is some problem between the Territory, the traditional owners and their institutions, let us deal directly with the Cattlemen's Association. The current situation can continue—a lease. The covenants I have talked about can be conditions of the lease with a view to ensuring that the Cattlemen's Association can continue to use those yards into the distant future. I am not necessarily asking Mr Lee to respond, but we would like to get a solution. If we cannot get one with the Territory, maybe that is a way.

Mr Jones—There were two things happening simultaneously. There was an agreement to undertake an environmental evaluation of the stockyards, and that was a document that was agreed to between the Northern Territory government and the Northern Land Council and signed. It set out all the sorts of things that you would look at that would need to be examined in the terms of the environmental evaluation. So that work was done. Those reports were delivered.

I should point out the issue about the buffer zone and the privacy screens. The 1995 agreement referred to the parties—being the Northern Land Council, the Commonwealth and the Territory—using their best endeavours. The funds were obtained by ATSIC and directed to an organisation known as the Gurungu Council as opposed to the Elliott Community Government Council, the local governing body. To support that, landscape planning work was done for the community by the Northern Territory Parks and Wildlife Commission. It is also my understanding that the funds were delivered and spent, and the plantings and what have you were done—and it has not been successful. Certain of the other works, such as safety provisions for the dip and the tank, were also done at cost by the Territory. Some further works relating to dust suppression have not been done because they involved the installation of a new sprinkler system.

I will be unable to respond to the suggestion about a lease, and that is obvious, but something along those lines could be achieved. It sounds like it is more to do with points of principle, but a number of things occurred in that time, stemming from the 1989 agreement. Without opening it up too much further, that involved gas pipelines and other things. The Territory government was consulted by the Commonwealth and put forward its views. The land rights act is an act of the Commonwealth. It is administered by the Commonwealth. They

agreed to do something. That agreement was in fact with the Land Council directly—and that is the issue.

CHAIR—Minister, do you want to add anything?

Senator Herron—I cannot clarify it—unless there is anything Mr Stacey wants to say to clarify it.

Mr Stacey—No.

Senator Herron—I think we are going around in circles a bit.

Senator BOLKUS—I have one question for Mr Levy to take on notice. Could you come back to us after the discussion this morning with an indication of what you still expect to be delivered under the 1995 agreement? And it could be useful to circulate that to the Northern Territory government and the federal government.

Mr Levy—Yes.

CHAIR—I think that concludes the discussion on clause 3. We will move on to clause 4, which is compensation. Do any of the witnesses want to lead off in putting your point of view on clause 4? Is everyone happy with clause 4? It sounds like it.

Mr Jones—To the extent that the issue of compensation would arise if these amendments were implemented, that is a matter for the Commonwealth.

Senator Herron—I will ask Mr Stacey to comment.

Mr Stacey—From the Commonwealth's perspective, the bill provides that the Commonwealth is only liable to pay compensation in the event that the Federal Court were to find that this is required by section 51 of the Constitution. The Commonwealth's position is essentially that, if there is a requirement under the Constitution for just terms compensation to be paid, it should be paid, but not otherwise. I believe the Commonwealth again takes the view that there should not be a moral obligation to pay compensation. The assets involved were not the property of the Land Trust to begin with. They were granted in error. The Commonwealth's view is that all the parties were put on notice at the outset that, ultimately, that error was going to be rectified.

Senator BOLKUS—I thought some of the land councils had problems with the compensation clause.

Mr Levy—We have raised our concerns about this previously. I probably do not need to reiterate them except to say that there is some legal analysis in a document produced by the Parliamentary Library, dated 12 May 1999, which sets out some of the legal issues about compulsory acquisition in circumstances such as this. While we appreciate the moral issues raised by Mr Stacey, at the end of the day we would say it is a compulsory acquisition; it will lead to compensation, and will be greater than what exists.

I would also say that we do have a particular concern here. I guess this provision is not that uncommon, but it gives power to the Federal Court to deal with issues of compensation. Clause 5, which is related to clause 4, says that the Lands Acquisition Act 1989 shall not apply. The reason the Lands Acquisition Act is not to apply is because, if this was being done under the Lands Acquisition Act, procedures would have to be followed whereby there would be negotiation to see if you could reach a negotiated settlement. Undoubtedly, a tribunal looking at it would say that, despite all the history of the matter and what everyone thinks, negotiated settlement should be possible.

Senator BOLKUS—We are not just talking here about compensation for the Elliott stockyards but we are talking about the operation of sunset clauses and other aspects of the bill?

Mr Stacey—No, it is just with respect to compensation for the Elliott stockyards. If I could respond, I think the Commonwealth takes a view that it is probably the case that the invalidation of the grant amounts to an acquisition. I do not think the Commonwealth would necessarily want to insist that it was not an acquisition. From the Commonwealth's point of view, the question is whether or not an acquisition in the Northern Territory requires just terms compensation to be paid under the Constitution. Of course, that argument was made by the Commonwealth in the Newcrest case in the High Court. The Commonwealth is still, as I understand it, taking the view that acquisition of land in the Territory is not necessarily caught by that provision in the Constitution. Nonetheless, the Commonwealth is saying that should it be the case that section 51 of the Constitution applies then, indeed, the Commonwealth will pay compensation.

Senator BOLKUS—Wasn't the decision in Newcrest four-three in favour of the principle that compo would be paid in the Territory?

Mr Stacey—The Commonwealth argued strongly against that.

Senator BOLKUS—And you lost.

Mr Stacey—It was a complex decision. I do not think it was quite so clear as saying that it was a win/lose situation. But, suffice to say, I think the Commonwealth took a strong view at that stage that that was the case.

Mr Levy—But, with respect, the Commonwealth lost their strong argument. They are hanging by their fingertips on some other arguments. I am not a betting man but Mr Tilmouth is and I know what he would be betting.

Senator BOLKUS—The prawn farm?

Mr Stacey—All I can say in response—Ron might be right about that—is that the bill does say if that is the case then compensation is payable.

CHAIR—That is right.

Senator BOLKUS—So, in other words, you want to take it back to court. You want to revisit it. Is that a useful thing to do? You got done over four-three.

Senator Herron—I do not think it is fair—it is a policy matter.

Mr Stacey—I do not think it is fair to ask me that.

CHAIR—That is quite right.

Mr Stacey—I would not be the one to make a judgment about things going to the High Court but, suffice to say, the Federal Court is given jurisdiction in the bill in relation to compensation.

Mr Levy—Senator Bolkus could ask us that question: whether we want to go to court. The answer would be that we do not. It is good fun going to court and winning but, frankly, every time you go to court you cannot do other work you are supposed to do, and I get into trouble with the judge here for not doing things—

Senator BOLKUS—Does ATSIC pay the bill?

Mr Levy—We do not want to take ATSIC to court either. We do not want to go to court.

Senator BOLKUS—Does ATSIC pay your legal bills if you go to the High Court?

Mr Levy—Not necessarily, no. We have to apply for funding and I do not think they would give us any. They might do.

Senator Herron—Let's not go into that.

Mr Levy—Even if you get funded, it inevitably uses up your resources and you do not do other things. It is just a silly thing to do.

Mr Tilmouth—Getting back to the argument of compensation, if you take the Aboriginal communities' position in regard to this matter, I think the negotiated outcome is the best way. I do not think the compensation argument would cover the real compensation which is an opportunity forgone. If in the future you are moving the cattle to the north, you are possibly looking at the levy on the cattle going through Gepps Cross as an example. These are huge amounts of money. I do not think the Commonwealth would want to be acquiring such land and paying compensation, taking into account the long-term impact of that and the amount of money that it would require. So I think a negotiated process is probably the best way.

CHAIR—Do any other witnesses want to add any comments? Any further questions?

Senator BOLKUS—My question of Mr Stacey concerns the operation of clause 4 and whether it covered compensation only in respect of clause 3 or more. The answer was that it only covers possible compensation under clause 3 acquisitions. It could very well be that there are other acquisitions of title and property by the effect of other causes of this bill. Has the minister ever thought of extending the compensation clause to pick up other compensations? I know at the end of the day people can go straight to the High Court.

Senator Herron—As far as we know, there are no further acquisitions. This is the end, as I understand it.

Senator BOLKUS—We can come to it later on.

CHAIR—That completes the discussion on clause 4. We will turn to clause 5 where the Lands Acquisition Act does not apply. Would any witness like to lead off on this particular clause?

Mr Jones—No.

Mr Levy—We have made our comments, thank you.

Mr Stacey—The Commonwealth thought about using the Lands Acquisition Act but ultimately took the view that essentially, as the error had been made in parliament, that is where it should be fixed and using those processes would be time consuming and lengthy with no guarantee of any agreement ultimately coming out the other end.

Senator BOLKUS—I would like to tease out whether there was a real chance given to the agreement. We did that a bit earlier. I am looking for the references in the Library's paper in respect of the use of the Lands Acquisition Act. In essence, the obligations under the Lands Acquisition Act would basically have been obligations as to notice, that is, 28 days notice, and you would have to have achieved consent. In essence, you have chosen not to allow the operation of the Lands Acquisition Act because you felt that you could not get consent to the transfer. Is that right?

Mr Stacey—What I am saying is that that option was considered within the Commonwealth and they decided that passing legislation was a more appropriate way to proceed in this particular instance.

Senator BOLKUS—But would the act have required them to or would it have required a process of notice and subsequent acquisition?

Mr Stacey—I am not in a position to say with certainty. I could check for you. Acquisition means that ultimately, at the end of the day, if there cannot be any agreement reached, the Commonwealth will be able to acquire the land. I should say that, even from an ATSIC perspective, using the Lands Acquisition Act does not exactly set a good precedent anyway.

The view that we have always had is that this is land which has been granted under a specific act of parliament. If we should ever have to get to the situation where land has to be taken back—and it is not something that ATSIC would ever wanted to see anyway, because we think that the land should ultimately have been surrendered—it should be done by an act of parliament, not by way of the Lands Acquisition Act, which we think would be setting quite an unhappy precedent for the land councils as well, if we thought that the Lands Acquisition Act was just going to be used to re-acquire Aboriginal land.

Senator BOLKUS—I suppose you have raised the issue there that is of concern to the land councils, and possibly a few others, and that is that this legislation might also be an unhealthy precedent not only in terms of the acquisition but also in terms of your contemplation of the operation of the compensation clause and the subsequent challenge that you anticipate happening.

Mr Stacey—I will answer that because, in some respects, I think ATSIC would agree with that. It is an unfortunate precedent but, from an ATSIC point of view, we have taken the policy position that ATSIC has had for a long period that the land should be surrendered following the agreement reached in 1995 and that we should not have had to get to this stage. But if it is going to happen, if something like this is going to be contemplated, then it should be done via parliament, not via a piece of legislation administered within a particular department—in this case, the Department of Finance and Administration.

Senator BOLKUS—I suppose we are confronted with your expo where you say that any possible compensation would be nominal on the one hand under this legislation and that there is the likelihood of litigation taking place after the legislation is passed on the other hand. If compensation is going to be nominal, why not do it under the Lands Acquisition Act? It would probably cost you less than going to court and probably you would have done it by now.

Senator Herron—It has cost us \$120,000 already.

Senator BOLKUS—You possibly could have had the whole issue solved by now without having to go to court and wait another year or so to get a conclusion.

Mr Stacey—Just to repeat, from an ATSIC viewpoint, to the extent that it has been involved in this process—and we advise the minister on the administration of the act and, at his instructions, we have had to take the responsibility for drafting the amendments—if an acquisition like this is being contemplated, we think that should be done via parliament, given the significance of the land rights act to Aboriginal people in the Northern Territory. As for the question of compensation, I come back to the point I made before on behalf of the Commonwealth that its view is that there is not a moral obligation to pay any compensation.

While I take the point from Ron from the Northern Land Council about not wanting to go to court, they do not have to seek compensation. The Commonwealth has taken the view that, morally speaking, it was a mistake to begin with. Everybody was under notice from the outset that it was a mistake. The assets do not belong to Aboriginal people in this particular case and, from a moral point of view, it would not be appropriate to be paying compensation. But, as I said, nonetheless, in the event that is seen to be required under the Constitution, then compensation will be paid.

Mr Jones—Could I just add something to help answer Senator Bolkus's query. Putting aside the case and the complexities of the issues involved in Newcrest, it is generally held that the Commonwealth is able to acquire a property in the Northern Territory on other than just terms. That has always been fairly well understood, and it has always been an issue—for instance, it is one of the issues that arises in various considerations about the development of statehood in the Northern Territory.

It is also quite clear that the Commonwealth has always had the capacity to acquire Aboriginal land in the Northern Territory. There are also provisions in the land rights act which enable the surrender of Aboriginal land. Under those circumstances, the Northern Land Council would be required—and I notice that the judge is watching me and I am referring to section 19, so I hope I get it right—to obtain the consent of the traditional owners, consult with other Aboriginal people affected and then obtain the approval of the Commonwealth minister. The land council is then able to direct the Land Trust to surrender the land.

The agreement that was drafted in 1995 was an enabling mechanism, a way by which the Territory government, the Commonwealth government and the Northern Land Council were agreeing to initiate the surrender process under section 19 of the land rights act. The agreement was signed by the Northern Land Council and the Northern Territory government—it was the Commonwealth that did not sign the agreement at the time.

Mr Roberts—In the discussion about compensation, I wonder whether the point is being missed that the traditional owners are seeking benefits and gains from this that go beyond what their normal expected entitlements would be. They are seeking to have environmental health issues dealt with and security of the process by which that would happen. They are not seeking some windfall gain. When we talk about the compensation issue, I think it would be unfortunate if it was thought that they were going to use this as some opportunity for gain. They are simply trying to have those environmental health issues addressed which would be the rights and expectations of non-Aboriginal communities anywhere else.

I do not think we should lose sight of that. It is not a get-rich-quick scheme; it is to get security of agreements to rectify those issues. That really is a stumbling block in getting satisfactory fulfilment of the agreement to which the traditional owners are initially going to assent. What is lacking is the assurance that those things will be delivered. I think that is really the point at issue.

Senator BOLKUS—Mr Roberts, one of the things we missed out on earlier was the amendments to the Northern Territory Pastoral Lands Act. There was some reference earlier on to say that those amendments are ready, but have they been passed?

Mr Roberts—I think you are referring to issues that relate to community living areas. It does not relate to the issue we are talking about, but some have been passed. We will come to this later, but they do not go as far as we had expected them to. But it does not relate to this issue.

Senator BOLKUS—Okay.

Senator Herron—I accept Mr Roberts's statement. We have been trying to do that from the Commonwealth's perspective. As I understood it, we have corresponded with the Northern Territory government and we have those assurances. That is so, isn't it, Mr Stacey?

Mr Stacey—Yes.

Senator BOLKUS—Can we get a copy of the correspondence?

Mr Stacey—Yes.

Senator Herron—We corresponded with the Northern Land Council about that. We are getting those letters for you too.

Senator BOLKUS—Can we have the correspondence between governments, because that would be useful too.

Senator Herron—Yes.

Mr Levy—Minister, we are pleased that you agree with Mr Roberts's comments.

Senator Herron—We have been trying to promote it.

Mr Levy—That is right, and we are very pleased, but the trouble is that if you run off to court the big concern is that it will polarise things. The traditional owners will say, 'Someone is trying to beat us over the head with a sledgehammer.' I have not got these instructions and I am not seeking them, but if it comes to it it will have to be discussed. They may well say something like, 'Someone is beating us over the head with a sledgehammer. Let's go off to court and get all the compensation we can.' It is just ridiculous. They will say, 'Oh, we'll have the windfall, thank you very much.' That is not what all parties, and especially those involved in 1995—including the NLC, ATSIC the Commonwealth and so on—were directing themselves towards.

CHAIR—True, but the council did sign off in 1995.

Mr Levy—Yes, but an agreement was not executed and subsequent legal advice which we subsequently accepted clearly showed that that agreement ought not to have been gone through with and that an alternative approach should have been taken. That was an error on the part of the NLC, if you like, at the time. But it is an error which has been rectified.

Senator BROWNHILL—I am not a legal person by any stretch of the imagination, but isn't that the reason why it has to come back and merely fix an error that a previous minister made in drafting the legislation—fix that legislation so there will be no disagreements or different opinions about agreements that are made outside the realms of legislation?

Mr Levy—Yes, but in fixing one side of an error regarding the system of legal rules and administrative procedures by which we operate it also needs to be taken into account that traditional owners, for whatever reason, are also able now—whether by good fortune or otherwise—to enforce concerns which they hold and which anyone who lived next door to stock yards would hold. The reality is that we think that if the matter was to go to court they would be in a very good position, at least in terms of getting quite significant compensation gains, when really what they want is the processes which we have talked about.

I appreciate what you are saying, Senator, but there is a pragmatic reality with how it all works, leaving aside the morality of any number of things. There are any number of people, including traditional owners, who are in some sort of cleft stick here. That is why the kinds of solutions we have suggested and the one which Justice Olney indicated, which I mentioned earlier, seem to provide the solutions.

CHAIR—We will now move on to schedule 1, item 3, repeal of paragraph 67A(5)(c) and substitution of the new paragraph.

Justice Olney—It may be useful to remind the committee of the function of the Aboriginal Land Commissioner in dealing with the traditional land claimed. That is set out in section 50. Essentially, once there has been a claim the commissioner's function is to ascertain whether the Aboriginals who have made the claim or on whose behalf the claim has been made or any other Aboriginals are the traditional owners of the land that has been claimed. A number of different circumstances will arise in the hearing of a claim. The simple one is that the

claimants establish, through their evidence, traditional ownership and a finding is made that individuals or groups of individuals are the traditional owners, and that presents no problem. If there is a recommendation for a grant, then the minister is able in his wisdom to recommend that if he so thinks fit.

You also get the situation which is not uncommon where the evidence does not always extend to satisfying the commissioner that the claimants, or indeed any other Aboriginals, are in fact traditional owners. This may be through lack of evidence simply due to the absence of individuals or through the fact that when they come to give their evidence their material suggests that their boundary goes to a certain place and the claim area goes beyond that.

I remember one claim out in the Simpson Desert when the Northern Land Council and the Central Land Council lawyer asked a witness, 'Whose country is that out there across the other side of the river?' The witness answered, 'That is camel country.' In that case I was not able to make a finding that there were traditional Aboriginal owners.

Mr Tilmouth—We have since sacked that field officer.

Justice Olney—In the instant case—we are talking here about the late 1980s or early 1990s—there was no finding of Aboriginal traditional ownership of that land, but the land council promptly lodged what we call a repeat claim. So the capacity to pursue a further claim was preserved. Different land commissioners have adopted different practices. There is reference in some of the papers to a finding I made in one of the Simpson Desert claims in relation to a piece of land where I said that I was unable to find that there were traditional owners. The Northern Territory government promptly leased that land and a subsequent land commissioner said that that is not a finding that there are no traditional owners. Anyhow, it has all ended up happily with the scheduling of the land.

That was how the system operated. Once they got a report, the land councils tended, virtually the next day, to lodge a repeat claim if they did not get a recommendation for the whole of that land and in due course any rights that could be pursued were preserved. That is not the case now with the operation of the sunset clause when a commissioner comes to a conclusion that he is simply unable to say whether there are traditional owners. It would be a bold commissioner who could say that there are no traditional Aboriginal owners of a particular piece of land. The best you can say is that on the evidence you cannot make that finding. Under the present situation there is no further capacity for land to be effectively claimed—it can be claimed, of course, but it cannot be processed through an inquiry by the commissioner. A finding that a commissioner is unable to conclude that there are traditional owners leaves the situation in limbo. The effect of section 67A is simply to operate effectively as a permanent injunction on the alienation of that land by the Territory.

As I said earlier, from a practical point of view and on the assumption that that sunset clause was intended to be a permanent feature of the act, it seems to me that, in the administration of the act where you have a situation that does not enable anything to be done one way or the other in resolving a claim, it would be appropriate simply to treat those claims as having been disposed of. That is the reason I indicated I support the proposal.

CHAIR—Thank you. Any other comments?

Mr Keyes—I preface my remarks on this particular clause by taking up a point which a number of speakers earlier this morning have made and which appears also in various submissions, and that is that parties other than the land councils take the view that this bill is really a technical one intended to rectify the mistakes of the past.

The reason the land councils are here, in relation to the provisions of the schedule at any rate, is that we take a different view of the bill. We say that the effect of the amendments proposed, if enacted, would be to rule a permanent line under the traditional entitlements of Aboriginal people in the Northern Territory under the act. We understand, of course, the points that are being made, principally by the Northern Territory government and also by His Honour Mr Justice Olney. We understand the effect of section 67A in relation to claims that remain outstanding, but we say that there are two sides to the equation and the Senate needs to consider both sides very carefully before enacting legislation of this sort.

Senator Bolkus referred earlier to the possibility of compensation implications in relation to the provisions of the schedule. We have not made specific submissions on that in writing, and I do not know that I am in a position to make particularly detailed submissions on the point here today. It is obviously a fine legal point as to whether the effect of the schedule, if enacted, will in fact constitute an acquisition and whether, if it does, the matter on which that matter operates in fact constitutes property. We can leave those matters to discuss on another day.

In relation to this particular clause, which would have the effect of finally disposing, for the purposes of section 67A, of claims in which the commissioner has reported to the minister that the commission is unable to make a finding that there are Aboriginals who are the traditional owners of the land claimed, we endorse what Mr Justice Olney has just said: that there are a number of reasons why a commissioner may be unable to make findings. The point we make in our submissions and are reiterating now is that in the majority of cases we believe—unfortunately I have not been able to do a statistical analysis—in which the Central Land Council has been involved, in the circumstances that His Honour has described, where a report has been delivered in which a commission has been unable to make a finding for whatever reason and repeat claims have been lodged, a grant has resulted to the traditional owners.

In some cases that has happened through a successful repeat claim being followed all the way through the process of the commission hearing—the claim under section 50 resulting in the recommendation to the minister and a further recommendation by the minister to the Governor-General. But in recent times, as the minister knows, there have been deliveries of deeds of grant to traditional owners in a number of cases where the Territory and the relevant land council have reached agreement on the resolution of claims. The minister has expressed many times the Commonwealth's preference for negotiated outcomes. Certainly the Central Land Council shares that preference, and I am sure the Northern Land Council do as well in regard to what they have just said about Elliott.

Given that history—the number of cases in which the traditional rights of Aboriginal people have been given strong effect to under the land rights act following repeat land claim procedures in cases where previously, for one reason or another, the commission had been unable to make a finding—and leaving to one side the technical non-Aboriginal legal question about acquisition of property rights to which I have already referred, from the point of view of traditional Aboriginal owners in the Northern Territory, their traditional rights are quite central to life itself; and, of course, the land is the most fundamental aspect of that.

We say that the bill, if enacted in its present form, would for all time rule a line under the enjoyment of those rights. We say that, under the act as presently enforced, those rights are capable of being enjoyed—claims that are presently on foot are capable of being pursued. They are also capable of being resolved in a number of ways. Mr Justice Olney referred to repeat claims being followed through the procedures of the Aboriginal Land Commissioner. As I have

said, there are other ways of resolving claims and, happily, in recent times an increasing number of those have been by negotiation. We say that there is nothing to prevent existing claims being resolved in that way, notwithstanding the effect of the sunset clause.

CHAIR—Perhaps we should break now for quarter of an hour.

Sitting suspended from 10.50 a.m. to 11.09 a.m.

CHAIR—Mr Keyes wants to make a couple of additional points to those he was making before we broke.

Mr Keyes—Thank you, Mr Chairman. There were a couple of matters that slipped my mind. Some of the submissions and the second reading speech for this bill and its predecessor have mentioned that it was always intended that certain things should happen—for example, that stock routes should not be available for claim. Our line on that is that the language of the act is quite clear. The courts—principally the Federal Court and the High Court—have variously pronounced on the meaning of the various provisions of the act. We say that, so long as those pronouncements are in place or in any event as long as the clear statements of the act are in place, they are what has effect.

In relation to the clause under consideration, which is item 3 of schedule 1, the subsidiary point I was going to make was to pick up the point that Mr Justice Olney made about the practice of land councils in lodging repeat claims in cases where the commission is unable for whatever reason to make a finding as to traditional ownership. We say that the existing provision of paragraph 67A(5)(c) of the act—indeed the entire section 67A—makes adequate provision in relation to the final disposition of claims.

To take the example of Urrpantyenye, which is the repeat claim pertaining to the Simpson Desert to which His Honour referred earlier, the effect of the deed of grant which is to be delivered by the minister in August this year will be to finally dispose of all outstanding claims in relation to that block. So section 67A operates effectively. That case also demonstrates that the Territory is quite prepared, as soon as it thinks a claim has been disposed of, to jump in and alienate land to a body like, for example, the Northern Territory Land Corporation. Whatever the intention may be, the effect of that, if done validly, is to defeat future claims by removing land from the category of unalienated crown land.

Senator BOLKUS—I am glad that issue has been raised. Mr Justice Olney said that it would be a bold judge who made a finding of no traditional owner in respect of that land, and I think it might also be a bold parliament that excluded any such possible claims. I was going to ask about that, but Mr Keyes just talked about the impact of the Urrpantyenye claim and mentioned that titles were granted in that interim period, I would imagine. It may not be possible to answer this today. With respect to that claim and some other claims mentioned—where the repeat claim actually found traditional owners and found title—in those circumstances, was title given in that interim period? I suppose it would have been given by the Northern Territory government and possibly would have been given to the land corporation, as you mention, or to private individuals, and it could have been given to the conservation land corporation: are there any others?

Mr Keyes—The Territory could grant land to anyone, I suppose, as it saw fit, as long as it complied with requirements for crown land.

Senator BOLKUS—Can we get details of where title has been given and where there has been a subsequent repeat claim finding title?

Mr Jones—As far as this situation you are talking about here with repeat claims is concerned, this is the only one I am aware of.

Senator BOLKUS—So title was given here? Can you provide us details of who title was given to?

Mr Jones—It was to the Northern Territory Land Corporation.

Senator BOLKUS—For the whole area that was subject to the later claim?

Mr Jones—Yes, and subsequent to the acceptance by the Land Commissioner of the repeat land application the claim has gone forward by agreement.

Senator BOLKUS—Thanks for that, but could you take on notice, because sometimes the files and the systems throw up things we do not expect, the question of to whom title was given in a situation such as this one that Justice Olney talked about.

Justice Olney—My understanding of the situation is that this particular piece of land—I think it is called Urrpantyene—is a very small area of land remote from the main area of the claim. It was a funny shape, which was described as an inverse trapezoid. It was a five-sided piece of land which had been left out of adjoining pastoral leases for some reason or other over the years.

I will not go into the story of the day we heard the evidence there because it involved me having five punches and goodness knows what and being left in the desert with nowhere to go. But at the end of the day—not because of that—I was unable to make a finding that there were traditional Aboriginal owners of this section of land.

In the period after the report was submitted, the land was I think leased under some form of crown lease to the Northern Territory Land Corporation, which the High Court has held not to be the Crown and, therefore, it would appear to have become alienated crown land not available for claim. Subsequent to that, the Central Land Council lodged a repeat claim and the matter came before Justice Gray, who was then the commissioner, and he ruled that my finding that I was unable to make a finding as to traditional ownership did not amount to a finding that there were no traditional owners. On that basis, he held that under section 67(A) the lease was of no effect. The repeat claim did not proceed, but in fact the land was scheduled in the amendment act recently passed by the Senate, as a result of negotiations.

I know of only one other situation where something similar happened. It had to do with the Mataranka land claim, which was reported back in 1988 when I was first a commissioner. The claims were withdrawn and I think territory title was granted by the Northern Territory government.

Senator BOLKUS—I wonder then, with respect to both but particularly the Urrpantyene claim, whether the Territory government can provide us with details of the land that title was given to, whether it is the Northern Territory Land Corporation or any other organisation.

Justice Olney—My recollection is that it may have been referred to in the Senate debate on that bill.

Senator BOLKUS—That can be taken on notice. I am sorry, I have to go to a committee meeting setting up the republican referendum committee, but, Justice Olney, as you said, it would be a bold judge who makes a declaration that there are no TOs. That basically signals to me that there is a real possibility for injustice if a bold parliament were to do what a bold judge would not do.

Justice Olney—I guess after you have been in the business for a few years, which I have now, you appreciate that traditional Aboriginal ownership is a very complex issue, and it is not easily dealt with in legislation. When you have spent time listening to people and trying to understand—as a non-anthropologist and not an Aboriginal—with proper insight of traditional ownership, you would have to appreciate that there are probably traditional owners of all land in Australia. In those circumstances, a commissioner can only make findings on the evidence. As I pointed out earlier, the act requires him to ascertain whether the applicants or others are the traditional owners, and the answer is either ‘Yes, they are’ or ‘No, they are not’. The act does not require the commissioner to ask: ‘Are there traditional owners?’ or ‘Are there no traditional owners?’ Really, a finding that there are no traditional owners is not one of the functions that the commissioner should perform under section 50. I guess that commissioners in the past have made such a finding that there are no traditional owners, but I certainly could not imagine ever making such a finding myself.

The situation is affected by the sunset clause in that, prior to June 1997, if a commissioner had not recommended land that had been claimed, the usual thing was for a repeat claim to be lodged. You can virtually assume that, in respect of land that was subject to reports prior to June 1997, everything that could have been claimed has been claimed—either in an original claim or a repeat claim. Subsequent to June 1997, if there is a report which indicates a commissioner has not been able to make a finding about traditional ownership, that is where you are left in limbo. It may be that a commissioner in the future in these circumstances—perhaps because of a death or absence of some evidence—where a finding simply cannot be made, a commissioner may resort to the device of simply adjourning that aspect of the claim and leaving it open. If there is a genuine prospect, as there frequently is, of a repeat claim succeeding, it would not be a repeat claim; it would be the same claim but simply stood over until some more appropriate time. It does present a situation that needs some sort of clarification, and one way to do it is simply to say, ‘All right, everyone has had a go; the best evidence has been put up and there has been no finding of traditional ownership; that should be the end of it.’

Senator BOLKUS—I will read the *Hansard* to find out what happens in the next 45 minutes.

Mr Jones—I would like to make a comment—and Justice Olney could respond and the *Hansard* will bring it up for Senator Bolkus’s information. The other thing that needs to be remembered is that, while the Land Commissioner is required to ascertain whether or not the applicants are traditional owners, he then presents a report to the minister, who then makes a recommendation as to whether the land should be granted or not. There have been any number of cases where the process has not resulted in a recommendation that land be granted; otherwise there would never have been repeat land claims and that is why a provision was brought in, in 1987, to test the repeat land claim process. So there are quite a few claims which have not resulted in a grant of Aboriginal land.

Senator CROSSIN—I am not sure who might want to field the answer to this question. In a similar way as it is difficult to make a judgment that there are no traditional owners, can you actually finally dispose of land, if there is such a concept?

Justice Olney—What is finally disposed of under section 67A is the application. The making of an application under section 51(1) is the event which operates to trigger the consequences of section 67A, which in fact is a restraint on further dealings with that land until the application has been finally disposed of. So it is the making of the application that has the effect that section 67A dictates.

CHAIR—Are there any comments from any other witnesses?

Mr Levy—We agree with the comments of Mr Keyes from the Central Land Council. I will just make an additional comment—and for clarification I probably should have done this before Senator Bolkus left. Do I understand correctly that Senator Bolkus has requested that the Territory investigate this issue and advise as to what outstanding repeat land claims are over land which has previously been granted to the Northern Territory Land Corporation or some other body, such that there is a question of the validity of that earlier grant? Because that is what happened in the Urrpantyenye land claim.

What happened was that the land claim was not successful. There was the usual flurry of activity between the land councils and the government to get either a repeat land claim in or, alternatively, the land vested in the Northern Territory Land Corporation. You cannot claim that in the Northern Territory Land Corporation, so the government tries to do that quickly. Land councils try to get repeat land claims in quickly. It is all a bit of an unholy rush.

The only reason the repeat land claim was able to go ahead was that the grant to the land corporation was invalid. We would say that parliament and this committee cannot really consider this matter unless they know whether there are any other situations just like that. If there are other situations just like that, then it may be that, by dealing with what seems to be a technical matter that can be tidied up, a number of repeat land claims will be rendered invalid. That is the information which, in addition to the matters Mr Keyes has raised, we would say is essential. We understand that the Territory is going to look into that, not just in respect of earlier grants to the Northern Territory Land Corporation but to any other person.

CHAIR—Do you want to respond, Mr Jones?

Mr Jones—No, I am getting slightly confused now. I thought Senator Bolkus's question was—and maybe we are talking about two sides of the coin—about what the details are of any grants by the Northern Territory government following a land claim which then became subject to a repeat land claim. I will explore the whole dimension of it.

Justice Olney—I think the matter that is concerning Senator Bolkus can probably be fairly easily investigated. I may be able to assist him once I get to Darwin and have the records. His concern is that land which has been the subject of a traditional land claim but which has not been recommended for a grant may have been, as in this particular case, immediately alienated so as to prevent a subsequent repeat claim. It would be very easy to check on the number of repeat claims that are outstanding and to ascertain whether there have been any dealings with that land in the period between the original report and repeat claim. I could undertake to supply that information from the records of the Aboriginal Land Commissioner. Whether there have been cases where there has been a report which does not recommend some of the land granted, where the land has then been alienated and then, as a result of that, a land council or a group of Aboriginals have simply said, 'Bother, we can't put it on a repeat claim,' I do not know. That would be really for the land councils to say, but I doubt it very much, knowing the efficiency of the land councils in lodging repeat claims. My experience is that they have not missed too many, if any.

Mr Keyes—I think in the case of Urrpantyenye there was a significant lapse in time—for what reason, I am not aware of.

Mr Tilmouth—You made an earlier statement to the judge about not being able, at that time, to locate a group of traditional owners but not having the courage to declare that that traditional ownership is not existing. The question also is: has there been an injustice to the existing Aboriginal group by the transfer and the alienation of that land to the land corporation

so that no further repeats can be made? That is also a question that needs some clarification or some answer, based on your earlier statement. Do we move land across to alienate, or do you allow us to further inhibit Aboriginal people in exercising their rights in relation to that original claim as well?

CHAIR—Thank you. I might add while we are on this that, when the committee does get advice from the Northern Territory government on Senator Bolkus's question, we will distribute copies to the groups that are here.

Mr Stacey—Senator Herron has asked me to make a couple of comments from the Commonwealth side just to clarify things. We are talking at the moment about item 3 in schedule 1. The Commonwealth is responding essentially to a recommendation made by the Aboriginal Land Commissioner. It was made with a view to tidying up this uncertainty which exists should a commissioner state in his report that he is unable to find any RTOs based on the evidence that is before him. It has to be understood here that what it means to make this amendment is that a land claim is not prevented from ultimately being determined but only that a land claim is removed from the register. Thus the uncertainty is ended about the status of that particular land.

The Commonwealth's view is that that is a reasonable thing for parliament to do, because legislation needs to be as certain as possible for all the stakeholders and clear in its intentions. As far as the government is concerned, it is giving effect to what the parliament's intention was originally when it put this provision into the land rights act and, rather than taking away any rights of Aboriginal people, it is essentially just removing from the land claim register that particular application. I think it has to be made clear in relation to repeat claims—and my understanding is that repeat claims can be made, but they cannot be heard by an Aboriginal land commissioner. That is because of the sunset clause. You can correct me if I am wrong, but I think that is the case. They cannot be heard by an Aboriginal land commissioner; they can be made.

CHAIR—Thank you very much.

Justice Olney—My concern is not about claims that have been dealt with and reported on prior to the sunset clause but about reports that I may make in the future where it is not possible to make a finding of traditional ownership. If this bill is passed, it would simply mean that, on the handing down of that report, the Territory as the landowner is no longer restrained by section 67A and may alienate it. That is the intention. One question that I think was raised in one of the submissions was: what about the review process? The commissioner's reports are subject to review under the Administrative Decisions (Judicial Review) Act so that, if this amendment were to be passed, it may be desirable for some provision to be made to ensure that the time for the review process is allowed to expire before it becomes effective. Otherwise, you will get a situation where land may be alienated and then, on review by the commissioner's report, set aside. You will have the Federal Court saying that the report does not exist and the land has already been alienated. That is a problem which I think does need to be addressed.

The other thing is that the repeat claim section, which was introduced in 1987—if I remember rightly—is effectively a two-phase thing. Once the repeat claim is made, it is necessary for the commission to make certain findings before that can proceed. One is that the basis of the claim is different from the original basis, or that information, documents and records likely to be relevant to the performance of the commission's functions are available

which were not then available, or that there are other good reasons for the repeat claim to proceed.

It does concern me that, consistent with what Tracker has been saying, if for some reason—whether it be a sick witness or some other reason—the evidence falls short of establishing traditional ownership, the report goes in and there is no finding in respect of a part of land, then that land is lost to the process of the act. It may be a matter of amending the drafting in some way, but it is not the situation where it is a hopeless case, which, as the witnesses said, is seen as camel country. Often there is a genuine situation—I will not go into the details of how it occurs but it does occur—where the evidence simply does not come up to anticipation because of one reason or another. So it is a situation that needs to be carefully considered. For the purpose of trying to get some order out of what is left in the land claim process, it seems a sensible suggestion that, if there can be no further processes under the act in respect of land, that particular claim ought to be treated as being disposed of. Nevertheless, if there is a good reason why there should be some birth processes then perhaps that ought to be accommodated.

CHAIR—Any further comment from witnesses?

Mr Keyes—I would just like to respond to a couple of things that Mr Stacey had to say on behalf of the Commonwealth. The Commonwealth government seems to be fond of saying, when it finds the statute book not to its liking, that the parliament at the time when the relevant statute was enacted had something in mind other than what has ended up on the statute book. I submit that our legislators know what they are doing on the whole. The point of my submission is that the act has a clear meaning at present—section 67A included. The clear intention in relation to subsection (5) paragraph (c) as it presently stands is that where there are no traditional owners, there presumably is no traditional land claim as that term is defined elsewhere in the act and, therefore, there is no good reason for the injunction under 67A to remain in place. Paragraph (d) reflects the fact that the Commonwealth parliament knew what it was doing in putting those words there because it talks about the minister determining in writing that he does not propose to make a recommendation, but that is limited to a case where the commissioner does find that there are Aboriginals who are the traditional owners.

The land councils can see the point of 67A(5)(c) as it presently stands. But, as Justice Olney has quite rightly pointed out, there are any number of reasons as to why the situation described in the proposed amendment—the proposed subparagraph 67A(5)(c)(ii)—might come to pass. We simply say that the intention—and, in our submission, what was always intended by the Commonwealth parliament by 67A—is that if there is no traditional land claim, if there are no traditional owners who, according to Aboriginal tradition, hold particular country, then it should not be subject to the injunction of 67A. But in the sorts of situations that Justice Olney has been talking about, clearly the parliament did not intend that the claim should be treated as being finally disposed of. We submit that that is the way it should remain.

The motivation in saying so is not that the land councils want to frustrate the land administration functions of the Northern Territory government. Aboriginal people do not enjoy making land claims. In their world view, their traditional country is their traditional country and to have to go off to what essentially is a foreign process and establish ownership to someone who has nothing to do with that country, be it, with respect, the land commissioner, the land councils or a court somewhere, is something which they do not enjoy doing. They do not enjoy having unresolved land claims in place. I said at the outset that the land councils and traditional owners would much prefer to resolve outstanding land claims and any other

issues to do with land use in the Northern Territory by negotiation. That avenue is well and truly open under the legislation as it stands and we simply submit that there is no need for this amendment as a result.

Mr Jones—I think Justice Olney has accurately described the situation and you are potentially faced with a forever continuing limbo. We will see, when we get to the discussion of the next clause, the practical effects of such wording of precluding the commissioner from conducting an inquiry. The clear intent of this amendment, along with some other amendments, as time is now involved, is to bring the land claims process to a halt. There is a sunset clause in operation. There cannot be new claims, and this is the tidying up measure on that.

Senator Herron—As Mr Jones has said, it was the intent at the time and it is legitimate for the Commonwealth to do this. That is why we are pursuing this.

CHAIR—Unless there are any further questions from senators, we have had a good discussion on this particular item and will now move on to the final item—item 4 of schedule 1. Justice Olney, would you like to lead off?

Justice Olney—This relates to stock routes?

CHAIR—Yes, stock reserves.

Justice Olney—I rather suspect, without knowing, that the way in which stock routes have been handled over the years has led to this situation. What has been said about the previous clause can be, and no doubt has been, said about determining stock route claims. My recollection is that in about 1988 or 1989 the Northern Territory government took the view that stock routes were land set aside under an act for a particular purpose and therefore did not come within the definition of crown land in section 3, that is, 'land set apart for, or dedicated to, a public purpose' under an act. They also took the view that stock routes were a road and therefore could not be the subject of a grant of title under the provisions of the act.

The High Court—it may have been the Federal Court—decided that stock routes were not roads. Also another High Court decision said that land set aside or dedicated under an act had to be under a federal act and these were dedicated under Territory legislation. That threw stock routes open to claim. I think the only purely stock route claim was the Bilinara claim in Pigeon Hole, which was partially successful. That was after the act was amended but before it was proclaimed.

From the commissioner's point of view, there are simply a lot of claims involving a lot of land—many pieces of land, perhaps not great in area—which are outstanding claims that the commissioner cannot hear. I have not been privy to the negotiations that led to what was called the red areas being granted in, I think, 1989. No doubt the arguments that have been advanced on the other amendment are equally cogent here. From the point of view of the commissioner required to administer this act, I simply take the view that, if the commissioner has no function to perform, then it seems sensible—although perhaps not just—that those particular claims be finally disposed of, or deemed to be so.

Mr Jones—By about 1985, the federal government proposed a national land rights model. Had that ever gone through, it would have had the effect of having some amendments to the then only other existing Commonwealth legislation. One of those would have been no land claims to land such as stock routes. The land claims process throws up lots of jargon and nicknames; we had the 'spaghetti' land claims—land claims just scattered all over the place and the undesirable effect of subdividing land and what have you. The Commonwealth passed amendments. They amended this act, and drew up section 50(2D) in 1987, which would have

had the effect of precluding the commissioner from conducting an inquiry. Those provisions were not proclaimed; they were not commenced. The reason for that, depending on your perspective, was to maintain pressure—some would say holding a pistol at the head—to negotiate the grant of community living areas on pastoral properties.

In 1989, the Commonwealth government and the Northern Territory government, as represented by Prime Minister Hawke and Chief Minister Perron, negotiated a memorandum of agreement. In return for the passage of specific legislation dealing with the granting of living areas, the Commonwealth undertook to commence section 50(2D) and 50(2E). At the time we queried the Commonwealth as to the efficacy of the provision—that it was one thing to preclude the Land Commissioner from conducting an inquiry, but it was another thing as to whether or not the land claim would remain on foot and therefore bring into effect section 67A—prohibition on dealings on land. We were assured at the time, on the Commonwealth Attorney-General's advice, that this provision would be sufficient to cause the land claims to stock routes to lapse. Quite clearly, it has not. Apart from a very small number of withdrawals that occurred in the region of the Northern Land Council, these land claims remain on foot. They invoke section 67A; the land remains in limbo. So the proof has been in the pudding, if you will, that the efficacy of this amendment did not come to pass.

Related to this was the process with the Commonwealth that a certain number of the famous so-called red areas would be scheduled as Aboriginal land. That was the quid pro quo. The Commonwealth would schedule as Aboriginal land something in the order of 35 separate areas of stock route and stock reserve, and the balance of the claims was then to lapse. But they have not lapsed; they still sit there. The land is still frozen. So the intent of the 1987 amendments and the intent of the 1989 agreement have not resulted in the required action.

CHAIR—Do any of the other witnesses wish to speak?

Mr Keyes—Clearly, the land councils have a different perspective on the history that Mr Jones has just described, and I will not go into the details on that; it is in our submission. Suffice to say that the quid pro quo to which Mr Jones has referred first of all left Aboriginal people out of the equation altogether. It was a deal done behind closed doors between the Commonwealth and the Territory; the Cattlemen's Association and the traditional owners—

Mr Jones—The Cattlemen's Association were not part of it.

Mr Keyes—And in that respect we say that we are in the same boat as they are, that the government has reached this arrangement without recourse to the stakeholders. That aside, the quid pro quo quite clearly was that on one hand the so-called red areas would be scheduled and that excisions legislation of the sort described in the MOA would be enacted and, on the other hand, the amendments to section 50 would be proclaimed to commence. We say that, as to the excisions legislation, the Northern Territory has not fulfilled its part of the bargain.

There is a description of the sort of legislation that is to be enacted in the 1989 MOA. There is a subsequent agreement again between the governments without recourse to the stakeholders in 1995 as to improvements that both parties agreed were required to the excisions legislation. In our submission we have a table setting out the matters that the Territory agreed to enact and the extent to which they have been enacted. Only in very small part has it been done. So we say that, even though we find the whole process and the content of the MOA and subsequent agreements unsatisfactory, even by the yardstick of those agreements the excisions legislation is not up to scratch.

I talked before about Aboriginal people not enjoying making land claims, but they also do not enjoy making life difficult for neighbouring pastoralists. The reason those spaghetti land

claims were first lodged is that it was a lawful entitlement, under the act, to make the claims. Aboriginal people's legitimate interests in pastoral land in the Northern Territory had been ignored in the other provisions of the land rights act. The history of seeking to obtain living areas in pastoral districts clearly showed that the only way to get anywhere in negotiations with the Territory government on the point would be to exercise some leverage. That is why the land claims were first lodged.

In those areas Mr Jones, I think, said that only a few claims in the NLC region were withdrawn. My understanding is that there are some claims in the CLC region that have withdrawn. The southern stock route, the Goyder stock route, the Hugh River stock route, amongst others, were involved. I know also that only a part of the north-west stock route and the north-south stock route itself are subject to claim. I think the same might also be true of some in the eastern area of the CLC region.

I am saying that the Hugh River stock route is a case in point. Three red areas were scheduled along the Hugh River stock route; Aboriginal people's living requirements were met, albeit imperfectly. Who would want to live on land that hitherto was deemed suitable for travelling stock? But, in any event, some areas of land were made available to people in those districts, and the claims were withdrawn accordingly. We say, again without going into the detail, that when there is a satisfactory legislative process—either under the Pastoral Land Act or in some other way—we will be quite happy to support the Commonwealth keeping its side of the 1989 and 1995 agreements.

Having said that, there is also the question about the extent to which land has been frozen as a result of the effect of the stock route claims in section 67A. Just speaking from my own experience in the Central Land Council region, I cannot think of one situation where an extant stock route claim in the CLC region is having any effect on pastoral or any other activities. I am aware—and Mr Lee might know more details about this—that the proprietors of Stirling Station or in that area want to get hold of part of the north-south stock route for horticultural purposes. I am also aware that the proprietor of Hamilton Downs station wants to fence along the Tanami Road on his property.

I am also aware that owners of other stations in that area have fenced along existing stock routes. The Territory talks about the inability to include former stock route areas in neighbouring pastoral leases. I listed a minute ago a number of stock routes that are not subject to claim and have not been for in excess of 10 years. In none of those cases have the stock routes in question been incorporated into the neighbouring pastoral lease, even though the Territory has an unfettered power to do so. An example would be New Crown Station in relation to the Goyder and southern stock routes.

Mr Stacey—It is the view of the Commonwealth—and, I might say, of the previous government as well—that these amendments are consistent with parliament's original intention; that is, that claims over stock routes and stock reserves not proceed. As Neville or Tony pointed out, there was a delay with proclamation until 1990, but it was the intention that these claims not proceed. The fact is that, even though they remain on the land claim register, the claims cannot be dealt with in any shape or form.

I heard Tony make the point that there are other ways to settle land claims. But, being realistic about this, there is very little prospect of a claim being settled by negotiation, in the way that a number of other claims have been settled in recent times, when there is not any right for it to be heard by an Aboriginal land commissioner. In the Commonwealth's view, these amendments are consistent with what was originally intended by parliament.

The Commonwealth would take the view that these amendments are consistent with the agreements which have been reached between governments—the first in 1989 and the subsequent one in 1995. I wish to make it clear to senators that the memorandum of agreement in 1989 was an agreement designed to deal with the legitimate land needs of Aboriginal people in pastoral areas of the Northern Territory. The key parts of that agreement were that the Northern Territory would pass suitable excisions or community living areas legislation on pastoral leases and, in exchange, the Commonwealth would do two things: firstly, proclaim the amendments passed in 1987 to prevent stock route claims from being heard; and, secondly, and more importantly, grant some 35 areas which had been subject to claim around the Northern Territory and which were stock routes, parts of stock routes or stock reserves.

As far as the Commonwealth is concerned, its side of the bargain has been well and truly met. The 35 areas were all granted in the period after the agreement was reached. In terms of the excisions legislation, that is a matter for the Northern Territory government to defend. The Commonwealth's view is that the legislation that was passed has resulted in a large number of community living areas being established in the Northern Territory. Mr Jones might correct me if I am wrong, but I believe it is in the order of just under 100.

Mr Jones—Correct.

Mr Stacey—Which is a substantial number compared to other parts of Australia. Another point that is being raised is in relation to the Northern Territory government's legislation. I understand that that is not accepted by the land councils to the extent that it does not address all the concerns they have about the Northern Territory government's legislation. But the Commonwealth—and again I am speaking on behalf of the Commonwealth—has accepted that legislation as offering significant improvements in the process and the potential for more living areas to be given to Aboriginal people in the Northern Territory.

Finally, we did not talk about the commencement provisions. It is worth while pointing out that it is envisaged that, while the provision relating to Elliott stockyards would be proclaimed 28 days after assent, with respect to these provisions—that is, in schedule 1—it is envisaged that there would be a delay of up to 12 months in order for the Northern Territory to meet its part of the bargain to pass those changed amendments to the Northern Territory legislation before the Commonwealth enacts its bit.

Senator BOLKUS—What if they do not do it in 12 months?

Mr Stacey—The legislation as currently drafted envisages that these amendments come into effect one day after 12 months.

Senator BOLKUS—It is a great incentive for the Territory government to wait another 12 months. They have waited a few years already. I find it very hard when you come in here with the Commonwealth's legislation driving one part of the bargain into legislation, but you are saying, 'Our hands are clean. We have done our part of the job but we won't hold our parties to the agreement to their part of the commitment.'

Mr Stacey—All I can say is that the Northern Territory has given written assurances that indeed it will pass this legislation as soon as this legislation is passed.

Senator BOLKUS—With respect, Mr Stacey, they are not really worth the paper they are written on. You have got an agreement that has been around for quite a few years and that has been put in the bottom drawer for the last few years. People have not answered requests to pursue negotiations and discussions. We are used to the Territory government doing one thing one day and changing the law the next. That has happened before. What good faith is

there, in terms of these discussions and these negotiations, for you to say to the people at the end of the table there, 'We don't care. In 12 months time the Territory government can do anything'? That is basically where it is. And on their track record, they do do anything. With all respect, Mr Jones, it is quite a concern.

Mr Jones—If you go back to 1989, there was an agreement between the then Commonwealth government and the Northern Territory government to commence respective pieces of legislation on the same day, and that was adhered to. The same undertaking has been given in respect of this matter and, to the fullest extent of what authority I have, that would happen again. That is the undertaking that has been given.

Senator CROSSIN—What progress has been made to making any changes to the legislation?

Mr Jones—The Pastoral Land Amendment Bill 1997 was introduced into the Northern Territory parliament at the same time as the forerunner of this current Commonwealth bill was introduced. On the proroguing of the Commonwealth parliament, the Commonwealth bill lapsed and the Northern Territory bill was withdrawn. The Northern Territory bill will be reintroduced and dealt with on the passage of this bill.

Senator CROSSIN—After consultation with major stakeholders or just reintroduced *per se*?

Mr Jones—In its current form. References are made to major stakeholders. Most of these matters were dealt with in what was known as the joint review group, which monitored the 1989 agreement. The land councils chose not to participate in those meetings, but they have been consulted. They have made a number of submissions in terms of what the amendments to the Northern Territory legislation should be.

Senator CROSSIN—Is there an intent to introduce a new bill or to just amend the Pastoral Land Act?

Mr Jones—I think you are misunderstanding the situation, Senator. The community living areas provisions are contained within the Pastoral Land Act of the Northern Territory. In light of negotiations with the Commonwealth on all of these matters, the Pastoral Land Act Amendment Bill 1997 was drafted and introduced.

Senator CROSSIN—I see.

Mr Jones—That would have the effect of enhancing the features of the community living areas scheme.

Senator CROSSIN—Is it your intent to reintroduce the same bill?

Mr Jones—Yes. Obviously, it would be re-examined before we did that. The point was that both governments were at the point, more than a year ago, of proceeding with their respective amendments.

CHAIR—Are there any further comments?

Mr Roberts—Can I raise a parallel between this situation and that of the Elliott stockyards. We have a situation where the Commonwealth and Territory governments are concerned about some uncertainties in relation to certain pieces of land. We question whether those uncertainties are serious or real; nevertheless, the governments have those uncertainties. There have been attempts to negotiate a solution. In relation to the stock routes, a purported agreement was made: it was a condition of the legislation to remove stock routes from being available for claim. In this case, and in the Elliott stockyards case, it is our view that the Territory

government did not fulfil its end of the bargain. We now have the Commonwealth government wanting to legislate to solve a purported problem that is still in the realms of being negotiable.

In relation to the stock routes, there is an added sting to the irony of the situation in that the people whose traditional interests in land are in relation to stock routes—and are now being denied as a result of the stock routes legislation—are being precluded from being applicants for claims under the community living areas legislation. So there is a double disadvantage, if you like, for the people who have a land interest in the stock routes: they lose the provision for lodging land claims, but the resultant community living areas legislation does not allow their traditional interests to be used as a basis for an application under the community living areas. They seem to be losing on both sides of the equation.

One of the things that we find deficient in the quid pro quo agreements of the community living areas legislation, is that the interests of these people with traditional attachments to the land are not included as a legitimate need for consideration in the community living areas application. That is one of several deficiencies in the legislation that we are arguing does not fulfil the NT government's side of the agreement, which was the quid pro quo for the original agreement on the stock routes amendments.

Senator BOLKUS—Mr Stacey, was that part of the deal?

Mr Stacey—No, it was not part of the original deal, if you are talking about the deal back in 1989. It was not part of the deal that traditional land claims, or traditional sites, would be allowed for over pastoral leases. Let me be more specific. It was not part of the deal originally that excisions would be able to be granted on pastoral leases as a consequence of traditional connection, but it is very true that the land councils have always had the position that they should be.

Mr Keys—Indeed. That is the main cause of complaint with the MOA and the subsequent agreement. I have talked before about the Aboriginal world view in relation to land. Part 8 of the Pastoral Land Act might as well have come from Mars. In the era when Aboriginal people worked on stations, they might have travelled 500 miles away to work on someone's station; 30 years later, we get the Territory's excisions legislation. The result of that is that that person is entitled to sit down on someone else's country but has no claim at all, no entitlement, in relation to their home country, where they originally come from. We say that the excisions legislation is entirely misconceived but, in any event, even if there were any merit in the 1989 agreement, it has not been implemented.

Senator BOLKUS—I might have been a bit confused here. When I asked if it was part of the deal, I meant: is this precluding the traditional owners from being able to access their land in this particular circumstance? Was that part of the arrangement with the Northern Territory government? Or were they going to be allowed to make claims?

Mr Stacey—The answer in short, again, is no.

Senator BOLKUS—No what?

Mr Stacey—The amendments that the Northern Territory is making to its Pastoral Land Act in relation to community living areas on pastoral leases are not going to allow for excisions to be granted on the basis of traditional connection.

Senator BOLKUS—So that is not consistent with the agreement that was reached in 1989?

Mr Stacey—Yes, it is consistent with the agreement.

Senator BOLKUS—That is where the confusion was.

Mr Levy—Mr Chair, I was wondering if I could make a comment, with your leave.

CHAIR—Please do, Mr Levy.

Mr Levy—In relation to the first point about traditional connection, now that native title has been recognised, there is some urgency in ensuring that the community living areas legislation ensures that grants are on the basis of traditional interests or, alternatively, if they are the people who do not have a traditional connection to the land, at least with their consent. I think that might be in part what Mr Roberts was driving at before.

The second point is that there is a document, which I possibly should have tabled earlier. It is more relevant to Senator Bolkus's question of Mr Jones about the Northern Territory Land Corporation, but it is also relevant to the discussions which were arising regarding every provision about the original intention of the act and the agreements which have been reached and not fulfilled or, alternatively, broken, depending on one's point of view. It may be useful.

This is an article in the *Australian* dated 12 May 1999. I have only one copy, which I will read from before I table it. It explains how the Northern Territory Land Corporation works. If we were talking about the original intention of the land rights act, we would say that the original intention of the act was that land which is essentially undeveloped, government controlled land outside town areas was supposed to be available for claim.

While former Prime Minister Gough Whitlam loves giving public speeches in which he claims that the Territory has lost every case in the High Court for the last 20 years and it is 21-nil, actually it is not. They won a major issue, and that issue was that the Northern Territory Land Corporation, which is a Territory body, and also the Conservation Land Corporation, which is the body that holds all national parks, is not the Crown and therefore the land cannot be claimed. That matter is currently being litigated. Given that it was not successful in 1984, one may think that was something parliament ought to look at, because there is no doubt at all that, for practical purposes, the Northern Territory Land Corporation is controlled by the Crown and such land ought to be available for claim.

CHAIR—Thank you.

Senator CROSSIN—I am interested in getting a comment from each of the witnesses about the fact that some of these matters were raised by John Reeves in the review of the land rights act.

CHAIR—Is this relevant to the legislation in front of us?

Senator CROSSIN—It certainly is because, in fact, he makes mention that some of the changes proposed in this legislation ought to be enacted. Yet the act itself is under review by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. Some of the witnesses' statements, if you have read them, point out that they believe that this bill should not be considered until the review of the act and until that committee and the review of the Reeves report have been finalised. I would like a comment from various witnesses, if they so choose, about that.

Mr Jones—With the exception of the Elliott stockyards matter, this bill was in fact drafted prior to the commencement of the Reeves review, and indeed Reeves's recommendation is that this bill be given priority and be passed.

Senator Herron—Perhaps I should make a comment about that too. It is a valid question and I would like to respond to it. These amendments actually arise from agreements and commitments entered into by the previous government. The Reeves report, of course, is still before the House of Representatives standing committee, and it will take considerable time

to finalise. We have to wait for the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report to be put to the parliament. After that, it then has to consider its recommendations before preparing legislation and introducing it into parliament.

In the meantime, the benefits of the legislation will be delayed even further for all parties, including Aboriginal interests. The land rights act is being brought into disrepute while these problems are not rectified, and the Reeves report did recommend that these amendments be passed urgently in the federal parliament. I am not giving an opinion either way on the Reeves report, but I think the arguments have been well put for the passage.

Before I finish, Senator Bolkus asked about the correspondence that had occurred with the Northern Land Council. I would like to table a letter, which is a summary of what had occurred, to the Chairman of the Northern Land Council on 28 June 1996, which he had asked for.

Senator BOLKUS—I have also asked for the correspondence between the Australian government and the Territory government. You offered to provide that at some time.

Senator Herron—Yes, I am happy to provide the other two. They are virtually identical, as I tried to be the broker between them.

Mr Jones—I am able to provide to the committee, tabling not necessarily every single piece of correspondence but a chronology of events as it pertains to the Elliott stockyards, with copies of some of the critical letters which, in the main, are exchanges between Territory and Commonwealth ministers. I will table those.

CHAIR—Thank you, Mr Jones.

Mr Levy—I think there might have been an additional letter from Senator Herron to the Northern Land Council in 1996, which perhaps has not been uncovered just now. I do not think it has.

Senator Herron—Yes, and a recent letter too. I think it was a few months ago, notifying you of that.

Mr Levy—That is probably right.

Senator Herron—We are happy to table those.

CHAIR—Thank you.

Mr Lee—I would just like to make a statement with regard to the community living areas question. I would like it placed on record that, whenever there has been an application which my members have felt has been genuine, where the person involved has an association with the particular pastoral lease and also has a need for an area of land, they have been anxious to see that granted. In quite a few cases they have been just as frustrated as the land councils and the applicants at the delays in the process and have been concerned about the fact that people have actually died before they received the land that they felt they were entitled to.

CHAIR—Thank you, Mr Lee.

Senator Herron—I have that letter, if you would like it.

Mr Keyes—I would like to come back to Senator Crossin's question, but before doing so I would endorse, on behalf of the land council, Mr Lee's comments in their entirety. Mr Jones has referred to the number of living areas that have been granted. Again, I do not have the figures, but I am sure the record will show that the vast majority of those are titles that have been granted pursuant to an agreement between the applicants and the pastoral lessee in

question. So I put on the public record the gratitude of those applicants and the land council to Mr Lee's members for their cooperative approach in that matter. But for that approach, the excisions legislation would have produced next to nothing.

In relation to Senator Crossin's question, of course it is true, as Mr Jones has pointed out, that the purported agreement on which this bill is based predates the Reeves review. We do not deny that. What we do say, though, as we said at the outset, is that these are not merely technical amendments correcting past clerical errors. They are amendments of substance that will have permanent detrimental effects on the traditional interests of Aboriginal people in the Northern Territory. They raise questions of traditional ownership, for example, which is a theme running through the land rights act.

Obviously enough, it is a matter on which Reeves had a great deal to say. It is a matter on which, no doubt, the House of Representatives committee will have a lot to say. What we say is that, albeit these amendments were pending in the previous parliament, the events of the Reeves review have overtaken them and that, in the interests of comprehensive and consistent legislation, at the end of the day, these proposals before us should be made the subject of that more general and comprehensive process.

As Mr Jones again pointed out, Reeves recommends that these amendments should be enacted as a matter of priority. We say that neither Reeves nor the Territory nor the Commonwealth has demonstrated any need whatsoever for them, and there is certainly no need for their urgency. As I said earlier, there is no single case that has been pointed out in which an extant stock route claim, for example, is frustrating the proper management of the Northern Territory pastoral estate.

CHAIR—Thank you. Are there any more questions?

Senator BOLKUS—I will make one point. We will go away and consider this legislation obviously, but I suggest to the particular governments that it might be a useful exercise, in the next little while, to try to get a process going to see what has not as yet been delivered under previous agreements and what land councils are concerned about. I think it would be useful, when we do go back into the parliament, for there to have been a process of good faith, negotiations, discussions and an agreement on outcomes before we were to consider this legislation. It would be quite useful.

Senator Herron—I think we can do that.

CHAIR—Thank you. That concludes this committee's public hearings on this bill. The committee will consider the bill further when we have the other evidence together. Thank you, Minister, for attending, and thank you to all the witnesses who have appeared before us today.

Committee adjourned at 12.22 p.m.