

Access to Aboriginal Land

Introduction

- 7.1 This chapter considers the Reeves Report's proposals concerning access to Aboriginal land, specifically the removal of the permit system and access to such land by the Northern Territory Government.
- 7.2 An overview of the current provisions of the Land Rights Act governing access to Aboriginal land is presented. The chapter then outlines reactions to the Reeves Report's recommendations. Finally, the Committee makes its recommendations, which will streamline the permit system and help to improve relations between Aboriginal and non Aboriginal people in the Northern Territory.

Current Provisions of the Land Rights Act

Permit System

- 7.3 Sir Edward Woodward told the Committee that the permit system is a practical and symbolic extension of granting land rights to Aboriginal people. For Aboriginal people not to have the capacity to control entry on to their own land, he believed, would have made a mockery of land rights.¹
- 7.4 The Land Rights Act contains three sections dealing with access to Aboriginal land:

1 Sir Edward Woodward, Transcripts, Canberra, p 561.

- s. 70, which makes it an offence for a person to enter or remain on Aboriginal land except in the performance of a function under the Act or otherwise in accordance with the Act or a law of the Northern Territory;
- s. 71, which allows Aboriginal people to use and occupy Aboriginal land in accordance with Aboriginal tradition; and
- s. 73(1)(b), which provides for the Northern Territory Legislative Assembly to enact complementary legislation regulating or authorising the entry of persons on Aboriginal land.

7.5 Pursuant to s. 73(1)(b), the Northern Territory Legislative Assembly passed the Aboriginal Land Act 1978 (NT). This Act makes it an offence for a person to 'enter onto or remain on Aboriginal land or use a road unless he has been issued with a permit to do so'.² Four people or organisations are authorised to issue permits:

- the land council for the area concerned (after consulting traditional owners);
- the traditional owners of the area concerned;
- the Administrator of the Northern Territory where a person has applied to a land council or the traditional owners for a permit to use a road and, either the application has been refused, or the permit has not been issued in a reasonable time; and
- the relevant Northern Territory Minister in relation to certain government employees.³

7.6 The land councils and traditional owners have the power to revoke each other's permits and to delegate all or part of their authority to issue permits as they think fit.⁴ Neither body has the power to revoke a permit issued by the Northern Territory Administrator or Minister.

Compulsory Acquisition

7.7 The Commonwealth Government has the power to acquire Aboriginal land compulsorily as long as just terms compensation is paid.⁵ The Land Rights Act expressly excludes the Northern Territory Government from

2 s. 4, Aboriginal Land Act 1978 (NT). The latest amendment to the Act was in 1992.

3 ss. 5(1), 5(2), 5(A), 6, Aboriginal Land Act 1978 (NT). Under s. 7, Members of Parliament or candidates for election to Parliament may enter and remain on Aboriginal land.

4 ss. 5(4),(5) and (6), Aboriginal Land Act 1978 (NT).

5 See s. 50(2) of *Northern Territory (Self-Government) Act 1978*.

this power as a way of reinforcing the inalienability of title to Aboriginal land:

Aboriginal land shall not be resumed, compulsorily acquired or forfeited under any law of the Northern Territory.⁶

- 7.8 However, ss. 19 and 20 of the Land Rights Act allow the grant of an interest or estate in Aboriginal land for public purposes subject, as with any other dealing with the land, to the informed consent provisions of the Act.

Reeves Report's Proposals

- 7.9 The Reeves Report suggests that arrangements for accessing Aboriginal land, both in terms of the permit system and the limit on compulsory acquisition by the Northern Territory Government, impose unwarranted costs on non Aboriginal people and government in the Territory.
- 7.10 The Report argues that the permit system does not have the general support of the Aboriginal people, is costly to administer, racially discriminatory and causes disputes.⁷ It also argues that the permit system is one of the main obstacles to the development of a productive partnership between Aboriginal and non Aboriginal people in the Northern Territory. Further, the Report states that the limit on the Northern Territory's power to compulsorily acquire Aboriginal land for public purposes is unreasonable.⁸

Replacing Permits with the Trespass Act 1987 (NT)

- 7.11 The Reeves Report states that, as the costs of the permit system outweigh the benefits, it should be abolished and replaced with strengthened trespass law. The Report suggests that s. 70 of the Land Rights Act and Part II of the Aboriginal Land Act 1978 (NT) be repealed, and the following amendments be made to the Trespass Act 1987 (NT):
- expressly include Aboriginal land within the definition of 'place';
 - make provision for an Aboriginal community to post a notice stating that entry is a trespass on the roadway at the entry to their land and/or any airport on their land (but this measure should not apply to prevent

6 s. 67, Land Rights Act.

7 *Reeves Report*, chapter 14 and John Reeves QC, Transcripts, Darwin, p. 689.

8 *Reeves Report*, chapter 14 and pp. 547-53.

access to any town as defined by the Town Planning Act (NT) and Crown Lands Act (NT));

- identify a person or body with the authority to post notices or give warnings in relation to Aboriginal land;
- increase the penalty for trespass to \$10 000 or six months imprisonment and a daily penalty for a continuing breach of \$1 000 per day;
- make general provision for access to Aboriginal land by officers and other persons who currently have that right,⁹ and
- retain the distinction between Aboriginal land and Aboriginal pastoral leases, so that the public has no right to enter Aboriginal land and camp beside natural waters as they do in relation to pastoral leases.¹⁰

7.12 The Reeves Report states that these measures will give Aboriginal landowners more control, and they will be 'simpler, less costly, more effective and easier to enforce than the present permit system'.¹¹

Compulsory Acquisition for Public Purposes

7.13 The Reeves Report argues that in principle, all governments ought to have a power of compulsory acquisition. The Report recommends that the Northern Territory Government should have the power to compulsorily acquire Aboriginal land, other than as a freehold interest, for public purposes. This power, the Report suggests, could be extended to the provision of essential services by private providers like Telstra.¹²

7.14 The Report notes the concerns of Aboriginal people that a power of compulsory acquisition will be used to 'whittle away' Aboriginal land. Therefore, the following restrictions on the power are suggested:

- no more land can be acquired than is absolutely necessary for the public purpose concerned;
- any acquisition would have to be effected by legislation of the Northern Territory Legislative Assembly, and allow adequate time and a transparent process for all interested parties to lodge their concerns; and

9 See for example, s. 22 of Fences Act (NT), s. 56A of Bushfires Act (NT), s 55A of Stock Routes and Travelling Stock Act (NT), s. 9B of Soil Conservation and Land Utilisation Act (NT), s 42A of Stock Diseases Act (NT), s. 61 of Licensed Surveyors Act (NT), s. 10 of Noxious Weeds Act (NT) and s. 11 of Brands Act (NT).

10 *Reeves Report*, pp. 306-9.

11 *Reeves Report*, p. 308.

12 *Reeves Report*, pp. 376-77.

- the Commonwealth Parliament would have to approve any acquisition.¹³

7.15 These arrangements, the Report states, will address the concerns of the Northern Territory Government and others and Aboriginal people.

Comments on the Reeves Report's Proposals

7.16 The Committee took evidence from Aboriginal and non Aboriginal agencies and individuals about the proposal to replace the permit system with the Trespass Act, and to extend to the Northern Territory Government compulsory acquisition powers over Aboriginal land.

7.17 Some non Aboriginal groups outlined their concerns about the permit system, but others indicated their wholehearted support. Overwhelmingly, the Committee was told that Aboriginal people wanted the permit system to remain and that even a strengthened Trespass Act would be an inadequate protection of their rights. The focus of many of these communities is on negotiated agreements both over issuing permits and the use of Aboriginal land for public purposes. Most, if not all, agreed that the bureaucratic processes for achieving these agreements should be as close to the people involved as possible.

Concerns about the Permit System

7.18 Nabalco Pty Ltd, situated at Nhulunbuy, emphasised their support for the right of Aboriginal people to control access to their land. However, the mining company also indicated their concern that, at times, the permit system was used as a 'leverage' point to solve other community problems by banning or expelling people.¹⁴ Nabalco suggested that Nhulunbuy residents felt insecure about access to the surrounding areas because of the changing nature of the permit system, as at times it is relatively easy to get a permit, while at other times it is 'quite restricted'.¹⁵

7.19 ATSIC and the Dhimurru Land Management Aboriginal Corporation (Dhimurru Land Management) stated that land in designated recreation

13 *Reeves Report*, pp. 380-82.

14 Nabalco Pty Ltd, Submissions, p. S81.

15 Nhulunbuy is the mining town situated within a special purpose lease at Gove in East Arnhem Land. Nabalco, Transcripts, Darwin, pp. 130, 135.

areas is subject to degradation, and that closures from time to time are based on sound natural and cultural resource management principles.¹⁶

7.20 The Amateur Fisherman's Association of the Northern Territory (AFANT), while supporting the rights of indigenous people to valid ownership of the land, declared that:

The current permit system for Arnhem Land is not working for recreational anglers. It is very difficult to get a permit to fish in Arnhem Land unless you know one of the elders and get direct permission from them by bypassing the NLC permit system.¹⁷

7.21 The Committee also notes the response to this comment by the Northern Land Council (NLC), namely that it has negotiated formal access arrangements under the Land Rights Act to facilitate increased angler access to Aboriginal land. These access arrangements are negotiated with the traditional Aboriginal owners, the Department of Lands Planning and Environment, the Department of Primary Industry and Fisheries, the Parks and Wildlife Commission, AFANT and fish tour operators.¹⁸

7.22 In Katherine, the Committee heard a concern that restrictions on roads, which are major thoroughfares, are placing an unacceptable burden on non Aboriginal people in the Territory. There was dissension about whether such roads were public or strictly not public access roads. The NLC stated that, as many of the roads go through Schedule One lands, they are private roads however traditional owners have allowed the public to travel on those roads because of the difficulty of enforcing permit arrangements.¹⁹

Support for the Permit System

7.23 Submissions from non Aboriginal organisations, particularly mining companies, supported the permit system. The Northern Territory Minerals Council made the following comment:

16 ATSIIC, Transcripts, Canberra, p. 164. Dhimurru Land Management Aboriginal Corporation ('Dhimurru Land Management'), Submissions, pp. S358-65.

17 Amateur Fisherman's Association of the Northern Territory (AFANT), Transcripts, Darwin, p. 609.

18 Northern Land Council (NLC), Submissions, p. S1582-83. For example, the NLC cites that formal angler access arrangements are in place for Browns Creek, the 'Market Gardens' on the Daly River, Sandy Creek in North East Arnhem, Gurig National Park, Cobourg Marine Park and Eleyse Aboriginal pastoral station.

19 See discussion, Transcripts, Katherine, pp. 411-18. Also NLC, Submissions, p. S1036. The Northern Territory Association of Four Wheel Drive Clubs also indicated it was costly and time-consuming to get permits to travel on historical tracks like the Canning Stock Route, Submissions, p. S423.

People in the mining industries have said, 'I have had a fairly good relationship with the Aboriginal people. If you are not smart enough to know who to phone to get a permit, you had better start learning'. As far as we are concerned, we have no objection to the permit system at present.²⁰

- 7.24 These sentiments are echoed by Giants Reef Mining N.L. and Normandy Mining Ltd who both support the right of Aboriginal people to maintain control over access to their land.²¹
- 7.25 The Northern Territory Government was equivocal stating that it had no final position on the matter. While appreciating that the Reeves Report was attempting to break down an 'oppositional culture', the Government noted that many Aboriginal people may not support such changes.²²
- 7.26 Indeed, the vast majority of Aboriginal people told the Committee that they wanted the permit system to remain. It provides them with mechanism to control entry onto their land and it respects Aboriginal tradition to some extent by requiring that permission to visit Aboriginal land is obtained from the relevant traditional owners.²³
- 7.27 This is in contrast to the findings of the Reeves Report that there is no general support amongst Aboriginal people for the permit system. In particular, some people expressed concern for the safety of their family claiming that some 'visitors' were antagonistic and threatening. Not all witnesses made this claim. The Committee was not in a position to pursue investigations into those claims. However, it was a matter of concern to the Committee.
- 7.28 The Ramingining Community Council described the importance of the permit system to Aboriginal people:

This is why, when faced with the Reeves recommendation to abandon the permit system, we get very upset. Because we not only want to keep the permit system, but we would like to make the permit system even stronger if we could. To us, it's a matter of

20 Northern Territory Minerals Council, Transcripts, Darwin, p. 150.

21 Giants Reef Mining N.L., Transcripts, Darwin, p. 674. Normandy Mining Ltd, Submissions, p. S312.

22 Northern Territory Government (NTG), Submissions, p. S93.

23 See for example, Jawoyn Association, Transcripts, Darwin, p. 74; Nguiu Community Government Council, Submissions, p. S1; Dhimurru Land Management, Submissions, pp. S339-65; Harry Nelson, Transcripts, Yuendumu, p. 338; Paula Roberts, Transcripts, Ngukurr, p. 493; Anindilyakwa Land Council (ALC), Transcripts, Angurugu, p. 542; Ronald Lamilami, Transcripts, Maningrida, p. 728; Australian Anthropological Society (AAS), Submissions, p. S12; and Desart Inc, Submissions, p. S1676-77.

survival – of the Yolgnu culture and the Yolgnu people themselves.²⁴

- 7.29 Ronald Brown, at a public meeting in Tennant Creek, gave this description of how, under Aboriginal law, access to land is restricted and even Aboriginal people have to gain permission from other landowners to go on their land:

When you talk about a permit, it is only for Europeans. But we have another permit which is on the cultural side, which we do locally with each traditional owner...if we keep our permit system strong, it will be so for both sides...so we have our own cultural boundaries too.²⁵

- 7.30 At Yuendumu, Lindsay Turner outlined the importance of the permit system in helping Aboriginal people to protect their sacred sites:

We need entry permits for people to go onto Aboriginal land because of the culture and the sacred sites where the land is very respected. These are strong laws that mean a lot to us...²⁶

- 7.31 The Marngarr Community Government Council indicated to the Committee that these Aboriginal laws were no different, in some ways, to the respect that non Aboriginal people expect towards their private property:

In our culture you have to obtain permission to enter other people's country; you cannot just go where you like. Indeed, I don't think it is much different in any culture; there has to be respect for other people's country.²⁷

- 7.32 Other submissions emphasised the protection the permit system gives non Aboriginal people as well as Aboriginal people:

The permit system is, rather, a system of 'informed entry'. A system that takes due cognisance of the traditional ownership of Aboriginal land...It is a system that provides protection, just as much to the person entering Aboriginal land as it does to the owners of that land.²⁸

24 Ramininging Community Council, Submissions, p. S286.

25 Ronald Brown, Transcripts, Tennant Creek, p. 305.

26 Lindsay Turner, Transcripts, Yuendumu, p. S334.

27 Marngarr Community Council Inc, Submissions, p. S417.

28 Jawoyn Association, Submissions, p. S844. Also comments by Larrakia Nation Aboriginal Corporation (Larrakia Nation), Transcripts, Darwin, p. 758.

Trespass Laws Inadequate

- 7.33 Aboriginal communities and other groups argued that the Trespass Act, even with the amendments suggested by the Reeves Report, would be totally inadequate for protecting their land from unauthorised entry. The reasons for this mainly rested upon the impracticalities of enforcing a prosecution against trespass law. The problems included, the lack of access to police, the vast tracts of Aboriginal land that would need monitoring, the lack of resources to fund a prosecution, and the general fear that people would not respect trespass laws on Aboriginal land.²⁹
- 7.34 The Nguiu Community Government Council explained to the Committee the problems they would face on Bathurst Island in trying to enforce trespass law:
- Removal of that power [permit system] would allow unrestricted travel of non Tiwis into Nguiu with all the social problems (alcohol and drugs) that this would cause. This is even more important when it is realised that the nearest Police presence is at Garden Point on Melville Island. It takes approximately one and a half hours for Police to travel to Nguiu from Pirlangimpi, Melville Island.³⁰
- 7.35 The Ramingining Community Council is in a similar situation and pointed out:
- Our nearest police are in Maningrida, over one and a half hours drive away and they have told us that they cannot and will not come over to Ramingining simply to ask some white people to move on. Similarly, bringing these trespassers to court is a time consuming, expensive and in most cases fruitless exercise.³¹
- 7.36 Dhimurru Land Management, which issues recreation permits in the Gove region, questioned the practicalities of the Reeves Report's suggestions to signpost Aboriginal land against trespass:
- the potential effectiveness of such measures must have been apparent to the Review Head at the time he compiled the Report. Established roadways and airports are by no means the only avenues for gaining access to Aboriginal land. Since approximately 85% of the coastline of the Northern Territory,

29 For example, NLC, Submissions, p. S928-31; ATSIC, Submissions, p. S307; Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Submissions, p. S641, AAS, Submissions, p S13; Central Land Council (CLC), Submissions, p. S1651; Indigenous Law Centre, Submissions, p. S392-93; and John Ah Kit MLA, Transcripts, Darwin, p. 671.

30 Nguiu Community Government Council, Submissions, p. S1.

31 Ramingining Community Council Inc, Submissions, p. S285. See also comments by Marn Garr Community Government Council, Submissions, p. S417.

including offshore islands, is held under title by Aboriginal owners, thousands of kilometres of sparsely populated coastline are, in effect, boundaries. How are they to be effectively signposted?³²

- 7.37 Dhimurru Land Management also notes that the Reeves Report does not suggest any amendments to the defences to trespass. A charge of trespass will not be laid if the defendant did not see, or could not reasonably be assumed to have seen the notice posted on the land, or if the trespass was not wilful and was done while hunting or in the pursuit of game.³³
- 7.38 The issue of how much control Aboriginal people would have over entry to their land under trespass laws was pointed to by Larrakia Nation Aboriginal Corporation:
- The permit system, Aboriginal people I am sure would believe, works much better because they are aware of who is coming onto the land, their movements and the times and dates...In respect to the trespass part of the Reeves Report, that is a fact that happened after the act was committed...³⁴
- 7.39 For the Aboriginal arts organisation, Desart Inc, which services artists throughout Central Australia, prosecuting for trespass after an offence has serious implications:
- The permit system allows individual artists and Aboriginal arts organisations to check the credentials of dealers, and journalists, and arrange for interpreters and professional advice in regard to the subject of the proposed visit...The Trespass Act in its current form is not able to ensure that unwanted visitors do not arrive, and it cannot ensure that if they do, they can be immediately evicted. This opens the way for exploitation of Aboriginal artists.³⁵
- 7.40 In summary, the Committee was told that the permit system gave Aboriginal people the same rights that all non Aboriginal people have to control who goes in and out of their private land. The lack of resources in Aboriginal communities and the extensive nature of Aboriginal land means that trespass law is inadequate to provide Aboriginal people with these rights.

32 Dhimurru Land Management, Submissions, p. S351-52.

33 Dhimurru Land Management, Submissions, p. S352.

34 Larrakia Nation, Transcripts, Darwin, p. 758.

35 Desart Inc, Submissions, p. S1679.

Compulsory Acquisition Not Required

- 7.41 In relation to accessing Aboriginal land in order to provide essential services, the Committee heard little evidence of instances when access has been denied.³⁶
- 7.42 The Northern Territory Government indicated to the Committee that it does not seek unfettered access, nor a freehold interest in Aboriginal land:
- The Territory believes it should have the capacity to acquire interest in Aboriginal land for essential purposes and that the Land Rights Act inhibits the delivery of a range of services to the community generally. It was submitted by the Territory that section 67 should be removed and that grants of Aboriginal land should exclude easements in gross for essential services.³⁷
- 7.43 Aboriginal groups such as the Jawoyn Association acknowledged there is a need for security of tenure over land intended for community use and benefit. However, they argued that the Land Rights Act does not prevent the granting of an interest less than freehold in Aboriginal land. The method of providing the Government with a long term leasehold interest over Aboriginal land to provide essential services is a better option in their view for both sides:
- Indeed, in the cases where leases have been established for community purposes on Aboriginal land, they have been obtained through proper consultations with traditional Aboriginal owners at peppercorn rentals. With good will on all sides there seems no reason why this situation should not continue to prevail.³⁸
- 7.44 The Committee notes that this was the method used to establish the corridor from Darwin to Alice Springs for the proposed new railway. A 198 year lease was agreed to by the CLC and NLC for the 1500 kilometre railway corridor, which passes over the land of seventeen language groups.³⁹
- 7.45 Other Aboriginal groups and organisations also argued that the existing provisions allowing leasing of Aboriginal land for public purposes with

36 Many people told the Committee that they were not aware of any cases when the NTG had been denied access to provide essential services. See for example: Utopia community, Submissions, p. S646; Larrakia Nation, Submissions, p. S1567; and South East Arnhemland Land Council Steering Committee (SEALC), Submissions, p. S777.

37 NTG, Submissions, p. S1542.

38 Jawoyn Association, Submissions, p. S846.

39 Indigenous Land Corporation, Submissions, p. S815.

consultation are the best method of reaching lasting agreements and enhancing partnerships.⁴⁰

The Committee's Recommendations

Core Principles

- 7.46 The Committee believes that issues of access to Aboriginal land should always take place with proper consultation and negotiation with the Aboriginal people who rightfully own the land under inalienable freehold title. The Committee further believes that this principle provides the way forward for real partnerships of mutual respect between the Northern Territory Government and Aboriginal people.
- 7.47 In evidence to the Committee, Aboriginal people clearly rejected the Reeves Report's proposal to replace the permit system with an amended Trespass Act.

Recommendation 31

- 7.48 **The recommendation of the Reeves Report to replace the permit system under the Aboriginal Land Act 1978 (NT) with an amended Trespass Act 1987 (NT) be rejected.**

Negotiated Access Agreements

- 7.49 In discussions about access to Aboriginal land, the Committee was impressed to hear about various negotiated agreements that streamline the process of obtaining a permit. Aboriginal groups stressed the proper consultation and respect for their rights that these agreements entailed, and all parties agreed that the closer the processes are to the people involved, the better the system worked.
- 7.50 Of particular note is the agreement struck by the Tiwi Land Council (TLC) and AFANT to regulate recreational fishing on the island. The permit system is administered by AFANT and provides the opportunity for people to camp at six designated sites on Bathurst and Melville Islands.

40 SEALC, Submissions, p. S790; Indigenous Law Centre, Submissions, p. S395; CLC, Submissions, p. S1620-21; ALC, Transcripts, Angurugu, p. 541; ATSIC, Submissions, p. S308, and Larrakia Nation, Submissions, p. S1567.

They can obtain a permit quickly and easily. From the TLC's point of view, they are able to protect sacred sites and choose the sites for recreational fishing.⁴¹

- 7.51 The Committee understands that a similar process is underway between the Northern Land Council with AFANT in relation to formalised recreational fishing arrangements.⁴² There also exists a number of regional consultative committees around the coastline between the Northern Territory Fishing Industry Council and Aboriginal people to discuss issues of fisheries management.⁴³ The Committee encourages such agreements, negotiated in good faith between the relevant parties, which serve to streamline the process of obtaining permits for specific areas.
- 7.52 The Committee also believes there is potential to further streamline processes by having permits with different application requirements for different 'types' of access. They could include recreation permits, commercial or business permits, and residential permits. The Committee also wishes to encourage traditional Aboriginal owners to consider exempting certain areas of Aboriginal land where appropriate from the application of the permit system under s.11 of the Aboriginal Land Act 1978 (NT).
- 7.53 In keeping with its core principle that no changes should be made to the Land Rights Act without consultation with Aboriginal people, the following recommendations should be examined by the project team outlined in chapter one.

Recommendation 32

- 7.54 **A project team, as outlined in recommendation 2, be established to:**
- **review existing specific area access agreements with a view to ascertaining their successes and failures to date;**
 - **identify possible areas where such specific area access agreements might be extended;**
 - **draw up a project plan for implementing any possible new specific area access agreements;**
 - **consider the use of specific types of permits tailored for different land access purposes;**

41 TLC, Transcripts, Bathurst Island, p. 117; AFANT, Transcripts, Darwin, p. 609.

42 See video released by NLC, *Marine Agreements with Aboriginal People*, 1999.

43 Northern Territory Fishing Industry Council, Transcripts, Darwin, pp. 55-56 and pp. 65-66.

- **develop appropriate ‘user friendly’ systems to simplify and streamline the permit application process, including encouraging licence agreements for access to specific areas under section 19 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, particularly those which involve travel agents and/or tourist operators; and**
- **develop a campaign publicising the ability of traditional Aboriginal owners to recommend to the Administrator under section 11 of the *Aboriginal Land Act 1978 (NT)* that certain areas of their land be exempted from the application of the permit system.**

Delegation of Authority

- 7.55 An important adjunct to streamlined processes and negotiated access agreements is the delegation of authority to issue permits. Many Aboriginal people indicated to the Committee their desire to have more local control over the process of issuing or revoking permits.⁴⁴ One of the causes of delay was said to be the difficulty in locating the relevant permit delegate who may not live in that community.
- 7.56 Other comments were made indicating that the *Aboriginal Land Act 1978 (NT)* is silent as to how traditional owners are to make their decision and evidence their determination. The NLC suggests that one solution may be to recognise within the statute certain delegates who are empowered to issue and revoke permits on behalf of traditional owners if they agree to such a delegation.⁴⁵ The Committee suggests that local Aboriginal governing bodies may be appropriate delegates if traditional owners consent to such an arrangement.

Recommendation 33

- 7.57 **Land councils encourage delegation of the authority to issue permits under section 5(4) of the *Aboriginal Land Act 1978 (NT)*, particularly to local governing bodies by negotiating 'Land Use Agreements' under section 19 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, where there is informed consent by traditional Aboriginal owners for such an arrangement.**

44 See for example: Jawoyn Association, Transcripts, Darwin, p. 73; Walter Rogers, Transcripts, Ngukurr, p. 496; Don Blitner, Transcripts, Angurugu, p. 543; SEALC, Submissions, p. S791, and Anmatjere Association, p. S1032.

45 NLC quoted in *Dhimurru Land Management*, Submissions, pp. S345-47.

Workability Issues

- 7.58 To reduce the criticisms of the current access system, the Committee suggests that there are workability and enforcement issues in relation to the permit system that need addressing. In a modern society with new communications systems and increased mobility, it is essential that the permit system be reviewed.
- 7.59 The permit system needs to be ‘redesigned’, by maintaining its core objectives, but at the same time eliminating delays and needless bureaucracy. This will ensure that the system gains increased support, respect and recognition by all Australians. There is no doubt that most Australians would agree that, as a matter of common courtesy, permission to enter private land should be obtained from the owner. Aboriginal owners of land are entitled to the same courtesy. Continuation of a permit system (streamlined and user friendly) is justified in those circumstances.

Recommendation 34

- 7.60 **A project team, as outlined in recommendation 2, examine any workability problems with the current permit system under the Aboriginal Land Act 1978 (NT), and suggest ways to address them. Issues to address should include:**
- **the mechanism in sections 5 and 6 of the Aboriginal Land Act 1978 (NT) providing that the land councils can revoke permits issued by the traditional Aboriginal owners and traditional Aboriginal owners can revoke permits issued by the land councils;**
 - **the lack of an effective dispute resolution process when there is disagreement between individual traditional Aboriginal owners; and**
 - **the lack of effective enforcement measures for non compliance with the provisions of section 4 of the Aboriginal Land Act 1978 (NT).**

The project team should suggest a cost effective system of monitoring the experience of the community with the permit system to ensure that it is ‘user friendly’, effective and transparent, and so that any difficulties are resolved quickly.

Public Awareness Campaign

- 7.61 During the course of the inquiry, it was apparent to the Committee that a public awareness campaign regarding the operation of the permit system would help to relieve some of the tensions surrounding access to Aboriginal land. This is particularly true in relation to the status of roads, which are main thoroughfares in the Northern Territory and use of the permit system in natural and cultural resource management. It will also be essential if changes are made to streamline the process in accordance with the above recommendations.

Recommendation 35

- 7.62 **Land councils initiate a public awareness campaign about the operation of the permit system, including its role in natural and cultural resource management.**

Consultation not Compulsory Acquisition

- 7.63 The Committee does not believe that the Reeves Report's proposals in relation to the power of compulsory acquisition over Aboriginal land would achieve a more effective partnership between Aboriginal people and the Northern Territory Government. Furthermore, the Committee did not receive evidence from anyone that demonstrated actual cases where difficulties in gaining appropriate access for 'public policy purposes and works' were experienced. The case for compulsory acquisition was not substantiated.
- 7.64 The Committee wishes to encourage further negotiated agreements in relation to long-term leases over Aboriginal land granted to government for public purposes. To emphasise this point, the Committee wishes to explicitly reject the recommendation in the Reeves Report to delete ss. 67 and 68 of the Land Rights Act.
- 7.65 The Aboriginal community and traditional Aboriginal owners will no doubt continue to recognise the mutual responsibility of all Australians to ensure that a spirit of cooperation and goodwill is maintained. Mutual responsibility entails ensuring that essential 'public policy purposes and works' are facilitated and not subjected to delay and unwarranted opposition. If in the future, 'hard evidence' of unjustified opposition and delays in dealing with proposals for 'essential public works' comes to

light, this would inevitably require the recommendations of the Reeves Report to be revisited.

Recommendation 36

7.66 The recommendation in the Reeves Report to repeal sections 67 and 68 of the *Aboriginal Land Rights (Northern Territory) Act 1976* be rejected.

The Minister for Aboriginal and Torres Strait Islander Affairs facilitate formal discussions between land councils and Northern Territory Government to resolve any outstanding issues relating to obtaining access to Aboriginal land for a public purpose.

Conclusion

7.67 This chapter has considered the Reeves Report's proposals concerning access to Aboriginal land. The Committee has made its recommendations, which will ensure that Aboriginal people are consulted and have control over any access to their land. The Committee has also sought to assist in the process of achieving mutual respect and understanding between Aboriginal and non Aboriginal people in the Northern Territory.

7.68 The next chapter will examine the Reeves Report's recommendations about the application of Northern Territory laws on Aboriginal land.