
The Parliament of the Commonwealth of Australia

Unlocking the Future

*The Report of the Inquiry into the Reeves Review of the
Aboriginal Land Rights (Northern Territory) Act 1976*

House of Representatives
Standing Committee on Aboriginal and Torres Strait Islander Affairs

August 1999
Canberra

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Foreword

When enacted in 1976, the *Aboriginal Land Rights (Northern Territory) Act 1976* represented a milestone in the recognition of Aboriginal rights to land. Twenty five years later the Act remains central and relevant to the lives of Aboriginal people in the Northern Territory.

The Act has been reviewed several times since its enactment and minor amendments made. The Reeves Review is the most recent of these and its recommendations the subject of this report. The Reeves Review made far reaching and, at times, controversial recommendations. If accepted, these recommendations will lead to substantial change to the Land Rights Act. For this reason, Members of the Committee took very seriously the request by the Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon John Herron, that the Committee seek the views of as many people as possible with an interest in the recommendations of the Reeves Review. Accordingly, at an early stage in the inquiry, the Committee undertook to visit as many regional and remote communities as it could so that Members could listen to and talk with people, especially those most affected by the Act – the Aboriginal people of the Northern Territory.

When reviewing the written and oral advice before it, the Committee focused its deliberations by agreeing to core principles and values. These principles are described in chapter one and guided the Committee when it was deciding its recommendations. The overriding principle was that traditional Aboriginal owners and other Aboriginal people affected by the Act should be involved in any decisions to amend the Act. For this reason, the Committee recommends a process for its recommendations to be considered by Aboriginal people – it is after all, their Act, their land and their future.

The involvement of Aboriginal people in a number of project teams to consider the Committee's recommendations for amending the Act represents a new dynamic.

The Committee trusts that it will give Aboriginal people greater ownership of the Act and a greater sense that they control their own destinies. Hopefully, it will also facilitate a more productive partnership between Aboriginal people, land councils, the Northern Territory Government and the mining industry.

I am confident that the Committee's recommendations will lead to:

- Aboriginal people managing their own land at a local level and making decisions from the 'bottom up';
- targeting the expenditure of Mining Royalty Equivalent money in a transparent and fully accountable way that is subject to performance measures so that Aboriginal people derive the full benefit from their land; and
- a reduction in welfare dependency, promotion of mutual responsibility, trust and enduring partnerships between Aboriginal people, governments and others of the Northern Territory.

It remains for me to thank the people who have helped the Committee conduct the inquiry and prepare the report. First, I thank the Members of the Committee for their support during the inquiry: my Deputy Chairman, Harry Quick; Trish Draper; Barry Haase; Kelly Hoare; Bob Katter; Jim Lloyd; Daryl Melham; Warren Snowdon; and Barry Wakelin. I would also like to thank the secretariat staff: James Catchpole, Sara Cousins, Jennifer Cochran, Claressa Surtees and Fran Wilson. The Committee also relied on Karin Oldfield, Brian Lindell, and Alan Savage from Hansard and the Sound and Vision Office for their technical support in sometimes challenging conditions. I would also like to thank my electorate secretary, Sandie Dalton, for her assistance to me during the inquiry.

Of course, my thanks are also extended to the many individuals and organisations, both Aboriginal and non Aboriginal who forwarded submissions to the Committee and appeared at formal hearings – in particular, the land councils, the Northern Territory Government, ATSIC, and the Centre for Aboriginal Economic Policy Research. Thanks are also due to the many hundreds of Aboriginal people who spoke to Committee Members at meetings throughout the Northern Territory. The meetings themselves would not have been possible without the assistance of the officers and crew of 34 and 35 Squadrons of the Royal Australian Airforce who flew us most ably through the Territory.

Finally, I wish to pass on the Committee's hope that its efforts will unlock a better future for Aboriginal and non Aboriginal people alike in the Northern Territory.

Hon Lou Lieberman MP
Chair



Membership of the Committee

Chair Hon Lou Lieberman MP

Deputy Chair Mr Harry Quick MP

Members Mrs Trish Draper MP

 Mr Barry Haase MP

 Ms Kelly Hoare MP

 Hon Bob Katter MP

 Mr Jim Lloyd MP

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Terms of Reference

The Committee shall inquire into and report on the views of people who have an interest in the possible implementation of recommendations made in the Reeves Report. In particular the Committee will seek views on:

- the proposed system of Regional Land Councils, including
 - ⇒ the extent to which they would provide a greater level of self-management for Aboriginal people, and
 - ⇒ the role of traditional owners in decision making in relation to Aboriginal land under that system;
- the proposed structure and functions of the Northern Territory Aboriginal Council;
- the proposed changes to the operations of the Aboriginals Benefit Reserve including the distribution of monies from the Reserve;
- the proposed modifications to the mining provisions of the Act including the continuing role of government in the administration of these provisions;
- proposals concerning access to Aboriginal land including the removal of the permit system and access to such land by the Northern Territory government; and
- the proposed application of Northern Territory laws to Aboriginal land.

The Committee shall make recommendations on any desirable changes to the proposals made in the Reeves Report in the light of the views obtained.



List of Abbreviations

AAPA	Aboriginal Areas Protection Authority (Northern Territory)
AAS	Australian Anthropological Society
ABR	Aboriginals Benefit Reserve
ABS	Australian Bureau of Statistics
AFANT	Amateur Fisherman's Association of the Northern Territory
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALC	Anindilyakwa Land Council
ALGA	Australian Local Government Association
ANAO	Australian National Audit Office
ATSIC	Aboriginal and Torres Strait Islander Commission
CAEPR	Centre for Aboriginal Economic Policy Research
CANCA	Combined Aboriginal Nations of Central Australia
CEO	Chief Executive Officer
CLC	Central Land Council
DISR	Department of Industry Science and Resources (Commonwealth)

DME	Department of Mines and Energy (Northern Territory)
ELA	Exploration Licence Application
ILUA	Indigenous Land Use Agreement
MRE	Mining Royalty Equivalent
MWT	Mining Withholding Tax
NAC	Ngurratjuta Pmara/Ntjarra Aboriginal Corporation
NIEIR	National Institute of Economic and Industry Research
NLC	Northern Land Council
NTAC	Northern Territory Aboriginal Council
NTFIC	Northern Territory Fishing Industry Council
NTG	Northern Territory Government
RLC	Regional Land Council
SEALC	South East Arnhemland Land Council Steering Committee
TLC	Tiwi Land Council



List of Recommendations

1 Introduction

Recommendation 1

The *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') not be amended without:

- traditional Aboriginal owners in the Northern Territory first understanding the nature and purpose of any amendments and as a group giving their consent; and
- any Aboriginal communities or groups that may be affected having been consulted and given adequate opportunity to express their views.

Recommendation 2

The Minister for Aboriginal and Torres Strait Islander Affairs ('the Minister') establish project teams to consult and advise on the Committee's recommendations.

The number and membership of project teams should be decided by agreement between the Minister and the land councils. There is an understanding by the Committee that the Northern Territory Government will be involved in project team negotiations when and where specifically appropriate. The Minister shall be the final arbiter in the event of any dispute regarding the composition of such project teams.

Project teams should address the Committee's recommendations in the following order of priority:

- those recommendations concerning the delegation of land council powers and the establishment of new land councils;

- those recommendations concerning the mining provisions (Part IV) of the Act;
- the recommendation to review the method of disbursing 'areas affected money' within each area affected by mining;
- those recommendations concerning the permit system; and then
- the Committee's other recommendations.

Project teams should establish timetables for their consultation processes. The timetables and memberships of the project teams should be made publicly available.

Any recommendations for amendments to the Act from the project teams should be subject to recommendation 1.

Recommendation 3

The Minister for Aboriginal and Torres Strait Islander Affairs provide additional funding to allow the project teams, as outlined in recommendation 2, to perform their tasks.

3 Regional Land Councils

Recommendation 4

The recommendation of the Reeves Report to implement a system of eighteen autonomous Regional Land Councils to replace the existing land councils under the *Aboriginal Land Rights (Northern Territory) Act 1976* be rejected.

Recommendation 5

Section 28 of the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') be amended to allow land councils to delegate any or all of their powers, except for the power of delegation itself, the power to surrender Aboriginal land, and powers under section 35 and section 19(4)(b) of the Act.

Such delegations should be subject to the following conditions:

- the informed consent of the appropriate traditional Aboriginal owners;
- accountability and workability prerequisites; and
- the ability of the body to carry out the statutory functions it is delegated.

Recommendation 6

Section 22(2) of the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended in consultation with the land councils to provide for tighter controls on the process of affixing a common seal to documents.

Recommendation 7

Section 21(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') be amended to:

- define 'substantial majority' as at least 60% of those Aboriginal people living in the area; and
- require the Minister to be satisfied that the appropriate traditional Aboriginal owners have given their informed consent to the setting up of a new land council in accordance with section 77A of the Act.

Recommendation 8

Any application to the Minister for Aboriginal and Torres Strait Islander Affairs ('the Minister') for a new land council under section 21 of the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') involve the following processes:

- a working party be established, made up of the relevant stakeholders, to define precisely the boundaries of the proposed new land council;
- a publicly available discussion paper be prepared by that working party for the Minister containing: a summary of the main arguments 'for' and 'against' the proposal; estimates of the cost involved in establishing and operating the new land council; an assessment of the impact of a new land council on neighbouring regions; and relevant details establishing that it will be economically viable, and able to satisfy the requirements of the Act; and
- a campaign be undertaken by that working party to inform Aboriginal people who would be affected by the proposal about its implications.

When the Minister is satisfied that the above processes have been undertaken and that Aboriginal people understand the proposal and its implications, then the following should occur:

- a plebiscite be conducted, in accordance with the requirements of the Australian Electoral Commission, of all Aboriginal people living in the area to ascertain whether 'a substantial majority' support the establishment of a new land council; and

- the informed consent of traditional Aboriginal owners (if any) of the land within the boundaries of the proposed new land council be established in accordance with section 77A of the Act.

Recommendation 9

The *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') be amended to provide an option for traditional Aboriginal owners to represent their own interests in land without land council involvement.

Any consequential amendments be also considered. Agreements over land should remain subject to section 23(3) of the Act.

Recommendation 10

Land councils assist in the process of traditional Aboriginal owners facilitating security of tenure for long term residents through 'Land Use Agreements' under section 19 of the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act').

Such 'Land Use Agreements' could also cover matters such as:

- resource development;
- service delivery arrangements;
- access to housing; and
- the leasing of land for certain types of infrastructure, including community stores.

The requirements for consent by the Minister for Aboriginal and Torres Strait Islander Affairs under section 19 of the Act be removed.

4 Northern Territory Aboriginal Council

Recommendation 11

The recommendation of the Reeves Report to establish the Northern Territory Aboriginal Council (NTAC) as an authority under the *Aboriginal Land Rights (Northern Territory) Act 1976* be rejected.

Recommendation 12

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

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

Recommendation 13

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

Recommendation 14

As recommended in the Reeves Report, the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended to include a clear statement of purposes for the distribution of the funds in the Aboriginals Benefit Reserve.

Recommendation 15

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

Recommendation 16

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

Recommendation 17

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

Recommendation 18

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

Recommendation 19

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

Recommendation 20

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

Recommendation 21

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

Recommendation 22

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

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

Recommendation 23

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

The Minister should publicise the findings.

6 The Mining Provisions of the Act**Recommendation 24**

Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended so that there are no restrictions on the contents of agreements for exploration or mining, subject to general commercial law requirements and recommendation 25.

Recommendation 25

Traditional Aboriginal owners, through their land councils, should have the right to withhold consent for any exploration or mining proposal, subject to the current provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

This recommendation should be read in conjunction with recommendation 24.

Recommendation 26

Section 28 of the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended so that land councils can delegate their power to approve exploration and mining agreements to regional committees or councils, subject to existing requirements for the informed consent of the traditional Aboriginal owners of the regions concerned.

The Minister for Aboriginal and Torres Strait Islander Affairs should still be required to give consent to any agreement.

Recommendation 27

The *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') be amended to make it clear that traditional Aboriginal owners can choose their own advisers, should they wish, to assist in the negotiation of exploration or mining agreements. Unless the land council agrees, the cost of such advice should not be borne by the land council.

Land councils, or their regional committees or councils, should still be required to endorse any agreement in accordance with section 23(3) of the Act.

Recommendation 28

The Minister for Aboriginal and Torres Strait Islander Affairs request that the Northern Territory Government grant the Northern Territory Mining Minister powers to withdraw Consent to Negotiate an Exploration Licence if the Northern Territory Mining Minister believes that the company is not negotiating in good faith, and on any other grounds which the Minister considers relevant.

If an application is withdrawn on this basis, other companies should be able to seek Consent to Negotiate an Exploration Licence for the affected area. The original applicant, whose licence to negotiate was withdrawn by the Northern Territory Mining Minister, should not be able to reapply for an Exploration Licence for the same area for twelve months.

Section 48 of the *Aboriginal Land Rights (Northern Territory) Act 1976* be amended so that the five year moratorium on new applications for exploratory licences after a refusal to give consent to an application can be removed, if the land councils or their regional committees or councils (on advice from traditional Aboriginal owners) and the Northern Territory Mining Minister agree that a new Consent to Negotiate can be granted.

Recommendation 29

The responsibilities of the Northern Territory Mining Minister under Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* be retained.

Recommendation 30

The Minister for Aboriginal and Torres Strait Islander Affairs request that the Northern Territory Government amend the Mining Act 1980 (NT) to exclude zero or very low impact exploration on Aboriginal land from the definition of 'exploration'. Approvals to conduct zero or very low impact exploration should be processed by the land councils through the permit system with the informed consent of traditional Aboriginal owners.

Under this arrangement, land councils should be required to advise the Northern Territory Government of the terms and conditions of any permits they issue to allow zero or very low impact exploration.

These arrangements should have no legal status in the formal processes for obtaining a Consent to Negotiate from the Northern Territory Mining Minister.

7 Access to Aboriginal Land**Recommendation 31**

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.

Recommendation 32

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;
- 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.

Recommendation 33

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.

Recommendation 34

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.

Recommendation 35

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

Recommendation 36

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.

8 Application of Northern Territory Laws to Aboriginal Land**Recommendation 37**

The Minister for Aboriginal and Torres Strait Islander Affairs consider whether the power of the Legislative Assembly of the Northern Territory to make laws under section 73(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') needs to be extended beyond the matters listed in section 73(1)(a) to 73(1)(d) of the Act.

A project team, as outlined in recommendation 2, should suggest processes to resolve future disputes concerning the application of Northern Territory laws to Aboriginal land.

Examples of difficulties encountered, or perceived difficulties, be examined by the project team to determine whether or not the existing law needs to be reviewed.

Recommendation 38

The recommendations in the Reeves Report to:

- repeal section 74;
- amend sections 26 and 71

of the *Aboriginal Land Rights (Northern Territory) Act 1976* be rejected at this time.

Land councils undertake negotiations with the Northern Territory Government to consider the practical difficulties associated with land councils complying with the Fences Act (NT).

Recommendation 39

The Minister for Aboriginal and Torres Strait Islander Affairs seek the cooperation of the Northern Territory Government to review any inconsistencies between the Local Government Act 1993 (NT), and other relevant Commonwealth and Northern Territory Acts, and the *Aboriginal*

Land Rights (Northern Territory) Act 1976 and advise the appropriate Northern Territory and Commonwealth Ministers.

9 Other Issues Presented to the Committee

Recommendation 40

The Minister for Aboriginal and Torres Strait Islander Affairs consider the recommendations made in the Reeves Report to amend the powers and functions of the Aboriginal Land Commissioner with a view to amending the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Act') to, at least, give the Aboriginal Land Commissioner powers to:

- to intervene by way of conciliation or mediation to assist in the settlement or disposal of land claims; and
- to make findings and recommendations under section 50(1)(a)(ii) of the Act by consent.

Recommendation 41

The Minister for Aboriginal and Torres Strait Islander Affairs host a settlement conference involving the Northern Territory Government, the land councils and other interested parties to determine whether any land claims can be settled by negotiation and voluntary agreement.

Recommendation 42

The role of the Minister for Aboriginal and Torres Strait Islander Affairs in the administration of the *Aboriginal Land Rights (Northern Territory) Act 1976* be reviewed, with a view to reducing or removing that role altogether.

Recommendation 43

The Minister for Aboriginal and Torres Strait Islander Affairs liaise with the Northern Territory Minister for Aboriginal Development and the land councils to establish protocols for cooperation between the Northern Territory Aboriginal Areas Protection Authority and the land councils when fulfilling their functions under section 23 (1)(ba) of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Recommendation 44

Title to the banks and beds of rivers wholly within Aboriginal land be granted to the title holders of that land.

However, before title is granted, a project team as outlined in recommendation 2, is to recommend amendments to the *Aboriginal Land*

Rights (Northern Territory) Act 1976 to ensure that the rights and obligations of the traditional Aboriginal owners of the banks and beds of rivers wholly within Aboriginal land are consistent with the provisions of the Water Act 1992 (NT) and the Soil Conservation and Land Utilisation Act 1970 (NT).

Recommendation 45

A project team, as outlined in recommendation 2, consider the recommendation of the Reeves Report regarding the beds and banks of rivers that:

- form the boundary between land that is available for claim and that which is not; or
- comprise a strip of land between two areas of land that are not available for claim.

Any amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* should reflect the interests of the Northern Territory community and principles of river resource management.

They should also, in principle, provide that claims over the beds and banks of rivers maintain rights of access as set out in section 13 of the Water Act 1992 (NT), and that rights of public access be addressed before a claim is granted.

