

## Regional Land Councils

### Introduction

- 3.1 The Land Rights Act allows for at least two land councils to act on behalf of traditional Aboriginal owners and to represent the interests of the Aboriginal people of the Northern Territory. Since 1976, a further two smaller land councils have been established under its provisions – the Tiwi and Anindilyakwa land councils. Over time, there have been calls from other parts of the Territory for regional autonomy. In response, the Reeves Report recommends a new system of Regional Land Councils (RLCs) and the establishment of a Northern Territory Aboriginal Council (NTAC). NTAC is considered in more detail in chapter four.
- 3.2 This chapter examines the current provisions of the Land Rights Act relating to decision making processes and self management. It then responds to the Committee's first term of reference, by detailing the two main reasons why people rejected the RLC system. These were that:
- it would fail to provide a greater level of self management for Aboriginal people; and
  - its reliance on the 'regional community' rather than traditional Aboriginal owners as the primary decision makers is not supported by Aboriginal people, and would potentially lead to conflict and uncertainty.
- 3.3 Finally, in the light of these views, the Committee outlines its recommendations to increase the self reliance of Aboriginal people. The recommendations, if implemented, will also increase the autonomy of those who wish to remain within the current land council structure, and

facilitate a more effective means, for those who do not, to establish their own independent land council.

## Current Provisions of the Land Rights Act

### Traditional Owners and Decision Making

- 3.4 The Woodward Commission determined that traditional Aboriginal owners lay at the centre of decision making over the land. ‘Traditional Aboriginal owners’ are defined under s. 3 of the Land Rights Act as:
- a local descent group of Aboriginals who (a) have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land; and (b) are entitled by Aboriginal tradition to forage as of right over that land.
- 3.5 As described in chapter two, legal title to Aboriginal land is held by Land Trusts. However, a Land Trust cannot act without the instruction of the land council, which in turn takes its direction from the traditional owners. A land council cannot take any action regarding Aboriginal land without the informed consent of the traditional owners or before having consulted with any Aboriginal group with interests in the land that may be affected.<sup>1</sup>
- 3.6 Decisions made by traditional Aboriginal owners regarding land use and management are ratified by Full Council meetings of the relevant land council. Communities within a land council area nominate members to the Council. A list of communities and the allocation of representatives are subject to review by the land council and Ministerial approval. In 1997-98, the Central Land Council (CLC) was made up of 83 members representing 65 communities.<sup>2</sup> For the same period, the Northern Land Council (NLC) had 78 elected members from communities throughout its region.<sup>3</sup>

### Regionalisation Policy

- 3.7 Both the CLC and NLC have formally adopted a policy of regionalisation. Justice Toohey, in his review of the Land Rights Act in 1983, suggested that consideration should be given to ‘establishing regional committees of

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1 s. 5(2), s. 23(3) and s. 77A, *Aboriginal Land Rights (Northern Territory) Act 1976*.

2 Central Land Council (CLC), *Annual Report 1997-1998*, p. 9.

3 Northern Land Council (NLC), *Annual Report 1997-1998*, p. 8.

a Land Council, delegating to each committee wide powers with regard to Aboriginal land within its region'.<sup>4</sup> Currently, regional committees or councils, which are subsets of the Full Council, exist in all nine regions<sup>5</sup> of the CLC and all seven regions<sup>6</sup> of the NLC.

- 3.8 The object of regionalisation is to provide a local forum for the discussion of regional issues, and to increase the efficiency of decision making. At the same time, professional services and support remain available through the central agency. Some of the activities regional committees are involved in include: discussions relating to mining, leases, licences and other aspects of land management; regional planning and development; training and community awareness programs; and the identification of regional resource needs.<sup>7</sup>
- 3.9 While the purpose of regionalisation is to deliver a high degree of autonomy to local areas, the Land Rights Act currently restricts a land council's power of delegation to regional committees. Section 28 limits decisions which can be made by regional committees, that is, decisions not requiring the ratification of the Full Council, to those which affect their interests in land to a term of no longer than 2 years or involve a payment of a total value of less than \$100 000.

## Creating New Land Councils

- 3.10 New land councils can be established under the existing provisions of the Land Rights Act. Under s. 21, the Minister can create a new land council where satisfied that:
- (a) a substantial majority of adult Aboriginals living in an area that: (i) is wholly included in the area of a Land Council; or (ii) is partly included in the area of one Land Council and partly included in the area of another Land Council or in the areas of other Land Councils; is in favour of the setting up of a new Land Council for that first-mentioned area only; and
  - (b) that first-mentioned area is an appropriate area for the operation of a new Land Council.

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4 Justice Toohey, 1984, *Seven Years On, Report to the Minister for Aboriginal Affairs on the Aboriginal Land Rights (Northern Territory) Act 1976 and Related Matters*, AGPS, Canberra, para 298.

5 Alice Springs; South Western; North Western; Tanami; Western; Tennant Creek; Eastern-Sandover; Eastern-Plenty, and Anmatyerre regions.

6 East Arnhem; West Arnhem; Borroloola/Barkly; Victoria River District; Katherine; Ngukurr, and Darwin/Daly regions.

7 CLC, *Annual Report 1997-1998*, pp. 57-59 and NLC, *Annual Report 1997-1998*, pp. 13-14.

- 3.11 Both the Tiwi and Anindilyakwa land councils were created through the exercise of Ministerial discretion under this section.
- 3.12 Other regions have called for greater autonomy by making applications to the Minister to establish 'breakaway' land councils. These areas include the Daly River region; North East Arnhem Land; South East Arnhem Land; and the Anmatjere region in Central Australia.<sup>8</sup> To date, the relevant Minister has rejected these applications. The exception is a revised application for an Anmatjere land council, which is currently with the Minister, pending the outcome of this inquiry.<sup>9</sup>
- 3.13 In determining whether or not to create a new land council, the Minister can have regard to the recommendations of a report commissioned by the Aboriginal and Torres Strait Islander Commission (ATSIC).<sup>10</sup> The prevailing practice in recent times has been to engage an anthropologist to ascertain the appropriateness of the boundaries proposed for the new land council, and to establish whether or not a 'substantial majority' of people in the area agree to its creation.<sup>11</sup>

## Reeves Report's Proposals

### Issues

- 3.14 The Reeves Report argues that the main purpose of the Land Rights Act has been to grant traditional Aboriginal land for the benefit of Aboriginal people living in the Northern Territory. Other purposes include to recognise traditional Aboriginal interests in the land and to provide Aboriginal people with effective control over their land.<sup>12</sup> The Report states that the Act has clearly been very successful at granting and

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8 The Reeves Report contains a discussion of the various 'breakaway' land council movements at pp. 190-201.

9 There have been two separate applications for an Anmatjere land council – the first in 1988 and the second in 1994, rejected by the then Minister who did not believe that a 'substantial majority' supported the creation of a new land council in the area. See Anmatjere Association Inc, Submissions, p. S1030.

10 The Aboriginal and Torres Strait Islander Commission (ATSIC) administers the Land Rights Act.

11 See for example, reports by David Martin and Jeff Stead referred to by the *Reeves Report* at pp. 193-94.

12 *Reeves Report*, p. 60.

recognising traditional interests in land. It has not been as successful in providing effective control over that land.<sup>13</sup>

- 3.15 The Reeves Report argues that there are two main reasons for Aboriginal people lacking effective control over their land:
- the two larger land councils are remote, bureaucratic and uninterested in local problems. They have not been successful at performing their representative role under the Act; and
  - the current emphasis in the Act on traditional owners has caused irreconcilable disputes and does not reflect traditional decision making processes. Consequently, the importance of regional communities as a more appropriate representative structure has been overlooked.<sup>14</sup>

## System of Regional Land Councils

- 3.16 The Reeves Report therefore recommends the creation of a new structure to represent Aboriginal peoples' interests in the land at a regional level. The Report suggests a system of eighteen autonomous RLCs whose boundaries would broadly correspond to the existing administrative regions of the two larger land councils. The boundaries of the Tiwi and Anindilyakwa RLCs would remain as they are now.<sup>15</sup> The CLC and NLC would cease to exist.
- 3.17 Under this system, each RLC would 'hold all Aboriginal land in its region in trust for the benefit of all Aboriginal people who are entitled by tradition to use or occupy that land'.<sup>16</sup> Legal title to the land would be transferred from the existing Land Trusts to the appropriate RLC.
- 3.18 Traditional owners would not necessarily retain their current central role in decision making over matters relating to the land. Rather, an RLC would be required to:
- make its decisions in the best interests of the Aboriginal people of its region and should be entitled to adopt the decision making process that it considers best reflects Aboriginal traditional processes in its region.<sup>17</sup>
- 3.19 The rules of membership proposed for each RLC are that: 'any Aboriginal person who has a traditional affiliation to an area of land within the

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13 *Reeves Report*, pp. 63-64.

14 *Reeves Report*, ch. 6 esp. pp. 105-118 and ch. 7 and 8.

15 *Reeves Report*, pp. 208-213 and ch. 27.

16 *Reeves Report*, p. 597.

17 *Reeves Report*, p. 213.

region, or who is a permanent resident of the region, is entitled to be a member'. The Reeves Report recommends however that a person may only be a member of one RLC at any one time.<sup>18</sup>

3.20 These new bodies would be responsible for most of the functions of the present land councils, including land use and management matters in their region, and regional coordination in conjunction with the new peak organisation, NTAC.<sup>19</sup> The Report suggests that NTAC would be the most appropriate body to carry out some of the present functions of the land councils, for example, completion of the land claims process.<sup>20</sup>

3.21 In keeping with its other recommendations for the future purpose of the Land Rights Act, the Reeves Report proposes that RLCs should have the following additional duties:

- to assist the social and economic advancement of Aboriginal people living in its region generally;
- to coordinate and assist the implementation of Aboriginal social and economic advancement programs of NTAC, the Northern Territory and Commonwealth governments and ATSIC in its region;
- to join in cooperative arrangements with Community Government Councils, Aboriginal Housing Associations and other agencies in its region to effect mutual economies and other benefits;
- to encourage Aboriginal people living in its region, especially young Aboriginal people, to acquire productively useful skills;
- in conjunction with NTAC, to identify likely regional skill shortages, infrastructure needs, economic opportunities and fund-raising prospects;
- to support the development and adoption of productively useful technologies in its region;
- to support the productive development of Aboriginal land, especially for mining, tourism and specialist primary production (horticulture, aquaculture etc.); and
- to propose projects in its region for consideration and approval by NTAC for seed funding.<sup>21</sup>

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18 *Reeves Report*, p. 601.

19 *Reeves Report*, p. 594.

20 *Reeves Report*, p. 597.

21 *Reeves Report*, p. 598.

## Northern Territory Aboriginal Council

- 3.22 As discussed, the Reeves Report suggests that an umbrella body be formed called NTAC in order to provide a framework for the operations of the eighteen RLCs. The members of NTAC would be appointed by the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs and the Chief Minister of the Northern Territory. They would choose from a list of nominations by Aboriginal people in the Northern Territory. Over time, the Reeves Report recommends that the members of NTAC be elected.
- 3.23 NTAC is an important element of the proposed system of RLCs, as the Reeves Report suggests it should control the financial aspects of the Land Rights Act. NTAC would decide the budgetary allocations of each RLC, estimated by the Reeves Report to be approximately \$400 000 per annum.<sup>22</sup> NTAC would also control, at its discretion, the expenditure and investment of all the funds of the Aboriginals Benefit Reserve (ABR) and any negotiated payments.
- 3.24 NTAC is considered in more detail in chapter four of this report.

## Comments on the Reeves Report's Proposals

### Greater Self Management?

- 3.25 In response to the Reeves Report's finding that the two larger land councils are perceived to be remote, bureaucratic and uninterested in local problems, the Committee heard two broad types of comments from Aboriginal people living on the mainland of the Northern Territory:
- support for the CLC and NLC in their current form with a view to enhancing their regionalisation programs<sup>23</sup>; and

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22 *Reeves Report*, p. 612.

23 See for example: Laynhapuy Homelands/Yirrkala Community Elders and Traditional Owners, Submissions, p. S822; Utopia community, Submissions, p. S644; Communities – various, Katherine region, Submissions, pp. S829-30; Amy Lawler and Neville Barclay, Transcripts, Tennant Creek, pp. 306-7; Alison Anderson, Transcripts, Yuendumu, p. 335; John Sullivan, Transcripts, Daly River, p. 711; Larrakia Nation Aboriginal Corporation (Larrakia Nation), Submissions, p. S1567; and Combined Aboriginal Nations of Central Australia (CANCA), Submissions, pp. S586-590, p. S611.

- dissatisfaction with the current regionalisation policies of the two larger land councils coupled with a desire for an autonomous local land council.<sup>24</sup>
- 3.26 There was general agreement with the Reeves Report's aim of delivering greater self management to Aboriginal people at the local and regional level. All agreed that a more regional focus would improve the operations of the CLC and NLC, although the degree of autonomy sought did differ amongst the Aboriginal groups who spoke to the Committee. In the words of the Jawoyn Association:
- The obligations to inform, consult and obtain consent built into the Act are fundamental and are fully supported. They are the reality of land rights. They are most comprehensively, effectively and efficiently achieved, however, at a regional level.<sup>25</sup>
- 3.27 Despite this general agreement, the majority of Aboriginal and non-Aboriginal people who contributed to the Committee's inquiry rejected the system of RLCs proposed by the Reeves Report. The reasons for this were varied and will be examined in turn.

### Loss of a Strong 'Voice'

- 3.28 For those Aboriginal people who favour remaining under the umbrella of a larger land council but perhaps achieving greater local autonomy, breaking up the existing system into smaller regional bodies represents a threat to the land council's strong advocacy role. Under the Land Rights Act, land councils are required 'to protect the interests of traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land' in their area.<sup>26</sup>
- 3.29 Many people thought that smaller RLCs would not be able to provide a strong 'voice' for Aboriginal interests in the Northern Territory. Lindsay Herbert from Lajamanu put it this way:

Both the Northern Land Council and Central Land Council are our supporters, because all of us sitting here have not been educated. We did not go to university. Therefore we look to the land councils for our support if we cannot understand your speech – that is, English. That is the reason we really support the two big land

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24 Discussed further at paras 3.33-3.34.

25 Jawoyn Association, Submissions, p. S837.

26 s. 23(1)(b), Land Rights Act.



councils...we do not agree to the breaking up into all those small land councils. That is a complete no-no.<sup>27</sup>

3.30 Similarly, Otto Smith argued at Yuendumu that:

We want the one land council. It is our voice, it is a strong voice. If we have separate land councils, we will be powerless. It will be as if we are in a boat, tossed and kicked around.<sup>28</sup>

3.31 Ronald Lamilami put his rejection of the system of RLCs in these terms:

The land council is the representation of the people. ...The people who are the representatives from our region sit there – and they are our voice in those land councils. But, as part of the review, to take out the heart and core of it, that is where people die. We are just going to wither. It is like a sand dune. The sand dune will change its formation as the wind changes. ...We are just going to be blown from one direction to the other because the heart or the core of it has been taken away.<sup>29</sup>

3.32 The existence of NTAC in the Reeves Report model seemed to provide no relief to this concern because of its proposed initial method of appointment by the Commonwealth Minister and the Chief Minister of the Northern Territory.<sup>30</sup>

### Loss of Autonomy

3.33 Not all the Aboriginal groups who spoke to the Committee felt that they needed a large land council to advocate on their behalf. Some groups argued that they could do much better with their own independent land council, and that the regionalisation process of the CLC and NLC does not provide sufficient local autonomy. The regionalisation policy to them represents mere ‘tokenism’ on the part of the larger land councils.<sup>31</sup>

3.34 Some of the Aboriginal groups who wish to establish ‘breakaway’ land councils made written and oral submissions to the Committee’s inquiry. These include the Anmatjere Association at Ti-Tree in Central Australia,

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27 Lindsay Herbert, Transcripts, Kalkarindji, pp. 296-97.

28 Otto Smith, Transcripts, Yuendumu, pp. 338-39. See also other comments, Transcripts, Yirrkala, pp. 510-33.

29 Ronald Lamilami, Transcripts, Maningrida, pp. 734-35.

30 Although the Reeves Report suggests that a Congress of RLCs would act as ‘a strong representative body of Aboriginal Territorians’, all decision making power and ultimate authority rests with NTAC. *Reeves Report*, p. 605.

31 For example, South East Arnhemland Land Council Steering Committee (SEALC), Submissions, p. S789.

the South East Arnhemland Land Council Steering Committee at Ngukurr and the Jawoyn Association at Katherine.

- 3.35 Despite the strong desire of these groups for their own land council, the Reeves Report's model of RLCs and NTAC is seen as *reducing* their local autonomy. The Jawoyn Association for example is in support of regional autonomy, however it does not support 'the attenuated form that the Regional Land Council ("RLC") proposal would deliver'.<sup>32</sup>
- 3.36 While these groups argue that the existing two larger land councils are too remote and decision making should be closer to the local region, NTAC to them presents an even more centralised system. Some of the concerns held by the Anmatjere Association regarding NTAC are as follows:
- the Anmatjere see no reason why such a Land Council [Anmatjere Land Council] can not be established within the parameters of the current *Land Rights Act*.
- The NTAC will be established in Darwin and will be even more remote from the Anmatjere that [sic] the CLC. ...The very concerns that the Anmatjere have raised in relation to the Central Land Council are seen to be evidencing themselves in the NTAC except on a larger scale.<sup>33</sup>
- 3.37 While agreeing in principle with the concept of NTAC, the South East Arnhemland Land Council Steering Committee also expressed reservations about its controls on RLCs' decision making processes and investment income. Their comments are qualified by a need for further examination and discussion to fully understand the proposal.<sup>34</sup>
- 3.38 Similar concerns are echoed by the Tiwi Land Council and Anindilyakwa Land Council. Although the boundaries of their land councils would not alter under the Reeves Report proposals, their financial autonomy would be dramatically affected. Controls by NTAC over financial aspects of the Land Rights Act are considered in more detail in both chapter four and five of this report.<sup>35</sup>

### Imposed 'Static' Solution

- 3.39 The Reeves Report bases its mainland RLC boundaries on the existing administrative regions of the CLC and NLC. The Report assumes that

32 Jawoyn Association, Submissions, p. S836.

33 Anmatjere Association Inc, Submissions, pp. S1031-32.

34 SEALC, Submissions, p. S774

35 Anindilyakwa Land Council (ALC), Transcripts, Angurugu, p. 537. Tiwi Land Council (TLC), Transcripts, Nguiu, pp. 124-25.

these regions are broadly based on regional cultural similarities, and would thus be appropriate for RLCs.<sup>36</sup> However, as Sir Edward Woodward points out:

One only has to read Mr Reeves' careful descriptions of the 'cultural factors' and 'conclusions' applying to each of his proposed regions, in Appendix H of his Report to realise that many of their populations are far from [homogeneous].<sup>37</sup>

- 3.40 During the Committee's inquiry, concerns were raised about the 'static' nature of the RLC system, which would be imposed 'from above' rather than allowing the impetus to come from Aboriginal people themselves. After referring to the system of RLCs as 'non-traditional constructs imposed from above', anthropologist Les Hiatt submitted that:

This leads me to question the wisdom of accepting the 16 regional committees of the NLC and CLC as the foundation for the new system without extensive consultation with Aboriginal communities throughout the Northern Territory. Encouraging regional growths where they occur spontaneously is to be commended; imposing them by fiat seems dubious.<sup>38</sup>

- 3.41 Senator Tambling, in his oral submission, echoed this principle stating that 'it is wrong for us to patronise and to say to the Aboriginal people what the number [of land councils] is. That has to be evolved by the Aboriginal people themselves'.<sup>39</sup>
- 3.42 The Australian Anthropological Society's (AAS) submission argued that a likely consequence of attempting to fix boundaries in a static fashion would be conflict and disputation. Particular difficulties would arise as a result of the Reeves Report's suggestion that a person may only be a member of one RLC at any one time:

it is widely documented in the NT that people often have key customary responsibilities for sites and lands in two, sometimes several, different areas separated by some distance. No amount of adjustment of RLC boundaries could overcome all such cases.<sup>40</sup>

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36 *Reeves Report*, pp. 208-209. The Report acknowledges that some process of adjustment for establishing boundaries may be needed, and suggests the Aboriginal Land Commissioner could inquire into any disputes.

37 Sir Edward Woodward, *Submissions*, p. S758. Note the correction made by Woodward to his submission at a public hearing on 2 June 1999, *Transcripts*, Canberra, p. 550.

38 Les Hiatt, *Submissions*, p. S1028. See also comments made by the NLC, *Submissions*, p. S899.

39 Senator Grant Tambling, *Transcripts*, Canberra, p. 794.

40 Australian Anthropological Society (AAS), *Submissions*, p. S9.

3.43 Comments by the Utopia community support this notion:

The people feel that the proposed boundaries of the regional land councils have not been researched properly or if they have then it is a deliberate attempt to weaken Utopian authority on their [sic] own land. There was no consultation with the people here on the subject and it appears once again the experts think they know best.<sup>41</sup>

3.44 Dr David Martin from the Centre for Aboriginal Economic Policy Research (CAEPR) also outlined the factors militating against use of defined boundaries. He emphasised the restrictive impact it would have on organic growth:

Most importantly, this [establishing set boundaries] would pre-empt and constrain the *organic growth of regional political forms which is a critical element of self-determination*, and of the eventual political legitimacy and success of these organisations within the Aboriginal domain.<sup>42</sup>

3.45 As outlined above, Aboriginal people who contributed to the Committee's inquiry have at this stage rejected the system of RLCs including the boundaries defined for the mainland of the Northern Territory.

### Bad Public Policy

3.46 While the Reeves Report system of RLCs and NTAC has the aim of increasing the self management of Aboriginal people, there are public policy reasons why this is unlikely to be the outcome. The point has already been made that in creating NTAC, the Reeves Report presents an even more centralised system than the status quo. As Professor Jon Altman from CAEPR stated:

While it claims to aim to empower regional interests with the creation of RLCs, it simultaneously centralises economic power in NTAC that will have control of the ABR and that will be run initially by an unrepresentative Board nominated by party political governments.<sup>43</sup>

3.47 Many submissions argued that the creation of eighteen RLCs would result in inefficiency, an increased likelihood of nepotism and conflict, and

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41 Utopia community, Submissions, p. S644. See also comments by Tony Jack, Chair, Garrak Jarru Regional Council (ATSIC), Transcripts, Canberra, p. 91.

42 David Martin, Centre for Aboriginal Economic Policy Research (CAEPR), Submissions, p. S466. Also Nicolas Peterson, Submissions, p. S566.

43 Jon Altman (CAEPR), Submissions, p. S438.

uncertainty for mining and developer interests. Others indicated that the smaller RLCs would be vastly under resourced for the functions they would be expected to undertake and would have trouble retaining a critical mass of expert staff. Furthermore, some submissions contended that the proposal would actually result in a greater level of bureaucracy not less. These comments will be examined in more detail.

### Economically flawed

3.48 The budget for the operation of RLCs is estimated by the Reeves Report to be in the vicinity of \$400 000 per annum.<sup>44</sup> This estimate is based on the administrative budgets of the two existing smaller land councils because the new RLCs would be roughly equivalent in size.<sup>45</sup> Some RLCs, at the discretion of NTAC, could receive 'areas affected' monies as long as they had a mining operation in their region and could fulfil the new criteria proposed by the Reeves Report (further discussed in chapter five of this report).

3.49 Both the NLC and CLC considered \$400 000 per annum to be vastly inadequate for the range of statutory functions a RLC would be required to carry out, even with the strategic supervision of NTAC:

With limited resources and access to expertise and advice, the Regional Land Councils could not provide even basic services within the proposed budget ...<sup>46</sup>

3.50 Others focused on the loss of economies of scale that would occur in replicating autonomous land councils eighteen times. As Professor Brian Galligan notes, the majority of RLCs would have less than 2000 people and administrative staff of around ten. Effective governance even at a local level, he states, 'requires a certain critical mass and scale'.<sup>47</sup>

3.51 David Pollack from CAEPR detailed the likely staffing requirements of a RLC including mining and resource specialists, anthropologists, and legal, financial and administrative staff. Consultants could be used on some occasions, however much of the above expertise would necessarily have to be in-house.<sup>48</sup> The likelihood of RLCs being able to attract staff with the

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44 *Reeves Report*, p. 612.

45 The NLC points to the difficulties of making this comparison for estimating budgetary requirements at p. S901 of their submission. See also Brian Galligan, *Submissions*, pp. S500-501.

46 NLC, *Submissions*, p. S901. CLC, *Submissions*, p. S1589. See also estimates of RLC budgets by David Pollack (CAEPR), *Submissions*, pp. S509-14.

47 Brian Galligan, *Submissions*, p. S495.

48 David Pollack (CAEPR), *Submissions*, p. S511.

necessary expertise is doubted.<sup>49</sup> Similarly, Dr Elspeth Young questioned the ability of RLCs to plan for effective land management with limited access to highly specialised technical equipment such as GIS mapping (currently used by the CLC and NLC).<sup>50</sup>

### Larger bureaucracy

- 3.52 The Central Land Council currently has a staff of 116 and the Northern Land Council has a staff of 85. The AAS estimated that eighteen RLCs would have a staff of around 252 (based on the Tiwi Land Council's and Anindilyakwa Land Council's average staff of fourteen each). They argued that it is difficult to see how NTAC could fulfil its functions without a staff of at least 100. Thus, the total staff would be in the vicinity of 350, in comparison to the current staffing levels of all the land councils combined of 229. As the AAS put it: 'The outcome would thus be far more bureaucrats rather than fewer'.<sup>51</sup>
- 3.53 David Pollack agreed, stating that the aggregated estimates for administration costs of the eighteen RLCs and NTAC 'total in excess of \$40 million which is more than the current income of the ABR'.<sup>52</sup>

### Inefficiency and uncertainty

- 3.54 There was some concern expressed to the Committee that the implementation of the RLC system would cause inefficiency and uncertainty. This concern came particularly from the Northern Territory Government and mining interests. While supportive of efforts to bring decision making closer to the ground, the Northern Territory Government foresaw problems with the Reeves Report's model.
- 3.55 Indeed, the Northern Territory Government stated that the Reeves Report's recommendation for RLCs goes 'far beyond the Territory's initial submission'. In its opinion, some of the problems which would cause uncertainty are:
- disputes over boundaries;
  - only allowing a person to be a member of one RLC at any one time; and
  - the probability that there would be some bodies without the unity and capacity to function as a responsible and accountable land council.

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49 See for example, David Martin (CAEPR), Submissions, p. S461 and Nicolas Peterson, Submissions, p. S568.

50 Elspeth Young, Submissions, p. S338.

51 AAS, Submissions, p. S12.

52 David Pollack (CAEPR), Submissions, p. S513.

- 3.56 These factors were seen as affecting, at least temporarily, ‘the capacity of an RLC to make decisions about important land management problems and economic development projects’.<sup>53</sup>
- 3.57 For these reasons, the Northern Territory Government favoured a more evolutionary development of new land councils under the current provisions of the Land Rights Act:
- as the Territory Government has always postulated, the development of new land councils could have occurred, and should have occurred, in an evolutionary fashion under the existing provisions of the Act [Land Rights Act], whereby regional groups are able to muster support and such things as geographical issues can be resolved on a case by case basis. I further believe that the motivation behind applicant groups would assist in establishing appropriate administrative bodies, whereas the wholesale implementation of the recommended scheme may lead to problems in practice.<sup>54</sup>
- 3.58 Similarly, mining interests were concerned that the blanket introduction of a system of RLCs may lead to confusion and inefficiency. The Northern Territory Minerals Council indicated its concern that the RLCs would need to be properly resourced and funded to undertake their statutory responsibilities.<sup>55</sup> Giants Reef Mining N.L. pointed to the probable difficulties that would face mining companies trying to negotiate an exploration licence:
- Getting back to multiple land councils, if they had total autonomy and one had an exploration licence that straddled three land councils – which could well be the case – it would create great difficulties. An EL [exploration licence] or a group of ELs would cover numerous land councils if there were 18.<sup>56</sup>
- 3.59 As Normandy Mining Ltd argued, having to deal with a number of land councils rather than one would end up ‘compromising established negotiating processes and efficiencies’.<sup>57</sup> These companies, along with the Department of Industry, Science and Resources, saw the progressive introduction of Regional Land Councils under the current provisions of the Land Rights Act as far more desirable.<sup>58</sup>

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53 Northern Territory Government (NTG), Submissions, pp. S1529-30.

54 NTG, Transcripts, Darwin, p. 624.

55 Northern Territory Minerals Council, Submissions, p. S220.

56 Giant Reefs Mining N.L., Transcripts, Darwin, p. 679.

57 Normandy Mining Ltd, Submissions, p. S311.

58 Department of Industry, Science and Resources (Commonwealth), Submissions, p. S383.

### Potential 'nepotism' and conflict

- 3.60 These uncertainties and their impact upon economic development could be exacerbated by the system of decision making recommended for RLCs. In short, the Reeves Report proposes that each RLC make decisions in accordance with its view of Aboriginal traditional processes, taking into account the best interests of the Aboriginal people in its region.<sup>59</sup>
- 3.61 Professor Brian Galligan notes that small bodies are 'notorious for internal strife and paralysis'.<sup>60</sup> Other submissions argue that the potential for RLCs, who determine their own decision making processes and beneficiaries, to become dominated by strong personalities is quite high. It was highlighted to the Committee that this is likely to exacerbate rather than reduce conflict.<sup>61</sup> This suggestion is examined further below.

### Legal Issues

- 3.62 A further reason the Reeves system of RLCs and NTAC was rejected involves the legal implications of transferring assets from RLCs to NTAC.<sup>62</sup>
- 3.63 There may also be legal ramifications in transferring the title of Aboriginal land from Land Trusts to RLCs. Ernst Willheim suggested to the Committee that such an action would constitute an acquisition of property under s. 51(xxxi) of the Constitution, therefore attracting the 'just compensation' provision.<sup>63</sup> He also argued that abolition of the Land Trusts and the creation of NTAC could contravene Article 27 of the International Covenant on Civil and Political Rights<sup>64</sup>, and may be inconsistent with the *Racial Discrimination Act 1975*.
- 3.64 The Northern Territory Government responded that a voluntary transfer may occur without implications under s. 51(xxxi) of the Constitution. A transfer may occur if just terms compensation is paid, to the extent that there is an 'acquisition of property'.<sup>65</sup>

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59 See para 3.18 above.

60 Brian Galligan, Submissions, p. S503.

61 See for example: David Martin (CAEPR), Submissions, p. S457-59; Robert Levitus (CAEPR), Submissions, p. S472 and AAS, Submissions, p. S7.

62 This is discussed in chapter five.

63 ATSIC commissioned Ernst Willheim to provide legal opinion on the validity of the recommendations of the Reeves Report. See detailed discussion of this particular issue at ATSIC, Submissions, pp. S663-64; and ATSIC, Transcripts, Canberra, pp. 166-73.

64 Article 27 states that cultural rights protected include the right to effective participation in decisions concerning their land. ATSIC, Submissions, pp. S701-12.

65 NTG, Submissions, p. S1552. Note that the Northern Territory Government does not accept



## Traditional Owners or ‘Regional Communities’?

- 3.65 The Reeves Report’s RLC system was not only rejected on the basis that, despite its stated aim, it would be unlikely to deliver greater self management to Aboriginal people and may have some unintended legal consequences. Aboriginal people, anthropologists and others rejected the Report’s conclusion that traditional ownership does not reflect Aboriginal traditional decision making processes. The Report argues that the current emphasis on traditional owners under the Land Rights Act should be removed, and instead ‘regional communities’ should be the focus of decision making in relation to Aboriginal land (see para 3.15).

## Speaking for Country

- 3.66 At public meetings around the Northern Territory, the Committee was told that Aboriginal law, while adaptable, ultimately does not change.

Aboriginal people do not change the law. We would never ever change the law until the world ends. Every Aboriginal person in the Northern Territory, whatever tribe they are, we do not change the law. Interpretation is made by lingo. But law and order, Dreaming – the things we do – are the same in the Territory or in Australia.<sup>66</sup>

- 3.67 Central to this law, the Committee heard, is the role of the traditional owner in decision making and the fact that no Aboriginal person can speak for someone else’s country. Theodora Nandu, a traditional owner belonging to the Kardu Diminjin people, described the responsibilities she carries in respect to the land:

For me this land is very important. It gives me a connection to all objects on the land, all creation. That land is my nature. ...I know I must treasure and protect it. ...I am part of other special land that is my life – my mother’s country, my husband’s country and my grandmother’s country. I respect their land. If I want to do business on their land I would speak first to the elders. ...Even though this country is connected to my spirit, I cannot make a decision on someone else’s land... Under the land rights act I want that same law that will hold that power to protect our rights as traditional Aboriginal owners, to have the capacity to control and use the management of our land.<sup>67</sup>

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that s. 51(xxxi) of the Constitution necessarily applies in the Territory.

66 Billy Bunter, Transcripts, Kalkarindji, p. 298.

67 Theodora Nandu, Transcripts, Daly River, p. 703.

- 3.68 Even Aboriginal groups in dispute with the larger land councils did not question the need for traditional owners to make decisions over their own land, nor the law that an Aboriginal person cannot speak for other person's country. Rather, they disputed that the correct traditional owners had not been identified.<sup>68</sup>
- 3.69 To give decision making power to RLCs, which have no requirement to consult traditional owners, or an NTAC is seen as contrary to Aboriginal law: 'Basically, it gives decision making and all that goes with it back to a group or body of people who should not necessarily have the say on such important things as what happens on land...'<sup>69</sup>.

### Woodward Commission

- 3.70 The concept of using 'regional communities' as land-holding groups had been considered by the Woodward Commission in 1973 and 1974. Sir Edward Woodward, in his submission to the Committee, elaborated on why he chose to give traditional Aboriginal owners primacy within the scheme of the Land Rights Act. One reason was to 'give effect, as closely as possible, to what I believed to be the Aboriginal law on the subject...'.<sup>70</sup>
- 3.71 Sir Edward rejected the contention by the Reeves Report that the concept of 'regional communities' was 'overlooked' as the basic unit for land rights. Rather, he argued, it was carefully considered but he believed that to 'recognise community councils, in preference to tribal elders, would have flown in the face of Aboriginal traditions'.<sup>71</sup> Sir Edward indicated to the Committee that he saw nothing in the Reeves Report to dissuade him from that view today, although over time he acknowledged that if spiritual ties weakened there may be a need for greater emphasis on communities.<sup>72</sup>

### Anthropological Issues

- 3.72 As described above, Aboriginal people who spoke to the Committee strongly contested the Reeves Report's conclusions about traditional Aboriginal ownership. Anthropologists, along with Sir Edward

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68 See for example: Davey Inkamala, Hermann and Mavis Malbunka, Transcripts, Alice Springs, pp. 282-83; Edith Petherick, Transcripts, Daly River, p. 701; Tom Petherick, Submissions, pp. S253-57, Marie Allen, Transcripts, Katherine, p. 425; and Yankuntjatjara traditional owners, Submissions, pp. S619-20.

69 Larrakia Nation, Transcripts, Darwin, p. 763.

70 Sir Edward Woodward, Submissions, p. S748.

71 Sir Edward Woodward, Submissions, p. S753.

72 Sir Edward Woodward, Submissions, p. S757.

Woodward, also rejected the Report's thesis as the basis for reducing the role of traditional Aboriginal owners under the scheme of the Land Rights Act.<sup>73</sup> Many argued that the Reeves Report had misused or quoted out of context the work of anthropologists, in order to support its emphasis on regional populations:

His [Reeves'] view of Aboriginal land ownership and local group organisation is heavily constructed towards the conclusions that he draws, and misrepresents and simplifies the current state of knowledge.<sup>74</sup>

- 3.73 The arguments put to the Committee did not reject the concept of regionalisation. The problem was seen rather with an RLC, through its membership structure and self-regulating method of decision making, giving an equal standing in relation to the land, to those who are resident (without traditional affiliations with the area) with those who have traditional affiliations (resident or not).
- 3.74 Such a system, it was argued, would be 'contrary to Aboriginal customary law in quite a profound way' and would lead to conflict and uncertainty.<sup>75</sup> As the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) put it: 'statutory responsibility, will be complex, divisive and fraught, because legislated responsibilities will inevitably cut across traditional responsibilities'.<sup>76</sup>
- 3.75 While acknowledging the Reeves Report's concern with possible concentrations of power at the expense of a regional community, the AAS argued that the RLC model has the potential to lead to greater and more inequitable distribution of resources. This is partly because of the small numbers of people involved in each region and 'the emphasis on a permanent concentration of decision-makers rather than on an event-specific approach'. The AAS contrasted this with the current situation:

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73 See for example: AAS, Submissions, p. S18; Howard Morphy for NLC, Submissions, pp. S986-1013; Nicolas Peterson, Submissions, pp. S567-68; and Francesca Merlan, Submissions, pp. S426-428. An exception is Les Hiatt, who described the Reeves Report's review of anthropology as 'sound and perceptive'. It should be noted however that he disagreed with this being the justification for instituting the RLC model. Les Hiatt, Submissions, p. S1027.

74 Howard Morphy, Submissions, p. S991 (Appendix 3 of NLC Submission). See also AAS, Submissions, p. S19; NLC, Submissions, pp. S110-12; Francesca Merlan, Submissions, p. S428; and Sir Edward Woodward, Submissions, pp. S749-752.

75 AAS, Submissions, pp. S7, S11.

76 Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Submissions, p. S640.

Even the 'little people', those who stand in the back row politically, all have country and the standing that flows from that.<sup>77</sup>

- 3.76 Fundamentally, the Committee was told that the Reeves Report's anthropological analysis is flawed and the local group remains critical to the composition and stability of the many wider groupings to which people belong.<sup>78</sup>

## The Committee's Recommendations

### Core Principles

- 3.77 The Committee agrees wholeheartedly with the aim of increasing the self reliance of Aboriginal people. The Committee sees greater autonomy, through management of the land, as important for future economic and social development. It may contribute to reducing the welfare dependency of present and future generations.
- 3.78 Accordingly, and in the light of views obtained, the Committee makes the following recommendations which will:
- increase the autonomy at the local level of those Aboriginal people who wish to remain within the current land council structure;
  - facilitate a more effective means for those who do not, to establish a new land council;
  - help to clarify the relationship between traditional Aboriginal owners and long-term residents in communities; and
  - enable traditional Aboriginal owners and long term residents in Aboriginal communities to establish cooperative arrangements for land management and use (without involving a statutory land council in the management of their particular Aboriginal land if that is their wish).

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77 AAS, Submissions, p. S9. See also comments about the risk of dominance by powerful individuals by Sir Edward Woodward, Submissions, p. S760 and CANCA, Submissions, p. S608.

78 AAS, Submissions, pp. S20-21.

## Support for Regionalisation

- 3.79 The Committee accepts, in the light of Aboriginal and non-Aboriginal peoples' overwhelming rejection of the RLC system, that there is no case at this stage for implementing eighteen RLCs in place of the existing four land councils. As a matter of principle, Aboriginal people should be able to determine how many land councils they wish to have to represent their interests.

### Recommendation 4

- 3.80 **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.**
- 3.81 The Committee notes the unanimous agreement from all sides of the debate about the need for a greater regional focus. The Committee believes that it is important to facilitate and encourage the organic, dynamic growth of regional populations as they develop. Such growth must come from 'the bottom up' with the full support of the Aboriginal people involved and must not be imposed from above by legislators. It is up to Aboriginal people to decide how they want their land to be managed.
- 3.82 Through bringing decision making about development proposals and other land management issues closer to the people involved, land councils will achieve greater efficiency and the operation of the Land Rights Act will be improved.
- 3.83 For these reasons, the Committee supports the current regionalisation policies of the CLC and NLC, but believes this process needs to go further and should be accelerated.

### Restrictions on the Delegation of Power

- 3.84 The Committee acknowledges the restrictions under the current provisions of the Land Rights Act on the ability of land councils to delegate their powers. Any legislative impediments to such delegation should be removed.
- 3.85 The Committee notes the NLC's recommendation that the Land Rights Act should continue to limit certain powers from being able to be delegated to

a regional committee. These powers include: those held under s. 35 and s. 19(4)(b); the power of delegation itself, and the power to surrender Aboriginal land.<sup>79</sup> The Committee agrees that certain safeguards should exist in the legislation to prevent Aboriginal people losing their land completely and to preserve current accountability measures.

- 3.86 The Committee believes that where possible over time, legislatively prescribing how Aboriginal people should make decisions should be avoided. In accordance with its core principle of achieving self reliance, the Committee believes that the Minister's role in approving decisions made by Aboriginal people about the management of their land should be reduced (further discussed in chapter nine).

### Decision to Delegate Powers

- 3.87 Currently, under s. 28 of the Land Rights Act, the land council may decide which powers it will delegate to regional committees. The NLC submitted that the Full Council of the land council should continue to make decisions about the powers that it would delegate and when they should be delegated.<sup>80</sup> The CLC and Dr Martin from CAEPR suggested that the Minister should determine which powers and functions devolve to regional committees or councils.<sup>81</sup>
- 3.88 The Committee is mindful of the fact that Aboriginal people adamantly stated that any regionalisation process should be meaningful. For this reason, the Committee agrees in principle that regional committees should be able to decide for themselves the degree of delegation they accept. The current section 28 is subject to the informed consent provisions of the Act. As such, it preserves the rights of the local group asserting greater independence. Any decision taken by the land council will be subject to administrative review and review by the Parliament through annual reporting mechanisms. In this way, the interests of the local group continue to be safeguarded.

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79 NLC, Submissions, p. S1578.

80 NLC, Submissions, p. S1578.

81 CLC, Submission to Reeves Review of *Aboriginal Land Rights (Northern Territory) Act 1976*, p. 197; David Martin (CAEPR), Submissions, p. S466.

## Recommendation 5

3.89 **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.

## Common Seal

3.90 In the event that restrictions on delegation are lifted, the NLC indicated to the Committee that tighter controls would be needed on the process of affixing the common seal of land councils to agreements. The NLC stated that the reason for developing tighter controls on the common seal mechanism is to maintain the integrity of agreements under the Land Rights Act and to ensure legal certainty.<sup>82</sup> The Committee agrees that tight control on the use of the common seal of land councils is essential.

## Recommendation 6

3.91 **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.**

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82 NLC, Submissions, p. S1578.

## Support for New Land Councils

- 3.92 The Committee believes that just as Aboriginal people should have the freedom to remain within the current land council structure, it should be made easier for other groups to establish a new land council if that is what they want. The current process for establishing new land councils under section 21 of the Land Rights Act is not adequate.
- 3.93 Throughout the inquiry, groups who had applied to the Minister to establish a new land council and had failed, expressed their frustration at not knowing the reasons. Currently, as described earlier in this chapter, the process is dependent upon Ministerial discretion. The relevant Minister has regard to a report, usually commissioned by ATSIC and completed by an anthropologist. The report details the appropriateness of the boundaries of the proposed land council and whether or not a 'substantial majority' of adults in the region agree to its creation.
- 3.94 The Committee is concerned about this process - its lack of transparency for the Aboriginal people involved, its lack of requirement for 'informed' decisions, and its general lack of appeal or arbitration procedures. The Committee also believes that, to achieve consistency with other provisions of the Land Rights Act, traditional owners should have a role in deciding whether or not a new land council should be established to represent their interests and assist in the management of their land.

### Recommendation 7

- 3.95 **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**

3.96 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.

3.97 In the event of disputes concerning any aspect of the boundary fixing or referendum procedures, the Committee suggests that the Aboriginal Land Commissioner, or other agreed arbitrator, should assist with a conciliation

process. The Aboriginal Land Commissioner could advise the Minister pursuant to section 50(1)(d) of the Land Rights Act.

- 3.98 The Committee notes the concern of the Jawoyn Association that any new land council should be economically viable and capable of undertaking its statutory functions.<sup>83</sup> The Committee agrees that, in accordance with principles of accountability and responsibility to its constituency, a land council should not be 'set up to fail'. The decision on these issues should be left in the hands of traditional owners and the Aboriginal community, and be 'reflected in the vote' after the voters have had the benefit of examining the material in the discussion paper.
- 3.99 The Committee believes that implementing these procedures and amendments to the Land Rights Act's process for establishing new land councils will assist Aboriginal people to attain complete autonomy if that is what they want. The Committee also believes that creating a transparent accountable process will help to 'depoliticise' the process of establishing new land councils.
- 3.100 Of course, in future, traditional Aboriginal owners and Aboriginal communities and groups may feel that they do not need to be represented by a land council at all. In other words, they may wish to 'opt out' altogether from any land council structure. As in other areas of Australia, they may be content to represent their own interests or form associations with other land owners who have a common interest. That, of course, will be a decision for Aboriginal people themselves to make in the future. To give effect to such a decision will require amendment to the Land Rights Act, ensuring that the current provisions relating to informed consent and consultation are maintained with appropriate modifications.

### **Recommendation 9**

- 3.101 **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.**

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83 Jawoyn Association, Submissions, p. S836.

## Traditional Owners and 'Land Use Agreements'

- 3.102 The Committee respects the central role that traditional Aboriginal owners play in making decisions in relation to Aboriginal land, and recognises that Aboriginal people in the Northern Territory have strong laws which mean that they cannot speak for somebody else's country.
- 3.103 The Committee believes however that a land tenure system should be flexible and dynamic and that landowners should be able to enter into agreements with others in the community for mutual benefit. The Committee feels sympathetic towards the insecurity of tenure that may be felt by residents who have no traditional affiliations to the land. Therefore, the Committee suggests that negotiation of rent-free or so called 'peppercorn' sub leases in municipal areas may relieve some tensions in large communities. These leases can be struck under s. 19 without need to amend the Act.
- 3.104 The Land Rights Act, under s. 19 currently allows Land Trusts to grant an interest in land. The Committee believes that this section of the Act provides Aboriginal people with an important opportunity to establish unique agreements within communities covering an infinite variety of issues.
- 3.105 For inspiration about what these agreements could achieve, the Committee draws on the *Native Title Act 1993* which allows for Indigenous Land Use Agreements (ILUAs). ILUAs are customised, voluntary agreements whose content and implementation are entirely at the discretion of the parties concerned. ILUAs, in the native title context, have been used to establish:
- land access, use and management agreements;
  - wildlife and natural resource agreements;
  - co-management or partnership agreements;
  - regionally based agreements specifying relationships with key private or public sector agencies; and
  - frameworks and alternative procedures for making other agreements.<sup>84</sup>
- 3.106 These types of arrangements, negotiated as 'Land Use Agreements', could easily apply in the Land Rights Act context through s. 19 agreements. While the current rights of traditional owners would be protected, such agreements could include other Aboriginal residents, Aboriginal and

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<sup>84</sup> Diane Smith, 'Finding a way to Just and Durable Agreements' in *Indigenous Law Bulletin, Indigenous Land Use Agreements Issue*, June 1999, vol. 4 (21), p. 4.

government agencies and the private sector. They could cover a wide range of matters including resource development, service delivery arrangements, and the relationship between traditional Aboriginal owners and other Aboriginal residents.

- 3.107 The Committee notes that the NLC is currently negotiating local government agreements, similar to 'Land Use Agreements' in several Aboriginal communities, which establish the role of traditional Aboriginal owners in decision making by the local governing body. These agreements attempt to clarify any areas of inconsistency between local government legislation and the Land Rights Act.<sup>85</sup> 'Land Use Agreements' are a good example of what can be achieved through negotiation. The Committee believes that these types of arrangements maximise the flexibility of the Act and facilitate processes, rather than prescribe outcomes.
- 3.108 Section 19 also states that individual families can negotiate with traditional owners for residential or business sub-leases. With cooperation from lending institutions, this arrangement could provide for 'mortgageable' leases on Aboriginal land, opening up the sorts of opportunities that many other Australians take for granted.
- 3.109 In keeping with this sentiment, the Committee strongly believes that the Minister for Aboriginal and Torres Strait Islander Affairs' current role in giving consent under s. 19 should be removed altogether.<sup>86</sup>

### Recommendation 10

- 3.110 **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

85 This issue is further discussed in chapter eight.

86 The Committee makes a general recommendation about the Minister's role in administering the Land Rights Act in chapter nine.

**community stores.**

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

## **Conclusion**

- 3.111 This chapter has examined the Reeves Report's proposals for a system of RLCs and NTAC. The Committee has outlined its vision for greater self management by Aboriginal people and the means to achieve greater regional autonomy in land ownership and management matters. The Committee has also made recommendations to clarify arrangements between traditional Aboriginal owners, long term residents, local government and service deliverers in communities.
- 3.112 The next chapter will examine the role of NTAC in more detail, including its range of functions and proposals for its funding. The Committee argues that there is some use to be gained from an umbrella body, but acknowledges that NTAC is clearly rejected by Aboriginal people.