

ANTHROPOLOGICAL SUBMISSION ON THE REEVES REVIEW: BRIEF SUMMARY

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For HORSCATSIA hearing 24 March 1999

1. We support several aspects of the Reviewer's report, including
 - the need to further decentralise land council activities
 - the need to offer greater security of tenure for non-owner residents in townships
 - the need to do something to alleviate complaints about the permits system
 - the need to maintain a distinction between owners of country and custodians of sacred sites; and
 - the need to minimise any legislative basis for political competition between the land councils and the Aboriginal Areas Protection Authority.

2. However, we seriously question the Reeves Review on two main fronts:
 - We regard certain of its key assumptions about Aboriginal cultural traditions, and certain of its future cultural expectations, to be unrealistic and unsupported by what we know of Aboriginal practice.
 - We seriously question the workability of the proposed restructuring of land councils

We also make the observation that the relative stability and predictability of current land administration, warts and all, is itself much valued in the Aboriginal community of the NT. Any move to introduce radical change courts the possibility of serious destabilisation. For example, if traditional owners were to feel threatened by the imposition of mere residence as a qualification for land council membership, there could be a rush of new native title claims placed over existing Aboriginal land. This is a possibility most people would like to see avoided.

Cultural assumptions and expectations

3. The Review assumes there is a single level of traditional Aboriginal grouping which in the past served as the primary location of rights in country, and which should now form the basis of the bureaucratic apparatus in regard to country. So also did the framers of the Land Rights Act. In their case they considered it to be ‘the local descent group’, and the Reeves Review takes it to be ‘the community’.
4. We could not support this on anthropological grounds, especially as Reeves has confused the community of traditional owners with the community of residents, and seeks to give both kinds of community equal power in making decisions.
 - The two are not the same, they do not have comparable powers in Aboriginal culture, and any attempt to make them level in power is likely to cause serious conflict.
 - This has been the experience of NSW. It is likely to be much worse a prospect in the NT. (Reasons: more Aboriginal land, more resources involved, stronger localised identity traditions of a classical kind, etc.)
5. There is no point in replacing over-emphasis on one kind of grouping (local descent groups) with over-emphasis on another (regional communities, however defined). There is no single level of group for all seasons, even if one kind of group has more general prominence than another in the thinking of the people themselves. Decisions on grading a Telstra access track, versus decisions on approving a large uranium mine, etc. etc., recruit different sets of people whose authority is required in each case. Some such groups are small and their interests are very localised, others are bigger and have regional interests.
6. Authority regarding country is grounded in the fact that certain people have an essential or intrinsic relation to the country – the ‘traditional owners’ in a nutshell – and this idea is central to Aboriginal law. Other kinds of people, eg. residents who are not traditional owners and who may have only historical reasons for being there, have rights too, but the two kinds of rights and relationships to the country are very distinct. To attempt to melt the two together administratively is to encourage the breaching of Aboriginal law, and thus to incite conflict.

7. The Reeves proposals would place government in the role of encouraging the imposition of a type of assimilation on the people. That is, the proposed new laws would officially allow for the replacement of traditional ownership and affiliation, as the basis of final authority over country, with political and financial bodies selected from a mixed population of owners and non-owners. To politicise in this secular way what is at heart and by tradition a religious relationship would send the people a quite negative message about their own existing land tenure systems.
8. Not only do we question the expectation that Aboriginal people should assimilate to a foreign culture of authority over land, we also ask:
 - Is there any realistic basis for believing that this aspect of Aboriginal culture can and will adapt to these kinds of legal demands in the foreseeable future?
 - If Aboriginal tradition is as flexible and adaptable as it is sometimes made out to be, why should a potential shift from spiritual birthright to the hustings, as a basis of authority over land, be so shocking a prospect?

Our answer to the first question is 'No'. As for the possibility that the basis of authority over land might readily change, the observable fact is that it is exactly on this point that Aboriginal tradition is at its most durable and confidently resisting. I think the 'fluidity' of Aboriginal relationships to land has at times been exaggerated and have written a paper on this subject which lays out a body of empirical research on the question:

- Sutton, Peter (in press 1999). 'The System as it was Straining to Become'? – Fluidity, Stability and Aboriginal Country Groups In J.D. Finlayson, B. Rigsby and H.J. Bek (eds). *Connections in Native Title: Genealogies, Kinship and Groups*. Canberra: Centre for Aboriginal Economic Policy Research (ANU).

For example, under the Queensland legislation, claims can be made on the basis of historical association or traditional affiliation or both. Of 31 claims lodged so far, none has been made on grounds of historical association only. All have been lodged only by people asserting traditional affiliations, and most have asserted both traditional and

historical associations. Many of these groups have a long history of cultural impact from non-indigenous Australia.

9. To allow for the delegation of land rights to a committee is to ask not for flexibility but for the challenging of a root principle. The emphasis should be on consultative mechanisms tailored to the kind of decision that has to be made, not on boards of directors whose accountability to customary land owners is not specified or even required. This separation of powers is far less likely to result in challenges to decisions.
10. We believe the definition of traditional owners in the Act should be less narrow. The *Aboriginal Land Act 1991* of Queensland has a broader definition. There, traditional affiliation is established 'if the Land Tribunal is satisfied that the members of the group have a common connection with the land based on spiritual and other associations with, rights in relation to, and responsibilities for, the land under Aboriginal tradition.' (4.09(1))

The proposed re-structuring of land councils

11. We do not simply support the status quo on structure either. Further decentralisation of the existing land councils would go a long way to addressing some of the problems identified by Reeves. Dissatisfaction with the land councils is likely to continue under *any* arrangement, especially if alternative sources of patronage power and development finance are available and can be played off against them. But further regional devolution is desirable.
12. We regard the Review's proposed land council structures as placing serious new kinds of obstacles in the path of smooth administration and decision-making. These include:
 - Conflict and delay caused by forcing developers to negotiate with up to several different councils, which are likely to be in competition with each other, in cases where developments are sought near two or more council boundaries. [At least 10 of the current land council sub-regions have areas where three boundaries are close together; one has four]. That is as well as dealing with the NTALC. A one-stop shop is better is it not?
 - The remoteness of 18 very small bodies from a single central office

- The increased total size of the land councils bureaucracy, on the basis of Reeves's own figures
- The forcing of people to have to choose one local council regional membership when they may have traditional ownership of land in more than one council region, thus partly disenfranchising them
- The encouragement of economic migration, including chain migration from distant regions of Australia, which is likely to be disruptive
- Potential severe difficulties leading to civil cases, where one or two families control a regional council and make land use decisions in the absence of a required fiduciary duty to consult traditional owners
- The smallness of regional councils tending to make them less accountable to local constituents rather than more accountable.

On these and other implementation questions, I would defer to my colleagues here, who have greater knowledge and experience in that field.