CENTRAL LAND COUNCIL

SUBMISSION TO THE

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS

INQUIRY INTO THE RECOMMENDATIONS OF THE REEVES REPORT

REVIEW OF THE *ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976*

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INTRODUCTION

Commitment and reservations

The Central Land Council opened its initial submission to the Review of the *Aboriginal Land Rights (NT) Act 1976*, conducted by John Reeves QC, with the assurance that it welcomed any fair appraisal of the operation of the Aboriginal Land Rights Act (ALRA). It undertook to assist the Review, but recorded a number of reservations about its nature. These reservations were of two types. The first category related to the social, economic and political context of the Review and the Government's possible motives. The second type of reservation concerned specific aspects of the Review process and how they were unfolding. The Land Council's early concerns were confirmed by the course taken by the Review, the findings and the recommendations.

Report outcomes in a nutshell

The Reeves Report features recommendations that, if implemented, will totally transform, or distort, the nature of Aboriginal Land Rights in the Northern Territory. Control of Aboriginal land by identified traditional owners would end and the two large mainland Land Councils would be abolished. Instead, a system of administration superintended by the relevant Northern Territory Government (NTG) minister would be instituted. A government appointed Northern Territory Aboriginal Council (NTAC) would receive and control all revenues and oversee a group of eighteen Regional Land Councils (RLCs) made up of all Aborigines qualified by residence or traditional affiliation in the region. Land Council funding would be drastically reduced and responsibilities for land claims, native title claims, sacred sites protection, issuing permits to enter Aboriginal land and overall advocacy of Aboriginal interests would be removed. Also removed would be the requirements that Regional Land Council meet certain consultative standards over decisions concerning Aboriginal interests. The new organisations would become primarily responsible for support of education, training, health, housing and similar services, as well as commercial enterprise. To date Land Councils have been prevented from direct involvement in these matters by the current Act. More like local governments, Regional Land Councils would be concerned with local service delivery rather than with the acquisition and

management of Aboriginal land, related finance and wider representation of Aboriginal interests. The Northern Territory Aboriginal Council would receive and retain all present assets of Royalty Associations and other Aboriginal organisations.

In his Report, John Reeves QC has not presented many recommendations for improving the operation of the Aboriginal Land Rights Act as a radical alternative to the existing land rights scheme. He has proposed what superficially amounts to an entirely new and integrally designed edifice. This has been accomplished through a highly problematic Review process. Irrespective of Reeves' personal agenda, there is evidence that the inquiry was conceived, established, welcomed and encouraged by conservatives in order to facilitate realisation of an unacknowledged wider political agenda with considerable momentum. The latter has included extinguishment and impairment of native title through amendments to the *Native Title Act 1993*, restricting Abstudy provisions, the reduction of ATSIC funding and responsibilities in health and housing.

The facts about the Reeves Report

The Reeves Report has largely followed the political agenda of the Northern Territory Government. This is evident in various ways. The NT government has welcomed the Report - as it welcomed the appointment of the Reviewer at the outset. On 13 October 1998, the NT Parliament called on the Commonwealth to prepare amendments to the Aboriginal Land Rights Act, following negotiations with the Northern Territory Government, in line with the recommendations of the Reeves Report. In passing this resolution it rejected an opposition amendment that Aboriginal people should be included in negotiations on the legislation (NT Parliamentary Record, 13/10/98; ABC Regional Radio News, 14/10/98).

The Northern Territory government has already begun work in anticipation of the Commonwealth government accepting the recommendations outlined in the Reeves Report, and pre-empting the findings of the Standing Committee. Two months after the release of the Report, the NT Minister for Aboriginal Development announced the formation of a Commonwealth – NT working group 'to investigate moves to break up the Territory's two mainland Land Councils'. The Minister said that 'the working party would look at the mechanics of pursuing separate Land Councils' (*NT News*, 6.11.98; ABC Radio, 18.11.98). The Northern Territory government is currently undertaking steps to implement its "so called" Local Government Reform and Development Agenda. Under this agenda roles and responsibilities of Local Government bodies would be similar to those of Regional Land Councils as outlined in the Reeves Report.

1. Virtually all of Reeves' recommendations are directly in line with or compatible with what the NT government has sought over many years. Conversely, virtually none of the recommendations are acceptable to the Central Land Council or its constituents.
2. The Report is about delivering the type of anemic Aboriginal Land Rights Act that the NT government has always sought. The most fundamental aspect of this is control of the Act itself. Short of the ALRA being transferred to the Northern Territory, the recommendations would provide for effective or virtual transfer of control to that government. It is inevitable that the NT government will continue to agitate for transfer of the ALRA (using the misleading term 'patriation').
3. To effect the recommendations it is necessary to eliminate the present requirement that decisions, in respect of Aboriginal land, be made by the traditional Aboriginal landowners.
4. It has also been necessary to eliminate the two larger, Central and Northern, Land Councils because the NT government has never been able to accept the primacy of traditional Aboriginal landowners under the Act and the corresponding functions of the Land Councils.
5. In their place would be a set of small, poorly resourced Regional Land Councils.
6. The Regional Land Councils would have very limited and defined functions, mostly confined to service delivery. These functions would be determined at the central level by government(s) and, in effect, its agency in the proposed government selected and non-elected Northern Territory Aboriginal Council. NTAC would superintend the activities of the Regional Land Councils.
7. Altogether, the proposed Northern Territory Aboriginal Council and the Regional Land Councils would employ considerably more staff than the present Land Councils. Sutton estimates 350 would be employed.
8. Because of the fragmented organizations, control would be emphatically centered on Darwin.
9. The projected budgetary allocation for the Regional Land Councils would be discretionary and would cover minimal staffing and overheads, and little or no more. No genuine discretionary funds would be available.
10. Regional Land Councils deemed 'dysfunctional' would be replaced with government appointed Administrators, similar to the situation with community government councils.
11. The Regional Land Councils would be given the trusteeship of land now held by Land Trusts, whose members are named individuals. Such a move would entail major legal, financial, political and moral dispute.
12. Government would appoint the Council members of the Northern Territory Aboriginal Council. Its CEO would be required to be acceptable to government. The CEO would hire, fire and supervise all staff. A similar autocratic arrangement for control of staffing through an approved CEO would apply to the Regional Land Councils.
13. Though lacking instructions, and having no obligation to consult, the Northern Territory Aboriginal Council would take over all land claims. With this responsibility it would be expected to rush through outstanding claims at the expense of claimants.

14. With NTAC at the helm outstanding disagreements regarding the claimability of certain land and waters would inevitably be resolved in line with the NT government positions and the claimants would be denied rights or the means to exercise those rights.
15. Though unrepresentative, the Northern Territory Aboriginal Council would also become the Native Title Representative Body.
16. Laws, including regulations, of the Northern Territory that are incompatible, even with an amended Aboriginal Land Rights Act and with established Aboriginal rights, would be given precedence.
17. The main role of Regional Land Councils would be to deliver public services of the kind that governments should and normally provide at the local level.
18. The arrangements being put in place would resemble a local government scheme. Among the similarities are:
    - locally appointed statutory committees meant to undertake only a prescribed range of functions with authorization for minimal entrepreneurial activity;
    - heavily regulated revenue raising, borrowing and expenditure prerogatives;
    - enfranchisement based on residence [or traditional affiliation, but not property ownership];
    - boundaries drawn on the basis of some sort of notion of 'regional community' taking into account geographical and cultural factors';
    - functional subservience to central government through an agency with inspectorial duties;
    - ultimate ministerial control, with power to appoint an administrator to take over from a council deemed 'dysfunctional', and
    - centralized regulation of CEO appointments, and very limited rights for appeal against intervention.
19. The proposed requirements that Regional Land Councils address 'the role of local community councils in their region as part of their primary functions…join in cooperative arrangements with community government councils and share facilities and expenses with community government councils…' and that the Northern Territory Aboriginal Council provide 'training and support' for staff of community government councils' accentuate the validity of associating the proposed Regional Land Councils with local government.
20. It would be a comparatively short step to compress Regional Land Councils and community government councils within a single legal and administrative regime under the control of the Northern Territory government.
21. The Northern Territory Aboriginal Council would also be given all income and assets that have been acquired through the Land Rights Act. This proposal raises major legal and moral problems.

22. Substantial portions of assets and incomes appropriated to the Northern Territory Aboriginal Council would be invested to provide a future income stream. This would be used to subsidize public services and further commercial investment. In the meantime, incomes for services would be severely cut.
23. Genuine advocacy of Aboriginal rights or interests would be severely curtailed.
24. Funds used for local public services would be available to substitute for other expenditure by the NT government.
25. None of these proposals has been put before Aboriginal people. Their consent informed or otherwise, has not been sought. It would certainly not be given. The overwhelming vote by Aboriginal people against the candidate in the last Federal elections who ran on a ticket of small land councils is indicative of Aboriginal opinion, so too was the overwhelming 'No' vote in the referendum on statehood.
26. The anthropology, upon which various Findings and Recommendations are purported to be contrived, originates from various anthropological works modified to suit the Reviewer's case. Some have been taken out of context. In other places, where suitable formulations could not be found they have been attributed anyhow (see Morphy and Sutton's critiques).
27. Economic analysis is also seriously flawed (See Quiggin's critique).
28. Numerous serious legal blunders have been made, rendering many integral proposals unworkable (See Viner and Wilhelm's analyses).
29. The Review has been undertaken in a duplicitous and unprofessional manner. The Reviewer has not followed the established criteria for the conduct of a fair public inquiry (See Mowbray's paper on the Review method).
30. If implemented Aboriginal rights and self determination in the Northern Territory would be taken back to the Paternalist State that prevailed in the 1960s and earlier.

Predicability of Review outcomes

The appropriateness of the Land Council's qualms about the establishment of the Reeves inquiry is borne out in the substantial effective accuracy of its forecasts in 1997. These included:

- diminution of the incidents of Aboriginal freehold title, and eventual alienability;
- reduction in control by traditional owners over use of their land, including removal of the right of traditional owners to refuse mining on their land;
- transfer of the ALRA to the Northern Territory government;

- establishment of much smaller Land Councils in place of the Central and Northern Land Councils; conflation of Land Council functions with those of local service delivery organisations, such as local government, and
- disempowerment of Land Councils by cutting their resources and budgets, and removal of mining royalty equivalent payments as an independent revenue source for Land Councils, so as to constrict their degree of independence from government.

The Land Councils' were not the only bodies to tip foci and outcomes of the Review. Well before it was established a news item headed 'Herron ponders scrapping veto for Aborigines' appeared in *The Australian* (28.10.96:3). Former Darwin journalist David Nason reported that the Minister's office saw the forthcoming review of the Act as considering the appropriateness of the right of traditional owners in the Northern Territory to refuse consent to mining on their land. As other items for attention Nason listed the Aboriginal Benefits Reserve (then the Aboriginal Benefits Trust Account), 'environmental guidelines for mining and other development on Aboriginal land, and the transfer of the Aboriginal Land Rights Act to Northern Territory control'. A year later, and two days after announcement of the appointment of Mr. Reeves to review the Act, the NT Chief Minister used an ABC interview on 10 October 1997 to warn that the Central and Northern Land Councils' 'day of reckoning is fast approaching'. Soon afterwards Northern Territory Senator Tambling told the Senate that the Review was to be one of both 'the Aboriginal Land Rights Act and the political nature of the Land Councils' (Hansard, 25.11.97:9143). Both the Chief Minister and the Senator accurately foresaw the weight of Mr. Reeves' assault on the Central and Northern Land Councils.

Report seen as part of a wider campaign

The Aboriginal Land Rights Act had always encountered hostility from pastoral and mining interests, as well as from the Northern Territory government and other conservative politicians. Such parties have resented requirements to negotiate with Aboriginal interests over access to land. They have denounced associated costs and they have disliked the statutory functions and resources of the Central and Northern Land Councils. The Northern Territory government's antagonism to the fundamental principles of land rights has been extensively documented. Opposition to the ALRA has been expressed in costly and highly organised campaigns to influence public opinion, elections and the shape of legislation. The recent Review of the ALRA may well be regarded as another phase in the ongoing crusade. The extent and partiality of the attack on the present system of Aboriginal land rights in the NT lends substantial weight to this hypothesis. Its extremist quality must mean that it will not be taken seriously by the Commonwealth Parliament.

Reaction

The cavalier nature of the Review and Report was of course bound to provoke severe examination. The Reviewers confrontationist approach was virtually guaranteed to attract strong defence from Aboriginal people, senior lawyers and anthropologists and others who acknowledge the fundamental importance of land rights to the Aboriginal people in the Northern Territory, and who recognise the need to defend land rights for indigenous people.

In the months after publication of the Report a range of telling and constructive critiques have emerged. This material has the overall effect of comprehensively demolishing Reeves' findings and recommendations.

The latter documents include

(1) ATSIC's Submission to the Standing Committee;
(2) Community Aid Abroad's Submissions to the Standing Committee;
(3) Professor Howard Morphy's 'A review of the anthropological analysis in the Reeves Report and the conclusions drawn from it', in the NLC's Preliminary Submission to the Standing Committee;
(4) Professor Martin Mowbray's papers:
    (a) 'Fixing the Land Councils: The Review of the Commonwealth's *Aboriginal Land Rights Act*', to be published in *Just Policy*,
    (b) 'Redefining land rights: The Review of the *Aboriginal Land Rights* (Northern Territory) Act 1976 (Cth)', published in the *Indigenous Law Bulletin*, and
(5) Professor John Quiggin's paper 'Delay and uncertainty in negotiations for mining on Aboriginal land: A response to the Reeves Report' in the NLC's Preliminary Submission to the Standing Committee;
(6) Dr Peter Sutton's Anthropological Submission on the Reeves Review to the Standing Committee for the Australian Anthropological Society;
(7) Ian Viner QC's 'A Review of the Reeves Report, or 'Whither land rights in the Northern Territory', to be published in the *Indigenous Law Reporter*; and
(8) Professor Ernst Wilheim's papers:
    (a) 'Legal Aspects of the Reeves Report: Memorandum of Advice' Commissioned by the Aboriginal and Torres Strait Islander Commission, Canberra.

(b) ‘The Reeves Report and acquisition issues’ published in the Indigenous Law Bulletin, April/May 1999, vol4, issue 20.

The Central Land Council also refers committee members to a series of constructive critiques of the review process and the Report that followed (see Bibliography). These will be supplemented by other papers to be presented at the conference, ‘Evaluating the Reeves Report: Cross-disciplinary Perspectives’, convened by the School of Archaeology and Anthropology, Australian National University, 26-27 March 1999. It is anticipated that the papers from this conference will be published and supplied to the Committee. Following the conference, a number of other papers have also been written on the subject.

There is no need for the Central Land Council to repeat the detail of what it has told the Reviewer in its two submissions (which can be made available to the Committee on request). There is also no need to rehearse point by point the cogent arguments set out in the various recent papers published elsewhere and already or soon to be before the Committee. Nor is there a need to overlap with what is set out in the Northern Land Council, Preliminary Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Reeves Report on the *Aboriginal Land Rights (Northern Territory) Act 1976*. In broad terms and overall thrust the Northern Land Council’s positions are consistent with those of the Central Land Council.

PUBLISHED AND FORTHCOMING PAPERS ON THE REEVES REPORT

ATSIC, Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Reeves Report on the Aboriginal Land Rights (Northern Territory) Act 1976, March 1999.

Community Aid Abroad, Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Reeves Report on the Aboriginal Land Rights (Northern Territory) Act 1976, 12 March 1999.

Morphy, Howard, 'The Use of Anthropology in the Reeves Report' *Indigenous Law Bulletin*, 4(18) February 1999, 13-15.

Morphy, Howard, 'A review of the anthropological analysis in the Reeves Report and the conclusions drawn from it', Appendix 3, Northern Land Council, Preliminary Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Inquiry into the Reeves Report on the Aboriginal Land Rights (Northern Territory) Act 1976, February 1999.

Mowbray, Martin, 'Subverting the Aboriginal Land Rights (NT) Act 1976 and the NT Local Government Act 1993', Indigenous Law Bulletin, 4(10) March 1998, 12-16.

Mowbray, Martin, 'The future of the *Aboriginal Land Rights (NT) Act*: Land rights, public infrastructure or commercial development?' *Indigenous Law Bulletin*, 4(11), April 1998, 12-14.

Mowbray, Martin, 'Redefining land rights: The Review of the *Aboriginal Land Rights* (Northern Territory) Act 1976 (Cth)', *Indigenous Law Bulletin*, 4(18) February 1999, 9-12.

Mowbray, Martin, 'Fixing the Land Councils: The Review of the Commonwealth's *Aboriginal Land Rights Act*', *Just Policy*.

Mowbray, Martin, 'Municipalising Land Councils: Land Rights and Local Governance', conference paper, 'Evaluating the Reeves Report: Cross-disciplinary Perspectives', convened by the School of Archaeology and Anthropology, Australian National University, 26-27 March 1999.

Mowbray, Martin, 'Method and Politics in the Review of the Aboriginal Land Rights (NT) Act', Submitted to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Inquiry into the Reeves Report on the Aboriginal Land Rights (Northern Territory) Act 1976, February 1999.

Neate, Graeme, (1988) 'Review of the Northern Territory Land Rights Act', *Indigenous Law Bulletin*, 4(15), October, 7-11.

Northern Land Council, Preliminary Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Reeves Report on the Aboriginal Land Rights (Northern Territory) Act 1976.

Quiggin, John, 'Delay and uncertainty in negotiations for mining on Aboriginal land: A response to the Reeves Report', 18.2.99, Appendix 4, Northern Land Council, Preliminary Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Inquiry into the Reeves Report on the Aboriginal Land Rights (Northern Territory) Act 1976, February 1999.

Sutton, Peter, Anthropological Submission on the Reeves Review, Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Reeves Report on the *Aboriginal Land Rights (Northern Territory) Act 1976*, Commissioned by the Australian Anthropological Society, 10.2.99.

Viner, Ian, 'A Review of the Reeves Report, or 'Whither land rights in the Northern Territory', *Indigenous Law Reporter*, 4(2), July 1999.

Professor Ernst Wilheim 'Legal Aspects of the Reeves Report: Memorandum of Advice' Commissioned by the Aboriginal and Torres Strait Islander Commission, Canberra.

'Land Rights at Risk? Evaluations of the Reeves Report'. Edited by J.C Altman, F. Morphy and T. Rowse, CAEPR, Australian National University, Australia.

RESPONSES TO THE RECOMMENDATIONS IN THE REPORT.

*NOTE: NUMBERS CITED IN THE TEXT REFER TO PAGES NUMBER IN THE REEVES REPORT

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
(I) THE EFFECTIVENESS OF THE LEGISLATION IN ACHIEVING ITS PURPOSES		
Recommendations in Chapter 4		
• That a preamble and purposes clause be inserted in the Act expressing the future purposes of the Act along the following lines:		A genuine purpose clause would not be exceptional, but the proposed purpose clause is disingenuous, as is demonstrated by the comments below. The Reviewer suggestions for the preamble are not consistent with his recommendations and consequently are misleading. Regrettably, an opportunity to address the purposes of the legislation in a fair and even-handed way, with proper consultation, has been lost.
• to encourage the formation of a partnership between Aboriginal people in the Northern Territory and the Government and people of the	To change the fundamental premise or foundation of the Act. This recommendation suggests that Aboriginal people are not part of the 'people of the Northern Territory'. The slip appears in other places	The CLC would welcome any serious prospect of establishing a greater level of cooperation with the Northern Territory government, but that relationship would properly be founded on respect for Aboriginal

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
Northern Territory;	in the Report. Possibly, it also essentially admits a substantial objection to NTAC as the government "partner" (see below) which is that it is ultimately a government controlled organisation, and thus on one reading the government would, in effect, be in partnership with itself. Essentially, the envisaged partnership is to be formed by replacement of the mainland Land Councils by a multiplicity of smaller organizations (RLCs), with greatly diminished powers and resources, which would be closely overseen by a new central agency (NTAC) composed of persons directly appointed by the Commonwealth and Northern Territory governments. The Reviewer assumes that by abolishing autonomous Land Councils, which are presently free to contest issues with the Territory government, on behalf of their constituents, and locating their much weaker replacements within a line of authority to a Territory minister, "partnership" would be established.	autonomy rather than deprivation of it. The present proposal is one sided, and it is not about a partnership at all. There is no substance to the proposed new clause. It would be misleading and must be rejected. The proposition that Aboriginal people are separate from 'the people of the Northern Territory' is repugnant. As is also the proposition that only by substantial loss of autonomy under the Land Rights Act can they be accepted into a co-operative relationship with the Northern Territory Government. One would expect the Reviewer to examine both sides of the question. There is no examination of the effects or consequences of various policies and decisions of the NTG since 1977, i.e. during the period since the passage of the Land Rights Act. The resentment and distrust referred to by the Reviewer (p72) will only be heightened by implementation of most of the recommendations in the Report.
• to provide Aboriginal people with effective control over decisions in relation to their lands, their		This recommendation is admirable. However, it is not matched by the detail of the proposal.

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
communities and their lives; and		The Act in its present form goes infinitely closer to fulfilling the proposed purpose than the changes recommended by the Reviewer, and it should be strengthened. The Reviewer has presented a scheme for the oversight of all aspects of Aboriginal affairs by the Territory government (as the "sole" government [p.73]) in the NT), directly and through its appointees. The Reviewers recommendations for replacing the existing arrangements under the Land Rights Act are a step back to the welfare' past. Effective existing provisions for control of Aboriginal land by Aboriginal people would be removed in favour of de facto control by the NT government. There is no reason for that to happen and it is absolutely unacceptable.
• to provide opportunities for the social and economic advancement of Aboriginal people in the NT.	Another motherhood statement, but if the Act is to be given purposes in the service of which Aboriginal people are required to sacrifice essential aspects of Land Rights, then it will be socially and economically detrimental to them.	This recommendation is not borne out by the substance of the package being promoted. There is a significant risk that the NTG would use (or in effect require) the income and assets that the Reviewer recommends to be diverted from Aboriginal persons and organizations to NTAC, to

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
		substitute for its current expenditures. No mechanism for preventing substitution is proposed. Nor are means for ensuring that risks associated with the commercial investment of current revenue and secure assets are covered. The detail of the report reveals the true intention to be close scrutiny and control by a government appointed body over virtually all funding in relation to Aboriginal affairs in the Northern Territory, including those monies which are presently, in fact and in law, the private funds or assets of corporations and individuals. In any case the Reviewer found that 'easily the most important thing to do to improve the (economic and social) standing of Aboriginal Territorians is to maintain the fast rate of economic growth in the Northern Territory' (pp.90,91). The Land Council sees this proposal as simply placing a gloss on a set of proposals that are unacceptable in their present form. Support is not warranted. No-one can deny the need for the economic and social advancement of Aboriginal people in the Northern Territory. If the Reviewers scheme does indeed achieve such goals it does so in a rigid, paternalistic, top heavy and

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
		unacceptable manner
(III) THE OPERATION OF THE EXPLORATION AND MINING PROVISIONS		
Recommendations in Chapter 24	These comments could be read in isolation from the recommendations elsewhere in the Report.	
• The Land Rights Act and the *Mining Act* (NT) should contain provisions, which allow a person to obtain a license to enter Aboriginal land for a specific period for the purpose of reconnaissance exploration subject to various terms and conditions.	This proposal entails provision by the NTG of a "reconnaissance license" to conduct "low level exploration activities" on Aboriginal land without the knowledge or consent of traditional owners (p.529). Note that the Reviewer also proposes to abolish permits to access Aboriginal Land and to remove from the Land Rights Act provisions for the protection of Sacred Sites.	The proposal is provocative, intrusive and unnecessary. It is fraught with problems if traditional landowners and their Land Councils are excluded from the process. It would allow companies onto Aboriginal land without sacred site clearances and without the consent and knowledge of all traditional owners. It is a recipe for distress, confusion and discontent. Such access is a matter for traditional owners to determine. The Central Land Council has attempted to obtain the agreement of DME for certain 'reconnaissance' activities to be excluded from the definition of 'exploration' under the *Mining Act* and thus to allow a Land Council to 'permit' access for reconnaissance activities without needing a complex process.

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
		Department of Mines and Energy rejected the initiative. This would solve the problems of zero to low impact activities on Traditional owners.
• The Land Rights Act should be amended to provide that the relevant RLC and the holder of an existing mining lease should negotiate the terms and conditions of any renewal of that mining lease, provided that the relevant RLC shall not have a veto over that renewal. If the parties are unable to agree on the terms and conditions, the Act should contain provisions for the appointment of a Mining Commissioner to determine that dispute, following the procedures set out in the existing s48F, amended to remove the requirement under s48F(2) that a Federal Court Judge has to be appointed as Mining Commissioner.	This refers to the Reviewers pp 529-530.	"No comment. Subject to comments elsewhere concerning the CLC's criticism of any diminution in the role of traditional landowners in decision making"
• Each of the proposed RLCs	Because of the Reviewer's other recommendations,	Decisions about land use should be the prerogative of

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
should have the existing power to consent to (or veto) any exploration or mining proposals in respect of Aboriginal land within their region, subject only to the existing national interest provisions.	which effectively diminish the role of the traditional landowners in the decision, this means that the right of veto, or rights to be consulted or even informed would not lie with the traditional owners, but with those eligible to be members of RLCs, including any Aboriginal residents of the relevant region. The Reviewer also envisages relevant scenarios entailing delegation of RLC decisions to officers (p.210). NTAC would maintain 'strategic oversight' or 'strategic supervision' of 'both specific decisions' concerning mining and other agreements and delegations to other bodies, as well as the 'general performance' of RLCs, including their finances (pp.211,608-610), and 'intervene if it becomes necessary' (p.599), such as when it receives an appeal from someone 'aggrieved by a decision of a RLC' (p.213). For their part, Aboriginal people and RLCs would be 'without right of appeal to a court' (p.213). It is proposed that RLCs may act without consulting or notifying traditional owners, let alone gaining their informed consent. This is whether a new or a renewed agreement is sought.	traditional owners, subject to any agreement made with their informed consent. Traditional owners require the direct support of a properly resourced Land Council independent of government intervention. Like so many of the Reviewer's recommendations this one relies upon acceptance of his scheme to replace traditional land owners as the primary decision makers and to replace the existing land trust and land council structures with a Northern Territory Government controlled NTAC and RLC system. The right to consent to mining is in effect exercised by traditional owners as a group and on an informed basis. The proposed arrangements are unacceptable and unworkable. They would be socially and economically disruptive. The right to mining on Aboriginal land is currently an important and significant power held by traditional Aboriginal owners of land and an important mechanism for controlling what takes place upon the land. The veto as proposed by the Reviewer, in the hands of the RLC or its delegates, is a sham.

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
	The Reviewer also provides the means for overriding RLC agreements over mining that could be adapted to meet such situations. He proposes that NTAC could refer decisions about land use, including mining, to the relevant Commonwealth or NT Minister if it believes an agreement is 'contrary to the best interests of the Aboriginal people of the region' (p.609). Further, 'in the event of an impasse between a mining company and an RLC over a proposed mine', the NTG could appeal to the Commonwealth 'for a proclamation that the mine should proceed in the national interest' (p.534). However, the Reviewer also proposes that Commonwealth functions under the Act might be delegated to the NTG (p.493). The whole Act could be transferred to the NTG, an outcome sought by the NTG and contemplated by the Reviewer. The Reviewer proposes that NTAC could refer decisions or agreement about land use, including mining, to the relevant Commonwealth or NT Minister if it believes an agreement is 'contrary to the best interests of the Aboriginal people of the region' or 'unacceptable' because of 'effects on third parties'	

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
	(pp.535-609). These comments apply in general to the recommendations in this chapter	
• Each RLC should be empowered to negotiate legally enforceable agreements directly with any mining company, or number of mining companies, and be free to engage any outside help they need for that purpose, including drawing on the professional resources of the proposed new NTAC.	The meaning is unclear because of the vague working of the exception and also general remarks above. Some mining areas will cross RLC boundaries. The professional resources according to Reeves would be at a cost to the RLC.	The recommendations to draw on the resources of NTAC would clearly place NTAC in a position of conflict of interest. This recommendation also raises the prospect of one mining company negotiating with several RLC's. The Reviewer's solution presumably to this problem would be for NTAC to take over the process. But the consequence is that the matter is further removed from the influence and control of the traditional Aboriginal landowners.
The NT Government should be kept informed which mining companies a RLC is negotiating with.		Such an obligation to notify the NT government could be effected by an officer. It would not be matched by any such obligation to notify traditional owners, or even the RLC members. There is no place for the Reviewer's model of NTAC or RLC's in a workable land rights system.
The NT Government should accept whatever enforceable agreements are made between a mining company and a RLC (unless it considers the agreement should fail on other grounds) and issue the required exploration license or mining		Land Council experience indicates that the NTG would not accept the passive role envisaged by the Reviewer. The proposal is unworkable. This recommendation is nonsense and nothing but a smoke screen, which obscures the reality the Reviewer's proposals give the Northern Territory government, through NTAC, a powerful role in the

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interest accordingly.		negotiations between RLC's and the Mining Companies. Of course the proposed mechanism will allow the NTG, in effect, to engineer agreements so that they are acceptable to it.
The Commonwealth Government should continue to have the power to cause a Proclamation to be issued that an exploration or mining project should proceed in the national interest.	The Reviewer also proposes that Commonwealth functions under the Act might be delegated to the NTG (p.493).	The Commonwealth has taken a responsible approach to its power. The NTG should not be involved.
Mining companies operating on Aboriginal land should be bound by law to pay normal royalties to the NT Government (as is the case now) and *all* so-called negotiated royalties to the relevant RLC.	The Reviewer proposes that "negotiated royalties and other income, e.g. gate receipts and license fees, received by each RLC, after deduction of costs incurred in earning the income, would be required to be passed to NTAC for crediting in the RLC's account" . RLCs would only be able to use this money for purposes approved by NTAC (p.610). Opportunities for effective circumvention of the RLCs would seriously reduce leverage in bargaining.	The proposal is for negotiated royalties to go to an NTG appointed body and be used to support services for which the NTG already has a responsibility. It is unacceptable. Negotiated royalties should be distributed in accordance with the wishes of the traditional Aboriginal owners as reflected in the mining agreements. There are in existence a substantial number of agreements, which have been negotiated on the basis that the traditional landowners will be able to receive compensation themselves, and will have autonomy in how they deal with such receipts. Under the Reviewer's proposals they will have these rights in effect confiscated.
The Commonwealth Government	It is proposed that the ABR will become "NTAC's	The Commonwealth Government should continue to

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should continue to pay mining royalty equivalents into the Aboriginals Benefit Reserve for the benefit of all Aboriginal Territorians.	principal source of income" (p.611). Made up of government appointed councilors, with a government approved CEO who would also be a councilors (p.607) NTAC would be a virtual government agency. As such, it is not clear why it would not be funded in the normal way.	pay mining royalty equivalents into the Aboriginal Benefits Reserve only on the condition that the Reserve is firmly under Aboriginal control. Control by NTAC would be unacceptable, and on the basis that ABR funds are not allocated as NTAC's income, but are available for use as at present.

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(IV) THE OPERATIONS OF THE ABORIGINAL BENEFITS RESERVE (ABR) (FORMERLY THE ABTA) INCLUDING THE DISTRIBUTION OF PAYMENTS OUT OF THE TRUST ACCOUNT **and** **(V) THE OPERATIONS OF THE ROYALTY ASSOCIATIONS AND THEIR REPORTING REQUIREMENTS**		
Recommendations in Chapter 16		
• The link between the ABR's funds and the mining industry should be maintained to underscore the fact that the payment of these funds is based upon a unique and		The principal point of providing mining royalty equivalent indexed revenue for Land Councils is to give Land Councils a significant degree of insulation from the vagaries (and political interference) of normal budgetary process. Royalty equivalent payments are an integral part of

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historical factors.		the current scheme. They should be preserved in this context. The present rationale would not apply to a government appointed council. With diversion of expenditure to services, and without means to prevent this practice, it could enable substitution of expenditure by the NTG.
• The Act should be amended to include a clear statement of purposes for the distribution of the funds in the ABR.	No such purposes are proposed in the Report.	Meaningful policy about the application of ABR funds must be developed by the beneficiaries, Aboriginal people. The policy should be transparent in its development and application.
• The ABR should, in future, be administered by the proposed Northern Territory Aboriginal Council (NTAC).	This would mean that the NT Government would be in a position to influence policy and administration of the ABR.	The Aboriginal Benefits Reserve should be managed by the Land Councils or possibly another representative Aboriginal controlled and independent body. As conceived by the Reviewer, NTAC is not independent.
• The formula for the distribution of the ABR's funds should be abolished. In its place, NTAC should decide on the distributions within the statement of purposes set for the ABR.	No specific purposes are proposed in the Report. Nor is an alternative formula for distributions.	The allocation of funds to the Land Councils needs to be relatively stable, and not subject to political whim. The amounts must reflect the broad responsibilities of the Land Councils. Combined with the proximity of the NTG to NTAC, ad hoc distributions would be politically charged and generate disputation. They would also necessitate a

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		big central bureaucracy for their administration.
• In future, 'areas affected' monies should only be paid to the proposed new Regional Land Councils (RLCs) in the region for the benefit of those communities that can establish an actual adverse affect from mining on the community in net terms, i.e. taking into account the receipt of negotiated payments and any countervailing benefits obtained from mining.	Determinations about adverse effects would be politically charged and require substantial resources. It places a heavy onus on Aboriginal people. It requires actual adverse effects to be established, but does not provide that those affected will be compensated, the funds will go only to the RLC, which may do nothing with the funds to ameliorate the adverse effects. The Reviewer is confused about benefits and compensation payments, as well as public and private monies.	The use of compensation payments is a matter for those affected, subject to proper auditing and reporting. Funds for development of public services or enterprise should be treated separately. As it is proposed by the Reviewer, the net receipts by a RLC be remitted to NTAC and be made available for expenditure on administrative or public purposes (p.597), the quantum of the negotiated payments would not be a relevant consideration. The Reviewers discussion on these issues is confused and ignorant. Negotiated payments are not necessarily compensatory and may be used for development initiatives.
• All expenditure of all ABR funds and all other income from activities on Aboriginal land should be applied by NTAC or the RLCs to particular purposes e.g. ceremonies, scholarships, housing, health etc. Conversely, none of these funds should be paid to an individual without a related purpose. Furthermore, any Association	Only NTAC would have any real choice about expenditures. The RLCs would have little discretion, being only authorized to expend monies on administrative or 'public purposes approved by NTAC' (p.597). ABR funds would be distributed at the 'complete discretion of NTAC'. NTAC would also respond to requests for funds from individual communities via an RLC (pp.611,612). The Reviewer's recommendation does not take into	In the CLC area, at least, no ABR funds have ever been paid to individuals. ABR funds are compensatory. They should not be available to substitute for normal public amenities and services provided by governments to all Australians. Independent Land Councils should determine how ABR funds are expended. All public monies should be properly accounted for through auditing and reporting.

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receiving ABR funds should not be able to pay those funds to another Association that makes individual payments. Measures should also be adopted to remove the perception that the practice of substitution is occurring.	account the nature of private monies and the prerogatives of the recipients. The Reviewer appears not to accept the reality of substitution by the NTG (p.363), despite having had ample resources to investigate. No measures for its prevention are proposed.	The CLC does not agree that compensation currently received or receivable by Traditional Landowners or their corporations should be purloined by NTAC, and insists that they should retain responsibility to manage their own funds.
• Mining Withholding Tax should not be applied to the funds paid to the ABR.		
• NTAC should develop an investment strategy, which is aimed at it becoming self-sufficient to the amount of the income from a particular mining resource by the time that resource is estimated to be expended. The balance of the ABR's funds should be expended by NTAC and the RLCs on programs for the cultural, social and economic advancement of Aboriginal Territorians.	The Reviewer's recommendation fails to take into account the nature of private monies and the prerogatives of their recipients. Royalty associations have a responsibility to account for monies received, but cannot be directed on how to expend their funds. The possibility of ensuring a longer-term income flow through investment is partly determined by the amounts and time frames entailed. Some sources have mine lives so limited as to render the objective impossible. Not accepting the reality of substitution by government, no measures for its prevention are	Meaningful policy or strategy about the application of ABR funds must be developed by the beneficiaries, Aboriginal people. The policy or strategy should be transparent in its development and application. Mining royalty equivalent income should continue to be distributed from the ABR. Reposing such powers in NTAC is contrary to the thrust of discussions in Chapter 28 concerning more self - determination and less dependency.

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	proposed.	
• NTAC should only invest the investment component of its funds in commercial investments that are likely to provide a satisfactory rate of return for the investment.	The Reviewer recommends the forced diversion for investment for a 'commercial rate of return' (p.610) of what is money presently available for Aboriginal use. No provisions for indemnity are proposed. The immediate effects would be a sharp reduction in funds available for Aboriginal use, and a loss of property rights, without any compensation being proposed.	The Land Council categorically rejects the scheme and reasserts that the ABR should distribute funds, and control the investment of the funds allocated for that purpose and that this should be in accordance with decisions about use made by Aboriginal people themselves. It must be asked what is the point of a government causing public money already marked for Aboriginal use to be diverted for commercial investment? The effect of this is to expect the poorest group in the country to forego benefits, with the prospect of restoration at some uncertain time in the future.
• A special system of assistance, accountability and transparency should be adopted for Aboriginal incorporated associations to take account of: • the effect of Aboriginal culture and tradition; • the undesirability of a multiplicity of such associations; and • the general lack of familiarity and experience among	The Reviewer makes no practical recommendations on what this proposal might mean in practice, other than that it should be for the NT (p.504). The *Aboriginal Councils and Associations Act 1976* was developed to allow culturally appropriate incorporation, governance and management of Aboriginal communities and organisations. Subsequent amendments have required greater accountability, along the lines of Corporation Law. A 1996 report proposing revision of this legislation remains with the Minister.	The *Aboriginal Councils and Associations Act 1976* should be more compatible with the current needs of Aboriginal people, including the management of royalties. However, there is no need to impose yet more restrictions on the autonomy of Aboriginal people. The Central Land Council operates in a way, which is consistent with these recommendations. The Reviewer tried, but failed to find substantial evidence of financial mismanagement of the associations, and therefore focuses attention on the

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Aboriginal people with administering such bodies.		legislation as being to blame for his inability to succeed in that quest (see Chapters 15 and 16). The more obvious and correct solution is that the associations are generally well managed. The number of associations is a function of autonomous decision making by Aboriginal groups.
Recommendations in Chapter 28		
• The establishment of the Northern Territory Aboriginal Council (NTAC) as an authority under the Land Rights Act.	The Reviewer is proposing a new and large central bureau through which the NTG would be able to oversee or regulate all Aboriginal land, policy and programs in the NT and exercise control of all funds provided or generated through the Land Rights Act. Along with Regional Land Councils, NTAC is the key element in a scheme to eliminate the Central and Northern Land Councils and properly resourced independent Aboriginal voices. Aboriginal people have not been consulted about the proposal.	This recommendation is opposed by the Central Land Council. The establishment of the proposed NTAC would be a giant retrograde step towards past paternalism. The idea is cynical and devious. The Reviewer sees NTAC as the instrument by which the "partnership" (see Chapter 4 Recommendations) is to be achieved. But an imposed structure made up of Northern Territory government appointees seems less than a suitable basis to forge such a relationship (NTG's 'Council of Elders' scheme).
• The members of the Council of NTAC should be appointed jointly by the Commonwealth Minister and the Chief Minister of the NT from a list of nominations of Aboriginal	Details of how selection would operate are not set out. This proposal would likely mean that the Northern Territory government would be in a position to ensure that NTAC is made up of persons acceptable to the CLP. Since the Reviewer proposes	NTAC is unacceptable. Such political appointments are unacceptable. A central role for the NTG in policy making over land rights is also unacceptable. The NTG has always been hostile to land rights and Aboriginal self-determination. Through the

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Territorians made by Aboriginal Territorians.	the Commonwealth functions under the Land Rights Act might be delegated to the NTG (p.493) and the whole Act could be transferred to the NTG, this outcome is all the more probable.	Reviewer's recommendations the Northern Territory government is seeking to turn that hostility into a complete takeover of Aboriginal affairs in the Northern Territory. The rights of traditional Aboriginal landowners are diminished, their property acquired and their decisions making powers and support structures dismantled. All this supposedly in the name of the social and economic advancement of Aboriginal people.
• The Council members should elect their own Chairperson and appoint their own Chief Executive Officer from a list of candidates approved by the relevant Commonwealth and NT Ministers. The CEO should also be a member of the Council *ex officio*.	The key element in this strategy is to assert NTG control over the appointment of GEO of NTAC. The CEO would appoint and supervise all staff (p.607). NTAC would approve all RLC CEO's, who in turn would appoint and supervise all RLC staff.	The process for control over the appointment of the CEO and other staff compounds the problems with NTAC. The proposal is altogether unacceptable. What is the nature of this proposed "partnership" that requires such close government control over appointments of members and staff? Again, the proposal is geared to secure a politically compliant organization. As Viner[1] and Sutton[2] observe, the stage would be set for a new era of "cronyism" and "fiefdoms". It is not made clear whether or not the CEO would have to be Aboriginal.
• In due course, Government appointment of the members of the Council should be replaced by their	No indication of time span for election of NTAC is offered other than to say probably within 5 years, but "in due course, when a positive partnership has	The proposition that some kind of democratic accountability will be introduced if and when Aboriginal people demonstrate that they can behave

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election by Aboriginal Territorians on a basis providing for an appropriate spread of regional representation. This election should take place once the land claims process has been completed, the boundaries of the RLCs have been settled, and a further review of the Act has been undertaken.	developed with both governments and their agencies" (p.607). Effectively, this means no elections until the "correct" attitude is proven to the NTG's satisfaction.	properly is astonishing in its arrogance. It is reasonably foreseeable that under the Reeves scheme, with such a number of small Land Councils, boundary and membership disputes would continue for a very long time. Such disputes would then be used (by NTAC or by the NT government) as an excuse to argue that the time is not yet right for elections. The Reviewer's scheme contains within itself the makings of its own complete failure.
• The main functions of NTAC will be to: • Assist in the long-term social and economic advancement of Aboriginal Territorians through its social and economic advancement program.	This proposal signals the intended shift away from land rights and development, and the provision for representation and defense of Aboriginal interests. The move is towards regulated service delivery. Even the term "advancement" here connotes the paternalistic past.	Land Councils are more than service delivery organizations established to operationalize programs conceived by NTAC, or the NT and Commonwealth governments, at the local level. The main functions of the Land Rights Act, as it currently exists, is to: provide for Aboriginal ownership and control of traditional land; for Aboriginal decision making in relation to that land, in accordance with Aboriginal customs and traditions; for management of that land, and for the interface between Traditional landowners and third parties seeking access to the land to carry out various activities. The Reviewer's proposals

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		absolutely negate these functions.
• Maintain strategic oversight or supervision of the activities of the RLCs relating to major agreements, delegation of their functions, their financial and administrative functions and the appointment of their CEOs.	The phrases "strategic oversight" and "strategic supervision" used by the Reviewer, are not further defined. However, the contexts suggest that a substantial and intrusive role be envisaged.	Here it is plain that NTAC is seen as having a major function in surveillance and control of Aboriginal activity in the Territory. Real or effective Land Councils would not be subject to the detailed surveillance and direction proposed, in fact the opposite would be envisaged. Greater autonomy would warrant withdrawal of even current levels of government involvement..
• House and support the operations of the Congress of Regional Land Councils.	The sponsorship of what could be a peak council for RLCs would help secure the perimeter against any breakout led by disaffected RLC members.	The proposed RLCs are unacceptable. No Congress is necessary - and if it was, what is NTAC meant to be? This is a sop and an important admission that the proposed structure will, as intended, deprive Aboriginal people of their powerful organisations and corresponding political voice.
• Establish an investment trust and act as a 'bank' for the RLCs.	The terms 'trust' and 'bank' suggest a service role on behalf of RLC clients. The reality is more a master and servant relationship. Naturally the master holds the purse strings and has no accountability to the servant.	The ABR is able to carry out the necessary central investment management function. Properly constituted Land Councils would hold and manage their own funds.
• Complete the outstanding land claims.	The claims have been lodged on behalf of traditional owners to whom NTAC is not accountable. No provision is recommended for effective communication between NTAC and traditional	NTAC would be appointed by the NTG, which has historically opposed land claims or at least has a substantial potential conflict of interest. NTAC would not be accountable to the claimants. It may not even

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	owners. In most cases the Northern Territory is the party with the greatest interest in the outcome of a land claim, other than the claimants.	be sympathetic or agree with them. The proposal is ludicrous.
• Act as a sole Native Title representative body in the Northern Territory.	NTAC would be involved in identifying, consulting with, and obtaining the consent of native title holders, under the Native Title Act. A representative body is also enabled to become a party to an indigenous land use agreement after consultations with native title holders. The proposed structure is unlikely to satisfy the criteria, which the Minister for Aboriginal and Torres Strait Islander Affairs is required to consider in deciding on the recognition of representative bodies under the Act.	As with the other recommendations relating to the Native Title Act, this recommendation fails to take account of the July 1998 amendments to the Act, which, among other things, changed the functions, powers and the role of representative bodies. Specifically, it fails to take account of the new processes relating to the authorisation and certification of native title applications and indigenous land use agreements. The representative and consultative nature of these functions is not compatible with the proposed structure of NTAC. The idea that an unrepresentative, government appointed, and effectively government controlled, body may also be a representative body is absurd. Nowhere does the Reviewer discuss NTAC performing the roles required of a Native Title Rep body. It is an ill conceived and completely inappropriate recommendation.

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• Endeavor to resolve disputes between Aboriginal people, or Aboriginal organisations, in relation to land or other matters.	The Reviewer proposes that disputes around "questions involving Aboriginal tradition", including land and entitlements to membership of an RLC be resolved by the RLCs or NTAC. There would be no "right of appeal to a court" (p.213). Amongst other serious problems, the proposal entails exclusion of the jurisdiction of the High Court.	In the CLC region there has been only a nominal and acceptable level of disputation. It has been well managed, mostly by Aboriginal people themselves. There is no need to interpose an external body. The Reviewer mistakenly believes or represents that there is a much greater level of disputation than has ever been evident on the ground. It is possible that the Reviewer anticipates that the new structure proposed would give rise to more disputes, and it well might, in which case it should be rejected. This proposal constitutes more evidence of the unworkability of the Reviewer's plan. The Land Council cannot accept arrangements, which, amongst other things, deny Aboriginal people rights to natural justice. The proposal is discriminatory and offensive to the concept of the separation of administrative and judicial power. The Reviewer proposes NTAC, a politically appointed body with the express function of oversight and supervision of RLC's to also perform in an independent manner dispute resolution and determination of rights. There is obviously great potential for real and apparent conflict of interest.

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• Provide financial, technological and human resource support (at cost) for the RLCs. • On request by a RLC, act on the RLC's behalf in any matter.	The need for such a role arises through the proposal to dissolve the Central and Northern Land Councils. The task would require a large and heavily resourced establishment. The suggestion that representation "in any matter" will be made available on request is misleading. It is NTAC, which would be given the right to determine what issues will be taken up. Even if it happened to be so inclined, it could hardly contest issues with the NTG.	Having already appropriated most funds to NTAC, the Reviewer would then have people at the local level pay for its services. Land Councils must be properly resourced to provide or purchase appropriate services themselves.
• Maintain a (non-public) register of all agreements entered into by each RLC.	What detail would be included in the register? Who would have access? Under what circumstances? And given the degree of supervision in reaching agreements, why would it matter? The answers to these questions are not provided.	Responsible Land Councils are able to and do maintain their records. Of course this role is thoroughly consistent with other proposed surveillance functions of NTAC.
• NTAC will be responsible for receiving and distributing the mining royalty equivalents paid to the ABR by the Commonwealth Government and any other funds allocated to it by the NT and Commonwealth Governments or ATSIC.	The point of the statutory formula for funding has been to allow a degree of independence through insulation from the annual grants process. This proposal would remove one substantial reason for the payment of royalty equivalents, which is to provide Land Councils with a secure and guaranteed source of funds to carry out their functions under the Act.	Opposed. The ABR is able to perform all necessary centralized functions. The proposal is unnecessary? The Reviewer's proposal is for NTAC to have control over all funding concerned with Aboriginal affairs in the Northern Territory. The proposal is the antithesis of self-determination.
• NTAC will be required to fund the administrative costs of the RLCs.	NTAC would also, in effect, determine what administrative costs may be incurred in the first place. In other words NTAC would choose what it	Opposed. This proposal would also result in a gross diminution in Aboriginal autonomy. Land Councils are charged with statutory functions and require

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	wanted to fund.	certainty that an adequate income will be available, contingent on proper auditing and reporting procedures. The amount noted by Reeves as the probable budget for a RLC indicates an intention that they would be very poorly resourced operations indeed.
(VI) THE COMPULSORY ACQUISITION POWERS OVER ABORIGINAL LAND		
Recommendations in Chapter 17		
The Land Rights Act should be amended by repealing ss. 67 and 68 and by inserting, in Part VII, a new s. 67 along the following lines:		These recommendations are opposed for the reasons set out below:
(1). Subject to ss. (2) and (3), notwithstanding anything in this Act, including s. 71, or any other Act, save for the Racial Discrimination Act 1975 (Cwlth), the NT Government may compulsorily acquire an estate or interest in Aboriginal land or in land the	It is proposed that the NTG be given the power of compulsory acquisition of inalienable freehold land for "public purposes". This addresses a specific term of reference urged by the Territory government, which argues that such a power is necessary to provide essential services. The Reviewer accepts this, saying that it is "generally accepted, in principle, that a government should have a power of compulsory	The recommendation is about removal of Aboriginal control over land and is totally unacceptable. 'Privatization' of Aboriginal land is not necessary. Traditional Aboriginal owners have never stood in the way of a government, which genuinely sought to provide services to Aboriginal land. Why would they? But at the same time they retain their rights in the freehold and native title interests.

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subject of an application of the kind referred to in s.50(1)(a), other than the freehold interest, for public purposes provided that the nature and extent of the estate or interest shall be limited to that necessary for the public purpose concerned.	acquisition" (p.376). This is despite historic arguments from Aboriginal bodies and others to the contrary. The Commonwealth already has the right of acquisition, and the Act enables a Land Trust to grant an estate or interest in Aboriginal land. The Reviewer did not attempt to show that this provision was inadequate. No provision for consultation with traditional owners is made. In accordance with the Reviewer's scheme, compensation would be paid to the RLC, which holds the land in trust. The money would be deposited with NTAC and used for public services or commercial investment. Compensation paid by the NTG would effectively go to an agency it controls. The meaning of "public purposes" is not explained. Land acquired for "public purposes" could be to make land available to third parties, as has happened elsewhere. The proposal to compulsorily acquire land could give rise to breach of the International Covenant on Civil and Political Rights to which Australia is a party. Article 27 carries a positive obligation on states to ensure that minorities have a right to enjoy their culture. The proposal would diminish this right.	Proper and workable arrangements for provision of essential and other services, and provisions to allow for government access to and use of Aboriginal land already exist under the Land Rights Act. The Reviewer has not demonstrated that it is necessary for the inalienability of Land Rights Act title to be violated, nor has he demonstrated that his proposals are justified.

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(2). An estate or interest in Aboriginal land or land the subject of an application of the kind referred to in s. 50(1)(a) can not be compulsorily acquired except by an Act of the NT Parliament that expressly provides for that acquisition.		Proper and workable arrangements for provision of essential and other services, and provisions to allow for government access to and use of Aboriginal land already exist under the Land Rights Act.
(3). Prior to any compulsory acquisition of an estate or interest in Aboriginal land or land the subject of an application of the kind referred to in s. 50(1)(a), and within the period prescribed by the regulations, the NT Government shall: a.) notify the relevant Regional Land Council in writing as to the area of the land affected, the nature of the estate or interest that is to be compulsorily acquired, the purpose of the acquisition, and the alternative courses which have been considered; and b) allow the relevant Regional Land		Proper and workable arrangements for provision of essential and other services, and provisions to allow for government access to and use of Aboriginal land already exist under the Land Rights Act.

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Council, reasonable access to all documents held and advice received relevant to the proposed acquisition.		
(4). In relation to the acquisition of an estate or interest in land the subject of an application of the kind referred to in s. 50(1)(a), any compensation payable shall be held in trust, in accordance with the regulations, pending the final disposition of the claim in accordance with s. 67A(5).		Proper and workable arrangements for provision of essential and other services, and provisions to allow for government access to and use of Aboriginal land already exist under the Land Rights Act. Traditional landowners have never stood in the way of public services.
(VII) THE APPLICATION OF NT LAWS TO ABORIGINAL LAND		
Recommendations in Chapter 18		
• That provision be made for the general application of NT laws to Aboriginal land. Specifically, that the Act specify the subject areas in relation to which NT laws will apply	The Reviewer's proposals for general application of NT laws to Aboriginal land are based on the acceptance of the NTG's repeated statements about "uncertainty" and "the interests of the broader community" (p.401). Though the Reviewer notes that	There is no case for the substantial amendments proposed by the Reviewer. Most NT laws are already capable of operating concurrently with the Land Rights Act. Difficulties rarely occur. Nowhere in the discussion in this chapter does the Reviewer

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to Aboriginal land, with the qualification that every endeavor should be made to ensure that the rights under s. 71 of the Land Rights Act are preserved to the greatest extent possible.	the "major problem is uncertainty" (p.402) little or no clear evidence of just how this constitutes a problem is given.	provide an actual example of where a difficulty has occurred, which could not be, or was not solved by consultation, negotiation and agreement. To illustrate the alleged problem, the Reviewer noted that "it is not clear where the duties of the Land Councils end and those of the Local Government Councils begin" (p.410). The Reviewer previously forcefully argued that "there is no reason in principle" why the two acts "can not operate concurrently" (pp.397-399). The Reviewer's proposal would turn the current workable provision on its head. Currently NT government laws apply on Aboriginal land to the extent that they are capable of operating concurrently with the Land Rights Act. (See section 74 of the ALRA). This has the effect of protecting the use and occupation of Aboriginal land in accordance with Aboriginal tradition. (see section 71 of the ALRA) and fulfills one of the primary purposes of the Land Rights Act. The Reviewer's proposal reverses that situation and subjects Aboriginal land to the general unqualified application of Territory law in most key areas regardless of Aboriginal tradition. A weak form

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		of protection of Aboriginal tradition is proposed in other areas.
• Specifically, I recommend that s. 74 be repealed and s. 71 be amended along the following lines : • Insert a new subsection (3) as follows: Subject to subsections (4) to (6), the laws of the NT made pursuant to ss. 67 and 73 or laws of the NT, including delegated laws, with respect to environmental protection and conservation, public health and safety, the supply of essential services, the maintenance of law and order, or the administration of justice shall apply in relation to Aboriginal land in the NT.	The effect of these proposals is to reverse the current protection against application of laws that are inconsistent with the Land Rights Act or which carry negative effects on the use and occupation of Aboriginal land.	See the comments above. There is no need to change the current provisions. Article 27 of the International Covenant on Civil and Political Rights, to which Australia is a party, carries a positive obligation on states to ensure that minorities have a right to enjoy their culture. These proposals would diminish this right and breach the Covenant.
• Insert a new subsection (4) as follows: In the application of a law of the NT described in subsection (3) in relation to Aboriginal land, all		As above. This proposal is mere window-dressing. It has no substantive meaning or force. It is weak protection, easy to ignore, hard to enforce.

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reasonable steps shall be taken to minimise any negative effects on the use or occupation of the land pursuant to subsection (1).		
• Insert a new subsection (5) as follows: The application of a law of the NT described in subsection (3) in relation to Aboriginal land does not affect the right to use or occupy land in accordance with subsection (1), other than to the extent that that use or occupation is *directly inconsistent* with the effective operation of the law of the NT.		The way that this proposal is worded is a trick and obscures the fact that under the Reviewer's proposal NT laws could and would override Aboriginal tradition.
• Insert a new subsection (6) as follows: Any law of the NT other than a law of the NT described in subsection (3) applies to Aboriginal land other than to the extent that that law is *directly inconsistent* with this Act.		Like the Reviewer's other proposals this is a screen designed to mask the reality. The Reviewer's proposals reverse the current protection of Aboriginal tradition on Aboriginal land in all key areas. In those circumstances the concession contained in this recommendation adds insult to injury. Under the Reviewer's recommendations the onus would be upon traditional Aboriginal people to allege

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		and prove "direct inconsistency". This would place traditional Aboriginal owners, if they wished to challenge a Northern Territory law, in the position of asserting and proving (disclosing) traditional law to the satisfaction of the non-aboriginal legal system. This of course would also be conditional on the resources being available from the proposed NTAC via the RLC to conduct the challenge. In the context of a the Land Rights Act, an act for the purpose of allowing Aboriginal ownership of Aboriginal land in accordance with Aboriginal tradition the imposition of such a burden is oppressive and unreasonable. The Reviewer seems to think that the Land Rights Act is an Act for the purpose of imposing Northern Territory government control over Aboriginal land.
• That provision be made to ensure that the costs of fencing arising under the Fences Act are met by the relevant RLC. Specifically, it is recommended that s. 26 of the Land Rights Act be amended by inserting a new subsection (2) as follows: In this section the term 'charges' includes, but is not limited to, the	No assessment of the cost or need of this requirement was undertaken. Relative to the vastly reduced current expenditures being proposed, for RLC's, the costs would be prohibitive.	This recommendation is a lawyers trick. If the Act were amended as the Reviewer proposes it would have many effects additional to those matters discussed in Reviewer Report. Currently, section 26 provides a method for any administrative costs of a Land Trust to be met by the Land Council. This accords with other sections of the Act such as section 6 which provides that a Land Trust is not empowered to accept monies, but that Land Councils shall

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cost of fencing which is due and payable in relation to Aboriginal land pursuant to a law of the NT or the Commonwealth.		provide a service to Land Trust in relation to the receipt and discharge of monies. The Reviewer's proposal to insert a broad definition of the word "charges" to include, but not be limited to, the cost of fencing would change the whole nature of the section in a manner not alluded to in the report and for imposition of costs which have never been previously contemplated. The suggested change should be rejected. The proposal is another example of the vehemence and punitive nature of the current efforts to control Aboriginal activity and expenditures.
• That the NT Government be given a limited power to compulsorily acquire Aboriginal land for public purposes, including for the purpose of water supply.	The specific issue of water supply may be raised here to help legitimate the general power of compulsory acquisition of inalienable freehold land for "public purposes" that is being sought. There is no evidence that present provisions for access to a water supply are inadequate. Water catchment areas and underground aquifers often occupy large areas. A proposal to provide for unnecessary and compulsory acquisition of such land could give rise to breach of the International Covenant on Civil and Political Rights to which Australia is a party. Article 27	No one has been denied water supply and nor has any such threat been made by traditional landowners. The issue is raised as a furphy to draw support for the wider moves to acquire inalienable land. The proposal is unnecessary. The NTG has successfully negotiated a lease with the Land Trust over the water control district at Tennant Creek, which allows both parties to exercise their respective interests. The modest restrictions on Aboriginal land use, under the lease conditions, are

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	carries a positive obligation on states to ensure that minorities have a right to enjoy their culture. The proposal would diminish this right.	acceptable given that the traditional landowners are Tennant Creek community members who would use the water.
(VIII) THE ROLE, STRUCTURE AND RESOURCE NEEDS OF THE LAND COUNCILS FOLLOWING THE COMING INTO EFFECT OF THE SUNSET CLAUSE RELATING TO LAND CLAIMS		
Recommendations in Chapter 10		
• A system of representative regional land councils should be established based on the eighteen existing Land Council regions (including the two small Land Council areas).	The RLCs would be established regardless of the wishes of Aboriginal people. The Reviewer's discussion of this, and the recommendations do not consider that Aboriginal people should be consulted or have any further say on the question.	There are already provisions in the Land Rights Act for the creation of new Land Councils if required and desired. Unlike the Reviewer's proposal these existing provisions allow for the opinions of Aboriginal people to be central to any decision. The CLC submits that this process would be enhanced by requiring that such decisions should be subject to the informed consent of the people affected, as elsewhere in the Act

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		The proposed bodies would not be representative. Their need or viability has not been established. The model and what it entails has not been presented to Aboriginal people, and does not have their support. The Reviewer's model does not accord with Aboriginal custom and law, nor does it permit decision making based on traditional custom and law.
• These Regional Land Councils (RLCs) should be autonomous, subject to the system of supervision and accountability (detailed in Chapter 27).	The term 'autonomous' is totally misleading. The Reviewer's scheme places the proposed RLCs firmly inside a regulatory regime with the NTG at its peak. NTAC is to be appointed by the Commonwealth and Territory governments, or only the latter, and to supervise the RLCs. The NTAC CEO would have to be acceptable to the NTG. The CEO would appoint and supervise all staff (p.607). NTAC would approve of appointments of all RLC CEOs, who, in turn would appoint and supervise all RLC staff. The RLCs would have little discretion over programs, being only authorized to expend monies on administrative or "public purposes approved by NTAC" (pp.597,610). RLCs would be "without right of appeal to a court" (p.213).	The proposed scheme is paternalistic. It is a transparent device to divide, enfeeble and subjugate the mainland Land Councils. Income would be diverted and assets stripped. The RLCs would be able to pay for a few staff, overheads and not a great deal more. They would be puppet bodies; land councils in name only. They would not be autonomous and the Reviewer does not propose that they be accountable to traditional Aboriginal owners. They are absolutely rejected.
• Each RLC should be required to	All the Aboriginal people of the region could be	The RLC itself becomes the decision maker without,

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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.	members of the RLC. There is no proposed provision for requiring that decisions have the informed consent of traditional owners, members, or anyone else. It is easy to foresee decision-making powers being effectively held by a small group. As the subsequent recommendations indicate, a dispute about an RLC policy decision would be meant to be resolved by the RLC or NTAC. Judicial power would be conferred on non-judicial bodies. If a member was refused information or an opportunity to participate in a decision there would be no 'right of appeal to a court' (p.213). Natural justice would be denied.	it seems, the commensurate obligations to consult. Traditional owners could be effectively disenfranchised. A range of serious legal, financial and political problems would ensue. Conflict and uncertainty would prevail. The proposal is rejected.
• All disputes arising out of the Land Rights Act should be dealt with at first instance by the relevant RLC by the methods it considers appropriate.		The RLC itself is likely to be the main reason for disputes, in relation to boundaries, to membership, to decision making methods, in relation to rights to speak for country, to make decisions for country. It is plainly nonsense for the Reviewer to recommend that RLCs should deal primarily with all disputes arising out of the Land Rights Act, as such a body would be in the middle of such disputes. The consequence is that NTAC itself would become the primary dispute resolution forum. And according to the Reviewer's proposals there would be no where to go from there. The proposal is rejected.

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• A person aggrieved by a decision of a RLC should have a right of appeal to NTAC, which should deal with the appeal by the methods it considers appropriate.		One must remember that the Northern Territory Government appoints the membership of NTAC. The proposal is rejected.
• A person aggrieved by a decision of NTAC should have a right to appeal on a question of law only to the Aboriginal Land Commissioner, or some similar body. No question of Aboriginal tradition should be entertained on such an appeal.		This recommendation effectively would mean that NTAC, a politically appointed body firmly within the control of the NT Government, would be the final arbiter of matters of Aboriginal tradition. A frightful proposition. The proposal is rejected.
• An (existing) Ombudsman should receive and deal with non-traditional/ administrative complaints against a RLC or NTAC.		There is no justification to limit the options available for seeking redress. In fact the proposed nature of NTAC and the methods of its appointment would seem to cry out for access to judicial review or an independent commission against corruption.
Recommendations in Chapter 27		
• If any disputes arise about the boundaries of any of the RLC regions the Minister should request the Aboriginal Land Commissioner	Here the Reviewer is anticipating that a judge may be required to depart from a fact-finding role and provide policy advice that may have strong political elements to a minister. This would compromise the	Provisions for forming new land councils are already in place. They are based on a test of popular support. They are workable, but have not proved to be sufficiently conducive to the NTG's open functional

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to inquire into the most appropriate boundaries and report to him pursuant to s. 50(1)(d) of the Land Rights Act.	independence of judicial office and compromise the Land Commissioner's functions.	support for breakaway land councils to succeed, hence the Reviewer's proposal. It is rejected.
• Each RLC will be comprised of its: • Membership; • Board of Directors; • Chief Executive Officer; and • Staff.	This formulation seems careless. It suggests that an RLC would include persons who are not eligible to be its members. In this way non-Aboriginal persons could be members of the Council.	Such looseness appears throughout the Report, at both a fundamental or structural level and in respect of presentation. Considering the fact the Review cost $1.3 million in direct costs alone, this is inexcusable. It reveals the Reviewer's cavalier approach to his task. Alternatively, such confused expression may be intended.
• The universal rules of membership of each RLC should be that: • any Aboriginal person, who has a traditional affiliation to an area of land within the region, or who is a permanent resident of the region, is entitled to be a member of an RLC; • no person may be a member of more than one RLC at any one time; and	Carelessness may again be evident. This formulation indicates that children may be members and vote, presuming that voting is adopted as part of an individual RLC's decision making process (p.213). A person with traditional affiliation with country, which straddles RLC boundaries, could only be part of the decision making process on one side. Persons from far away and not responsible for the country under Aboriginal Law could take on major decision making responsibilities. Conditions for major social tensions would be created. Persons who do not fall into the category of	These recommendations raise more questions than they answer. Not the least is that different RLCs may have different definitions of traditional content, and hence eligibility for membership (see pp.495-8). No satisfactory process for dispute resolution is proposed. The recommendations are rejected. To anyone who has had some experience in working in the field of Aboriginal affairs it is foreseeable that these proposals have the potential to cause major disputation over the rights of residents as against the rights of traditional owners, over the membership,

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• each RLC shall be required to keep a Register of its members.	"Aboriginal people entitled by tradition to use or occupy the land" could (and would) have responsibility for the land of those who are.	and the rights of absentee members, and over cross boundary affiliations and interests. The proposal is a recipe for dispute and discontent.
• The membership of the RLC should decide the number of Directors on the Board of the RLC and how they will be chosen.	We have the extraordinary situation where disputes about membership entitlements or selection of directors would be resolved by the RLC itself or NTAC, and no 'right of appeal to a court' (p.213). Natural justice would be denied and conditions for formation of fiefdoms and recurrent tensions virtually guaranteed.	The RLC scheme proposed by Reeves is unworkable.
• The Act should simply prescribe that the system for choosing the Directors of the Board of each RLC should be fair, representative of the region and non-discriminatory.	Having already provided for 18 different definitions of Aboriginality, the Reviewer wishes to open the way for that many different systems for selecting directors.	The Reviewer is proposing a system of RLCs of vast complexity. Uncertainties and confusion will proliferate. Chaos will reign. Then NTAC will step in to take control of the "dysfunctionality". This is rejected.
• The CEO of each RLC should be appointed by its Board of Directors from a list of candidates acceptable to the Board and approved by NTAC.	The CEO would have to be acceptable to NTAC which itself would be appointed by government. Criteria for acceptability are not stated. Secret political blacklists would be bound to ensue. The CEO may have to have qualifications similar to those for Community Clerks under the Local Government Act (p.596). For these and other reasons, any real independence is blocked.	The CLC does not want to see Land Councils converted into what would be a virtual local government system, with the NTG at the apex.

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• The staff of each RLC should be appointed by the CEO, to whom the staff will be responsible for the proper execution of their duties.	As with NTAC, all staff hiring, firing and supervisory responsibilities would rest with a single CEO. The lineage of appointment from the NTG would help ensure the political subordination of staff. Ready opportunity for nepotist practices would be created.	The CLC does not want to see Land Councils converted into what would be a virtual local government system, with the NTG at the apex.
• The main functions of a RLC should be as follows: • to undertake all the functions of the present Land Councils in its region with the exceptions of completing the land claims process, sacred sites assistance, and assistance with commercial ventures, which functions will be undertaken by NTAC, or other bodies as specified elsewhere in this Report;	This formulation is disingenuous. Obligations to obtain the informed consent of traditional owners would cease. RLCs would have virtually no independence. Advocacy functions would be severely restricted. RLC budgets would cover little more than salaries and overheads. With opportunities for miners to bypass the RLCs, negotiating leverage would be heavily curtailed. Mining companies and other developers would be able to ride at the will of the NTG.	This proposal seems to be meant to convey the idea that minus three functions the RLC will have the same roles as the present Land Councils. This is grossly false. The proposed RLCs will have nothing like the same responsibilities. Under a more reasoned and balanced review of the Land Rights Act it could well be argued that the Act could be usefully amended to allow for the delegation of some of the Full Land Council decision making powers to regional sub-groups.
• to make decisions in relation to proposals for the use of Aboriginal land in its region that do not conflict with the functions above, including decisions relating to exploration and	Decisions may be made without reference to interested parties, such as traditional owners of the land. All decisions of the types listed would be overseen by NTAC which could intervene "if it becomes necessary" (pp. 211,213,599,608-610). NTAC could refer decisions about land use,	Once again the terms of the proposal are misleading. The RLCs would have heavily controlled decision-making prerogatives. Moreover, the proposal entails removal of the rights of traditional owners. It is deeply problematic, legally, morally, politically and financially. To achieve this objective the Reviewer

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mining, tourism, and specialist primary production (horticulture, aquaculture, etc.);	including mining, to the relevant Commonwealth or NT Minister if it believes an agreement is "contrary to the best interests of the Aboriginal people of the region" or "unacceptable" because of "effects on third parties" (pp.535-6,609). Further, "in the event of an impasse between a mining company and an RLC over a proposed mine", the NTG could appeal to the Commonwealth "for a proclamation that the mine should proceed in the national interest" (p.534). However, the Reviewer also proposes that Commonwealth functions under the Act might be delegated to the NTG (p.493).	needs to destroy the concept of traditional ownership and substitute mere Aboriginality and residence.
• to hold in trust all Aboriginal land in its region for the benefit of all Aboriginal people who are entitled by tradition to use or occupy that land;	Under the proposed RLC scheme persons who do not fall into this category of "Aboriginal people entitled by tradition to use or occupy the land" would have responsibility for the land of those who are.	The proposal entails removal of the rights of traditional owners. Again, it is deeply problematic, and is rejected. The proposal could constitute an acquisition of property, the implications of which the Reviewer does not seem to have considered.
• to receive and spend funds made available by NTAC for the administration of the RLC or for public purposes approved by NTAC;	In other words to receive money handed out by a NTG appointed body to spend only on activities specifically approved by that body.	We should be moving away from a regime of superintendence towards one that is more genuinely about self-determination. The proposal is unacceptable.
• to assist in the social and economic advancement of	Such assistance would only be through closely supervised activity that is mostly about the local	Terms such as "assist in" and "advancement" in relation to service delivery are from a past era.

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Aboriginals living in its region; and	delivery of government and municipal like services.	Municipalisation of the Land Councils is unacceptable. The Reviewer's proposal gives NTAC control of the money, control of staff, control of decision making, and then says "… now we are going to assist you with your social and economic advancement in the way we think you should be assisted. If you don't like it we will resolve your dispute for you".
• to co-ordinate and assist the implementation of the Aboriginal social and economic advancement programs of NTAC, the NT and Commonwealth Governments and ATSIC, in its region.	This function makes it clearer still that the RLCs would be seen as the local service arm of centralized government authorities. ATSIC is being increasingly shackled and defunded, and its future is insecure.	Municipalisation of the Land Councils is unacceptable.
• The annual budget for each RLC should be left to its own discretion. Each RLC will be required to meet its administrative expenses from the annual allocation provided to it by NTAC.	Another very deceptive proposition. Only NTAC would have any real choice about expenditures. The RLCs would have little discretion, being only authorized to expend monies on administrative or 'public purposes approved by NTAC' (p.597). ABR funds would be distributed at the 'complete discretion of NTAC'.	There would be no recognizable budgetary autonomy. Such paternalism is rejected.
• All agreements made by a RLC	What detail would be included in the register? Who	Once again, this is about surveillance and that is

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will be required to be registered with NTAC.	would have access? Under what circumstances? And given the degree of supervision in reaching agreements, why would it matter? The answers to these questions are not provided.	ultimately contrary to autonomy. Responsible Land Councils are able to maintain their records. Responsible Land Councils must be able to keep sensitive information confidential.
(IX) ANY OTHER MATTERS RELEVANT TO THE OPERATION OF THE ACT		
Chapter 8 – Definition of Traditional Aboriginal owners		
• The definition of traditional Aboriginal owners in the Act should be retained for the purposes of the remaining land claims under the Act.	This means that it is good enough to require land claimants to establish traditional Aboriginal ownership in the land claimed but, having done so, it is not good enough to accord those owners the rights arising from that status.	The definition should be retained, and not just as expediency for an interim period, as is proposed here. The Reviewer's anthropological conclusions are deficient and have been the subject of critical evaluation in other places.
Chapter 11 -Outstanding Land Claims		
Banks and Beds of Rivers • The land claims to the banks and beds of rivers that fall wholly within	The Reviewer has identified the one category of river banks and beds that the NTG was prepared to concede as claimable.	The Reviewer has finally isolated something the Land Councils have wanted and which the NT government will, through lack of much choice,

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other land that is claimable, should be granted without further delay and expense.		tolerate.
• The Land Rights Act should be amended to prevent land claims to the banks and beds of rivers that form the boundary between land that is available for claim and that which is not, or that comprise a strip of land between two areas of land that are not available for claim.	Here again the Reviewer follows the NTG position on countering claims to these two categories of river banks and beds (p.222).	The NTG and Reviewer's position on these matters is unacceptable. A means is already available for dealing with such situations.
Intertidal Zone • The Land Rights Act should be amended to provide that the areas of the NT on the seaward side of the high watermark, that are not already Aboriginal land under the Act, are not available for claim under the Act.	This is in line with the NTG position.	Refer to the Northern Land Council's position on these matters.
• The common law position regarding the ownership of living fish and native fauna on Aboriginal land should be confirmed in the Land Rights Act.	This is in line with the NTG position.	Native title rights to use flora and fauna apply in common law. Constriction of these rights is unacceptable.

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• The NT Legislative Assembly should be given the power to pass legislation to provide for the joint management of the resources in the intertidal zone and the territorial waters of the NT both on and off Aboriginal land in conjunction with those Aboriginal people who have traditional interests in those resources and areas and other persons and groups with interests in those resources and areas.	This is in line with the NTG position.	Refer to the Northern Land Council's position on these matters.
• The NT's power to make laws in this regard should be made sufficiently broad to allow it to permit members of the public, who are lawfully fishing in such waters and commercial fishermen licensed to fish in such waters, to place anchors, nets, fishing lines or other similar items of equipment on the bed or shore of the intertidal zone on Aboriginal land.	This is in line with the NTG position.	Refer to the Northern Land Council's position on these matters.
• The order of priorities given to		The order of priorities is misleading. Refer to the

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the interests of the various groups involved in the joint management regime should be: • Conservation and certain other identifiable overriding interests; • Traditional hunting and fishing; • Commercial and recreational hunting and fishing.		Northern Land Council's position on these matters.
Seas And Sea Beds • The expression 'low water-mark' should be defined in s. 3 of the Land Rights Act to mean the mean low water-mark.	This is in line with the NTG position.	Refer to the Northern Land Council's position on these matters.
• The Land Rights Act should be amended to provide that the areas of the NT on the seaward side of the (mean) low water-mark on land granted to an Aboriginal Land Trust under the Act, and on the seaward side of the high watermark of all other land in the NT (including the sea bed under the NT's territorial waters), should not be available for claim under the Act.	This is in line with the NTG position.	Refer to the Northern Land Council's position on these matters.

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Conservation Land Corporation / NT Land Corporation Land • The Land Rights Act should be amended to put it beyond doubt that lands held by the Conservation Land Corporation or the Northern Territory Land Corporation are not available for claim under the Act.	This is in line with the NTG position.	The issue can be fairly determined by the Courts rather than have the NTG position foisted on Aboriginal people.
• The NT Government should do all in its power to recognise and protect traditional Aboriginal interests in land held by the Conservation Land Corporation / Northern Territory Land Corporation and, in relation to the former, give those Aboriginal people, with traditional interests in that land, an effective role in the management of any national park involved.	No specific requirements are set out, nor are the proposed concessions to the NTG made conditional.	This is a vague proposal without teeth. The CLC would support such a proposition, subject to agreement on the detailed content, in respect of land currently held by the Conservation Land Corporation etc. which is not otherwise claimable.
Other Matters • The 'sunset clause', s. 50(2A), should be retained.		There is not nor has there ever been any justification for the sunset clause. It should be repealed.
• Encourage the early passage of		The stock route amendments should not be passed or

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the Aboriginal Land Rights (NT) Amendment Bill (No. 2) 1997.		take effect until the Northern Territory Government rectifies the problems with the Pastoral Land Act and the procedures and application criteria set out therein relating to Community Living Areas on pastoral land. In addition there should be a mechanism in place for Aboriginal people to obtain living areas within reserves and parks.
Chapter 12 - Land Claims Procedures		
Settlement of outstanding claims		
• The Aboriginal Land Commissioner's functions should be expanded as follows: • to intervene by way of conciliation or mediation to assist in the settlement or disposal of land claims;		The functions of the Aboriginal Land Commissioner should only be altered after close examination. It is not considered that the Reviewer has undertaken such a careful analysis. Accordingly at this point the recommendation is rejected.
• to make findings and recommendations under s.50(1)(a)(ii) of the Act by		No objection to this point.

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consent;		
• to dismiss a land claim subject to such an order not taking effect under s. 67A(5) until all parties have exercised their right to challenge it; and		The question becomes upon what grounds and under what circumstances. The discussion in the text of Reviewer's (at p.261) is not sufficient to base any conclusion. The recommendation is therefore at this point rejected.
• to specify in s. 51 of the Act a range of measures to reduce formalities and improve efficiencies in the land claims process.		The current s. 51 of the ALRA gives the Aboriginal Land Commissioner broad powers to do all things necessary and convenient in connection with the performance of his functions.
• Sections 50(1)(a)(ii) and 50(3) should be amended to provide that the Aboriginal Land Commissioner shall, in making his report and recommendations to the Minister, have regard to all of the matters set out in s. 50(3).		The question of detriment is partly a factual and partly a political question. It is arguable that having the Land Commissioner comment upon those issues and the Minister making the decision allows a fine balance. The recommendation is rejected at this point. This would also open up opportunities for future litigation to no effective purpose.
• A settlement conference should be convened by the Aboriginal Land Commissioner in an attempt to settle as many of the outstanding land claims as possible (including sea closure applications), with such		The CLC is always willing to participate in genuine attempts to settle matters, but rejects a procedure with is predicated upon the Northern Territory having in any way the power to compulsorily acquire Aboriginal land. The Reviewer's call for a settlement process is also predicated upon the proposed scheme

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conference proceeding on the bases that the Aboriginal Land Commissioner will not need to inquire into the question of traditional ownership, the Aboriginal Land Commissioner will be required to report his recommendations on strength of attachment and detriment (see above) and the Aboriginal Land Commissioner will only need to make recommendations on real and immediate detriment (on the assumption the NT Government will have a limited power of compulsory acquisition in relation to Aboriginal land).		destroying the notion of traditional Aboriginal ownership and the existing Land Rights structure. It should be rejected for that reason.
• If the Minister is minded to entertain an application to amend Schedule 1 to bring further land under the Act, a standard approach should be adopted, involving the Aboriginal Land Commissioner inquiring into any such proposals.		It is not clear from the recommendation or the text of the report what the Reviewer is trying to achieve with this recommendation. Until it is clarified it is rejected.
• Section 52(3) of the Act should		This may already have happened. In any event there

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be amended to bring the retiring age for an Aboriginal Land Commissioner into line with the retiring age of Federal Court and Supreme Court judges.		is no objection.
• Once the land claims process is complete, the final register of the land claims made under the Act should be placed in the custody of the Registry of the Supreme Court of the NT, the control of access to archival material under the Act should be a function of that Registry, and the remaining functions of the Aboriginal Land Commissioner under ss. 50(1)(d) and (e) and s. 50(2) of the Land Rights Act should then be conferred on a NT Supreme Court judge, from time to time, as required.		Again this recommendation shows the Reviewer's determination to bring all aspects of Aboriginal affairs and the Land Rights Act within the scope of the Northern Territory government, in any event it is premature to be suggesting such amendments. Is it noted that the current Aboriginal Land Commissioner, Mr. Justice Olney, was recently appointed as a judge of the Supreme Court of the Northern Territory.
Other matters • As many outstanding land claims as possible should be resolved by legislative intervention or settlement,		By what right can it be suggested that land claims should be settled by legislative intervention?. An imposed solution risks circumventing due process and overriding basic rights.

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and the remainder within two to three years.		
• The error in relation to the grant made to the Gurungu Aboriginal Land Trust to include the Elliott Stockyards should be remedied without further delay.		See NLC comments in this regard.
• The Minister should be required to consider and make his recommendations on a report from the Aboriginal Land Commissioner pursuant to s. 50(1)(a) within six months of the receipt of such a report.		No comment
• A special allocation of resources should be made to the proposed NTAC and the Office of the Aboriginal Land Commissioner to ensure that the land claims process is completed within two to three years.		The proposed NTAC should not be established. CLC would however welcome additional resources to more efficiently conduct the remaining land claims. Without sufficient resources there is no way that all outstanding claims could be finalised within three years.
Chapter 13 - Sacred Sites		
• The Land Rights Act should be	Land Councils would no longer have any right to act	The Sacred Site protections provisions currently

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amended by deleting both ss. 23(1)(ba) and 69.	to protect sacred sites. Sacred sites are integral to Aboriginal Land ownership and this will separate protection from all other Aboriginal land management issues.	contained in the ALRA together with the inconsistency provisions act as an assurance and a safeguard to ensure that the NT Government legislation, in relation to Sacred Sites, is not hollow and worthless. It is also important for the Land Councils to retain a role in relation to Sacred Sites as numerous Sacred Site issues arise from the day to day interaction between Land Council and its constituents. To say to constituents, yes we have a role in relation to your land, but not in relation to the sites and places of significance situated upon the land would be nonsense. The Reviewer's proposal is merely a means to diminish the capacity of a Land Council to act in protection of Aboriginal interests.
• Section 44 of the NT Aboriginal Sacred Sites Act should be amended to include in it a provision along the lines of s. 28 of the Aboriginal and Torres Strait Islanders Heritage Protection Act.		If the Reviewer and the Northern Territory Government were serious about Sacred Site protection then they would accept the introduction of a requirement for Sacred Site clearances prior to any land development. The Reviewer simply concludes that this is too great a burden upon development (p282). In relation to this particular recommendation, it is accepted that if the holder of a freehold title (through no fault of its own) is restricted in its use and enjoyment of the land by the presence

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		(previously undisclosed) of a Sacred Site it should be entitled to compensation (from the Northern Territory / Commonwealth?). However, the situation would not arise if protection of Sacred Sites was a paramount concern and clearances were performed prior to development.
• The NT Aboriginal Sacred Sites Act should be amended so that a person is not guilty of an offence under that Act in relation to a sacred site on freehold land in a town in the NT, where that freehold land was purchased without notice that it contained a sacred site.	This places a premium on (willful) ignorance. Registration of a sacred site should be deemed to be notice.	The situation would not arise if the purchaser (or vendor) were required to obtain a Sacred Site clearance as part of the process of subdivision and/or transfer of land. Sacred Sites are important to Aboriginal people. Non-Aboriginal people may not comprehend that importance but they should at least respect it.
• The NT Town Planning Act should be amended to include provisions requiring notice to be given to the Aboriginal Areas Protection Authority of all sub-divisional development applications within towns in the NT.		This recommendation goes only part of the way towards effective protection of Sacred Sites in the Northern Territory.
• The NT Government should take steps to amend the Heritage Conservation Act and Regulations to		Accepted.

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make it clear that Aboriginal people may enter and remain upon ancient Aboriginal sites, may use Aboriginal sacred objects and may otherwise deal with the places or objects referred to in the Act and Regulations, in accordance with Aboriginal tradition.		
Chapter 14 - Permits and access		
• Section 70 of the Land Rights Act should be repealed;	The Reviewer provides no justification other than vague allegations of dissatisfaction with administrative procedures for discarding the permit system (see pp 300-301). These vague suggestions are then converted by The Reviewer without further factual illumination into "strong evidence that it [the current permit system] is opposed by its beneficiaries." (see p.304)	There is no evidence that the permit system is not providing necessary and appropriate protection for Aboriginal traditional owners in relation to access to Aboriginal land within the Central Land Council region. There has not been, to the knowledge of the Central Land Council, anything remotely approaching "strong evidence" that its beneficiaries oppose the system.
• Part II of the Aboriginal Land Act (NT) should be repealed;		On the contrary, Part II of the Aboriginal Land Act should be strengthened.
• Amendments should be made to the Trespass Act (NT) to make it	It appears that the Reviewer's unstated objection to the permit system is that the issue of permits is under	The Trespass Act is inadequate and inappropriate to the particular conditions of Aboriginal land under the

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applicable to Aboriginal land and to allow Aboriginal landowners to make better use of it.	the control of the owners of the land, or their representative organisations.	ALRA. The permit system is clear and unambiguous. If a third party wants to enter Aboriginal land then a permit is required. Entry without a permit is an offence. Applications for permits allow discussion to take place between traditional owners and third parties through the agency of Central Land Council over the terms and conditions of entry for particular purposes.
Chapter 19 - Statehood and related matters		
• That the Minister and the Government have regard to the submissions made to the Review on this important issue.	The Reviewer initially advised Aboriginal people that he would not be addressing issues relating to Statehood. At a very late stage, for unknown reasons, the Reviewer changed his mind and circulated draft material for comment. Aboriginal people were not given notice of this as an issue. In Chapter 19 the Reviewer traversed a range of jurisdictional and constitutional considerations in respect of statehood for the NT and transfer of the Act, with the inevitability, even imminence, of statehood apparently assumed. The Reviewer provided advice on the possibility of executive	The Land Council rejects any move to transfer powers in respect of Land Rights from the Commonwealth to the Northern Territory government. The Committee should note the overwhelming "no" vote from Aboriginal people at the recent referendum.

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	powers in respect of the Act being effectively devolved to the NT. Elsewhere he makes a recommendation about having the Commonwealth Minister 'delegate some or all of his functions under the Act to the relevant Minister in the Northern Territory government'. Longstanding Aboriginal objections to statehood and devolved powers were not considered.	

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Chapter 20 - Native Title and Community Living Areas		It should be noted that the Reviewer's recommendations regarding the operation of the Native Title Act, as it relates to the Land Rights Act and the provisions of the Pastoral Land Act dealing with community living areas, are premised on a flawed understanding of the amendments to the Native Title Act, passed in July 1998. This is evident from his references to sections of the Native Title Act that have been repealed, such as section 21 which dealt with the agreements under the Act, and sections 23 and 235 which dealt with "permissible future acts". Of equal significance is his apparent ignorance of the comprehensive provisions in the amended Act dealing with indigenous land use agreements, which address a number of the issues that he raises.
Recommendations The Native Title Act should be amended to provide that: • A past or future grant of land under the Land Rights Act extinguishes all native title rights and interests in that land.		This is contrary to the objects of the Native Title Act which provide for the recognition and protection of native title. It is also contrary to the specific provisions of the Native Title Act which expressly provide that native title is <u>not extinguished</u> by the grant of land under the Land Rights Act.
• A native title claim may not be		This is contrary to the expressed provisions of the

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commenced or continued over any area of land that is the subject of a claim under the Land Rights Act until the Land Rights Act claim is finally disposed of.		NTA. It would deprive native title holders of their substantive and procedural common law and statutory native title rights and interests, and the protection afforded by them
• Any native title rights that may exist in relation to any area of land that is the subject of a claim under the Land Rights Act cannot be asserted or relied upon until the Land Rights Act claim is finally disposed of.		REJECTED. Refer to comments above.
• A grant of an estate or interest in an area of land that is the subject of a claim under the Lands Rights Act is exempted from the future act provisions of the Native Title Act in the same way as land that is granted under the Land Rights Act is exempted.		Again, this would deprive native titleholders of their substantive common law and statutory native title rights and interests. Furthermore, the indigenous land use agreement provisions in the Native Title Act (of which the Reviewer appears to be unaware) can operate in conjunction with section 11A agreements under the Land Rights Act to facilitate the grant of an interest in land under claim, in the future.
• The grant of a Community Living Area in favor of an incorporated association of Aboriginal people pursuant to the		REJECTED. The questions posed by the Reviewer in the text regarding community living areas, are effectively addressed by the indigenous land use agreement provisions in the Native Title Act. These

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Pastoral Lands Act (NT) be deemed not to constitute a future act under the Native Title Act, by including the grant of such a Community Living Area within the definition of 'an act that causes land or waters to be held by or for the benefit of Aboriginal peoples or Torres Strait Islanders under a law mentioned in the definition of 'Aboriginal/Torres Strait Islander land or waters' for the purposes of sections 233(3) and 253 of the Native Title Act.		provide the appropriate mechanism for the grant of community living area titles, while at the same time maintaining native title rights and interests, and the protection provided by them.
• Such a grant of an area of land as a Community Living Area under the Pastoral Land Act(NT) should be deemed to extinguish any existing native title rights and interests in that land.		REJECTED. The application criteria for Community Living Areas, despite the many calls by Land Councils over many years, remain divorced from notions of traditional Aboriginal ownership or Native Title rights. The Community Living Area process in fact provides a mechanism to grant land to Aboriginal people who may not be within either category. To suggest that such a grant should extinguish the rights of Native titleholders is devious and mischievous and pits Aboriginal people against each other.

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		It is unnecessary to extinguish native title, and such an outcome is likely to hamper native title agreements relating to community living areas. The application of the non-extinguishment principle is provided for under the Native Title Act and will have no effect on the grant of title. Its only effect arises where a community living area grant is revoked
• Where an area of land is the subject of an application for a Community Living Area under the Pastoral Land Act (NT), a native title determination application may not be commenced or continued in relation to that area of land until such time as the Community Living Area application has been finally determined.		Again, for the reasons stated above, this is unnecessary and would deprive native titleholders of their substantive and procedural common law and statutory native title rights and interests, and the protection afforded by them.
• Any native title rights that may exist in relation to any area of land that is the subject of an application for a Community Living Area under the Pastoral Land Act (NT) cannot be asserted or relied upon in relation to that land until such time as the		REJECTED. Refer to comments above.

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Community Living Area application has been finally determined.		
Chapter 21 - Inalienable title and Land trusts		
Recommendations • The provisions of the Act that prevent the sale, transfer, or perpetual lease of Aboriginal land, except to another Aboriginal Land Trust, or the NT or Commonwealth Governments, should be retained.	We presume that by this recommendation the Reviewer is suggesting that the provisions of section 19 of the ALRA should remain. (There is the possibility of a surrender to the Crown pursuant to s19(4) by a land trust of land vested in the land trust.)	If by this recommendation the Reviewer is saying that Aboriginal land should continue to be held by way of inalienable freehold title then we agree.
• All other restrictions in relation to the Act upon the grant of any estates or interests, including licenses, in Aboriginal land, should be removed.	One must look at this recommendation in the context of the demolition proposed by the Reviewer of the existing Land Rights structures. In that context the restrictions currently in the ALRA would be replace by the restrictions imposed upon RLC by NTAC financial and policy supervision.	There are some sensible changes that could be made to the existing provisions if a proper and considered review of the Land Rights Act was to be undertaken.
• The provisions of sections 11A, 19 and 67A of the Act should be amended to provide that an agreement made pursuant to them can operate to grant an estate or		There are some sensible changes that could be made to the existing provisions if a proper and considered review of the Land Rights Act was to be undertaken.

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interest in the land under claim before that land is granted under the Act. Any monies payable under such an agreement should be held in trust.		
• Transfer all Aboriginal land into 18 separate regions with the RLC for each region becoming the trustee of the Land Trust in that region and the members of the council of the RLC carrying out the trustee duties presently carried out by the members of the existing Land Trusts.	Presumably the expression "members of the council of the RLC" is a mistake, though it occurs elsewhere (e.g. p.484). While the land is to be held in trust by the RLC for "Aboriginal people entitled by tradition to use or occupy the land" (p.601), neither they nor traditional owners will have any particular beneficial rights, even to be consulted about land use. Over 110 Land Trusts would be abolished. No consideration is given to legal problems or financial issues that would be entailed in this. Elsewhere the Reviewer acknowledges that several RLCs may need to be responsible for the same area of land (p.482). This prospect raises further serious legal and administrative questions that are not considered.	Again the Reviewer raises the legally, morally, politically and financially fraught issue of transfer of rights. He appears oblivious or completely disregardful of the extent of the problems he would be creating. The Land Council rejects the recommendation. The Reviewer fails to see the almost delicate and subtle advantages of the current system of Aboriginal land held by a Land Trust with a number of traditional Aboriginal owner members. The land trust holds the land but can only make decisions after the Land Council has conducted its extensive inquiries and consultations which ensure traditional owner comprehension and consent to proposals concerning the land in accordance with Aboriginal tradition methods of decision making. By contrast the Reviewer's model has the RLC as the body holding title to the land and the decision making

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		body without necessarily the obligation to consult with anyone. It is a blunt and unsophisticated model designed to increase government control at the expense of self-determination for Aboriginal people.
• Aboriginal Land Trusts be permitted to hold land under any form of title available in Australia, as well as freehold title under the Land Rights Act.		Under the current system it is not necessary.
Chapter 22 - Role of the Minister		
• That the Land Rights Act should be amended so that all the existing ministerial consents, approvals, permissions and the like are removed.		As stated above there are some sensible changes that could be made to the existing provisions if a proper and considered review of the Land Rights Act was to be undertaken.
• That consideration should be given to having the Minister delegate some, or all of his functions under the Act, to the relevant Minister in the NT Government.	The Reviewer totally ignores the fact that the governance of the NT has been dominated by a party that is only supported by a minority of Aboriginal people. In any case Aboriginal people have never been consulted about the question of the Act or	The NTG is and has been for over twenty years dominated by a political party emphatically hostile to Aboriginal interests. No further powers or responsibilities in respect of Aboriginal interests should be transferred to the NTG. The NT political

Reeves' Principal Recommendations	Meaning and/or Effect of Recommendations	CLC Response
	ministerial powers under the Act being transferred to Darwin.	system has not yet managed to accommodate change of government and has not demonstrated the maturity to have such responsibility reposed in it.
Chapter 23 - Sundry other matters		
• That the definition of 'Aboriginal' in the Land Rights Act should be retained and it should be left to each Regional Land Council to give whatever Aboriginal traditional content is needed to the definition on a case by case basis. Any person aggrieved by a decision of a RLC on this matter should have a right of appeal in accordance with the dispute resolution system recommended elsewhere in this Report.	A dispute about whom is to be recognised as Aboriginal, would be resolved by the RLC or NTAC. Where a dominant group in an RLC decided to adopt e.g. an unusually selective definition of Aboriginal traditional content, and hence eligibility for membership, there would be no "right of appeal to a court" (p.213). Natural justice would be denied.	The idea of myriad different arrangements for all manner of questions, for each of the proposed RLCs, is farcical. The Reviewer's proposals if implemented are doomed to give rise to serious governance and disputation, and will ultimately fail.
• That the RLCs should be required to negotiate and cause the relevant Land Trusts to provide to any Aboriginal community in their	This recommendation is to be understood as part of the overall thrusts of the Report and the program of the NT government towards integrating land rights and local governance. The Reviewer's proposed	This type of matter is for the traditional owners to determine. Municipalisation of the land rights system is opposed. This has not been raised with the CLC as a

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regions that wishes to obtain it, a rent free sub-lease for a suitable term, of the land upon which that community is situated. In each case, the sub-lease should be provided to the local Community Council, or some other suitable body. That the Community Council, or other body holding such a lease should be permitted to enter into a sub-lease of the land for housing or business purposes.	RLC's would be likely to have boundaries coinciding with those now being re-drawn for NT community government. Major accountabilities, funding, infrastructure and programs would be shared, and to an emerging extent, constituencies. The prerogatives of traditional owners are bypassed in local government, as they would be in the proposed RLC's.	serious issue by any community council.
• That the NT Government should consider amending the provisions of the Associations Incorporation Act (NT) to allow the relevant Minister to consent to the grant of a lease or sub-lease of land for a term of 12 months or less, similar to the provisions of s. 26A(1)(b) of that Act.	The recommendation to amend the Associations Incorporation Act (NT) is made, notwithstanding the next recommendation, is that the two governments jointly draw up a new scheme for such incorporation.	
• That the Commonwealth and NT Governments should consider drawing up a single NT scheme to	The Reviewer makes no practical recommendations on what this proposal might mean in practice, other than that it should be for the NT (p.504) and this is	No special scheme is required for the NT. The *Aboriginal Councils and Associations Act 1976* should be refurbished, in consultation with

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regulate the affairs of incorporated Aboriginal associations in the NT.	not explained. The *Aboriginal Councils and Associations Act 1976* was developed as complementary legislation to the *Aboriginal Land Rights (Northern Territory) Act 1976*. It was to allow culturally appropriate incorporation, governance and management of Aboriginal communities and organizations. The Act never delivered on its promise. A 1996 report proposing revision of this legislation remains with the Minister.	Aboriginal people.
• The RLCs and NTAC should be given the function to inform and educate the people of the NT, and particularly Aboriginal Territorians, on the provisions of the Act and how it operates.	This recommendation reflects the Reviewer's pervasive attitude that major problems rest with the Land Rights Act, mainland Land Councils and Aboriginal people themselves. Submissions to the Review from bodies such as the NT Chamber of Commerce and Industry and the NT Cattlemen's Association reflect a severe incapacity to understand or seriously engage the relevant issues and even present evidence in a cogent form.	The Reviewer provides a "victim blaming" solution to a narrow interpretation of a problem. The Northern Territory as a whole provides culturally and politically hostile environment for Aboriginal people. Measures going well beyond providing more information for Aboriginal people are required to rectify the situation.
• The following amendments should be made to the Act: • sections 50(1)(b), 50(4) and 72 of the Act should be repealed.		One of the matters, which needs attention in relation to land rights in the Northern Territory, is failure of the Northern Territory governments legislation in respect to the land needs of Aboriginal people whose traditional country lies on land that was not claimable under the Land Rights Act. The Community Living

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		Areas provisions of the Pastoral land Act are flawed, limited and narrowly construed by the Territory. The provisions in the Land Rights Act referred to by the Reviewer in this recommendation need to be looked at in the light of the plight of the people that Land Rights does not help.
• Sections 10 and 77C of the Act should be amended such that land can be scheduled under the Act without requiring an amendment to the Act.		Provided that this does not establish an easy come easy go scheme.
• the Act should be amended to ensure that confidential information held by a RLC or NTAC is protected.	Some confidential information applies to areas that would cross RLC boundaries. Some is held by Land Councils on a basis of trust that may be breached by transfer to other organizations which are responsible to bodies which are not controlled by the appropriate persons. Minimally resourced organizations in possession of information that is not critical to the interests of its leadership or management may prove difficult to protect in practice.	
• Sections 16 and 63 of the Act should be amended to provide that the relevant Government must notify NTAC of payments received and		As NTAC is rejected as a concept, section 16 and section 63 are appropriate in the context of the current structures.

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where the NT is the recipient, it must also notify the Commonwealth Government.		
• Sections 16 and 63 of the Act should be amended to require that any monies received under those sections must be paid out within 28 days of their receipt. Where a part of the payment is in dispute, the Act should provide that at least the amount not in dispute is paid within 28 days.		
• That a comprehensive review of the operations of the Act should be conducted in three to five years time.	There is a presumption in this recommendation that the recently completed Review was comprehensive and fair. This is a position that is only accepted by parties opposed to the ALRA in anything like its present form and to the mainland Land Councils.	The Central Land Council regards the recent inquiry as an extension of the campaign to destroy Aboriginal Land Rights in the NT. No significant changes should be made to the Act without the informed consent of Aboriginal people.

AFTER IMPLEMENTATION OF THE REEVES SCHEME

‘RIVERWATCH’ REVISITED

Consider that a very high profile United States television show, ‘Riverwatch’, with a lucrative international market, discovers an excellent setting for a new series in the Northern Territory. The site is on Aboriginal land. Unfortunately the traditional owners of the land do not want the intrusive production team’s presence. Nor do they want the area, its sites and people to be part of the kind of portrayal that is planned. In addition, no compensation or consideration for cultural or social impact of the production has been offered. This would not be possible under the current regime, as any such money would be paid into an account controlled by the NTAC and only be available for administration of the RLC or ‘public purposes’ (Reeves:597). No unrelated individual payments are permissible (Reeves:368).

The traditional owners are not all members of the relevant Regional Land Council, or even eligible to be so. The ruling clique on the RLC Board, closely supported by the CEO, arbitrarily judges some of them as not eligible. Since this issue turns on a question ‘involving Aboriginal tradition’, the matter is up to RLC itself or NTAC to decide. NTAC declines involvement, saying that it is a local issue. Since there is no ‘right of appeal to a court’ (Reeves:213) there is an impasse.

Because their country crosses regional boundaries, other traditional owners are members of the adjacent Regional Land Council and are limited by the one membership rule (Reeves:595). In any case, most of the traditional owners are not consulted or even told about the proposal. They do not have to be, nor does the RLC have to keep a record of them anyhow (Reeves:601). Nevertheless, on this occasion the TO’s views are reflected in the relevant RLC resolution. Others in the community are also unimpressed with the proposed development, including the attitude of the proponents, and the show is told that it is not welcome.

Predicably, the decision to reject the production attracts a lot of attention from the NT media. An officer of NTAC declares that a resident of the region has lodged a grievance about the RLC decision, saying that the community will loose a big opportunity. NTAC is thereby empowered to deal with the appeal ‘by the methods it considers appropriate’ (Reeves:213). The resident is not identified. The NTG Chief Minister is outraged by the RLC’s decision, saying that the Territory’s economic development is being severely impeded.

The NTAC CEO confers urgently with the RLC CEO, of whose appointment he was originally asked to approve. In turn, the RLC CEO relays to key members of the RLC's Board that financial support for a number of needed projects may not be forthcoming if the decision on the proposal is not reversed. One of these projects is to make the water supply safer. Another is to get a renal dialysis machine. Additionally, the NTAC CEO has warned that, should the Board not exercise its delegated authority to approve of an application, it is quite possible that the relevant NT Minister (for Local Government) will declare the council 'dysfunctional' and appoint an Administrator to assume overall control of all of its activities (Reeves:609). This has already happened to another RLC.

Though it has given in to its CEO over some issues in the past, the Board decides on this occasion that it must support the position of the traditional owners who are agitating about the matter.

By this time the issue has assumed massive proportions. The Deputy Prime Minister and Prime Minister have both deplored the RLC, and the NT government is livid. The NT Chamber of Commerce and Industry contributes some semi coherent negative comment. For some reason the NT Cattlemen's Association also weighs in to the public controversy, attacking the Aboriginal leadership.

NTAC formally refers the decision to the relevant NT Minister, stating that it believes the rejection of the proposal is 'contrary to the best interests of the Aboriginal people of the region' and possibly 'unacceptable' because of it 'effects on third parties' (Reeves:535-6,609) though the latter are not identified. This has all been done at the executive level, through the government approved CEO, though a few key NTAC members could be relied on for support if needed. Exasperated and publicly vociferous, the Minster refers the decision back to the Regional Council for reconsideration within 30 days (Reeves:609). But most disappointingly for him a rare meeting of the whole council confirms its original position. Riverwatch is not wanted.

In view of the 'impasse' and with delegated responsibilities from the Commonwealth Minister (Reeves:493) the Territory Minister for Local Government invokes his indirect authority to cause the Governor General to proclaim 'that the project should proceed in the national interest' (Reeves:534). The RLCs is left 'without right of appeal to a court' (Reeves:213). Nothing more can be done other than in the political arena.

With the public conflagration spreading, the program producers are worried about their public image. Aboriginal leaders are threatening to use the International Covenant on Civil and Political Rights to which Australia is a party. Article 27 carries a positive obligation on states to ensure

that minorities have a right to enjoy their culture. The proclamation would diminish this right. With an alternative in Colorado, the proponents withdraw. Emergence of the new partnership that Mr. Reeves' scheme was meant to engender will take a little while longer.

ATTACHMENT A

AFTER IMPLEMENTATION OF THE REEVES SCHEME

‘RIVERWATCH’ REVISITED

Notes

[1] Ian Viner, 'A Review of the Reeves Report, or 'Whither land rights in the Northern Territory', *Indigenous Law Reporter*, 4(2), July 1999, forthcoming (typescript p.24).

[2] Peter Sutton, Anthropological Submission on the Reeves Review, Submission to the House of Representatives Select Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Reeves Report on the *Aboriginal Land Rights (Northern Territory) Act 1976*, Commissioned by the Australian Anthropological Society, 10.2.99, p.18.