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DEPARTMENT OF THE SENATE	
P.P.R. No.	1455
Date	
PRESENTED	17 AUG 1977
<i>J. V. Agers</i>	
Clerk of the Senate	
SEN. OF AUSTRALIA	

REPORT OF THE JOINT SELECT COMMITTEE ON ABORIGINAL LAND RIGHTS IN THE NORTHERN TERRITORY

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

REPORT OF THE JOINT SELECT COMMITTEE ON
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Australian Government Publishing Service
Canberra 1977

JOINT SELECT COMMITTEE ON
ABORIGINAL LAND RIGHTS IN THE NORTHERN TERRITORY

The Committee was originally appointed in the First Session of the Thirtieth Parliament by resolutions of the House of Representatives on 8 December 1976¹ and the Senate on 9 December 1976².

At the prorogation of the First Session of the Thirtieth Parliament on 28 February 1977, the Committee had not completed its Inquiry and an Unfinished Inquiry Report was tabled in the House of Representatives³ and the Senate⁴ on 24 February 1977.

In the Second Session of the Thirtieth Parliament the Committee was reappointed by resolutions of the House of Representatives⁵ and the Senate⁶ on 10 March 1977.

The terms of reference agreed to in both Sessions were identical, viz. :

That a Joint Select Committee be appointed to examine and report on -

- a) the operation of provisions of the Aboriginal Land Rights (Northern Territory) Act 1976⁴ relating to the identification of traditional owners of Aboriginal land and the means of establishing the views of such owners to the satisfaction of the relevant Land Council;

¹House of Representatives Votes and Proceedings No.78, 8 December 1976.

²Journals of the Senate No.78, 9 December 1976.

³House of Representatives Votes and Proceedings No.85, 24 February 1977.

⁴Journals of the Senate No.85, 24 February 1977.

⁵House of Representatives Votes and Proceedings No.3, 10 March 1977.

⁶Journals of the Senate No.3, 10 March 1977.

- b) the adequacy of provisions of the laws of the Northern Territory relating to entry to Aboriginal land, the protection of sites of significance, wildlife conservation and entry to seas adjoining Aboriginal land, and
- c) any other matters referred by the Minister for Aboriginal Affairs.

The Committee did not receive a reference under Clause (c).

Members of the Committee

Chairman	..	Senator N.T. Bonner
Deputy Chairman	..	The Hon. G.M. Bryant E.D., M.P.
Members	..	Senator the Hon. J.L. Cavanagh
		Senator F.M. Chaney
		Senator R.N. Coleman
		Senator B.F. Kilgariff
		Senator E.A. Robertson
		The Hon. K.E. Beazley M.P.*
		Mr S.E. Calder D.F.C., M.P.
		Mr P.H. Drummond M.P.
		The Hon. L.R. Johnson M.P.
		Mr R.M. McLean M.P.
		Mr P.M. Ruddock M.P.
		The Hon. W.C. Wentworth M.P.
Clerk to the Committee	..	Mr C.S. Boorman

Pursuant to paragraph 2 of the Committee's Resolution of Appointment, the members of the House of Representatives Standing Committee on Aboriginal Affairs are ex officio members of the Joint Select Committee on Aboriginal Land Rights in the Northern Territory.

*The Hon. K.E. Beazley M.P. was appointed on 15 March 1977 in place of Mr L.G. Wallis M.P.

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RECOMMENDATIONS AND CONCLUSIONS

The Committee recommends that :

on identification of Aboriginal traditional owners

- 1 the procedures followed by the Northern Land Council in the preparation and presentation of evidence before the Ranger Uranium Environmental Inquiry be followed in later cases

(paragraph 31)

on entry to seas adjoining Aboriginal land

- 2 the Northern Territory legislation should make clear provision for the right of Aboriginals to enter and use the resources of all waters adjoining and within 2 kilometres of Aboriginal land in accordance with Aboriginal tradition

the Ordinance should provide that pending the delineation of areas as set out below, such waters be also open to the general community for recreational use, including non-commercial fishing

provision should be made for consultation between the Northern Territory Executive and Aboriginal traditional owners, through the agency of the appropriate Land Council, to negotiate with respect to the closing of areas of the sea which are of significance to Aboriginal communities, either for traditional use and enjoyment of the waters or for the creation of a buffer zone for the Aboriginal community. In the absence of agreement about the area to be closed either party may apply to the Aboriginal Land Commissioner. Once an area is defined as a closed area, all persons other

than the traditional Aboriginal owners require a permit to enter such seas. The issue of a permit is to be governed by the same rules as govern other permits to enter Aboriginal land.

the Ordinance should provide for consultation between the Northern Territory Executive and Aboriginal traditional owners, through the relevant Land Council, leading to definition of areas near substantial non-Aboriginal centres of population which are to be defined as being open recreational areas. On agreement being reached as to such areas they can be gazetted and in the absence of agreement, application can be made by either party to the Aboriginal Land Commissioner. Once an area is defined as an open recreational area, either by agreement or by decision of the Aboriginal Land Commissioner, it is to remain open to all persons for recreational use including non-commercial fishing

any person may apply to the Aboriginal Land Commissioner to have an area of sea declared closed to persons other than the traditional Aboriginal owners of adjacent land, or opened for general recreational use

in determining all such applications the Aboriginal Land Commissioner shall consider Aboriginal traditional and other interests as well as the commercial, environmental and recreational interests of the public

the rights of existing commercial fishing licences be retained and that new fishing licences not be issued except after consultation between the Fisheries Branch of the Department of the Northern Territory and the relevant Land Council. In the event of disagreement

between the Department and the Council, the matter to be referred to the Aboriginal Land Commissioner for determination

(paragraph 129)

on need for a review

- 3 the Parliament establish a committee to further inquire into the operations of the Land Rights Act

(paragraph 133)

The Committee concludes that :

on identification of Aboriginal traditional owners

- 4 the methods adopted to date by both the Northern and Central Land Councils are appropriate to identify the Aboriginal traditional owners, subject to the adequacy of time and resources of the Land Councils and other agencies

(paragraph 29)

there is a need for continuing Government interest in the operation of the Land Councils and other agencies to ensure that the Aboriginal traditional owners are obtaining the full benefits of the ownership of land given to them by the Land Rights Act

(paragraph 30)

the Aboriginal Land Commissioner will be able to identify traditional owners following procedures he has outlined in the Practice Directions referred to in paragraph 12, on the assumption that the traditional owners will have adequate assistance in preparing their case and presenting it before the Commissioner

(paragraph 32)

on consultation with Aboriginal traditional owners

- 5 the methods of consultation by both the Northern and Central Land Councils are generally adequate but there are areas where improvement, as indicated, can be made
(paragraph 49)

on the role of Land Councils

- 6 the provisions contained in Section 23 of the Land Rights Act would apply when the Land Councils are exercising functions under Territory Ordinances

reference in the legislation to an advisory council should be deleted

(paragraph 64)

on consultation on the reciprocal legislation

- 7 close and meaningful consultation should take place between all parties concerned before the reciprocal legislation is re-introduced into the Northern Territory Legislative Assembly

(paragraph 69)

on entry to Aboriginal Land

- 8 the provisions of the Aboriginal Lands and Sacred Sites Bill in respect to entry onto Aboriginal land are inadequate in their present form and require amendment
(paragraph 88)

on protection of sites of significance

- 9 the provisions of the Aboriginal Lands and Sacred Sites Bill regarding the protection of sacred sites are inadequate in its present form and requires amendment in accordance with paragraph 102 of this Report
(paragraph 103)

on wildlife conservation

- 10 the provisions of the Territory Parks and Wildlife Conservation Ordinance are generally adequate but some amendment is required

(paragraph 115)

1 INTRODUCTION

Activities of the Committee

The Committee advertised its terms of reference in the Northern Territory press in January and March 1977 and invited submissions from interested organisations and individuals.

2 The first public hearing was held in Darwin on 7 February 1977. In all, there were 11 days of public hearings, 8 in the Northern Territory (6 in Darwin, 2 in Alice Springs) and 3 in Canberra. On 14 and 15 April 1977, public hearings were conducted concurrently by Sub-committees in Darwin and Alice Springs.

3 Some members attended a meeting of the Northern Land Council in Batchelor in the Northern Territory between 24 and 26 January 1977 and witnessed discussions between the Council and the Aboriginal traditional owners of the Alligator Rivers area regarding the claim to be placed before the Ranger Uranium Environmental Inquiry pursuant to Section 11.(2) of the Aboriginal Land Rights (Northern Territory) Act 1976 (the Land Rights Act). Committee members at this meeting were able to assess the methods that had been used by the Council in identifying the Aboriginal traditional owners and the methods used in consulting with them.

4 The members of the Committee who attended the above meetings at Batchelor also attended the inaugural meeting of the Northern Land Council on 27 January 1977. Senator Robertson represented the Committee at the inaugural meeting of the Central Land Council in Alice Springs on 3 February 1977.

5 The Committee established Sub-committees to consult informally with the Northern and Central Land Councils and the Chief Secretary of the Northern Territory before the public hearings commenced. Towards the end of the Inquiry the Committee divided into 4 Sub-committees for visits to 16 Aboriginal communities in the week commencing 20 June 1977 for discussions with Aboriginal leaders on the subject matters of the Inquiry. A list of the communities visited is at Appendix 1.

Witnesses

6 Evidence was heard from 65 persons, including the Minister for Aboriginal Affairs, the Presidents of the Northern and Central Land Councils and the Chief Secretary of the Northern Territory. A list of witnesses who appeared before the Committee is given at Appendix 2. The Appendix also contains the names of organisations and individuals who presented submissions which were incorporated in the transcript of evidence and who were unable or who were not required to attend at public hearings.

Evidence

7 Evidence given at the public hearings is available for inspection at the Committee Office of the House of Representatives, the National Library of Australia and the Australian Archives. Copies are also held by the libraries of the Commonwealth Parliament and the Northern Territory Legislative Assembly.

Aboriginal Land Councils

8 Throughout the Report reference is made to the Northern and Central Land Councils. These Councils were established on an interim basis in 1973 following recommendations in the Aboriginal Land Rights Commission's first report. The Councils

have been formally established as statutory bodies under the Land Rights Act. Section 23 of the Act lists their functions which include consultations with traditional owners, negotiations on their behalf, compilation and maintenance of a register of traditional owners and the performance of functions conferred on them by Northern Territory law. Membership of the Councils is made up of Aboriginals living in the area of the Land Council or whose names are set out in the register of traditional owners maintained by the Land Council, chosen by Aboriginals living in the area of the Land Council.

PART 'A'

IDENTIFICATION OF AND CONSULTATION WITH

ABORIGINAL TRADITIONAL OWNERS

Clause (a) of the Committee's terms of reference is to examine and report on :

the operation of provisions of the Aboriginal Land Rights (Northern Territory) Act 1976 relating to the identification of traditional owners of Aboriginal land and the means of establishing the views of such owners to the satisfaction of the relevant Land Council;

2 IDENTIFICATION OF ABORIGINAL TRADITIONAL OWNERS

9 Under its terms of reference the Committee is to examine and report on :

the operation of provisions of the Aboriginal Land Rights (Northern Territory) Act 1976 relating to the identification of traditional owners of Aboriginal land ...

10 Although the terms of reference refer to "the operation of provisions of the ... Act", the Act itself does not set out any procedures for the identification of traditional owners. However, to fulfil their functions under Section 23 of the Land Rights Act, Land Councils are required to identify traditional owners.

11 While Section 24 only requires the Land Council to compile a register setting out the names of the persons who, in the opinion of the Council, are the traditional owners, it is clear that the Land Councils can only carry out their functions in accordance with the Act if they are accurately able to identify the traditional owners. For example, Sub-section 3 of Section 23 requires a Land Council to be satisfied that the traditional Aboriginal owners consent to proposed action before the Land Council takes any action with respect to particular land.

12 Under Section 50 of the Act the Aboriginal Land Commissioner has the task of considering traditional land claims and ascertaining whether claimant Aboriginals or any other Aboriginals are the traditional Aboriginal owners of land. Again, the Act makes no provision as to how this function is to be performed, but the Commissioner following public hearings in Darwin has issued Practice Directions governing the presentation and hearing of applications under

Section 50.(1)(a) of the Land Rights Act. A copy of the Practice Directions is included as Appendix 3 to this Report. The Committee notes that the Commissioner does not regard the Directions as inflexible, but as a means of ensuring the orderly presentation and hearing of applications and to ensure as far as is practicable that applications receive adequate publicity and, in particular, that they come to the notice of any person or organisation likely to be affected by the exercise of the Commissioner's functions in regard to those applications.

13 The Committee notes that the Practice Directions require the service of notice of application on :

- (a) the Department of Aboriginal Affairs;
- (b) the Director of Lands, Lands Branch, Department of the Northern Territory;
- (c) the Director of Mines, Mines Branch, Department of the Northern Territory;
- (d) the Chief Secretary for the Northern Territory;
- (e) the Northern Territory Cattle Producers' Council; and
- (f) the appropriate Land Council where the application is not lodged by that Council;

as well as any person or organisation appearing to be affected by the application.

14 Any person may lodge notice of intention to be heard and the hearing of applications will be conducted along the lines of conventional court proceedings, although with less formality. As a general rule the hearing of an application will be public unless there is good reason why it should not be so held.

15 Under Section 23 it is a function of Land Councils to assist Aboriginals having a traditional land claim and to arrange for legal assistance for them at the expense of the Land Council. The Committee would expect the Land Councils to present evidence to the Commissioner in the same way as it was presented to the Ranger Uranium Environmental Inquiry, which is mentioned later in this Report.

Procedures of Identification Adopted
by the Northern Land Council

16 The Northern Land Council has recently been involved in the identification of Aboriginal traditional owners from the Alligator Rivers area for the Ranger Uranium Environmental Inquiry. The Inquiry was considering claims by Aboriginal traditional owners to land in this area. Because of the importance of the matter the Council gave extensive attention to the methods it should employ to identify Aboriginal traditional owners.

17 For the exercise the Council employed an anthropologist, a site survey officer from the Northern Territory Museums and Art Galleries Board and a linguist. Together with Land Council field officers they spent many months in the area holding detailed discussions with traditional owners. The purpose of these field inquiries was to record descent group membership and geneologies and put them in a written form where they could be readily available for reference. The authoritative representatives of each land owning group were consulted to indicate the precise boundaries of their land.

18 Witnesses from the Northern Land Council informed the Committee that Aboriginal people appear to be absolutely sure that the boundaries between clan areas are defined and that they can be determined accurately by asking one clan group and comparing it with the knowledge of surrounding groups. This

was verified by the Sub-committees who visited Aboriginal communities. Any uncertainties, both as to who belongs to what group, and as to the exact location of boundaries, can then be subjected to examination by the combined communities. By a process of discussion agreement is reached.

19 At the conclusion of the recording of the information on clan membership and boundaries there remained only the crosschecking with all the Aboriginal people concerned together with those who might possibly be concerned with the recorded data. This was conducted over 2½ days at Batchelor in January 1977. Involvement by the Land Council in the identification process was minimal.

20 The method described above was followed by the Northern Land Council with respect to the claims by Aborigines for traditional ownership of land in the Alligator Rivers area which were placed before the Ranger Uranium Environmental Inquiry. The acceptance of those claims by the Inquiry indicates that the Northern Land Council was able to satisfy the Inquiry as to the validity of the claims. The finding on this question by the Ranger Uranium Environmental Inquiry suggests the acceptance of the Northern Land Council's method of identification by the Commissioners. It is the basis of the procedures to be used by the Council in the identification of all traditional owners.

Procedures of Identification Adopted
by the Central Land Council

21 The Central Land Council employs an anthropologist and also uses the services of the Australian Institute of Aboriginal Studies in the preparation of background material. The anthropologist gave evidence to the Committee on the

procedures adopted by the Central Land Council in the identification process and his evidence is summarised in paragraphs 22-24.

22 Work in a particular area is usually preceded by a meeting held in the nearest population centre which is usually attended by most men of importance living in the community. At this stage it is ascertained which men are likely to be involved in the general locality and which people of importance may be living in another settlement or cattle station. The staff of the Central Land Council may collect further information at this stage, obtaining, for example, superficial information about location of principal sites and the names of sub-sections associated with them. Frequently by this stage the meeting is broken up into smaller groups composed of members of particular patrilineages together with their 'managers'. The Central Land Council then holds very detailed discussion with these groups.

23 Meetings are usually held in a mixture of English and the local language with field officers of the Land Council or members of the local community acting as interpreters where necessary. Sometimes groups will split off and hold discussions amongst themselves and return for further talks. Occasionally the group as a whole will ask for all staff to leave them for perhaps an hour or two while particular problems are discussed. Usually such discussions have preceded a visit by the staff of the Central Land Council. When a particular area is being discussed, follow-up meetings are arranged with those particularly associated with the area where possible. This is augmented with a visit to the area itself. Such trips may involve up to 20 or 30 people and several days of cross-country travel visiting sacred sites in the area.

24 To cross-check this information the Central Land Council draws upon published material in its library; it has access to the resources of the Australian Institute of Aboriginal Studies and it also corresponds with anthropologists who have worked in the area.

Level of Disputes in the Identification Process

25 Evidence before the Committee indicated that generally tribal people, without disagreement, knew traditional owners and what sections of land they were related to. The unanimity of tribal people suggests that there will be few claims on land ownership which will be disputed by other Aborigines. This was supported by Mr Justice Ward in evidence to the Committee, by Sub-committees' visits to Aboriginal communities and by the following extract from the Ranger Uranium Environmental Inquiry in the Second Report (page 257):

The evidence shows that it would be highly unusual for an Aboriginal person to lie about traditional ownership of clan areas and matters connected therewith. On the contrary, Aborigines usually acknowledge frankly the limits of their own clan areas and the ownership of neighbouring ones. What we have learned supports the following statement in the First Report of Mr Justice Woodward (para.65):

I have no doubt that, even today, the necessary information is available to divide much, if not all, of the Northern Territory into dialect group or clan regions. If the right people could be taken out to the right places, to demonstrate the position on the ground, I believe that there would be little disagreement. I have so far come across no case in which ownership of land has been disputed among full-blooded Aborigines. But the task of obtaining the necessary information from different informants, having different degrees of knowledge, and then converting it into clear terms for record purposes, could undoubtedly be a very long and difficult one. Since detailed surveying would be necessary, the job would certainly take a number of years and the expense would be very great.

26 Disputes by Aborigines over ownership of land are rare and generally occur when questions of succession arise, i.e. when a clan dies out. These are matters that are best resolved by the Aborigines themselves. This method ensures that unsubstantiated claims are most unlikely to succeed.

Comments by the Committee on Problems Associated with the Identification of Aboriginal Traditional Owners

27 Representatives from both Land Councils expressed concern at the pressure by various interests to identify Aboriginal owners. Identification is complex and time consuming and the Land Councils need both adequacy of time and resources.

28 The Committee believes that because of these pressures there is a risk that identification might not be as thorough as is necessary. The Government is responsible for ensuring that the Land Councils and other agencies involved have adequate time and resources to carry out the necessary procedures. In this regard the Committee draws the Government's attention to the claim by the Australian Institute of Aboriginal Studies that it requires \$100,000 to pay the salary and expenses of anthropologists and linguists to assist with the documentation of Aboriginal traditional owners.

Conclusions and Recommendation

29 The Committee concludes that the methods adopted to date by both the Northern and Central Land Councils are appropriate to identify the Aboriginal traditional owners. This conclusion is subject to the matters referred to in paragraphs 27 and 28 above, relating to the adequacy of time and resources of the Land Councils and other agencies.

30 The Committee concludes there is a need for continuing Government interest in the operation of the Land Councils and other agencies to ensure that the Aboriginal traditional owners are obtaining the full benefits of the ownership of land given to them by the Land Rights Act.

31 With respect to the Aboriginal Land Commissioner the Land Councils have an obligation under Section 23 of the Land Rights Act to assist Aboriginals claiming to have a traditional claim and the Committee recommends that the procedures followed by the Northern Land Council in the preparation and presentation of evidence before the Ranger Uranium Environmental Inquiry be followed in later cases.

32 The Committee concludes that the Commissioner will be able to identify traditional owners following procedures he has outlined in the Practice Directions referred to in paragraph 12, on the assumption that the traditional owners will have adequate assistance in preparing their case and presenting it before the Commissioner.

3 CONSULTATION WITH ABORIGINAL TRADITIONAL OWNERS

33 Under its terms of reference the Committee is to examine and report on :

The operation of provisions of the Aboriginal Land Rights (Northern Territory) Act 1976 relating to ... the means of establishing the views of such owners to the satisfaction of the relevant Land Councils.

'Such owners' in this extract refers to the Aboriginal traditional owners.

Background

34 Section 23.(3) of the Land Rights Act makes it mandatory for the Land Councils to have regard to the interests of and consult with the Aboriginal traditional owners and any other Aboriginals interested in the land and, in particular, shall not take any action including but not limited to the giving of consent or withholding of consent in any matter in connection with land held by a Land Trust unless the Land Council is satisfied that :

- (a) the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it; and
- (b) any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.

35 In the above paragraph, the 'other Aboriginals interested in the land' include those Aboriginals who, under Aboriginal tradition, have certain managerial responsibilities for the land who have a right to be consulted, e.g. the nephew.

36 Under Section 29 of the Land Rights Act the Land Councils comprise Aboriginals living in the area of the Council or whose names are set out in the register of Aboriginal traditional owners maintained by the relevant Council. They need not be traditional owners although the majority of the two existing Land Councils are traditional owners and they must be chosen by Aboriginals living in the area covered by the Land Council. Both Land Councils have membership consisting of representation from tribal groups elected by the tribal group in manner traditionally adopted by the group or by a method of selection by the European system of ballot.

37 While the membership of the Council is selected as set out in paragraph 36, there seems to be a practice that any Aboriginal can attend the meetings and in the case of the Central Land Council, vote on decisions. The Aboriginal Chairman of this Committee, at one Land Council meeting, was permitted to be in attendance for the decision of that Council when all European persons, including other members of the Committee, were excluded from the meeting, for the purpose of that decision. The indications are that there is very little conflict among tribal Aboriginals, most decisions being either unanimous or overwhelming, and the attendance of others of their own ethnic group does not seem to be to the detriment of obtaining a true expression of the views of a Land Council.

38 Since most members of Land Councils are themselves traditional owners they are aware of the traditional law and customs in relation to land in their own areas, the Councils are in a good position to ensure that all relevant people are consulted on any issues important to them following the Aboriginal patterns of consultation.

39 The role of the Land Council's staff is to assist and facilitate the consultation as directed by the Land Council.

Consultation by the Northern Land Council

40 The Northern Land Council has been involved in consultation on a number of major projects, as described below :

(a) An Agreement with Queensland Mines on the Narbalek Uranium Project

There were three stages of consultation :

- (i) a review of the sequence of events up to the time that the Council became involved;
- (ii) the preparation of a detailed description of the proposal and a simplified description for presentation to Aboriginals;
- (iii) describing the proposals to Aboriginals and the options they might consider as appropriate for inclusion in the form of agreement.

(b) The Preparation of a Case for Presentation to the Ranger Uranium Environmental Inquiry

The traditional owners from the Alligator Rivers area had a residential meeting at Batchelor for 2½ days in January 1977. Many discussions were held outside the formal meeting times. Matters were discussed and re-explained. The quick and almost automatic agreement in the meeting room was very often preceded by lively discussion, the raising of issues and the gathering of additional information.

After the discussions between the traditional owners and members of the Land Council from the general area, decisions were reached by the traditional owners which were then discussed by the Northern Land Council to ensure that consultations had taken place and that the people did understand. The decisions that had been made were then ratified.

(c) Discussions on the Reciprocal Legislation of the Northern Territory Legislative Assembly (see Part 'B' of this Report)

The Council distributed hundreds of copies of the Bill and later held a series of person-to-person talks with a view to informing Aboriginals as to what was happening.

(d) Discussion on Land Trusts

Ad hoc discussions on site were held to explain the concept of land trusts.

41 In all parts of the consultative process, the main emphasis of the Council was in obtaining all the information relevant to the subject, analysing it and creating a simple description of the factors to be conveyed. Having done that, the final requirement was to work out all the possible options that can be chosen to fit the situation that has been described. Sound tapes and video tapes are proving of immense value in passing information to Aboriginals and recording their responses for later checking.

42 Interpreters using the indigenous language were used. Questions and issues were placed before the traditional owners in their own language and they were given the opportunity to discuss them without Europeans being present. Decisions were then reached as a result of the combined consultations.

Consultation by the Central Land Council

43 For a general description of the method of consultation used by the Central Land Council when establishing the identity of Aboriginal traditional owners refer to paragraphs 22 and 23 of this Report.

44 A specific example given by the Council relates to seeking the views of Aboriginal people to the reciprocal legislation of the Northern Territory Legislative Assembly (see Part 'B' of this Report). In this case the staff of the Council prepared comments for circulation to all communities. Field trips were then undertaken to a number of communities. Discussions were also held over a half day with approximately 100 people who were attending a meeting of the Central Land Council. The conclusions drawn were then discussed at a Council meeting on 4 April and agreed to by the meeting.

Comments by the Committee on Problems Associated with Consultation with Aboriginal Traditional Owners

45 The Committee finds, following visits to Aboriginal communities, that in some of them there is not a clear understanding of the role of Land Councils. At some communities, such as Bathurst Island, Elcho Island, Roper River, Bamyili, Hermannsburg and Napperby, the degree of consultation appeared to be inadequate. The Land Council concept is new for Aboriginals and accordingly the functions and activities are, as yet, not fully realised. Communities are relying heavily upon their delegate to the Council to explain matters considered by the Council. The delegate chosen by the Aboriginals as delegate to the Council may not be the most vocal or have the necessary clarity of explanation and this justifies trained officers of the Land Council being available to explain any intended action of the Council or discuss any proposals claimed from Aboriginal groups or traditional owners. This is the intention of the Councils but in the short period they have been in existence the available staff has been inundated with land claim applications and their expert assistants have been busily occupied in preparing cases. Those whose duty it will be to converse with and explain to Aboriginals, need either some special training or experience

in the field. Selected Aboriginals could well perform this role.

46 The Committee was informed that Land Councils are not using traditional means of consultation in that discussions on land matters are traditionally done by the owners themselves and not in a group such as a Land Council which involves other Aboriginals. To overcome this problem, both Land Councils are considering decentralisation of some of their activities.

47 In the ordinary course, Aboriginals consider and discuss matters together, sometimes over a period of months and even years, before reaching a decision on a matter. Evidence was given of many instances where a person, company or Government department, not familiar with Aboriginal ownership, culture or practice, would ask Aboriginals for a decision on a certain matter and not allow adequate time for a considered reply. These circumstances create tensions which need not exist with adequate consultation. The Committee considers it imperative that no pressure be placed on Aboriginals to reach a decision.

48 Witnesses suggested improvement in the consultation process by the use of film, audio and video tapes, the use of people sensitive to Aboriginal needs, training linguists so that abstract European concepts can be translated into a form understood by Aboriginals, ensuring that Government bodies, mining companies and other groups be informed of the Land Council's role and that discussions be held with them in familiar surroundings.

Conclusion

49 The Committee concludes that the methods of consultation by both the Northern and Central Land Councils are

generally adequate but there are areas where improvement, as indicated, can be made.

PART 'B'

RECIPROCAL LEGISLATION OF THE
NORTHERN TERRITORY LEGISLATIVE ASSEMBLY

Clause (b) of the Committee's terms of
reference is to examine and report on :

the adequacy of provisions of the
laws of the Northern Territory
relating to entry to Aboriginal
land, the protection of sites of
significance, wildlife conservation
and entry to seas adjoining
Aboriginal land;

50 Section 4U of the Northern Territory (Administration) Act 1910 empowers the Northern Territory Legislative Assembly to make Ordinances for the peace, order and good government of the Territory.

51 Section 73.(1) of the Land Rights Act empowers the Northern Territory Legislative Assembly to make Ordinances relating to entry to Aboriginal land, the protection of sites of significance, wildlife conservation and entry to seas adjoining Aboriginal land. This legislation is referred to as reciprocal legislation in the marginal notes of the Land Rights Act.

52 Pursuant to this power the Aboriginal Lands and Sacred Sites Bill was introduced into the Northern Territory Legislative Assembly on 3 March 1977. This Bill relates to sub-sections 73.(1)(a), (b) and (d) of the Land Rights Act and concerns respectively the protection of sacred sites, entry to Aboriginal land and entry to seas adjoining Aboriginal land. An Ordinance relating to sub-section 73.(1)(c) of the Act relating to protection of wildlife - the Territory Parks and Wildlife Conservation Ordinance - was passed by the Northern Territory Legislative Assembly on 3 June 1976 and assented to on 26 May 1977.

53 Chapters 6-9 of this Report discuss separately the four aspects of the reciprocal legislation.

54 When introducing the Bill into the Legislative Assembly the Chief Secretary stated that the Bill would lie on the Table so that Aboriginal and other people would know what the proposals were and be able to comment on them with a view to amending the legislation.

55 The Chief Secretary informed the Committee on 20 June 1977, that the Aboriginal Lands and Sacred Sites Bill could not be proceeded with in the life of the then Assembly. The election for the new Legislative Assembly took place on 13 August 1977.

56 The fact that the Assembly could not make an Ordinance on part of the reciprocal legislation has presented a problem for the Committee as it has to report to the Parliament by 18 August 1977. The Committee is required to examine and report on "the adequacy of provisions of the laws of the Northern Territory" and a strict interpretation of this is that the Committee can only report on the present laws. Under such an interpretation the Committee could only report on the wildlife protection aspect of the reciprocal legislation and the inadequate provisions of entry to Aboriginal land and protection of sacred sites. The Committee has decided, however, that it should report on the subject matters of the Aboriginal Lands and Sacred Sites Bill.

5 GENERAL COMMENTS ON THE RECIPROCAL LEGISLATION

57 There are some comments that the Committee would like to make on the content of the reciprocal legislation and on the level of consultation in relation to it.

The 'Authorised Aboriginal' Concept

58 When it took evidence from the Chief Secretary of the Northern Territory in April this year, the Committee was informed that there were some circumstances in which the definition of a traditional owner, as laid down in the Land Rights Act, did not give enough flexibility in the administration of some matters, e.g. entry to Aboriginal land, that would be required in a practical situation. There were people, other than the traditional owner, who also had a role in relation to entry and movement over land. There was also a situation in which the traditional owner was not the occupier of a place on which a community was located (e.g. Hooker Creek). To extend the breadth of the people who could give authority to enter, a different term was devised (i.e. 'authorised Aboriginal') in the Aboriginal Lands and Sacred Sites Bill

59 Most evidence of the Committee was critical of the concept of the authorised Aboriginal as it was used in the Bill. The Committee has not taken the matter further because at a public hearing in June, the Chief Secretary informed the Committee that as there had been general dislike of the term 'authorised Aboriginal' he expected that it would not be used in any reciprocal legislation and that the Legislative Assembly would probably go back to using the term 'traditional owner'.

The Role of the Land Councils

60 When introducing the Aboriginal Lands and Sacred Sites Bill into the Legislative Assembly, the Chief Secretary stated that :

- the approach used was to give priority in the legislation to Aboriginal traditional owners and that the Bill gives them the necessary authority over Aboriginal land;
- there is still some confusion and conflict between the proper role of the Land Councils and the traditional owners;
- there is an attitude among many traditional owners to resent interference in respect to their full rights and the management of their land by any other body however constituted; and
- the responsibilities of the Land Councils, as outlined in the Federal Act, have not been ignored and the Bill makes it possible for any traditional owner to have the Land Council act on his behalf.

61 The Minister for Aboriginal Affairs and many other witnesses were critical of what they considered to be a reduced role for the Land Councils in the reciprocal legislation. The Minister informed the Committee that :

The Government decided that land councils should, under the Aboriginal Land Rights Act, have the central role in the administration of Aboriginal land, acting in accordance with the wishes of traditional owners of particular areas of land and after consulting the views of other Aboriginals interested in the land. The Government expressly decided to enhance the role of land councils by, for example, giving them responsibility for helping in the pursuit of traditional land claims. The Government also included express provision in the Act for land councils to carry out functions conferred by Northern Territory law.

The Government could not have indicated more clearly its policy that Territory law should, like the Commonwealth Act, give land councils central responsibility in all matters affecting Aboriginal land. The Government has a broad policy of encouraging and developing Aboriginal self-management and Aboriginalisation in Aboriginal affairs and, consistent with this, sees the land councils, as wholly Aboriginal bodies, having a very important role in the future administration and development of Aboriginal land in the Territory.

The Bill as introduced, however, appears to give land councils a relatively minor and indirect role.

62 The Committee believes that the matters of concern referred to by the Chief Secretary and mentioned in paragraph 60, can be dealt with by ensuring that the Land Councils act in accordance with the provisions of the Land Rights Act. Section 23 makes it clear that the Councils must consult with the traditional Aboriginal owners and shall not take any action, including the giving of consent or the withholding of consent, in any matter in connection with land unless the Land Council is satisfied that :

- (a) the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it; and
- (b) any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its views to the Land Council.

63 A further area of concern by some witnesses was Clause 31 of the Aboriginal Lands and Sacred Sites Bill which provided for the establishment of an advisory council to advise the Administrator in Council on the administration of the Ordinance. The Department of Aboriginal Affairs and other witnesses informed the Committee that the establishment of

such an advisory council would be unnecessary, undesirable and costly duplication when, in fact, Land Councils were already established and could advise on the administration of the legislation. The Committee agrees with the views of the Department of Aboriginal Affairs and the other witnesses.

Conclusion

64 The Committee concludes :

- (a) that the provisions contained in Section 23 of the Land Rights Act would apply when the Land Councils are exercising functions under Territory Ordinances; and
- (b) reference in the legislation to an advisory council should be deleted.

Complexity of the Reciprocal Legislation

65 Witnesses generally informed the Committee that the proposed legislation, particularly in relation to entry to Aboriginal land, protection of sacred sites and entry to seas adjoining Aboriginal land, was complex and confusing and would lead to uncertainty and delay in administration and enforcement. The Committee was in general agreement with this evidence.

Consultation

66 The Joint Committee on the Northern Territory in its Report "Constitutional Development in the Northern Territory", dated November 1974, stressed the need for continuing and close consultation and co-ordination of effort between the National and Territory Executives on matters of interest to both parties. Examples given in the Report of the areas where consultation is needed related to :

- Bills which were the function of the Australian Government proposed to be introduced into the Legislative Assembly by the Territory Executive; and

• Aboriginal affairs.

67 Evidence given to the Land Rights Committee suggests that such consultation and co-ordination did not take place between the Minister and officers of his Department, the Chief Secretary and his officers and the two Land Councils before the introduction of the Aboriginal Lands and Sacred Sites Bill. Many problems associated with the reciprocal legislation could have been overcome if adequate and meaningful consultation had been undertaken in the first instance by all parties concerned.

68 The Committee understands that, following the public hearings in Darwin in April 1977, the level of consultation between the Minister and his Department and the Chief Secretary and his Department has improved and is considered to be satisfactory by both parties. However, the levels of consultation between the Northern Territory Executive and its officers, the Land Councils and its officers appears to be inadequate.

Conclusion

69 The Committee concludes that close and meaningful consultation should take place between all parties concerned before the reciprocal legislation is re-introduced into the Northern Territory Legislative Assembly.

6 ENTRY TO ABORIGINAL LAND

70 Under its terms of reference the Committee is to examine and report on :

the adequacy of provisions of the laws of the Northern Territory relating to entry to Aboriginal land ...

Present Position

71 Entry to Aboriginal land is at present controlled under Section 17 of the Northern Territory Social Welfare Ordinance which, in summary, provides :

- (a) the Administrator, the Director or a welfare officer may authorise a person (subject to specified conditions in the authorisation) to enter and remain on a reserve; and
- (b) an Aboriginal native of Australia, members of the police force, Commonwealth public servants in the course of their duty, Members of the Legislative Assembly for the Northern Territory, candidates for election as a member of the Legislative Assembly for the electorate in which the reserve is situated, Members, or a candidate for election as a member of the Commonwealth Parliament elected for the Northern Territory, may enter and remain on a reserve.

The full text of Section 17 is given in Appendix 4.

72 The administration of the Ordinance is vested in the Northern Territory Director of the Department of Aboriginal Affairs who has delegated his responsibility to District Welfare Officers. When a request is received for a permit to enter Aboriginal land, the Department seeks the approval of the local council organisation at the main Aboriginal

population centres. The Department states that under no circumstances will a permit be issued until this approval has been obtained. In fact, therefore, the control of entry has been delegated to Community Councils.

73 The evidence before the Committee is that the permit system is generally operating satisfactorily for the Aboriginal inhabitants of Aboriginal land.

74 It appears to the Committee that there are problems in the system of allowing certain Government officers to enter and remain on Aboriginal lands without permit. The Department of the Northern Territory, in giving evidence before the Committee, submitted a list of Northern Territory Ordinances that permit officers to enter Aboriginal land without permit. The main request made by traditional owners to the Committee is that the entry on land by Government officers should be notified in advance and that traditional owners should be able to remove people who misbehave.

Need for a Permit System

75 In the second report of the Aboriginal Land Rights Commission, Mr Justice Woodward stated that the most important proof of general Aboriginal ownership of land will be the right to exclude from it those who are not welcome. He further stated that the Land Councils believe that this principle should be supported by a permit system and he agreed with them.

76 Land Councils and Aboriginal communities support the existence of a permit system. In elaboration of its views that there should be a permit system, the Northern Land Council submitted to the Committee that the Aboriginal people wish to retain a permit system for some time so as to protect them from the effects of rapid exposure to the modern world.

Aboriginal Lands and Sacred Sites Bill

77 The provisions for entry onto Aboriginal land contained in the Aboriginal Lands and Sacred Sites Bill stems from Section 73.(1) of the Land Rights Act which states :

The power of the Legislative Assembly for the Northern Territory to make Ordinances under Section 4U of the Northern Territory (Administration) Act 1970 extends to the making of -

- (b) Ordinances regulating or authorizing the entry of persons on Aboriginal land, but so that any such Ordinances shall provide for the right of Aboriginals to enter such land in accordance with Aboriginal tradition.

78 When introducing the Bill, the Chief Secretary summarised the entry onto Aboriginal land provisions as follows :

- empowers any person to enter upon Aboriginal land at the invitation of the traditional Aboriginal owner of that land;
- empowers the traditional owner to issue permits for entry onto his land, such permits to be subject to any conditions he may consider necessary;
- empowers a traditional owner to delegate his power to issue permits to enter land to a person or body, including an Aboriginal Land Council, and the delegation may be specific as to the extent of the powers delegated;
- the traditional owner may request the Administrator to publish details of any such delegation;

the traditional owner retains his right to control entry of persons onto his land and the right extends to other Aboriginals who do not have a traditional association with his land;

provides for entry to classes of persons whose daily duties in the Northern Territory necessitate their entry onto Aboriginal land, such as police, a person who holds an office under Territory law which requires his entry onto Aboriginal land in the course of his duties (permit issued by the Administrator in Council), and a person whose duties require him on certain occasions to enter onto Aboriginal land for a particular purpose (permit issued by the Administrator or persons authorised by him);

provides for all the above classes of people as soon as possible to inform the traditional owner when they enter his land, and unless there are urgent reasons to the contrary, shall leave the land at the request of the traditional owner;

provides for reports to the Administrator in Council of any cases of wrongful behaviour by the holder of such an authority;

requires the Administrator in Council to consult from time to time with the Aboriginal Land Councils to advise them on the number of permits likely to be issued to persons whose duties require them on certain occasions to enter onto Aboriginal land for a particular purpose;

provides for the Administrator, a Member of the Northern Territory Legislative Assembly, a Member of the Federal Parliament or candidate for election to enter onto Aboriginal land. These people are also required to give notice of their entry to the traditional owners.

79 When introducing the Bill the Chief Secretary said that, in effect, the administration and control of the issue of permits to enter Aboriginal land was being transferred from the Director of Aboriginal Affairs to the Aboriginal people themselves, to the traditional owners. He later informed the Committee that, in most cases, the Land Councils would be the agent nominated by the traditional owners to act on their behalf.

Comments by Witnesses on the Permit Provisions of the Bill

80 The major comments made by witnesses can be summarised as follows :

Aboriginal communities want to maintain control over entry onto Aboriginal land.

Generally, the system envisaged was application to a Land Council which would then seek the approval of the traditional owner through the Community Council in an area of Aboriginal population and/or the Aboriginal traditional owner. The Land Councils should have the power to delegate their responsibility in this area.

The Land Councils should have a greater involvement in the administration of the permit system and they should have the power to authorise entry to Aboriginal land.

- The machinery proposed in the Bill, particularly in respect to the entry of police and officials, is very complex and possibly confusing to Aboriginal people. This could only lead to uncertainty and delay in administration and enforcement.
- Aboriginals themselves favour the right to entry of police, public servants in the course of their duty and candidates and Members of Parliament and the Legislative Assembly provided they give warning of their visit or identify themselves on their arrival, and the right to remove them if they misbehave.

81 The Northern Land Council presented to the Committee a draft Bill which illustrated, among other things, possible guidelines for entry onto Aboriginal land. A copy of the draft Bill is at Appendix 5. The draft contained simple provisions for the issue of permits by the Land Councils (after obtaining the permission of the traditional owner), the Administrator to issue permits (with conditions) for officers in the performance of their duties who shall give notice of their visit, for police to enter and remain on Aboriginal land in the performance of their duties who shall give notice of their visit, and for Members and candidates for election as Members of the Parliament or the Legislative Assembly for the Northern Territory for the area in question.

Views of Aboriginals

82 During the visits of Sub-committees to a number of Aboriginal communities in the Northern Territory, the views were sought of the Aboriginal traditional owners on entry onto their land. They were all adamant that they wished to control entry onto their land and that all requests must go to them for approval. Most had no objection to requests being channelled through the Land Councils or the Community Council.

83 Traditional owners wanted control of all persons except Aboriginals who have a traditional right to be on that land. It was pointed out that Aboriginals from other areas had no automatic right of entry under customary law and would seek the permission of the owner to enter his land.

84 The Aboriginal traditional owners also want the right to expel any person from their land.

Comments by the Committee

85 The Committee generally agrees with the approach put forward by the Northern Land Council in its draft Bill. It however stresses that the legislation should make provision for :

- (a) power to delegate by the Land Council;
- (b) permit to include conditions approved by Aboriginal traditional owners; conditions to include the person to leave the land if requested to do so by the traditional owner;
- (c) revocation of the permit with penalty for non-compliance;
- (d) the right for a community occupying land not occupied by the traditional owner to issue permits to visit that community;
- (e) the traditional owner have the power to delegate;
- (f) a traditional owner to give permission to enter his land in conditions when it is not practical to obtain a permit from a Land Council;
- (g) officials and Members and candidates for election to the Parliament or the Legislative Assembly should notify their intent in advance; and
- (h) where practical, the police should notify their intent in advance.

86 The Department of Aboriginal Affairs commented that no provision seemed to have been made in the Aboriginal Lands and Sacred Sites Bill for the right of Aboriginals to enter Aboriginal land in accordance with Aboriginal tradition as required by Section 73.(1)(b) of the Lands Rights Act. In response, the Chief Secretary informed the Committee that he considered that Section 71.(1) of the Act adequately covered this point.

87 The Committee sought the advice of the Attorney-General as to whether Section 71.(1) of the Land Rights Act prevented the Northern Territory Legislative Assembly from making Ordinances restricting the right of Aboriginal traditional owners from entering their land. The answer was in the affirmative. (See Appendix 6, page 101)

Conclusion

88 The Committee concludes that the provisions of the Aboriginal Lands and Sacred Sites Bill in respect to entry onto Aboriginal land are inadequate in their present form and require amendment.

7 PROTECTION OF SITES OF SIGNIFICANCE

89 Under its terms of reference the Committee is to examine and report on :

the adequacy of provisions of the laws of the Northern Territory relating to ... the protection of sites of significance.

Present Position

90 The protection of sites of significance is at present provided for in the Native and Historical Objects and Areas Preservation Ordinance. Witnesses stated that this Ordinance is not adequate to protect sites of significance because in summary :

- . it embraces more than Aboriginal sites and objects;
- . for a site to be fully protected it is necessary that it be fully surveyed and there is a shortage of surveyors to undertake this task and the technical description of the area in having it protected in the Gazette;
- . the provisions are difficult to enforce;
- . the administration of the Ordinance rests with the Department of Aboriginal Affairs - this arrangement is unsatisfactory as the Department does not have the staff or resources and moreover the Ordinance embraces Europeans' historical and other material which is outside the function of the Department.

91 The recording of sites of significance is undertaken by the Museums and Art Galleries Board of the Northern Territory by funds mainly provided by the Australian Institute of Aboriginal Studies. Recording commenced in 1974 and to date

about 1,400 sites have been described and of these 14 have been proclaimed.

Need for Protection of Sites of Significance

92 In the second report of the Aboriginal Land Rights Commission, Mr Justice Woodward states :

Land generally has spiritual significance for Aborigines but, because of the form and content of the myths relating to it, some land is more important than other land. Certain places are particularly important, usually because of their mythological significance, but sometimes because of their use as a burial ground or important meeting place for ceremonies.

93 The Committee notes that Section 69 of the Land Rights Act imposes a penalty on persons entering or remaining on land that is a sacred site. The Section also provides for entry in accordance with Aboriginal tradition and for a defence where a person had no reasonable grounds for suspecting that the land concerned was a sacred site.

Aboriginal Lands and Sacred Sites Bill

94 The provisions for the protection of sacred sites contained in the Aboriginal Lands and Sacred Sites Bill stems from Section 73.(1) of the Land Rights Act which states :

The power of the Legislative Assembly for the Northern Territory to make Ordinances under Section 4U of the Northern Territory (Administration) Act 1910 extends to the making of -

- (a) Ordinances providing for the protection of, and the prevention of the desecration of, sacred sites in the Northern Territory, including sacred sites on Aboriginal land, and, in particular, Ordinances regulating or authorizing the entry of persons on those sites, but so that any such Ordinances shall provide for the

right of Aborigines to have access to those sites in accordance with Aboriginal tradition and shall take into account the wishes of Aborigines relating to the extent to which those sites should be protected.

95 The remarks of the Chief Secretary when introducing the Bill into the Legislative Assembly, were summarised by the Committee as follows :

Within Aboriginal Land

- provides for the Administrator in Council to prescribe areas containing a site if the boundaries of the land have been adequately marked with signs;

Outside Aboriginal Land

- upon request for protection the Administrator shall refer the matter to the Aboriginal Land Commissioner;
- the Administrator's Council shall ascertain the importance of the sites, the attitude of the owners or lessees, whether other persons would be disadvantaged and the appropriate protection for the site. These matters to be discussed with the applicant and the Land Commissioner;
- if the Aboriginal wishes to proceed, he shall request the Administrator in Council to act;
- the Executive Council may acquire the land or reserve it under trustee management, or make by-laws where the land is in an area vested in a statutory authority.

96 When introducing the Bill into the Legislative Assembly, the Chief Secretary said that the initiative in questions relating to sacred sites was left with Aboriginals. He pointed out that some sites are so sacred to them that they would prefer no action to reveal their location even for the purposes of protection, so no effort is made to have a blanket coverage or exhaustive registration of every sacred site in the Territory. The legislation offers instead protection by the best means available for those sites Aboriginals wish to have protected in our laws and where they asked for this to be done.

Comments by Witnesses on the Bill

97 The major comments made by witnesses are :

- . The definition in the Land Rights Act has not been carried forward to the Bill.
- . All witnesses stated that how a site be protected should be left with the Aboriginals.
- . Sites, whether sacred or of significance, should be protected.
- . The main need for protection was on non-Aboriginal land.
- . Aboriginals were generally against signposting.
- . If protective measures should be taken, the application should be made by the Land Councils on behalf of the Aboriginal traditional owners for the site.
- . The protective measures appear to be somewhat clumsy and inappropriate.
- . Enforcement will be difficult.
- . Onus of proof of desecration should rest with the defendant to prove that desecration was accidental.

- . No survey should be required and protection should be possible without affecting the title to the land.
- . Aboriginals themselves should be the custodians of the site.
- . Penalties for desecration are too low.
- . Most of the desecration of sacred sites is done by people doing work on behalf of Government departments.
- . In particular, the Northern Land Council submitted that the legislation requires a far more sophisticated approach than the present Ordinance and present Bill. The Council claimed (supported by the Australian Institute of Aboriginal Studies) that the only Australian legislation that approaches the desired quality is the Western Australian Aboriginal Heritage Act 1972.
- . The Bill does not make provision for protection of sites of archaeological interest and does not make provision for who is allowed to excavate.
- . There is advantage in establishing an appropriately constituted statutory body.

Views of Aboriginals

98 During their visits to Aboriginal communities Sub-committee members were informed that protection of sites of significance did not pose a great problem when those sites were situated on Aboriginal land as permits were required to enter that land. The Aboriginals present could oversee the protection of those sites. Most Aboriginals were against the idea of using signs because they felt that it may result in attracting people to the sites rather than protecting them. Where an area off Aboriginal land was frequented by non-Aboriginals, it was agreed that some form of protection would need to be provided.

Comments by the Committee

99 The present legislation - the Native and Historical Objects and Areas Preservation Ordinance - is inadequate for the reasons specified in paragraph 90.

100 The Bill proposed by the Chief Secretary appears to conflict with the Land Rights Act in important areas. After an investigation has been carried out, the Bill provides for rejection of a request by the Administrator in Council even if it has been established that the site in question is sacred. The Committee is doubtful if this provision is within the spirit, even if it is within the letter, of Section 73.(1)(a) of the Act because that Section provides for protection of a sacred site. In addition, Section 69.(1) makes it an offence for a person to enter and remain on land containing a sacred site. If the Administrator in Council rejected a request for protection of a particular site, as he would be entitled to do under the Bill, it appears to the Committee that a person entering such a site would still be liable to a penalty under Section 69 of the Land Rights Act.

101 The Department of Aboriginal Affairs claimed that Section 73.(1)(a) of the Land Rights Act provided that Ordinances providing for the protection of sacred sites and regulating entry to those sites "shall provide for the right of Aboriginals to have access to those sites in accordance with Aboriginal tradition", and that the Bill does not make any such provision. Advice from the Attorney-General supports the claim by the Department of Aboriginal Affairs (Appendix 6, page 102). The Committee notes, however, that Section 69.(2) of the Land Rights Act provides for an Aboriginal to enter and remain on a sacred site in accordance with Aboriginal tradition.

102 The Committee believes that the Western Australian Aboriginal Heritage Act 1972 should be examined and its

provisions adopted where appropriate. Any legislation in particular should make provision for the following :

- (a) The initiative for the protection of sacred sites, both on and off Aboriginal land, should rest with Aboriginals.
- (b) A statutory authority should be established and be responsible for co-ordination of requests for protection, the initiation of prosecutions and the most appropriate method of protection in each circumstance. The Land Councils should be represented on the statutory authority.
- (c) Signposting or fencing should be avoided where possible. If signposting is used a sign which indicates an area of Aboriginal land, a warning to "keep out" and the penalty, should suffice.
- (d) An area of land which is a sacred site should only be excised if requested by Aboriginals and approved by the statutory authority.
- (e) In any proposed activity that requires earthworks or clearing, it should be mandatory for prior adequate consultation to be held between the organisation or individual and the relevant Land Council. Here, as in other areas, the Land Councils are subject to Section 23.(3) of the Land Rights Act.
- (f) The maximum penalty for desecration of a sacred site should be sufficient to deter wilful desecration.
- (g) The law should be enforceable. In this regard the defence and onus of proof provisions of Section 69 of the Land Rights Act are commended by the Committee.

Conclusion

103 The Committee concludes that the provisions of the Aboriginal Lands and Sacred Sites Bill regarding the protection of sacred sites are inadequate in its present form and requires amendment in accordance with paragraph 102 of this Report.

8 WILDLIFE CONSERVATION

104 Under its terms of reference the Committee is to examine and report on :

the adequacy of the provisions of the laws of the Northern Territory relating to ... wildlife conservation ...

Present Position

105 Wildlife conservation is at present controlled by the Territory Parks and Wildlife Conservation Ordinance. This Ordinance was assented to on 26 May 1977.

106 The provisions for wildlife conservation in the above Ordinance stems from Section 73.(1) of the Land Rights Act which states :

The power of the Legislative Assembly for the Northern Territory to make Ordinances under Section 4U of the Northern Territory (Administration) Act 1910 extends to the making of -

- (c) Ordinances providing for the protection or conservation of, or making other provision with respect to, wildlife in the Northern Territory, including wildlife on Aboriginal land, and, in particular, Ordinances providing for schemes of management of wildlife on Aboriginal land, being schemes that are to be formulated in consultation with the Aboriginals using the land to which the scheme applies, but so that any such Ordinances shall provide for the right of Aboriginals to utilise wildlife resources.

107 The Chief Secretary informed the Committee that the Ordinance does not prevent foraging, hunting and traditional food gathering activities or the gathering of material for

ceremonial purposes, but applies constraints on the non-traditional use of wildlife resources for the sale and bartering trade or the manufacturing process. Because it is not practical to hunt with spears on foot, the Ordinance recognises that Aboriginals need to hunt with rifles from vehicles. These days an Aboriginal might have to travel long distances to get to a well-known and established hunting ground.

108 Sections 73 and 122 of the Ordinance are those mainly concerned with hunting by Aboriginals. The provisions of these Sections are set out below.

109 Section 73 of the Ordinance provides that Aboriginal communities may request the Territory Parks and Wildlife Commission (established under the Ordinance) to assist in the conservation and protection of particular species or habitat on Aboriginal lands. In consultation with the Aboriginals, the Commission will develop appropriate conservation proposals and, where necessary and with the consent of the local community, recommend the declaration of a reserve over the concerned area for the desired conservation purposes. The Aboriginal community would be involved in the supervision of that reserve.

110 Section 122 of the Ordinance provides that subject to the power to make regulations for the purpose of conserving wildlife in any area and expressly affecting the traditional use of the area by Aboriginals, and the operation of the Ordinance in relation to parks and reserves intended under the Ordinance, unless it expressly relates to Aboriginals, nothing prevents Aboriginals from continuing, in accordance with law, the traditional use of any area of land or water for hunting or food gathering and for ceremonial and religious purposes.

Comments by Witnesses

111 The Department of Aboriginal Affairs made the following comments on the Territory Parks and Wildlife Conservation Ordinance :

- . It may be appropriate to redraft Section 73 of the Ordinance to take into account the provisions of the Land Rights Act which had not been finally enacted when this Section was originally drafted, e.g. :
 - (a) the Commission to negotiate and conclude agreements with the relevant Land Council; and
 - (b) to provide that within a specified time, unless agreements had been negotiated under Section 73, areas of Aboriginal land would cease to be sanctuaries and protected areas.
- . The intention of Section 122 of the Ordinance would appear to ensure that Aboriginals might continue the traditional use of any area of land or water for hunting or food gathering and for ceremonial and religious purposes. However, this is made subject to regulations which can be made expressly affecting the traditional use of an area by Aboriginals. It would appear that such special rights as are preserved for Aboriginals can be removed or limited in any area by regulation. Such regulations could possibly contravene Section 73.(1)(c) of the Land Rights Act by not providing a right of Aboriginals to utilise wildlife resources.
- . 'Traditional use' in Section 122 is undefined thus creating uncertainty about the scope of the rights preserved by the Section. The use of firearms, for example, might well be judged not to be in accordance with 'traditional use' and since most Aboriginals hunt using firearms today this Section may well give Aboriginals no useful special rights at all. Furthermore, the phrase "in accordance with law" in Section 122 seems to imply laws of the Northern Territory and not Aboriginal tradition. This may need to be clarified.

112 Evidence to the Committee indicated that Aborigines killed wildlife only for food and ceremonial purposes.

Comments by the Committee

113 The Committee generally agrees with the comments made by the Department of Aboriginal Affairs in paragraph 111.

114 As regards the claim by the Department of Aboriginal Affairs that regulations made under Section 73 of the Territory Parks and Wildlife Conservation Ordinance could possibly contravene Section 73.(1)(c) of the Land Rights Act, the Committee notes that any such regulations would be ultra vires the Land Rights Act.

Conclusion

115 The Committee concludes that provisions of the Territory Parks and Wildlife Conservation Ordinance are generally adequate but some amendment is required.

9 ENTRY TO SEAS ADJOINING ABORIGINAL LAND

116 Under its terms of reference the Committee is to examine and report on :

the adequacy of the provisions of the laws of the Northern Territory relating to ... entry to seas adjoining Aboriginal land.

Present Position

117 There is no Northern Territory law relating specifically to entry to seas adjoining Aboriginal land.

Aboriginal Lands and Sacred Sites Bill

118 The provisions for the entry to seas adjoining Aboriginal land contained in the Aboriginal Lands and Sacred Sites Bill stem from Section 73.(1) of the Land Rights Act which states :

The power of the Legislative Assembly for the Northern Territory to make Ordinances under Section 4U of the Northern Territory (Administration) Act 1910 extends to the making of -

- (d) Ordinances regulating or prohibiting the entry of persons into, or controlling fishing or other activities in, waters of the sea, including waters of the territorial sea of Australia, adjoining and within 2 kilometres of, Aboriginal land, but so that any such Ordinances shall provide for the right of Aborigines to enter, and use the resources of, those waters in accordance with Aboriginal tradition.

119 This Bill, as regards seas adjoining Aboriginal land, provides in summary for :

- . traditional owners of coastal land to make application for the closure or protection of waters adjacent to that land;
- . the Administrator in Council to refer each request to the Aboriginal Land Commissioner who shall have each request examined;
- . the examination is to determine the extent to which intrusion into these waters would interfere with traditional Aboriginal rights for use of these waters and to assess any disadvantage to others which could flow from the closure of the waters;
- . the Administrator to have the results of that examination discussed with the owners who made the request;
- . if after these procedures have been followed the Aboriginal owner decides to proceed he shall ask the Administrator in Council to make a regulation or take necessary action to close or protect the waters;
- . the traditional owner to specify in the application the type and degree of protection requested, from total closure to, say, closure against a form of fishing;
- . the Administrator in Council to consider and may accept, accept in modified form or reject the request;
- . if accepted by the Executive Council it shall cause notice of the proposal to be published in the Gazette and subsequently in newspapers with full details and a map of the area and shall not make the regulation until one month after such publication;
- . after considering any submissions received the Executive Council may make regulations closing waters within the 2 kilometres limit to the extent of total closure or to allow some particular form of exclusion;

. Beyond the 2 kilometres limit the Executive Council's power is limited to action to close waters against a specified form of fishing under the Fisheries Ordinance.

120 When introducing the Bill into the Legislative Assembly the Chief Secretary said that it would be impossible to produce a piece of legislation which would satisfy all the community and what he proposed is a type of compromise.

121 The Committee notes, in information provided by the Surveyor-General of the Northern Territory, that about 81 percent of the total coastline of the Northern Territory (including islands) adjoins Aboriginal land plus land subject to claim by Aboriginals or land that is potentially subject to claim by Aboriginals.

Comments by Witnesses on the Provisions of the Bill

122 Witnesses generally did not support the provisions of the Bill. Arguments on the Bill can be divided into two categories :

(a) Aboriginals have control of 2 kilometres of sea adjoining Aboriginal land

Coastal Aboriginal groups strongly supported this category and they stated they were prepared to negotiate arrangements to allow the use of waters for reasonable recreational purposes in areas adjacent to non-Aboriginal centres of population and to negotiate with commercial fishing interests who wished to exploit areas within 2 kilometres of Aboriginal land.

The Northern Land Council made provision in its draft Bill (Appendix 5) for Aboriginal control of seas adjoining Aboriginal land for 2 kilometres and that any person may apply to the Aboriginal Land Commissioner to have any section of the coast opened. The Commissioner shall

consider commercial, environmental and recreational interests of the public as well as traditional Aboriginal interests, when making his recommendation to the Administrator in Council.

The main arguments advanced in support of this contention are :

- (i) In the second report of the Aboriginal Land Rights Commission, Mr Justice Woodward stated :

It seems to me that the legitimate interests of Aborigines will be protected if their traditional fishing rights are preserved and their right to the privacy of their land is clearly recognized by the establishment of a buffer zone of sea which cannot legally be entered by commercial fishermen or holiday makers. An exception would have to be made in cases of emergency.

Because of these reasons he recommended "that the definition of Aboriginal land where a coastline is involved should include both off-shore islands and waters within 2 kilometres of the low tide line".

- (ii) Anthropologists who gave evidence before the Committee stated that Aborigines assert rights of ownership over the sea in the same way they claim ownership over their land: through myth, ceremony and sacred objects. The sea is owned by individual clans. Clan ownership focuses on clusters of sacred sites which extends to cover the areas of sea surrounding them up to the boundary of territory belonging to neighbouring clans.

Evidence was given that some sacred sites in the sea extend to, or are located, more than 2 kilometres out to sea.

(iii) Coastal Aborigines rely heavily on the sea as a source of food and sea food is also of increasing economic significance to them.

(iv) The 2 kilometres would be a buffer against unauthorised entry onto Aboriginal land.

- (b) The seas remain open to all Australians

The main arguments advanced (mainly by non-Aboriginals) in support of this proposal are :

(i) There is a strong tradition and principle in Australia that the seas are for the use and enjoyment of all people.

(ii) Discrimination in favour of one race is the basis for racial tension.

(iii) The Barramundi fishing industry which is based on tidal flats, rivers and estuaries and worth \$1m per year, would be seriously jeopardised because most of the 140 licences at present operate in seas adjacent to Aboriginal land or land that could become Aboriginal.

(iv) A major recreational asset for townpeople could be greatly disadvantaged.

(v) The closure of part of the seas would be difficult to implement and difficult to enforce.

(vi) There could be conflict between the Land Rights Act and other Commonwealth Acts such as the Navigation, the Seas and Submerged Lands, the Racial Discrimination, the Fisheries and the National Parks and Wildlife Conservation.

Comments by the Committee

123 The Committee wishes to comment as follows on the two categories of arguments advanced above. In respect to :

(a) Aboriginals have control of 2 Kilometres of sea adjoining Aboriginal land

- (i.) The fact that Aboriginals regard the land and sea as the same and that there are sacred sites in the sea is considered by the Committee to be the major argument in support of this proposal.

A further major argument is the spirit and intent of Section 69.(1) of the Land Rights Act which states that a person shall not enter or remain on land that is a sacred site. Whilst Section 69 specifically refers to 'land', the Committee commends to the Government that it give consideration to amending it to include 'sea'.

However, the extent of sacred sites in the sea adjoining Aboriginal land and land under claim by Aboriginals is not known. The Committee received evidence, e.g. that sacred sites in the sea in the Yirrkala area are very extensive. On the other hand, a Sub-committee was informed that there are no sacred sites in seas adjoining Bathurst and Melville Islands.

- (ii.) It is understood that at present fishing and other sea food gathering by Aboriginals is not adversely affected by non-Aboriginals. This situation however could change as the movement to outstations along the coast continues.
- (iii.) It would appear that the concept of a buffer zone to protect the privacy of coastal Aboriginal people could be ineffective. Because of its isolation few non-Aboriginals would enter the seas adjoining Aboriginal land, they would require a permit if they were to set foot on that land and it would be difficult to enforce.

- (iv) It would be administratively clumsy for individuals to seek a permit every time they wished to enter seas adjoining Aboriginal land for recreational or other purposes.

(b) The seas remain open to all Australians

- (i) An argument against this proposal is that non-Aboriginals use only a small portion of the seas adjoining Aboriginal land for recreational purposes. In this regard Aboriginals have stated they are prepared to negotiate areas that could be freely used. In addition, Aboriginals have stated they are prepared to negotiate with commercial fishing interests about areas they can use.

- (ii) Under the circumstances outlined in (i) above, the reasons for resentment by non-Aboriginals against the closure of 2 kilometres of the sea would be largely mitigated.

- (iii) The Committee sought the advice of the Attorney-General on the possible conflict between the Land Rights and other Commonwealth Acts. This advice in summary is :

• Section 16(a) of the Seas and Submerged Lands Act 1973 does not limit or exclude the operation of any law in the Territory in force after the commencement of the Act. This Act, in itself, does not raise any problems.

• The right to innocent passage through the territorial sea is provided for in the Convention on the Territorial Sea and Contiguous Zone. Section 17(2) of the Aboriginal Lands and Sacred Sites Bill makes provision for the exemption by regulations of persons or vessels from any closing of waters where the use of those

waters is for transit purposes only. The Bill should require an exemption for vessels in transit where any waters are closed by regulation.

- . There is no substance in the suggestion that Section 10 of the Racial Discrimination Act 1975 operates in such a way as to effectively negate the various provisions conferring special rights on Aborigines.
- . The Navigation Act 1912 and any regulations made under that Act will apply to shipping and navigation within any area of waters that might be closed under provisions of the Aboriginal Lands and Sacred Sites Bill.
- . The Fisheries Act 1952 is administered to operate from the outer edge of the present 3 mile territorial sea.

The text of the letter from the Attorney-General is at Appendix 6.

Proposal by the Committee

124 The Committee believes that because of the strength of the different opinions put before it, consideration has to be given to the opposing views on this difficult matter. The issues are of great importance. The strong feelings expressed give credence to the suggestions that closing all the seas could give rise to ill-feeling between the communities. In addition, there is a question of existing rights and usages. There is ample evidence of substantial recreational use of the waters near the larger centres of non-Aboriginal population. There are existing fishing licences. The Committee is mindful of the fact that the Land Rights Act was drawn so as to preserve existing rights. The provisions relating to mining are the most obvious example of this.

125 The Committee is also mindful of the strong desire to obtain rights over the 2 kilometre area and the expectations raised in the Aboriginal community by the recommendations of the Aboriginal Land Rights Commission. The principles of this report were endorsed by all political parties and the Aboriginal communities, with few exceptions, seem to have modified their demand for a 12 mile zone to fit in with the recommendation. The Committee believes that the disappointment of those expectations could also have serious repercussions.

126 The Committee has endeavoured to formulate a proposal which takes into account the various points of view presented to it and the needs of the whole community, Aboriginal and non-Aboriginal. In making its recommendation the Committee points out that it is examining the legislative possibilities within the parameters of Section 73.(1)(d) of the Land Rights Act which establishes the limits of the legislative competence of the Northern Territory Legislative Assembly.

127 Section 73.(1)(d) limits the Legislative Assembly to making Ordinances regulating or prohibiting the entry of persons into, or controlling fishing or other activities in the seas within 2 kilometres of Aboriginal land. The Commonwealth Act requires such laws to provide for the right of Aborigines to enter and use the resources of those waters in accordance with Aboriginal tradition.

128 Another issue which has to be dealt with in any legislation is the particular problem of sacred sites within the sea. The Committee is of the view that such sites should receive protection and for that purpose it should be possible for the appropriate Aborigines to apply for the closing of specific areas of the sea. One problem is that such sites may extend beyond the 2 kilometre limit. There was ample

evidence before the Committee that this is so. Section 69.(1) of the Act, which states that a person shall not enter or remain on land where there is a sacred site, relates specifically to 'land' and the Committee recommends to the Government that it give consideration to either amending Section 69 to cover all sacred sites whether on land or sea or to extending the legislative authority of the Legislative Assembly beyond the 2 kilometre limit for the purpose of protecting sacred sites.

129 The Committee recommends that :

- (a) the Northern Territory legislation should make clear provision for the right of Aborigines to enter and use the resources of all waters adjoining and within 2 kilometres of Aboriginal land in accordance with Aboriginal tradition;
- (b) the Ordinance should provide that pending the delineation of areas as set out below, such waters be also open to the general community for recreational use, including non-commercial fishing;
- (c) provision should be made for consultation between the Northern Territory Executive and Aboriginal traditional owners, through the agency of the appropriate Land Council, to negotiate with respect to the closing of areas of the sea which are of significance to Aboriginal communities, either for traditional use and enjoyment of the waters or for the creation of a buffer zone for the Aboriginal community. In the absence

of agreement about the area to be closed either party may apply to the Aboriginal Land Commissioner. Once an area is defined as a closed area, all persons other than the traditional Aboriginal owners require a permit to enter such seas. The issue of a permit is to be governed by the same rules as govern other permits to enter Aboriginal land;

- (d) the Ordinance should provide for consultation between the Northern Territory Executive and Aboriginal traditional owners, through the relevant Land Council, leading to definition of areas near substantial non-Aboriginal centres of population which are to be defined as being open recreational areas. On agreement being reached as to such areas they can be gazetted and in the absence of agreement, application can be made by either party to the Aboriginal Land Commissioner. Once an area is defined as an open recreational area, either by agreement or by decision of the Aboriginal Land Commissioner, it is to remain open to all persons for recreational use including non-commercial fishing;
- (e) any person may apply to the Aboriginal Land Commissioner to have an area of sea declared closed to persons other than the traditional Aboriginal owners of adjacent land in accordance with paragraph (c) above, or opened for general recreational use;

- (f) in determining all such applications the Aboriginal Land Commissioner shall consider Aboriginal traditional and other interests as well as the commercial, environmental and recreational interests of the public; and
- (g) the rights of existing commercial fishing licences be retained and that new fishing licences not be issued except after consultation between the Fisheries Branch of the Department of the Northern Territory and the relevant Land Council. In the event of disagreement between the Department and the Council, the matter to be referred to the Aboriginal Land Commissioner for determination.

PART 'C'

NEED FOR A REVIEW

10. NEED FOR A REVIEW


130 The Committee believes that the Land Rights Act is one of the most significant pieces of legislation affecting Aboriginal society in the Northern Territory. The legislation has been a catalyst for a number of dynamic changes to the Aboriginal life style. For example, it has probably accelerated the movement by Aboriginals to outstations closer to their traditional land.

131 The Committee considers that the Parliament should have in the immediate future a continuing oversight of the administration of the Land Rights Act to ensure that the letter and spirit of the Act in this extremely sensitive area is being observed. Areas for review could include the effect on Aboriginal communities of mining and tourism on Aboriginal land, the effectiveness of the operations of the Land Councils, communications with Aboriginals, problems associated with the outstation movement and the operation of the reciprocal legislation.

132 A further important consideration that the Committee believes should be closely watched by the Parliament is the potential for racial tension, particularly as a result of mining and tourism pressures, and claims by Aboriginals for control of part of the seas and for pastoral land.

133 The Committee therefore recommends that the Parliament establish a committee to further inquire into the operations of the Land Rights Act.

August 1977


NEVILLE T. BONNER
Chairman

PART 'D'

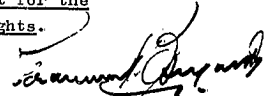
PROTEST AND DISSENT

11 PROTEST BY THE HON. G.M. BRYANT E.D., M.P.

134 The attempt to have the Legislative Assembly of the Northern Territory implement the wishes of the Parliament and Government of Australia as regards Aboriginal land rights in the Northern Territory, has been a failure. The Legislative Assembly has had before it unsatisfactory legislation and there is no guarantee that the newly-elected Assembly is more likely to act in the spirit of the Commonwealth legislation.

135 The delegation of our responsibilities for this important matter to another legislature is an abdication of the responsibilities imposed upon the Parliament by the people of Australia by the referendum of 1967.

136 Therefore, I recommend that the section of the Aboriginal Land Rights Act referring power to the Legislative Assembly be repealed and that the Australian Government accept the sole responsibility to this Parliament for the implementation of the policies on land rights.



G.M. BRYANT

August 1977

137 We the undersigned dissent from the Committee's Report in the following areas :

- (a) that due to restraints in time a properly prepared final draft of the Report has not been circulated to members for their considered response before presentation to the Parliament;
- (b) that the recommendation of the Committee at paragraph 129 of the Report represents a departure from the spirit and intention of the Woodward Commission's recommendations and the legislation introduced by the previous Government and also it is clearly contradictory to the attitude adopted in evidence before the Committee of the Minister and his Department and the Northern Land Council, all of whom are closely involved with the Aboriginal people in the Territory. Accordingly, we recommend that legislation of the Federal Parliament or the Northern Territory Legislative Assembly vest control of the seas adjoining Aboriginal land to a limit of 2 kilometres in the traditional owners. Further, we recommend that the appropriate Land Council be authorised to act for the traditional owners in granting access to such areas to non-Aboriginals having regard to the protection of sacred sites, traditional use and enjoyment of waters, the creation of buffer zones for Aboriginal communities and the protection of Aboriginal fishing interests. In the instance of disputes regarding access interested parties may apply to the Aboriginal Land Commissioner for arbitration; and
- (c) the recommendation in Part 'C' presupposes the inability of the Minister for Aboriginal Affairs to effectively administer the operation of the Act by proposing the establishment of a standing committee to oversee this function. We believe the extent to which the Minister believes the operation of the Act or reciprocal legislation requires Parliamentary examination outside that scrutiny normally undertaken by members could best be achieved by a reference of such matters by the Minister or the Parliament to the Standing Committee on Aboriginal Affairs.

G.M. BRYANT

L.R. JOHNSON

August 1977

ABORIGINAL COMMUNITIES VISITED BY SUB-COMMITTEES

Angurugu
Areyonga
Bamyili
Bathurst Island
Borrooloola
Elcho Island
Hermannsburg
Maningrida
Napperby
Papunya
Roper River
Utopia
Warrabri
Willowra
Yirrkala
Yuendumu

LIST OF WITNESSES

ALBRECHT, Pastor P.G.E.	Field Superintendent, Finke River Mission, Alice Springs, N.T.
BISHAW, A.	Acting Manager, Northern Land Council, Darwin, N.T.
BOLTON, Dr B.L.	Private Citizen, Alice Springs, N.T.
CAMERON, O.J.	Director, Northern Territory Department of Transport and Industry, Darwin, N.T.
CARROLL, P.J.	Linguist, Oenpelli, N.T.
CHALOUPKA, G.	Site Survey Officer, Museums and Art Galleries Board of the Northern Territory, Darwin, N.T.
DAY, K.L.	Chairman, Northern Territory Branch of the Progress Party, Darwin, N.T.
de GRAAF, M.	Anthropologist, Alice Springs, N.T.
de VOS, W.E.L.	Secretary, Northern Territory Cattle Producers Council, Sydney, N.S.W.
DHALPALAWUY, K.	Director, Galawinku Seafoods Pty Ltd, Elcho Island, N.T.
DIX, W.C.	Deputy Principal, Australian Institute of Aboriginal Studies, Canberra, A.C.T.

DJATI, J. Director, Galawinku Seafoods Pty Ltd, Elcho Island, N.T.

DOWNING, Rev. J.H. Program Director, Institute for Aboriginal Development, Alice Springs, N.T.

EAMES, G.M. Solicitor, Central Land Council, Alice Springs, N.T.

EVANS, E.C. Deputy Chairman, Museums and Art Galleries Board of the Northern Territory, Darwin, N.T.

FISHER, W.J. Private Citizen, Darwin, N.T.

GALARRWUY YUNUPINGU, J. Executive Member, Northern Land Council, Darwin, N.T.

GIESE, H. Special Adviser to the Chief Secretary of the Northern Territory, Darwin, N.T.

GRAY, W.J. Acting Assistant Director, Community Development, Northern Territory Region, Department of Aboriginal Affairs, Darwin, N.T.

HAGEN, R. Anthropologist, Central Land Council, Alice Springs, N.T.

HARDING, B.G. Commodore, Darwin Sailing Club Inc, representing the Darwin Sailing Club Inc, Darwin Trailer Boat Club Inc and the N.T. Water Ski Association Inc, Darwin, N.T.

HARE, W.T. Director, Northern Territory Reserves Board, Alice Springs, N.T.

HATTON, S.P. Acting Secretary, Darwin Regional Tourist Promotion Association Inc, Darwin, N.T.

HAUSER, J.P. Assistant Secretary, Forestry, Fisheries, Wildlife, Environment and National Parks Branch, Department of the Northern Territory, Darwin, N.T.

HAYNES, C.D. Private Citizen, Maningrida, N.T.

HEATHER, D.B.M. Member, Northern Territory Commercial Fishermen's Association and Manager, Galawinku Seafoods Pty Ltd, Elcho Island, N.T.

HEWITT, J.V. Executive Officer (Tourism), Northern Territory Department of Transport and Industry, Darwin, N.T.

HICKMAN, J.L. President, Northern Territory Branch of the Australian Fishing Industry Council, Darwin, N.T.

HIGGINS, G. Project Officer, Mines Branch, Department of the Northern Territory, Darwin, N.T.

HILL, M.A. Senior Officer, Australian National Parks and Wildlife Service, Canberra, A.C.T.

HOGAN, D. Director of Legislation, Chief Secretary's Department, Darwin, N.T.

JACK-HINTON, Dr C. Director, Museums and Art Galleries Board of the Northern Territory, Darwin, N.T.

JETTNER, W.R. President, Northern Territory Country Liberal Party, Darwin, N.T.

KEEN, I.	Anthropologist, Department of Anthropology, Research School of Pacific Studies, Australian National University, Canberra, A.C.T.
KENNON, J.S.	Private Citizen, Darwin, N.T.
KENTISH, R.J. M.L.A.	Member for the Electorate of Arnhem, Legislative Assembly of the Northern Territory, Darwin, N.T.
LAWLER, T.R.	Assistant Secretary, Lands Branch, Department of the Northern Territory, Darwin, N.T.
LEE, R.E.	Vice President, Darwin Regional Tourist Promotion Association Inc, Darwin, N.T.
LETTIS, Hon. Dr G.A. M.L.A.	Chief Secretary of the Northern Territory, Darwin, N.T.
LONG, J.P.M.	Deputy Secretary, Department of Aboriginal Affairs, Canberra, A.C.T.
LOVEGROVE, T.C.	Director, Northern Territory Region, Department of Aboriginal Affairs, Darwin, N.T.
MALBUNKA, Pastor C.	Member, Central Land Council, Hermannsburg, N.T.
McGILL, S.C.	Solicitor, Northern Land Council, Darwin, N.T.
McLAUGHLIN, D.	Private Citizen, Darwin, N.T.
McMAHON, G.	Chairman, Northern Territory Commercial Fishermen's Association, Darwin, N.T.

MEEHAN, Dr B.	Anthropologist, Member of the Australian Institute of Aboriginal Studies, Canberra, A.C.T.
MORPHY, H.	Anthropologist, Department of Prehistory and Anthropology, Australian National University, Canberra, A.C.T.
NELSON, H.	Member, Central Land Council, Yuendumu, N.T.
O'BRIEN, V.T.	First Assistant Secretary, Lands Division, Department of the Northern Territory, Darwin, N.T.
OKAI, B.	Member, Central Land Council, Jay Creek, N.T.
OVINGTON, Professor J.D.	Director, Australian National Parks and Wildlife Service, Canberra, A.C.T.
PATERSON, K.F.	Assistant Director - Technical, Australian Mining Industry Council, Canberra, A.C.T.
PETERSON, Dr N.	Anthropologist, Canberra, A.C.T.
ROBERTS, S.	Chairman, Northern Land Council, Darwin, N.T.
ROSE, Colonel A.L.	Chairman, Northern Territory Reserves Board, Alice Springs, N.T.
RUBUNTJA, W.	President, Central Land Council, Alice Springs, N.T.
RYAN, G.R.	Vice President, Northern Territory Chamber of Mines, Darwin, N.T.

SPENCER, V.F. Environmental Officer, Central Australian Four Wheel Drive Club, Alice Springs, N.T.

STACK, Ald. Dr E.M. Mayor of Darwin, N.T.

STOCKMAN, B. Member, Central Land Council, Papunya, N.T.

UCKO, Dr P.J. Principal, Australian Institute of Aboriginal Studies, Canberra, A.C.T.

VINER, Hon. R.I. Minister for Aboriginal Affairs, M.P. Canberra, A.C.T.

WARD, Mr Justice R.C. Darwin, N.T.

WATERS, J.B. Secretary, Northern Territory Branch, Australian Labor Party, Darwin, N.T.

WITHNALL, R.J. Member for the Electorate of M.L.A. Port Darwin, Legislative Assembly of the Northern Territory, Darwin, N.T.

The following presented submissions which were incorporated in the transcript of evidence :

A group of community workers and advisers in North Australia, N.T.

Nabalco Pty Limited, Sydney, N.S.W.

Mr D. Hewitt, Broome, W.A.

Mr R.J. Dare, Visitours Guiding Service, Alice Springs, N.T.

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976
PRACTICE DIRECTIONS

Section 51 of the Aboriginal Land Rights (Northern Territory) Act 1976 provides that the Aboriginal Land Commissioner "may do all things necessary or convenient to be done for or in connexion with the performance of his functions".

These Practice Directions have been made in exercise of that power and in response to the submissions made at the public hearing on 12 and 13 May 1977.

These Directions should not be regarded as inflexible or as not subject to change in particular instances. Their purpose is to assist in the orderly presentation and hearing of applications under S.50(1)(a) of the Act and to ensure as far as is practicable that applications receive adequate publicity and in particular that they come to the notice of any person or organisation likely to be affected by the exercise of the Commissioner's functions in regard to those applications.

1. From time to time the Commissioner will invite applications under S.50(1)(a) of the Act.
2. That invitation will take the form of an advertisement in newspapers published in the Northern Territory and to some extent by radio and television announcements. The Department of Aboriginal Affairs, the Land Councils and others will be asked to help in spreading word of the invitation to Aboriginal communities in the Northern Territory.
3. Applications may be made by or on behalf of Aboriginals claiming to have a traditional land claim to an area of land that is -
 - (a) unalienated Crown land; or
 - (b) alienated Crown land in which all estates and interests not held by the Crown are held by or on behalf of Aboriginals.
4. A traditional land claim is a claim by or on behalf of the traditional Aboriginal owners of land arising out of their traditional ownership. The Act defines "traditional Aboriginal owners" to mean a local descent group of Aboriginals who -

4.
 - (a) have common spiritual affiliations to a site on the land that places the group under a primary spiritual responsibility for that site and for the land; and
 - (b) are entitled by Aboriginal tradition to forage as of right over that land.
5. Unalienated Crown land is Crown land in which no person other than the Crown has an estate or interest, but it does not include land in a town. Alienated Crown land means Crown land in which a person other than the Crown has an estate or interest but it does not include land in a town. "Town" is defined in the Act.
6. It will be seen that applications may not relate to land in a town nor to alienated Crown land unless all estates and interests in that land not held by the Crown are held by or on behalf of Aboriginals.
7. When an application is made the function of the Commissioner is to ascertain whether the Aboriginals applying or any other Aboriginals are the traditional Aboriginal owners of the land, to

7. (cont.)

report his findings to the Minister for Aboriginal Affairs and to the Minister for the Northern Territory and where the Commissioner finds that there are Aborigines who are the traditional Aboriginal owners of the land, to make recommendations to the Minister for Aboriginal Affairs for the granting of the land or any part of it to a Land Trust.

8. Applications will be in writing and addressed to - The Associate to the Aboriginal Land Commissioner, Supreme Court, Darwin. There is no prescribed form but the application should ensure as far as possible that the identity of the claimants and the land claimed appears clearly. To this end the application should set out the following information -

- (a) the names of those persons by or on behalf of whom the application is made;
- (b) a description of the land claimed accompanied by a map showing clearly the location of the land;

8. (cont.)

(c) a statement whether the land claimed is -

- (i) unalienated Crown land, or
- (ii) alienated Crown land in which all estates and interests not held by the Crown are held by or on behalf of Aborigines, in which case the application should specify the estates or interests and the Aborigines on whose behalf they are held;

(d) a statement of all persons or organisations likely to be affected by the application so far as it is known to the applicants;

(e) an address for notices and correspondence.

9. When an application is lodged the Commissioner will give notice to the applicants of a time for a hearing in Chambers -

- (a) to determine the extent to which and the manner in which the application shall be advertised;
- (b) to determine the persons and organisations upon whom the applicants will serve notice of and a copy of the application;
- (c) to fix a date and place for the hearing of the application.

10. As a matter of course the applicants will serve notice of and a copy of the application on the following -

- (a) the Department of Aboriginal Affairs;
- (b) the Director of Lands, Lands Branch, Department of the Northern Territory;
- (c) The Director of Mines, Mines Branch, Department of the Northern Territory;
- (d) The Chief Secretary for the Northern Territory;
- (e) the Northern Territory Cattle Producers Council;
- (f) the appropriate Land Council where the application is not lodged by that Council.

11. In addition the applicants will serve notice of application and a copy of the application on any person or organisation appearing to be affected by the application.

12. Any person or organisation may apply to the Commissioner's Associate for a copy of any application lodged.

13. The advertisement of and notice of any application will each specify the date and place of hearing of the application and will each specify a time within which anyone

13. (cont.)

wishing to contest the application or to establish an interest in the land claimed or otherwise wishing to be heard before the Commissioner in relation to the application may lodge a Notice of Intention to be Heard. There is no prescribed form but the Notice should state briefly but sufficiently the grounds upon which the application will be contested or the nature of the interest claimed or the basis upon which the person or organisation wishes to be heard before the Commissioner.

14. Any person or organisation lodging a Notice of Intention to be Heard will as soon as possible serve a copy of the Notice on the applicants or their representative.

15. Before the hearing of an application the applicants or any person or organisation lodging a Notice of Intention to be Heard may by letter apply to the Commissioner for a hearing in Chambers to deal with any procedural question relating to the application, including such matters as the date and place of hearing.

16. In any event where it appears to the Commissioner to be necessary or desirable to determine any procedural question relating to an application he may appoint a time for a hearing in Chambers to determine that question and will give notice of hearing to all concerned.
17. Where it might be expected that an application will be made in relation to an area of land but none has been lodged, any person or organisation likely to be affected by such an application may apply in writing to the Commissioner for directions for the lodging of such an application on the ground that there are special reasons why the application should be lodged and dealt with as soon as possible. The Commissioner will then fix a time for a hearing in Chambers to determine that question and will give notice of hearing to the appropriate Land Council and to any other person or organisation thought likely to be affected by any such directions.
18. The hearing of an application will be conducted broadly along the lines of conventional court proceedings although with less formality. As circumstances dictate the hearing will take place at Darwin, at Alice Springs or elsewhere including at the land the subject of the application.

19. As a general rule the hearing of an application will be public unless there is good reason why it should not be so held.
20. Those appearing on the hearing of an application are asked as far as is practicable to prepare and exchange statements of their intended evidence and any material of a technical nature proposed to be used as evidence and to give a copy of those statements and that material to the Commissioner's Associate before the hearing. At this stage the Commissioner does not intend to give any firm direction in this regard.
21. Witnesses will be asked to take an oath or make an affirmation before giving evidence and ordinarily will be subject to cross-examination.
22. There will be no strict adherence to the ordinary rules of evidence. In particular as a general proposition hearsay evidence may be admitted, the weight to be attached to it to be a matter for submission and determination. Relevancy will be the controlling test for the admissibility of evidence.

8 June 1977

Mr Justice Toohey
Aboriginal Land Commissioner

EXTRACT OF SOCIAL WELFARE ORDINANCE 1964
OF THE NORTHERN TERRITORY

- 17.-(1.) The Administrator, the Director and a welfare officer may enter and remain on a reserve and may authorize a person, subject to such conditions, if any, as are specified in the authorization, to enter and remain on a reserve.
- (2.) A right to enter and remain on a reserve does not authorize the person having the right -
- (a) to enter or remain in a portion of the reserve that is included in a lease without the permission of the lessee; or
 - (b) to enter or remain in a dwelling, building or enclosed area on the reserve without the permission of the occupier or person in charge of the dwelling, building or enclosed area.
- (3.) A person shall not enter or remain on a reserve unless -
- (a) he is an aboriginal native of Australia;
 - (b) he is a member of the police force;
 - (c) he is acting in the course of his duty as an officer of the Commonwealth Public Service;
 - (d) he enters and remains on the reserve in accordance with an authorization under sub-section (1.) of this section;

- (e) it is necessary for the protection of life or property that he enter or remain on the reserve;
- (f) he is a member of the Legislative Council for the Northern Territory and he enters or remains on the reserve for a purpose connected with his service as such a member;
- (fa) he is a candidate for election as the member of the Legislative Council for the Northern Territory for the electorate in which the reserve or part of the reserve is situated;
- (g) he is a member, or a candidate for election as a member, of the Parliament of the Commonwealth of Australia elected for the Northern Territory; or
- (h) he is authorized by a law of the Territory to enter and remain on the reserve.

Note: Section 19A of the Northern Territory (Administration) Act 1910 provides that any reference to the Legislative Council in any law of the Northern Territory be read as including a reference to the Legislative Assembly.

DRAFT BILL

ABORIGINAL LAND AND SACRED SITES ORDINANCE 1977PART I - PRELIMINARY

1. This Ordinance may be cited as the Aboriginal Land and Sacred Sites Ordinance 1977.
2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the Gazette.
3. In this Ordinance unless the contrary intention appears -

"Aboriginal land, Aboriginal Land Commissioner, traditional Aboriginal owner, Land Council, Aboriginal tradition" have the same meaning as in the Aboriginal Land Rights (Northern Territory) Act 1976.

"Community Area" means -

- (i) an area of Aboriginal land immediately surrounding an Aboriginal settlement, mission, camp, or outstation which has been indicated by the Community Council or traditional owner as being a general community area but does not include the immediate vicinity of any dwelling, or camp;

- (ii) roads or tracks which have been indicated by the Community Council or the traditional owner as being a connecting corridor between the first mentioned areas.

PART II - ENTRY ONTO ABORIGINAL LAND

4. (1) Subject to this Act, a person other than an Aboriginal shall not enter or remain on Aboriginal land unless he is the holder of a permit, in writing, issued to him by or on behalf of the Land Council for the area in which the land is situated.

Penalty:

- (2) A person who is on Aboriginal land (whether in accordance with a permit or not) other than a traditional Aboriginal owner of the land, may be required to leave that land by a person authorised on that behalf by the Land Council or by the traditional owner for the area in which the land is situated, and the person on whom such a requirement is made shall comply with the requirement within a reasonable time.

Penalty:

- (3) The holder of a permit to enter and remain on Aboriginal shall comply with any condition imposed on him as such holder by the issuing authority.

Penalty:

- (4) In proceedings for an offence against sub-section (1) or (2) it is a defence if the person charged proves -

- (a) in the case of an offence against sub-section (1) that -

i. his entry or remaining on the land was due to necessity; and

ii. it was not practicable to apply for the necessary permit; or

- (b) in the case of an offence against sub-section (2) that his remaining on the land was due to circumstances outside his control.

5. (1) The Land Council for an area on Aboriginal land may issue a permit for a person to enter onto that area of land.
- (2) Before a permit is issued by the Land Council the permission of the traditional owner for the person to enter and remain on the area of land shall be obtained.
- (3) The traditional owner may issue a permit to a person to enter and remain on an area of land in circumstances where it is not practicable for the person to obtain a permit from the Land Council.
- (4) Where either the Land Council or the traditional owner has power under sub-sections (1) or (3) to issue a permit the Community Council for the area may be delegated the power to issue permits.

6. (1) Where -

- (a) the holder of an office that is established by or under an Act or an Ordinance, or regulation under an Act or an Ordinance, is required or permitted to enter upon land in the performance of his duties; and
- (b) in the opinion of the Administrator in Council it is necessary for the administration of the Northern Territory that the holder of that office be empowered to enter and remain on a community area of Aboriginal land in the performance of his duties,

the Administrator may issue to him a permit to enter on an area of Aboriginal land in the performance of his duties.

(2) A permit issued under sub-section (1) -

- (a) shall contain the name, signature and identification photograph of the holder of the permit;
- (b) shall specify the area of Aboriginal land that the holder is permitted to enter upon; and
- (c) may contain conditions and restrictions subject to which the permit is issued.

(3) Subject to this section, a person to whom a permit is issued under sub-section (1) may, while the permit remains in force and subject to the conditions and restrictions, if any, subject to which the permit was issued, enter and remain on the community area of Aboriginal land specified in the permit in the performance of his duty.

(4) Subject to section 5, before, or at the first reasonable opportunity after, a person who holds a permit issued under sub-section (1) enters on an area of Aboriginal land, he shall cause notice of his entry to be given to the traditional owner.

7. (1) A member of the Northern Territory Police Force acting in the course of his duties may enter and remain on a community area of Aboriginal land.

(2) Before or at the first reasonable opportunity after a member of the Northern Territory Police Force enters onto a community area of Aboriginal land he shall cause notice of his entry to be given to the traditional owner.

(3) A member of the Northern Territory Police Force shall not enter or remain on an area of Aboriginal land other than a community area without a warrant unless he is investigating an alleged offence or has reason to believe that an alleged offender is on that area.

8. A person who is a member or a candidate for election as a member of the Australian Parliament or the Legislative Assembly for the Northern Territory for the area in question may enter and remain on a community area of Aboriginal land.

PART III - ENTRY INTO WATERS ADJACENT TO
ABORIGINAL LAND

9. (1) Subject to this section, where Aboriginal land adjoins the territorial sea, or internal waters of Australia, appertaining to the Northern Territory, that part of the territorial sea or internal waters so appertaining that is within two kilometres of the boundary of the Aboriginal land shall be deemed to be part of that Aboriginal land.
- (2) This section has effect subject to the obligations of Australia under international law, including obligations under any agreement between Australia and another country or countries.
10. (1) Any person may apply to the Aboriginal Land Commissioner to have opened any section of coastal waters that are closed under section 9 (1).
- (2) Where the Commissioner receives an application under sub-section (1) he shall determine whether the application shall be granted and shall make the appropriate recommendation to the Administrator in Council.
- (3) When making a determination under sub-section (2) the Commissioner shall consider inter alia commercial, environmental and recreational interests of the public as well as traditional Aboriginal interests.

COPY

Attorney-General
Parliament House
CANBERRA, A.C.T. 2600
13 July 1977

Dear Senator Bonner,

I refer to your letter of 24 May 1977 seeking my advice concerning the operation of the Aboriginal Lands and Sacred Sites Bill 1977 introduced into the Legislative Assembly on 3 March 1977 and the Territory Parks and Wildlife Conservation Ordinance, 1976 of the Northern Territory with particular reference to possible conflict with the Aboriginal Land Rights (Northern Territory) Act 1976, the Seas and Submerged Lands Act 1973, the Racial Discrimination Act 1975, the Navigation Act 1912, the Fisheries Act 1952, and the National Parks and Wildlife Conservation Act 1975.

Aboriginal Land Rights (Northern Territory) Act 1976

Section 73 of the Aboriginal Land Rights (Northern Territory) Act is the relevant authority authorising the Northern Territory Legislative Assembly to enact the Aboriginal Lands and Sacred Sites Bill and the Territory Parks and Wildlife Conservation Ordinance so far as it makes provision with respect to wildlife in the Northern Territory.

Section 73 of the Aboriginal Land Rights (Northern Territory) Act makes it clear however that the Bill, on becoming law, and the Ordinance have effect only to the extent that they are capable of operating concurrently with the laws of the Commonwealth and in particular the Aboriginal Land Rights (Northern Territory) Act, and the National Parks and Wildlife Conservation Act.

Seas and Submerged Lands Act 1973

During the public hearing your Committee received evidence from the Department of the Northern Territory which was the subject of some discussion and which seemed to suggest that any Ordinance made by the Northern Territory Legislative Assembly pursuant to the power contained in section 73(1)(d) of the Aboriginal Land Rights (Northern Territory) Act would be inconsistent with the provisions of the Seas and Submerged Lands Act.

The Seas and Submerged Lands Act enacted and declared Commonwealth sovereignty over the territorial sea.

Section 73(1)(d) of the Aboriginal Land Rights (Northern Territory) Act and any Ordinance made pursuant to that provision is merely a legislative exercise of that sovereignty. In this regard I also draw your attention to section 16(a) of the Seas and Submerged Lands Act which provides that the Act does not limit or exclude the operation of any law of the Commonwealth or of a Territory in force at the commencement of the Act or coming into force after that date. I do not think, therefore, that the Seas and Submerged Lands Act in itself raises any problem.

A problem might arise, however, not in relation to the operation of the Seas and Submerged Lands Act but rather in relation to Australia's international obligations to ensure the right of innocent passage to ships of all nation States. The right to innocent passage through the territorial sea is provided for in the Convention on the Territorial Sea and Contiguous Zone, to which Australia is a party. In this regard I note that section 17(2) of the Aboriginal Lands and Sacred Sites Bill 1977 makes provision for the exemption by regulations of persons or vessels from any closing of waters where the use of those waters is for transit purposes only. If regulations were to be made closing particular waters, a regulation exempting vessels in transit should, I think, be made. Indeed I think that preferably the Bill should have required such an exemption where any waters are closed by regulations.

Racial Discrimination Act 1975

There are suggestions in the evidence and discussions before your Committee that section 10 of the Racial Discrimination Act operates in such a way as to effectively negate the various provisions conferring special rights on Aborigines.

In my opinion, there is no legal substance in these suggestions. Even assuming that section 10 might otherwise have such an effect the section appears in Part II of the Act, and section 8 provides that Part II does not apply to, or in relation to the application of, special measures to which paragraph 4 of Article 1 of the Convention on the Elimination of all Forms of Racial Discrimination applies. The Aboriginal Land Rights (Northern Territory) Act, the Aboriginal Lands and Sacred Sites Bill 1977, and the Territory Parks and Wildlife Conservation Ordinance 1976 (to the extent that it deals with Aborigines) are laws to which paragraph 4 of Article 1 of the Convention applies.

Navigation Act 1912

As indicated in paragraph 3 above Ordinances of the Northern Territory Legislative Assembly enacted pursuant to section 73(1) of the Aboriginal Land Rights (Northern Territory) Act only have effect to the extent that they are capable of operating concurrently with the laws of the Commonwealth. Accordingly, the Navigation Act and any Regulations made under that Act will apply according to their tenor to shipping and navigation within any area of waters that might be closed under Part III of the Aboriginal Lands and Sacred Sites Bill 1977. It seems to me that generally speaking the type of regulation that might be made under section 17 of the Bill would be capable of operating concurrently with the provisions of the Navigation Act. In saying this I am assuming that, one way or the other, the right of transit referred to above will be safeguarded.

Fisheries Act 1952

This Act is administered to operate from the outer edge of the present three mile territorial sea. Accordingly, any closing of waters under Part III of the Aboriginal Lands and Sacred Sites Bill would in no way impinge on the administration of this Act.

National Parks and Wildlife Conservation Act 1975

As indicated in paragraph 3 above, Ordinances of the Northern Territory Legislative Assembly enacted pursuant to section 73(1) of the Aboriginal Land Rights (Northern Territory) Act only have effect to the extent that they are capable of operating concurrently with the National Parks and Wildlife Conservation Act and any regulations made, schemes or programmes formulated or things done under that Act.

In addition to the foregoing you also sought my advice on a number of other matters which together with my answers are set out below :-

- Q. Does section 71(1) of the Aboriginal Land Rights (Northern Territory) Act prevent the Northern Territory Legislative Assembly from making an Ordinance restricting the right of Aboriginal traditional owners from entering their land?

A. Yes.

- Q. Does section 69(1) of the Aboriginal Land Rights (Northern Territory) Act automatically give protection to any site considered significant by Aboriginals?
- A. Having regard to the definition of 'sacred sites' contained in section 3(1) of the Act any site that is sacred to Aboriginals or is otherwise of significance according to Aboriginal tradition is a sacred site to which section 69(1) of the Act applies.

The evidence and discussions before your Committee raise the question whether or not the provisions of Part IV of the Aboriginal Lands and Sacred Sites Bill are consistent with the provisions of section 69. Section 73(1)(a) of the Aboriginal Land Rights (Northern Territory) Act clearly authorises Ordinances dealing with the protection of sacred sites.

As indicated in paragraph 3 above such Ordinances must be capable of operating concurrently with the laws of the Commonwealth including the provisions of section 69 of the Act. Although until recently the view may have been taken that the offence provision contained in section 29 of the Ordinance was not capable of operating concurrently with the corresponding but not identical offence provision in section 69 of the Act a recent decision of the High Court of Australia on an analogous situation suggests the contrary. I am inclined to think that the two provisions are capable of concurrent operation but the position is not clear.

I note however that section 73(1)(a) of the Aboriginal Land Rights (Northern Territory) Act requires that Ordinances dealing with sacred sites 'shall provide' for the right of Aboriginals to have access to those sites in accordance with Aboriginal tradition. The present Bill does not seem to satisfy this requirement by making express provision in that regard.

- Q. What is the meaning of 'sites' in the context of section 24(b) of the Aboriginal Land Rights (Northern Territory) Act?
- A. There is no statutory definition of the term 'sites' as used in this section. One reading of the provision would be that it refers to an area of land traditionally claimed by a particular group. Such land would of course include sites sacred to the particular group in question.

However, the obligation placed on a Land Council by the provision may go beyond that and require it to also identify sacred sites to the extent practicable. This may be the explanation for the concluding words of the section relating to Aboriginal usage. That is to say, in relation to sacred sites the obligation to compile and maintain a register setting out the sacred sites operates only in so far as that can be done without breach of Aboriginal usage.

- Q. Does section 23(3) of the Aboriginal Land Rights (Northern Territory) Act give traditional owners the power of veto over the Land Councils' decisions?
- A. The obligation placed on a Land Council by this provision is that in the carrying out of its functions it shall have regard to the interests of and shall consult with the traditional owners of land (and any other Aboriginals interested in the land) and shall not take any action in any matter in connexion with land held by a Land Trust unless the Land Council is satisfied that the traditional owners of the land in question understand the nature and purpose of what is proposed and that as a group they consent to it. Accordingly, where the traditional owners as a group do not consent to the proposed action the Land Council would be precluded from acting - and to that extent the traditional owners would be exercising a 'veto'.

- Q. What effect, if any, does section 14 of the Aboriginal Land Rights (Northern Territory) Act have on land set aside for conservation purposes e.g. wildlife sanctuaries, national parks?
- A. Section 14 deals with the situation where unalienated Crown land is vested in a Land Trust but is, at the time, occupied or used by the Crown or by an Authority of the Crown and provides that where the Crown or the Authority are occupying or using the land, the Crown or Authority are entitled to continue in occupation and use. Sub-section (3) of section 14 would appear to contemplate, however, that negotiations take place with a view to an appropriate lease being issued by the Land Trust.

Whether or not section 14 would have any operation in respect of land set aside for conservation purposes would depend upon the legal nature of the setting aside in any given case; for example, a setting aside which had the effect of alienating the land from the Crown (see for example, section 7(7) of the National Parks and Wildlife Conservation Act) would on the present state of the law operate so as to deny the possibility that the land in question could be granted to the Land Trust. Accordingly, each case would need to be considered in its own context.

I trust that the foregoing is of assistance to you but having regard to the complex nature of some of the questions involved I could arrange to have an officer of my Department elaborate on any particular issue if you feel the need for further amplification and assistance generally on any other legal issue that may arise.

Yours sincerely,

R. ELLICOTT

R.J. Ellicott Q.C.,
Attorney-General

Senator N.T. Bonner,
Chairman,
Joint Select Committee on
Aboriginal Land Rights in
the Northern Territory,
Parliament House,
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