

Reforming the Northern Territory
Land Rights Act's financial
framework into a more logical and
more workable model

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CAEPR Working Paper No. 5/1999

ISSN 1442 - 3871
ISBN 0 7315 4904 X

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Foreword

This Working Paper is a combination of two separate presentations given by each of the authors and presented as a seminar in June 1999 entitled 'Reforming the Aboriginal Land Rights Act's financial framework into a workable model in the aftermath of the Reeves Review'. On reflection, the authors decided that the title of the seminar was ambiguous and implied that the Act's financial framework was not workable, which is clearly not the case. The legislation has, of course, been working even if sub-optimally, for 20 years. Hence the revised title of this Working Paper: 'Reforming the Northern Territory Land Rights Act's financial framework into a more logical and more workable model'.

The research for this Working Paper followed the release of the report of the Review into the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) by John Reeves QC entitled *Building on Land Rights for the Next Generation*. The seminar presentation coincided with the release of Centre for Aboriginal Economic Policy Research (CAEPR) Research Monograph No. 14 *Land Rights at Risk? Evaluations of the Reeves Report*. Research also coincided with the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' Inquiry into the Reeves Report. However, while this Working Paper makes similar recommendations to that of the findings of the Inquiry in rejecting Reeves' reform of the ALRA, our discussion is independent of the Inquiry's Report.

This Working Paper is one of many contributions from CAEPR to issues arising from the review of the Land Rights legislation. As amendments to the legislation are in the process of being drafted, CAEPR will maintain its core research interest in this policy area and further contributions will be forthcoming. This Working Paper is also released concurrently with a CAEPR Discussion Paper No. 191 entitled 'The allocation and management of royalties under the Aboriginal Land Rights (Northern Territory) Act: options for reform', by Jon Altman and Robert Levitus. While both the Discussion Paper and Working Paper have similarities and articulate a range of options to be considered for reform of the legislation, the latter focuses more on a detailed analysis of the historical policy developments and reviews of the legislation, provides some alternative options for reform, and explores a variety of different issues relevant to the financial framework of the Act and royalty distribution.

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November 1999

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Introduction

The financial framework of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) has never been based on sound economic principles or even logical accounting, let alone clear and transparent policy messages or even obvious directives to Indigenous interests in the Northern Territory. With the benefit of hindsight it is clear that Justice Woodward tried hard to accommodate pre-land rights vested interests in his Royal Commission recommendations that were largely incorporated into the legislation enacted in 1976 and which became law on Australia Day, 1977. Nevertheless, it is also apparent that Woodward did not intend that the financial framework remain unaltered, by and large, for 25 years after conclusion of his Commission in 1974 (Woodward 1974).

The recent recommendations of the Review of the ALRA by John Reeves propose radical reforms to the financial framework of the legislation. Rather than restructuring or reformulating the prescribed statutory allocations of the current financial framework, Reeves recommended that it be replaced by discretionary allocations determined by a new statutory authority—the Northern Territory Aboriginal Council (NTAC). The Review's recommendations have been criticised widely for many reasons. Much of this criticism has been focused on the radical reform of institutions, the methodological approach of the Review, and a lack of understanding of key concepts and constructs within the legislative framework (for example, the concept of traditional ownership). Most notable amongst the criticisms is that directed at the Reeves notion that the Land Rights Act should be the primary framework to facilitate Indigenous socioeconomic advancement in the Northern Territory (see, for example, Altman, Morphy and Rowse 1999).

Our discussion here is not a detailed critique of the Reeves Review; rather that Review is placed in the sequential history of a series of reviews over the last two decades. The major focus of this Working Paper is to re-examine the logic and historical policy legacies associated with the financial streams of monies paid under the Land Rights Act. This is an issue that is neither rarely explored nor evidently understood by past and current reviewers. We intend to proceed firstly by re-assessing the history, issues of principle and logic in the construction of the ALRA's financial framework and the inherent long-term problems and inconsistencies in that framework. In addressing these problems and inconsistencies, we raise three very straightforward but crucial questions informed to a great extent by earlier research undertaken on the ALRA's financial framework by reviewers, academics, government agencies and consultants.

- Should royalties be paid to people in areas affected, and if so, how much should be paid, to whom and for what purposes?
- How much should land councils receive, for what statutory functions and from where (royalties or consolidated revenue or both)?
- Should royalties be paid to Northern Territory Aboriginal people as grants, and why?

In conclusion, and for discussion purposes, we will raise some options for change to the ALRA's financial framework and ask how a more logical and more workable model can be negotiated and devised given competing interests and pressures for reform.

History, logic and intention

Two important and complementary innovations were introduced by the then Minister for the Interior, Paul Hasluck, in 1952 that still have ramifications in the current ALRA financial framework. The first was the proposal that statutory royalties extracted from mineral production on Aboriginal reserves should be earmarked for the collective benefit of Aborigines residing in the Northern Territory. The idea was that Aborigines could benefit from any wealth produced on reserved land (and hence make this land work for their betterment) and that they would be compensated for loss of land that may have been utilised by them for subsistence (hunting and gathering) activities.

The second proposal was for the establishment of a trust fund into which all royalties would be paid. There was an ulterior political motive behind these proposals. Moy, the Director of Native Welfare, noted in a memorandum to the Northern Territory Administrator that it was important that royalties raised from mining on Aboriginal reserves were not paid to Consolidated (Commonwealth) Revenue, but were seen to be earmarked for the use of Aborigines. It was implied that any royalties that would be paid into the trust fund would not be offset by concomitant reductions in spending from Consolidated Revenue. These payments were intended to be supplementary to normal budget expenditure on Aboriginal welfare and to act as a defence against any potential public criticism of mining on Aboriginal reserves (Altman 1983: 5-6).

The Hasluckian vision and model of 1952 was the genesis of well-intentioned and progressive, but illogical policy. While the idea of a double royalty levied on Aboriginal reserves was apparently benign, it lacked logic because the dollars were to be provided to Northern Territory Aborigines generally, not necessarily those on affected reserves. The notion of direct compensation was not considered until 1963 when a House of Representatives Select Committee responded to the original bark petition. Policy remained well intentioned and became somewhat more logical when, in 1971, the government decided that areas or regions affected would be guaranteed 10 per cent of royalties raised on 'their' land. The reason for this change was largely because after the Yirrkala Aborigines lost the Gove case, to add insult to injury, the Aborigines were not guaranteed any return from mining on their reserves under the earlier Hasluck model, unlike at nearby Groote Eylandt where the Church Mission Society (CMS) had negotiated an extra royalty for local Aboriginal people when negotiating with the mining company BHP.

The model proposed by Woodward in his Royal Commission findings accepted and accommodated these historical precedents, but also addressed some highly contested and interrelated issues in Aboriginal public policy at the time (Altman 1999: 109). Woodward recognised and openly debated the fundamental fiscal tensions that emanated from his desire to accommodate historical precedent (the Hasluck legacy), while also recognising Aboriginal property rights in land. Although Woodward's letters patent empowered him to consider the provision of full property rights in minerals to Aboriginal land owners (rights not available to other Australians), he stopped short of such reforms, instead recommending a weaker form of property right in consent provisions (or what is frequently called 'the right of veto') (Altman 1999: 110). Woodward recommended that all royalty payments be paid over by the government to the regional land council (RLC) for distribution as follows:

- four-tenths to be retained by the land councils;
- three-tenths to be paid to the local community; and
- three-tenths to be paid to the Aborigines Benefit Trust Fund (ABTF) for grants (Woodward 1974: 114).

These proportional allocations were arrived at arbitrarily. As Woodward (1974: 113) commented 'in the final analysis an arbitrary decision has to be made and tested in practice to see how it works'. He stated that this matter must be reviewed by the government on request from the land councils from time to time, in the light of the amounts of money involved and the respective needs of land councils, local communities and other communities (Woodward 1974: 113). Woodward substantiated his allocations and rationale as follows.

- He recognised the importance of arm's length funding to land councils from the Commonwealth Government and saw great merit in the land councils having a substantial source of income not dependent on government approval (Woodward 1974: 114).
- In respect to local communities affected by mining, Woodward recommended that any payments should go to the relevant community or communities which would be affected by the exploration activities, and not to individual landowners. He stated that provided the monies were to be spent on community purposes they would appear in their true light as a compensation for disturbance and not as an inducement (Woodward 1974: 111). Nevertheless, the consent provisions in the Act provide a form of property right which can be traded for a negotiated royalty (Altman 1999: 3) and are therefore the counterbalance to the right of veto (Altman and Peterson 1984: 17).
- Woodward accepted the historical precedent that benefits should flow to all Aboriginal communities in the Northern Territory. Woodward's rationale was that mining monies could lead to significant income differentials between traditional owners and other Aboriginal people unless they were distributed in broad equitable amounts and applied to community purposes. Therefore Woodward recommended the retention of the ABTF specifically as the provider of grants and loans for Aboriginal enterprises and community purposes (Woodward 1974: 113).

Woodward's model has become known as the 40/30/30 formula, however this model and the distributive mechanisms he articulated were never fully adopted in the Land Rights Act. Instead, the Act created the Aboriginals Benefit Trust Account (ABTA), which replaced the ABTF, and all statutory royalties were to be paid to it for distribution. The ABTA took on a clearinghouse function in respect to 70 per cent of the royalties (40 per cent to land councils and 30 per cent to areas affected via the land councils). The ABTA, rather than the land councils, adopted the role of providing grants. While ss.64(1) of the Act stipulated that 40 per cent of royalties be paid to land councils to finance their ministerially-approved budgets, and ss.64(3) stated that 30 per cent of mining royalty equivalents (MREs) receipts of the ABTA be paid to land councils for distribution to incorporated bodies in the areas affected by mining, the Act did not guarantee that all of the remaining 30 per cent of the ABTA receipts would be distributed Territory wide. Instead, ss.64(4) provided discretionary powers to the Minister to make grants within the constraints of the remaining 30 per cent. Furthermore, the inclusion of ss.64(5) in the ALRA provided that monies originally intended specifically by Woodward for grants could also be used to meet the administrative expenses of administering the ABTA.¹

Woodward's 1974 recommendations and the eventual enacted legislation, both of which were framed with good intentions, presented three elements of poor logic that still constitute the ALRA's financial framework as outlined below.

1. Good intentions, poor logic, too much history

Woodward and the ALRA increased royalty payments to areas affected from the pre-land rights days from 10 per cent to 30 per cent, while also allowing negotiation of additional payments. This addition is due to the newly recognised rights of

traditional owners and the existence of the right of consent or right of veto provisions in the legislation.² But there are a number of inconsistencies and problems here.

- Traditional ownership is recognised but the legislation is careful not to earmark statutory royalties to traditional owners only, but also to other residents.
- The legislation does not define the actual areas affected.
- The legislation gives no guidance as to how monies should be spent.
- The legislation does not specify why monies are paid. If payments are compensation then they should be directed at the region, but should not be linked to royalties. If intended as mineral rent sharing then they should be directed at landowners, and if intended as both, they should be clearly differentiated.

2. Good intentions, innovation and poor logic

Another 40 per cent was earmarked to fund the operations of land councils, the Aboriginal statutory authorities established to claim land and to represent traditional owners' interests in land. The reason for funding land councils from royalties was to ensure their independence from annual budgetary processes, although their budgets have always required ministerial approval. Funding land councils from royalties also gave the impression that they were relatively cheap, being funded from revenue foregone rather than being an extra impost. But this mechanism too is problematic:

- from the outset, 40 per cent was an underestimate of costs given the statutory functions of the land councils;
- royalties fluctuate;
- bureaucracies are 'sticky downwards' in size and expense;
- this 40 per cent was inexplicably taxed at source at 6.4 per cent (hence being 37.4 per cent), an innovation introduced in 1979 by the then Treasurer, John Howard;³ and
- whenever the 40 per cent was exceeded, land councils ran the risk of conflict with their constituents who felt that land councils were spending too much of the royalties cake.

3. Good intentions, too much history, poor logic

Another historic vestige was the decision to continue to provide a share of royalties for the benefit of Northern Territory Aborigines generally so that non-land owners would not fall too far behind the rest; or so that those with land but no mine (which suggests royalties are economic rent), would not be second-class land owners. This was meant to be 30 per cent, down from the Hasluckian 100 per cent and the early 1970s 90 per cent. Unfortunately, the logic of this is most unclear:

- benefit was undefined, but was dependent on recommendations to the Minister from an Aboriginal Advisory Committee;
- beneficiaries were undefined, but traditional owners of land and even recipients of areas affected monies were not, and have not been, excluded; and
- a financial policy stipulating expenditure or investment was unstipulated leaving the ABTA open to criticism for doing either or both, either too badly or too well.

The lack of overall logic in the framework is highlighted by the fiction of what is often still referred to as the 40/30/30 formula. This formula has never operated,

in any one financial year since it was initiated in 1978–79 as is demonstrated in Table 1 and Table 2.

Table 1. Aboriginals Benefit Reserve (ABR) (former ABTA) disbursements (\$), 1978/79 to 1997/98

Year	Land council administration costs	Areas affected distributions	Grants Northern Territory wide	ABR Administ- ration	Total
	Incl. ss.64(1) and ss.64(7)	ss.64(3)	ss.64(4)	ss.64(5)	
1978/79	454,328	340,747	2,481,695	4,091	3,280,861
1979/80	1,394,152	625,222	1,094,590	2,810	3,116,774
1980/81	1,992,794	1,229,386	500,713	9,729	3,732,622
1981/82	3,803,183	1,735,523	871,277	12,164	6,422,147
1982/83	7,366,178	5,283,457	659,582	18,204	13,327,421
1983/84	7,119,186	5,119,200	2,000,178	43,906	14,282,470
1984/85	8,583,395	5,209,283	4,888,055	56,009	18,736,742
1985/86	8,746,782	6,686,417	3,474,727	18,064	18,925,990
1986/87	8,746,032	5,970,979	1,083,036	83,078	15,883,125
1987/88	11,983,183	5,642,376	4,108,745	154,888	21,889,192
1988/89	12,195,674	5,648,591	8,076,203	239,691	26,160,159
1989/90	14,940,811	8,434,487	2,516,657	194,371	26,086,326
1990/91	14,286,621	10,714,965	8,330,927	215,978	33,548,491
1991/92	17,792,808	11,363,441	7,770,955	317,141	37,244,345
1992/93	16,217,445	5,576,896	9,561,396	98,495	31,454,232
1993/94	16,518,765	9,688,836	674,403	129,757	27,011,761
1994/95	17,166,096	8,610,973	651,181	174,819	26,603,069
1995/96	19,240,885	7,952,237	4,114,620	171,378	31,479,120
1996/97	13,187,901	10,400,286	3,895,506	98,699	27,582,392
1997/98	16,523,112	9,454,166	531,750	152,996	26,662,024
Total	218,259,331	125,687,468	67,286,196	2,196,268	413,429,263

Note: All outgoings include Mining Withholding Tax.

Source: Reeves 1998 for the period 1978/79 to 1996/97; ABR 1997–98.

As a net result of the implementation of the ALRA financial framework, the following payments have been made for the period 1978/79 (when the ABTA commenced operations) to 1997/98:

- \$126 million (about 30 per cent of MREs) paid to areas affected (as distinct from fully negotiated and potentially well defined compensation under agreement provisions);
- \$218 million (about 53 per cent of MREs) to fund land councils; and
- \$67 million (about 16.5 per cent of MREs) in grants to, or for, the benefit of Aboriginal people in the Northern Territory (also includes ABTA administration costs) (Altman cited in Reeves 1997: 9).

The lack of logic in the financial framework of the ALRA has made Aboriginal interests in the Northern Territory extremely vulnerable to criticisms on two broad fronts. Firstly from non-Aboriginal political interests, wider public scrutiny and independent review due to the absence of transparent policy logic and expenditure guidelines, and possible negative representation of how resources are expended is always possible. Hence:

- land councils could be criticised for exceeding 40 per cent of royalties irrespective of performance;
- associations in areas affected could be criticised for not ameliorating social impact (if the logic is compensation) or for not delivering economic development or socioeconomic improvement (if rent sharing was the logic, although if this was the case, improvement should be targeted at traditional owners);
- the ABTA holding the residual could be criticised for spending too much, or not investing enough, or investing badly, or for making grants (such as for vehicles or for the purchase of pastoral stations) that accord too closely with Aboriginal priorities; and
- in all areas, Aboriginal interests face a lose/lose situation, and in such situations there is little incentive to perform.

Table 2. ABR proportion of outgoings, 1978/79 to 1997/98

Year	Land council administration costs	Areas affected distributions	Grants NT wide
	Per cent Includes ss.64(1) and ss.64(7)	Per cent ss.64(3)	Per cent ss.64(4)
1978/79	14.0	10.0	76.0
1979/80	45.0	20.0	35.0
1980/81	53.0	33.0	13.0
1981/82	59.0	27.0	14.0
1982/83	55.0	40.0	5.0
1983/84	50.0	36.0	14.0
1984/85	46.0	28.0	26.0
1985/86	46.0	35.0	18.0
1986/87	55.0	38.0	7.0
1987/88	55.0	26.0	19.0
1988/89	47.0	22.0	31.0
1989/90	57.0	32.0	10.0
1990/91	43.0	32.0	25.0
1991/92	48.0	31.0	21.0
1992/93	52.0	18.0	30.0
1993/94	61.0	36.0	2.0
1994/95	65.0	32.0	2.0
1995/96	61.0	25.0	13.0
1996/97	48.0	38.0	14.0
1997/98	62.0	35.0	2.0
Total	53.0	30.0	16.0

The second front of vulnerability is within the Aboriginal polity as there is constant tension in the division of the royalty cake. The discretionary nature of payments to Northern Territory Aborigines and land councils, especially after supplementary funding options were introduced in 1979, put these two new institutional forms in conflict despite the fact that land councils nominated ABTA Advisory Committee members. At the bureaucratic level land councils were keen to attract budgets adequate to fund their statutory functions, while the ABTA was constantly bemoaning its lack of access to 30 per cent of the royalties. People in areas affected, generally represented by traditional owners, bemoan the fact that 70 per cent of 'their royalties' are not directly available to them, or else complain that their mine is less valuable than another (with a smaller impact) or that one royalty regime is inferior to another.

Any reviewer can exploit these criticisms from both within and outside the Aboriginal domain and it was only a matter of time before a severe critique such as that by John Reeves appeared. Reeves' critique of the financial aspects of the ALRA lacks any hard empirical evidence but nevertheless highlights the statute's shortcomings and vulnerability. Reeves suggests that over the past 20 years Aboriginal socioeconomic status both on, and off, Aboriginal land has stagnated, ipso facto because the ALRA's financial framework is ineffective. In reference to the tripartite division of the royalty cake, Reeves (1998) suggests that:

- land councils soak up too much of the royalty cake; not 40 per cent as intended, but 50 per cent plus. Also the value of the land claimed, 250,000 sq kms, is lower than the payments to land councils, therefore the claims process is not a success, but a failure;
- areas affected monies, without statutory guidelines for expenditure, have not solved the socioeconomic problems of regional populations and have at times been paid in cash. Reeves emphasises that these distributions have caused conflicts that, arguably, exceed the social impact of mining. Hence, such payments should no longer be guaranteed notwithstanding the contribution and application of these receipts in the regional economy; and
- the 17 per cent of royalties paid in grants to Northern Territory Aborigines may have accorded with Aboriginal priorities, but they have not been paid under an overarching charter of providing better health, housing and education—areas which Reeves views as priorities.

Impacting events and past reviews

As already noted, Woodward's (1974) model was never exactly implemented in the legislation although, in the main, the central concepts such the payment of MREs to the three types of entities, were adopted. The thrust of these central concepts remains evident despite the impact of specific events and recommendations of past reviewers. On the other hand, and over time, Woodward's financial model has been slowly eroded in certain areas and fragmented perhaps to the extent that it is evident that its relevance may not be meaningful in the 21st century. Indeed, the incremental change of the overall model began soon after the enactment of the ALRA.

The passing of the Northern Territory Self-Government Act in 1978 changed the financial landscape of the land rights regime. The Land Rights Act was amended to provide that where the expression 'Crown' was used, it could include the Crown in the right of the Northern Territory where relevant (Rowland 1980: 22-3). This permitted the newly formed Northern Territory Government to levy royalties from mining operations (except for uranium), yet the Commonwealth Government continued to pay the MREs to the trust fund. Hence, as Toohey (1984: 112-13) noted, the 'conceptual' nexus between statutory royalties and payments to the Trust Account was broken when the Commonwealth gave the Northern Territory the right to raise and retain certain mineral royalties but retained the responsibility to pay equivalent amounts into that account (Toohey 1984: 112-13). In reality, however, this nexus was never realised in the context of the ALRA as the first payments to the ABTA were generated in the same year as self-government.

About this time it was also recognised that in some financial years land councils might not be able to meet their administrative costs from the allocation of 40 per cent of MRE under ss.64(1). It was also found to be illegal to provide additional funds to land councils under ss.64(4) (Altman 1983: 74). Therefore a section was included in the Act allowing for the Minister to approve additional (often

referred to as supplementary) payments to the land councils for administrative purposes. This amendment allowed the Minister to direct supplementary MREs from the residual 30 per cent held in the ABR, to land councils when the 40 per cent of MREs did not meet the cost of their proposed administrative expenditure for a particular year. The inclusion of this section (ss.64(7)) was another departure from the 40/30/30 formula and further depreciated the opportunity to comply with Woodward's original intention that 30 per cent of MREs be spread Territory wide.

A significant event to occur in the early years of implementation of the Act was the establishment of the Tiwi Land Council (TLC) in 1978. This was a further and immediate departure from Woodward's preferred two land council model. The establishment of the TLC is significant from a number of perspectives. Firstly, it was the first small land council and initiated prospective opportunities for similar 'breakaway' land councils. Secondly, and unlike the two large land councils, the TLC's jurisdiction was located entirely on land held by an Aboriginal Land Trust and therefore it was not necessary to lodge land claims nor to articulate and manage a strategic land claim program. Furthermore, the TLC jurisdiction has been almost completely devoid of interest by mining companies and, unlike the two large land councils, it has not been required to devote significant resources to administering the mining provisions of the Act. As a consequence of a comparative lack of administrative tasks to be performed under the legislation, the TLC has consistently performed its administrative functions within its financial allocation under ss.64(1) and subsequently has been able to provide grants to Tiwi Islanders from the surplus pursuant to ss.35(1) of the Act.

Two reports on the operations of the Land Rights Act were commissioned by the Minister for Aboriginal Affairs within the first four years of its operations. Turnbull was commissioned by Minister Viner in June 1978 to report on the impact of mining royalties on Aboriginal Communities in the Northern Territory. In the main, the Turnbull recommendations reflect the optimism of royalty income growth that flavoured much of the Act's financial policy development up to the late 1980s. Turnbull stated that royalty income from present and future mining operations would provide a basis for phasing out all the present operations of the Department of Aboriginal Affairs (DAA) (now the Aboriginal and Torres Strait Islander Commission (ATSIC)) in the Northern Territory. The timing of this could depend upon the development of new projects that produce royalties and rents for Northern Territory Aboriginals. With receipt of uranium royalties, the phase-out could occur within the next ten years. Turnbull recommended an immediate need to develop a strategy and schedule for a phase-out program (Turnbull 1980: 45).

In 1979, B.W. Rowland QC (a Perth lawyer) was asked to examine representations received by the Minister on the practical application of the Land Rights Act for the period 1976 to 1980.⁴ One of Rowland's major recommendations was that land councils be funded from the Commonwealth's Consolidated Revenue Fund (CRF) through the budgetary process rather than through a linkage with MREs. The main thrust of this recommendation was that land council funding should be seen to be independent and not directly linked to royalty type payments. Rowland's perception was that the land councils could be seen to have a financial interest in increasing the amount available to them and that could temper the objectivity of land council advice to the traditional owner (Rowland 1980: 54). Similarly, Altman (1983) advocated the use of direct and additional CRF flows to land councils when the 40 per cent was insufficient for land council administrative budgets. This suggestion was advocated in the context of ensuring the intent of the original Woodward model.

The most extensive and all encompassing review of the entire Act prior to the recent Reeves Review was undertaken by Justice Toohey. Toohey (1984: 109) examined the arbitrary method of distributing monies from the ABTA but was

unable to reach a satisfactory conclusion, noting that the issue was not an easy one to resolve. In respect to land council funding, Toohey, like Rowland, acknowledged problems in a system of funding based on mining royalties but also saw greater dangers in being dependent on grants from consolidated revenue. Hence Toohey saw no reason for any fundamental changes to land council funding from MREs.

Toohey did, however, note that one approach would be to amend the legislation in respect to areas affected, and reduce the percentage from 30 per cent to 10 per cent. He suggested that 50 per cent would then be available for distribution for the benefit of Aboriginals living in the Northern Territory. In effect, this would have been a regressive policy as there was already a 10 per cent allocation to areas affected by mining under the pre-land rights regime (Altman and Pollack 1998: 9). Another option would be to discard the notion of percentages and empower the Advisory Committee to determine, from year to year, the distribution of monies paid out of the ABTA (Toohey 1984:109). While Toohey favoured a reduction in the percentage distribution under ss.64(3) to ensure a more equitable distribution to Aboriginal people in the Northern Territory and to broaden the range of beneficiaries of MREs, he was very conscious of the impact on those associations already receiving areas affected monies. Some associations, such as the Gagudju Association, had already established projects, including commercial enterprises, which anticipated receipt of 30 per cent of MREs for at least the life of the mine. Without MREs income these associations would have been unlikely to survive.

Ultimately, Toohey suggested that the status quo be maintained but also suggested that the formula be reviewed in about two years time. Interestingly, the Review of the ABTA in the following year was not given a specific term of reference regarding the formula. Nevertheless, because of its wider ambit of addressing issues of ABTA distribution methods the Working Party canvassed the issue. The Working Party endorsed Justice Toohey's recommendation for a specific review of the formula and put forward possible options. These included:

- The pooling of all monies raised under ss.64(3) from which incorporated bodies could apply for funds for projects that diminish the impact of the disturbance of mining, thereby explicitly recognising a role of areas affected monies.
- That all ss.64(3) monies be paid to a 'new' ABTA, in actual effect discounting the regional compensatory nature of the payments. The existing royalty associations would have the same access to grants as other Aboriginal groups (Altman 1985: 246).

The Working Party eventually adopted the position that the original Woodward model should be strictly implemented. It took the view that the ABTA was intended to be a clearinghouse. The Working Party recommended the repeal of ss.64(7) and ss.64(5) and an amendment to ss.64(4) to guarantee that at least 30 per cent of MREs be paid to a proposed Northern Territory Aborigines Trust Account) to ensure it met the original intent of the grant function (Altman 1985: 248).⁵

There was something of a hiatus in respect to review and research of the Land Rights Act after the Toohey and ABTA Reviews due predominantly to a concentration of effort to implement amendments to the legislation based on the findings of the Reviews. The most significant of these amendments were to the mining provisions of the Act in 1987 where the new provisions set out clear rights and responsibilities of the land councils and mining companies and introduced conjunctive agreements whereby traditional owners either approved or 'vetoed' mining at the exploration stage. However, in 1989 Minister Hand initiated an examination of the financial situation and arrangements of the ABTA due to a number of political and administrative factors including the increased expenditure of the ABTA. A Working Party was established, with Mr Greg Crough as Chair, which reported in late 1989.⁶

This Crough Working Party identified a number of problems with the distribution of ABTA royalty equivalent income and noted that the real level of MRE income to the ABTA had declined by more than 30 per cent since 1982–83. At the same time the ABTA expenditure had increased significantly, particularly in respect to the provision of grants and discretionary payments to the land councils under ss.64(7). The Crough Working Party proposed that the two large land councils could recover costs associated with land claims and exploration licence applications in order to decrease the draw on discretionary funding. Furthermore, it was recommended that a moratorium be imposed on the ABTA grant functions to permit a re-assessment of the objectives and effectiveness of ABTA grants and also to assist the ABTA to accumulate a capital base (Crough 1989: 2). Notably, the Report recommended a specific review of the distributions under s.64 of the Act.

In the 1991 report of the Inquiry into *Mining and Mineral Processing in Australia*, the Industry Commission (IC) made a number of recommendations in respect to the proportional allocations under the Land Rights Act. While the Commission acknowledged that the intention of the distribution of monies under the ALRA was to spread the financial benefits from mining activity on Aboriginal land to the entire Aboriginal population of the Northern Territory it also cited the existing arrangements as clearly reducing the incentives for any one group to agree to exploration or mining on their land (IC 1991: 70). The Commission recommended that by increasing the share of MREs to traditional owners in areas affected from 30 to 70 per cent it would provide more appropriate incentives for traditional owners to make the 'best' land use decisions from their own and the nation's point of view (IC 1991: 71).

The Commission also recommended that land councils, as statutory bodies with functions and responsibilities conferred under Commonwealth legislation, should be funded from the Commonwealth Budget (IC 1991: 71). The Commission took the matter even further, commenting that since the taxpayer would then be paying for the administration of the land councils on top of the MREs, it considered that the Northern Territory Government, which receives the mineral royalties and gains most from mining, should shoulder some of the burden by funding a proportion of the MREs. The split between the Commonwealth and the Northern Territory Government's shares, could be negotiated in the context of the Grants Commission process (IC 1991: 71).

Two Reviews of the ABTA were undertaken by Walter and Turnbull a firm of Canberra Chartered Accountants in 1993 and 1995. The first of these Reviews was of the internal operations of the ABTA. The major focus of the second Review was on the viability of funds to sustain the ABTA's statutory obligations in the face of its volatile funding source (commodities) and increasing financial demands from land councils. In their first report Walter and Turnbull stated that:

The net assets of ABTA are under significant threat of complete diminution. Major reforms in the framework under which the ABTA and Land Councils operate are required. The lack of recognition by Land Councils and Advisory Committee of the intrinsic relationship of net assets of ABTA and the Land Councils assets and operations and the Advisory Committee's grant funding activities are key issues that need to be addressed in resolving the threat. The ABTA Secretariat cannot effectively control and protect the assets of ABTA, until Land Councils and the Advisory Committee recognise the above mentioned relationships in conducting their activities, or appropriate revisions to legislation are made to provide mechanisms of control (Walter and Turnbull 1993: 4).

Hence Walter and Turnbull recommended the need for the fund to accumulate capital to buffer any further or future potential declines in the receipt of MREs. The Walter and Turnbull (1993) analysis of the ABR suggested that a figure of \$64

million would be needed to ensure that the ABR became self-sufficient in providing for grants and that grants should be fixed at \$5 million per annum.

In response to the Crough Review and the findings of Walter and Turnbull, ATSIC implemented the Financial Management Strategy (FMS) in order to reverse the decline in the reserve. Implemented in the 1994/95 financial year the FMS was essentially an expenditure policy rather than an investment strategy.⁷ It was premised on 'freezing' land council administrative expenditure at 1993/94 levels, thus reducing the expanding draw on ss.64(7) supplementary monies. The strategy also limited expenditure of grants pursuant to ss.64(4) to \$5 million per annum and attempted to ensure that funds in the reserve would not drop below \$23 million. The large land councils argue that the FMS has restricted their ability to meet their functional responsibilities and has severely hampered the implementation of their regionalisation programs.

The origins of the most recent review of the ALRA can be found in the Federal Government's competition policy. However, Senator John Herron, Minister for Aboriginal and Torres Strait Islander Affairs, ordered the Reeves Review in response to calls primarily from the Northern Territory Government which have continually argued that the Act is largely unworkable (ATSIC 1998: 1). Indeed, Reeves' findings allude to similar unworkability. According to Reeves (1998: 350) the 30/40/30 distribution and the number of bodies involved (that is, land councils, royalty associations, ABR advisory Committee and ATSIC) has caused an unnecessary fragmentation of the administration of the ABR monies between all these groups. This fragmentation, Reeves suggests, is not conducive to the pursuit of a central policy in the application of the ABR monies. In order to remedy this situation, Reeves recommends that the Act be amended to clearly set out a policy objective for the application of ABR monies (Reeves 1998: 350).

A key feature of the Reeves' recommendations was the replacement of the current land council structure with a new regime of 18 RLCs, overseen by a new institution called NTAC. NTAC incorporates functions of the ABR and the social and economic program activities of ATSIC and the Northern Territory Government together with a number of other functions such as Native Title Representative Body operations. RLCs would inherit the bulk of functions currently undertaken by the current land councils together with responsibility for providing economic and social advancement programs to communities within their jurisdiction. The current proportional allocation is replaced by a discretionary regime undertaken by NTAC's appointed directors and determined annually. There is essentially no guarantee that groups or associations in areas affected by mining would receive MRE income from NTAC and the methodology for allocating the discretionary funds by the NTAC directors is left largely unresolved.

If public policy in the ALRA's financial framework is already based on illogical principles, then the Reeves' recommendations, if implemented, would make this even less logical. In particular, Reeves does not seem to comprehend that:

- it is impossible to keep the veto but not provide traditional owners with any guaranteed access to financial incentives. In such circumstances traditional owners will inevitably exercise the veto (Altman 1999);
- it is impossible to run 18 smaller land councils with enhanced statutory functions more cost effectively than the status quo (Pollack 1999); and
- it is not possible to destroy bedded down existing institutions and institutional arrangements overnight, at least not without a very persuasive argument and not without significant opposition. One lesson from history is that the funding provided to land councils from royalties has made them powerful political organisations.

Rather than focus on the question of socioeconomic advancement, which is arguably, the realm of other legislative mechanisms other than the ALRA, the Reeves Review may have been more effective if it had attacked the lack of logic in the existing framework as outlined earlier in this Working Paper. Nevertheless, Reeves' Report did two very useful things with respect to the ALRA's financial framework:

- it highlighted, like no previous reviewer, the vulnerability of Indigenous interests to negative evaluation of the ALRA's financial framework, especially in situations where the Federal Government is open to radical, unilateral and unsympathetic reform; and
- it showed that to improve the financial framework of the ALRA policy makers need to move beyond incrementalism and apply a reformist approach to establishing a new framework.

Considerations for a new financial framework

In respect to which 'entity' should receive either an enhanced or diminished proportion of the allocation, the maintenance or increase of the proportional allocation of MREs to areas affected is the easiest and arguably the more logical to sustain for the following reasons:

- traditional owners within an area affected actually make the decision on mining on *their* land;
- decisions on mining relate to traditional owner property rights and MREs are an obvious incentive to support mining;
- Aboriginal communities located in these areas affected by mining are amongst the most remote in Australia, not just geographically but economically, socially and culturally. For some communities the receipt of MREs may be the only development capital ever obtainable;
- there is evidence to prove that MREs have been expended in these remote regional economies; and
- the 'compensatory' nature of the payments is best sustained if paid to those people directly affected by mining operations.

A further issue is that any reduction to the current proportion to areas affected might have drastic results for some royalty associations. If changes were to be made, it is imperative that the existing financial obligations of royalty associations are examined thoroughly. Notably, most royalty associations have a diverse source of funds and would probably survive in one form or another relying on program assistance from ATSIC and other government agencies. However, those which have invested heavily, based on the assumption of continuing receipt of MREs, risk the loss of their major assets if 'area affected' monies are abolished or even reduced. Indeed this issue has the same relevance today. Organisations such as the Gagudju Association in Kakadu National Park have invested heavily in the regional economy. The recent financial problems confronted by Gagudju demonstrate the organisation's reliance on MREs to maintain its investments and its broader commitments to social program objectives (Altman and Pollack 1998: 9-10). The real problems that need to be addressed are not so much the proportional allocation to areas affected, although the current low allocation might be seen as an impediment to mining (see IC 1991), but in clearly determining the geographic limits of the actual area affected, the beneficiaries of resource development projects and creating proper and enforceable accountability mechanisms.

The funding of land councils, more specifically the funding of the two larger land councils, has attracted the most pronounced attention and criticism in the last

decade when compared to other entities that receive MREs. They have been subject to a high level of public scrutiny in Senate Estimate Committees and their financial operations have been under continual review in the annual estimates process. Any criticism of the land councils has been echoed by the Northern Territory Government due to the adversarial relationship that has evolved over the years. This criticism has led to a culture of constant monitoring and is partially responsible for the imposition of financial constraints.

On the other hand, the large land councils have continued to bid for additional funds and have argued that the imposition of the FMS restricts the land councils from fully performing their statutory responsibilities. But how relevant and sustainable is the land council argument? It is instructive to examine costs associated with two of the primary functional responsibilities of the land councils, namely land claims and mining. According to estimates of the Northern Land Council (NLC), each claim contested by governments costs on average around half a million dollars⁸ (Fletcher 1998: 5). As there are currently about 100 land claims to be completed this suggests that the financial resources required to complete the process could be potentially be very high. In respect to mining, the NLC calculates that it spends \$1.8 million a year, or 19 per cent of its total budget on mining and exploration, for which it recovers \$250,000 a year in user charges (Manning 1999: 70). Manning (1999: 71) notes that the Central Land Council (CLC) calculates that its current gross spending on mining and exploration amounts to \$1.45 million a year, which is 14 per cent of its operating costs. As there are no current mining tenements on the Tiwi Islands, and historically there have been few exploration applications in its area, the TLC spends little or nothing on mining. The Anindilyakwa Land Council (ALC) estimates that perhaps half of its total expenditure is mining-related (Manning 1999: 14).

So what proportion of ABR income should land councils receive? As already noted, significant financial resources will be required to complete the land claim process and the number of Exploration Licence Applications (ELAs) to be processed by land councils will be ongoing with cycles of peaks and troughs in the quantities to be processed. At the same time, the large land councils have considerable pressure on them to regionalise which requires further financial resources, and land councils also have a wide range of other statutory functions to perform than simply land claims and ELA processing. It would not be difficult for the land councils to draw up a list of resource requirements against their functions to demonstrate what needs to be done and how. Just like most Aboriginal institutions and organisations the resources are inadequate to comprehensively undertake all the tasks at hand. Hence, there appears to be a strong case for enhanced funding to land councils particularly if objectives are adopted to quickly finalise the land claims process, expedite ELA processing, develop existing Aboriginal land and permit the large land councils to embark on a program of full regionalisation.

A further dimension for consideration is the method of apportionment between each of the four land councils. Under the current model, the Minister determines the proportion of administrative funding to each land council based on populations as demonstrated in Table 3. This results in allocations to the NLC of 22/40, CLC of 15/40, TLC of 2/40 and of ALC 1/40. However this apportionment occurs only for the 40 per cent of MREs through ss.64(1). The actual apportionment of the quantum of administrative monies is far greater because the large land councils receive supplementary funding through ss.64(7). The apportionment of administrative monies to land councils can therefore be seen as a mix of guaranteed funding based on population together with a discretionary allocation based on administrative need as determined by the Minister.

Table 3. Estimated resident Aboriginal populations in each land council jurisdiction and allocations to each land council, June 1997

Region	Population	Percentage of Aboriginal population	Administrative fund allocation
NLC	30,070	58.9	22/40
CLC	17,522	34.3	15/40
TLC	1,989	3.9	2/40
ALC	1,507	2.9	1/40
Total Population	51,088	100.00	

Source: Strategic Planning and Policy Branch, ATSIC.

There is a potential dilemma if the proportion of guaranteed administrative funding to the land councils was to increase and a population apportionment retained. If the same population formula were applied under, for example, a regime that directed 50 per cent of MREs to land councils, the allocations would be in the order of: NLC 27/50; CLC 19/50; TLC 2.5/50; and ALC 1.5/50. The net effect would be increases to administrative budgets for the two small land councils and possible diminution of funding in real terms to the two large land councils as supplementary funding may not necessarily be available. Furthermore, the two small land councils currently operate within the restraints of the 40 per cent allocation and the TLC annually distributes a high proportion of its budget as a surplus. Any further increases to the smaller land councils may result in increasing this surplus. This may not be a desirable result if an increase in land councils' administrative allocations are supported and premised on improving land council operational outcomes.

To overcome such a deficiency, a model would need to be devised that directed MREs for administrative purposes based on operational activity rather than apportionment based purely on population. The current apportionment could be replaced by a process of assessment of operations and workloads similar to that recommended in the 1995 Review of Native Title Representative Bodies. Under such a regime, and in the context of the ALRA, operational activity would be assessed annually based on criteria such as land claims, ELAs and other functional requirements to be completed in any one year (see Table 4 for ELAs). An essential component would also be the extent of Aboriginal freehold land within each land council jurisdiction, given the land administration functions and potential land management role for land councils (see Table 5 for area of Aboriginal land in each jurisdiction). However, such criteria would also make provision for the population given the Acts emphasis on informed consent and the consideration of impacts on traditional owners and Aboriginal residence.

The above commentary assumes the continuance of funding to land councils based on MREs. As noted, a number of assessments of the Land Rights Act over the years have recommended direct funding to land councils from the CRF. The IC (1991: 71) suggested that land councils should be funded in the same way as other Commonwealth Statutory Authorities. Rowland (1980: 54) saw a potential conflict of interest for land councils because their income from royalty type payments is derived from mining operations when their functions require the land council to give objective advice to traditional owners as to whether mining should proceed. However, as traditional owners have similar financial incentives, and the informed consent provisions of the legislation provide satisfactory safeguards, a conflict of interest does not generally arise. Other arguments to promote direct funding to land councils from CRF address the uncertainty of the current funding system which is ultimately based on fluctuations in commodity markets and mineral production.

Table 4. ELAs and mines in each land council jurisdiction

Region	ELAs	Proportion Per cent	Mines
NLC	204	36.4	2
CLC	351	62.6	2
TLC	1	0.2	0
ALC	5	0.3	1
Total	561	100.0	5

Source: Northern Territory Department of Mines and Energy, March 1999.

Table 5. Area of Aboriginal land in each land council jurisdiction

Region	Area (km ²)	Percentage of Aboriginal land	Percentage of Northern Territory
NLC	166,358	29.3	12.3
CLC	391,643	68.9	29.1
TLC	7,768	1.4	0.6
ALC	2,500	0.4	0.2
Total Aboriginal land	568,269	100.00	42.2
Total Area	1,346,200		

Source: Northern Territory Department of Land, Planning and Environment, August 1999.

Reeves (1998: 349) addressed the question of the uncertainty in relation to ABR MRE receipts and argued for the retention of the current system regardless of its shortfalls. He commented:

There are good reasons for maintaining the historical link between the ABR's income and mining royalties that flow from mining on Aboriginal land. This link provides a unique and historical rationale for the payments. If this historical link is broken and the income of the ABR is linked to some other factor, it may only be a matter of time before the payments are discontinued because they do not have such a unique and historical underlying rationale (Reeves 1998: 349).

While these unique and historical factors provide a rationale to continue the payments, the current system of MREs payments provides the land councils with some autonomy from government budgetary considerations, a process that is not necessarily free from fluctuations in allocations to policy sectors. Overall, it would appear that there are enough factors to support the current system.

A possible alternative model is to maintain a statutory distribution and adopt the Reeves proposal to provide additional funding from the CRF to land councils specifically for the purpose of land claims. Reeves notes that a precedent exists in respect to similar funding arrangements to Native Title Representative Bodies. Such additional funding to land councils, would have a 'sunset' clause, like the land claim process itself but, nevertheless, would permit the land councils to diversify and refocus their MRE resources to operational activities such as land development and management rather than land acquisition. In addition, the repealing of the requirement to levy mining withholding tax on ABR expenditure would provide additional resources and permit an increase to the statutory guaranteed administrative funding without distorting the increase in favour of the smaller land councils.

As noted earlier, the notion of spreading the 'benefits' from mining Territory wide, rather than applying them to specific areas, originated in the Hasluck era. Although Justice Woodward substantially reduced the proportion from 90 per cent to 30 per cent he maintained the grant functions of the ABTF because he observed

that it worked well and had the confidence of Aboriginal people (Woodward 1974: 113). Indeed, the provisions of these grants are seen by Northern Territory Aborigines as being just as important today. However, during the formulation of the Hasluck and Woodward models, organisations such as the DAA and ATSIC did not exist. The latter is a representative Aboriginal organisation with discretionary powers to allocate monies to Aboriginal communities and reflects many similarities with the role of the ABR Advisory Committee. Essentially, during the formulation of the ALRA's financial framework in the 1970s the government commitment to providing mainstream and special programs to Aboriginal people on an equitable basis with other Australians was not as evident as it is today. These are policy shifts that have occurred in the last two decades. In fact, the operations of ATSIC may have contributed to the continuing decline in the allocation of grants by the ABR.

While the proportion of the allocation to areas affected has remained static, and those to the land councils, overall, have increased over time, the proportion made available to grants to, or for, the benefit of Aboriginal people residing in the Northern Territory has substantially decreased. Between the 1978/79 and the 1997/98 financial years, the proportion allocated to grants was 16 per cent as opposed to the 30 per cent recommended by Woodward (1974). Under the FMS, grants are currently capped at \$5 million (roughly 12 per cent of current ABR annual income) and have been for the last six or seven financial years. In more recent individual financial years, and in terms of actual annual expenditure, the proportion has dropped to as low as 2 per cent.⁹

A further complexity in terms of equity and balance arises in respect to the comparative application of mining monies between the ALRA and the *Native Title Act 1993*. Payments to Native Title Holders (NTHs) under the Native Title Act are explicitly compensation and are directed to NTHs or a prescribed body corporate within a specific area. This is comparable to the negotiated royalties under the ALRA. However, the statutory royalties prescribed in the Land Rights Act provide for wider beneficiaries than those within the area affected. In effect a NTH can be a beneficiary, by way of grant pursuant to ss.64(4) of the ALRA, from mining monies derived some distance from their land and at the same time potentially become a beneficiary of the native title compensation should mining take place on the NTH's land. There is no requirement for NTHs to distribute benefits Territory wide.

Notwithstanding these policy ambiguities, the abolition of grants from the ABR appears to be a politically sensitive issue and one that would be opposed by Northern Territory Aborigines. Indeed, this issue was raised in the recent House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry with the Chairman of the Committee alluding to the necessity to maintain a proportion of MREs to provide grants. However, the current allocation of \$5 million per annum could be met by existing policy mechanisms and outside a statutory regime that specifies an exact allocation. As Walter and Turnbull (1993) noted, with a base of \$64 million the ABR would be able to facilitate its current level of grant releases of \$5 million, as specified in the FMS, from investment interest. Given that the ABR's current accumulated assets are nearing \$50 million,¹⁰ the figure of \$64 million could be achieved by setting a moratorium on the grant function for a period of two to three years so as to permit the fund to grow from its current base to the level recommended by Walter and Turnbull. The proviso, in this context, is that land council funding is similarly constrained so as to achieve the financial goal of \$64 million.

The arguments we have outlined suggest an increase of funding to both areas affected and to land councils while ABR grants are seen as anachronistic. As a framework for negotiation we suggest that there should be an increase to areas affected in the range of 40 to 50 per cent which should be linked with enhanced internal and external accountability and the prevention of individual payments from

MREs (but with potential for compensation to traditional owners from separate negotiated agreements). Enhanced accountability measures would include:

- that funds transferred from land councils to areas affected associations are subject to mandatory monitoring by the land councils (which should, in turn, have a statutory requirement to report publicly on royalty association performance);
- the development of distribution mechanisms for monies and other profits based on association rules and published widely to members;
- negotiation of agreements with land councils to periodically develop alternative mechanisms for the receipt and distribution of all monies, and for the monitoring of such mechanisms; and
- negotiation of service delivery agreements with ATSIC, the Northern Territory Government and local governments, which clearly specify respective responsibilities (including funding) for service delivery within a region (Altman and Smith 1999: 18).

Land council funding could be enhanced to 50 per cent to 60 per cent and apportioned on operational criteria rather than population level. With enhanced funding, land councils would be able to focus on land management and development and to further their regionalisation strategies. Funding should continue to be paid out of the ABR from MREs receipts to maintain land council fiscal autonomy from the Commonwealth budgetary process. However, if a prime objective of all parties is the quick finalisation of outstanding land claims then additional funding to complete the claims process could come directly from consolidated revenue.

Further examination is required of the ABR's grant function in the context of its relevance within this area of public policy. Such an examination should be undertaken in the context of the responsibility of government in the provision of services to Aboriginal communities so as to ascertain whether such grants are a duplication or substitution of services. Furthermore, the relevance of these grants needs to be considered within the context of broader developments in Indigenous policy and the creation of Indigenous institutions in the last two decades.

Conclusion

This Working Paper has focused on the lack of logic within the ALRA's financial framework and has outlined the historical origins of the evolution of the framework. It is evident that the logic of the payment of MREs is largely unresolved and past assessments of the framework accept the historical rationale rather than test the logic or the lack of it. Nevertheless, some broad trends can be observed from the preceding analysis of past assessments of the framework and impacting events and reviews.

- There has been an acceptance by all reviewers that the concept of paying MREs to Aboriginal interests should continue (although some have argued that land councils should be funded in the same manner as other Commonwealth Statutory Authorities, notwithstanding the lack of logic within the current framework).
- Optimism in royalty growth, during the late 1970s and early 1980s, has been replaced by a relative decline in royalty income (in real terms) together with significant growth in ABR expenditure in the late 1980s and early 1990s. These developments have influenced policy development in their respective 'eras'.
- Amendments to the legislation and the implementation of financial policy and guidelines have continued to erode the original Woodward model.

- Many recommendations for reform or the restitution of the Woodward (1974) model have been set aside or overtaken by other events.
- Incremental change, rather than radical recasting, has been the mainstay of public policy developments within the ALRA's financial framework despite some radical recommendations for reform. (See Appendix 1 Table A1 which summaries in historical sequence, recommendations for change by past reviewers and commentators and the distribution policies implemented).

The rationale of public policy in the domain of the ALRA is mostly a hybrid of historical precedent, consideration of the interests of the Aboriginal people of the Northern Territory, and accommodating industry and the Northern Territory Government. Questions of logic have never been resolved. Indeed such questions are by no means easy to answer and have bedeviled policy-makers and reviewers since the enactment of the legislation in 1976. A standard response of many reviewers has been that a further examination of the proportional allocative model of the land rights regime be pursued in future years. To resolve these issues of logic requires one to first address a series of other questions such as: whether the payment of MREs is compensation or rent, or whether the payments are public or private monies. The overdue resolution of such questions would provide a clearer framework for the appropriate usage of the mining royalties derived from Aboriginal land and a clearer framework to construct appropriate accountability mechanisms.

Appendix A

Table A1. Summary of the allocative formula for MREs under the ALRA as recommended by past reviewers or implemented in policy and legislation

	Area affected (Per cent)	Land councils (Per cent)	Grants (Per cent)
ABTF (pre-land rights)	10.0		90.0 (includes loans)
Woodward	30.0	40.0	30.0
ALRA 1976 Statute	30.0	40.0 (maximum)	up to 30.0
ALRA 1979 Amendment	30.0	>40.0	<30.0
Rowland 1980		CRF ^c	
Altman 1983	30.0	40.0 + CRF ^c	30.0
Toohey 1983	status quo		
Altman 1984 (ABTA)	30.0	40.0	30.0
IC 1991	70.0	CRF ^c	30.0
Reeves 1998	Discretionary	Fixed at \$400,000 for each of 18 RLCs ^a . NTAC ^b partly funded from CRF ^c , partly MRE	discretionary

Note: a. RLC = Regional Land Council.

b. NTAC = Northern Territory Aboriginal Council.

c. CRF = Consolidated Revenue Fund.

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Notes

- 1 Notably, there has been only a very minor draw by the Aboriginals Benefit Reserve for its administrative expenses (at the most 0.5 per cent of its income over time) as government has covered its salary and running expenses.
- 2 It should be noted that on Groote Eylandt the CMS had already negotiated an extra royalty for surrender of mineral leases they acquired so as not a break with precedent, the traditional owners of the 1970s were the CMS of the 1960s.
- 3 In 1979, Mining Withholding Tax was at the rate of 6.4 per cent. Over time the tax has reduced to 4 per cent. Nevertheless, approximately \$20 million has been levied against ABR expenditure transactions in the 20 years of the operation of the tax. Notably, almost all reviewers of the ALRA have recommended the tax be abolished.

- 4 In effect this was a reasonably limited review but it addressed issues relating to Aboriginal land, mining, consent and compensation agreements, land councils, access to Aboriginal land and Northern Territory self-government.
- 5 A major recommendation of this Review was the re-casting of the ABTA as a separate statutory authority. Essentially the Working Party's recommendation was premised on the recognition of the two distinct functions of the ABTA: namely, as a clearinghouse and as a grant provider. The clearinghouse function was to be maintained under the DAA umbrella and renamed the Northern Territory Aborigines Trust Account. The new separate ABTA would solely address the grant function.
- 6 The agreed terms of reference were simply:
 - to develop strategies to address the current arrangements of the ABTA to ensure the effective functioning of Aboriginal organisations receiving funding from the ABTA under the ALRA;
 - to recommend ways to implement these strategies; and
 - to report to the Minister on the above (Crough 1989: 5).
- 7 The FMS was implemented under the previous Labor Minister (Tickner) and has been continued by the current Liberal Minister (Herron) with a review date in the year 2000.
- 8 As Fletcher (1998: 5) notes, land councils carry significant costs for land claims including litigation. Anthropological reports cost around \$500 per day (generally these take between 15 and 20 days) followed by a series of costly stages. The preparation of a case by administration, lawyers and anthropologists costs on average around \$25,000, followed by on-site proofings at an average of \$55,000, on-site evidence at an estimate of \$100,000 (depending on location), legal costs at \$35,000, staff costs at \$25,000 and evidence given at the site of the claim at around \$35,000 (Fletcher 1998: 5).
- 9 For example, the 1997/98 financial year (see Table 2). However, it should be noted that the Minister has actually approved a further \$11 million of grants which were yet to be processed by the ABR as at 30 June 1998. This amount comprised of \$5 million from the 1996/97 and 1997/98 financial years, and \$1 million from 1995/96 (ABR 1998: 11).
- 10 The ABR's accumulated surplus at the end of the 1997/98 reporting period was \$48,747,484 (ABR 1998: 6). It is anticipated that accumulated surpluses at the end of 1998/99 will be about the same.