



# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

14<sup>th</sup> Assembly

## LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

### Public Hearing Transcript

12.15 pm, Tuesday 12 March 2024

Litchfield Room, Parliament House

**Members:**

Hon Dheran Young MLA, Chair, Member for Daly  
Mr Manuel Brown MLA, Deputy Chair, Member for Arafura  
Ms Marie-Clare Boothby MLA, Member for Brennan  
Mr Steve Edgington MLA, Member for Barkly  
Ms Lauren Moss MLA, Member for Casuarina

**Witnesses:**

**Central Land Council**

Dr Josie Douglas: General Manager, Professional Services  
Kate O'Brien: Principal Legal Officer

**North Australian Aboriginal Justice Agency**

Phil Brown: Acting Chief Executive Officer  
Leeanne Caton: Acting Deputy Chief Executive Officer  
Charlotte Grover Johnson: Manager, Law and Justice Projects

## INQUIRY INTO A PROCESS TO REVIEW BILLS FOR THEIR IMPACT ON FIRST NATIONS TERRITORIANS

### Central Land Council

**Mr CHAIR:** Thank you for your time and coming today. On behalf of the committee I welcome everyone to this public hearing into a process to review bills for their impact on First Nations Territorians. I welcome via videoconference to give evidence to the committee from the Central Land Council: Dr Josie Douglas, General Manager, Professional Services; and Kate O'Brien, Principal Legal Officer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask the committee to go into a closed session and take your evidence in private.

Could you please each state your name and the capacity in which you are appearing?

**Dr DOUGLAS:** Dr Josie Douglas, General Manager, Professional Services, Central Land Council.

**Ms O'BRIEN:** Kate O'Brien, Principal Legal Officer, Central Land Council.

**Mr CHAIR:** Thank you. Dr Douglas, would you like to make an opening statement?

**Dr DOUGLAS:** Thank you, Chair, I would like to make an opening statement. I acknowledge that we are appearing today on Arrernte country. The Central Land Council is a Commonwealth corporate entity established under the Aboriginal Land Rights Act 1976. Through our council of 90 delegates directly elected by their communities, the CLC represents the interests and aspirations of approximately 20,000 traditional land owners and other Aboriginal people in its region. We have a range of responsibilities ...

[Technical issues.]

**Mr CHAIR:** I am not sure if you can hear me, but we have just lost you.

[Videoconference reconnected.]

**Dr DOUGLAS:** Can you hear us and see us?

**Mr CHAIR:** Yes, we can hear you. I am sorry about that. Would you like to start with the statement again, please?

**Dr DOUGLAS:** Sure. Thank you, Chair.

The Central Land Council is a Commonwealth corporate entity established under the *Aboriginal Land Rights (Northern Territory) Act 1976*. We have a council of 90 delegates directly elected by their communities. The CLC represents the interests and aspirations of approximately 20,000 traditional land owners and other Aboriginal people resident in our region. We have a range of responsibilities and our functions include protecting the interests of traditional owners and ascertaining and expressing the wishes and the opinions of Aboriginal people living in our region. Our roots are very much in the Aboriginal struggle for justice and land rights and this struggle continues today.

I now go to key points in relation to the interest of this inquiry. The CLC represents the rights and interests of Aboriginal people in Central Australia. Aboriginal people must have a say over matters that affect them. Legislation continues to be passed to the detriment of Aboriginal people and the rights and interests of traditional owners and native title holders. Legislative scrutiny mechanisms are common in most parliaments, particularly unicameral ones.

While they were imperfect, the scrutiny committees that existed during the 13<sup>th</sup> Assembly provided an important safeguard against poor legislation and a valuable means for stakeholders, including land councils and other Aboriginal organisations, to have input to legislation.

Given the absence of a House of review ...

[Fire alarm test.]

**Dr DOUGLAS:** We will wait while the alarm test happens. We will put you on mute.

**Mr CHAIR:** No problem. It has been a very eventful morning.

**Dr DOUGLAS:** With the permission of the Chair, I will continue.

Given the absence of a House of review in the NT parliament, the CLC considers that a minimum outcome of this inquiry should be the re-establishment of parliamentary scrutiny committees as essential mechanisms to improve the accountability and transparency of the legislature. This is consistent with basic, good governance and consistent with other unicameral parliaments in Australia and New Zealand.

In addition, we strongly recommend further consultation with the land councils, other Aboriginal representative bodies and community members to develop options for an appropriate body to review bills for their impact on First Nations Territorians specifically.

The design of a future body should be a shared decision between Aboriginal representative organisations and the government. It should take into account other processes, including work to develop an independent mechanism to support, monitor and report on the transformation of government agencies and institutions as part of the National Agreement on Closing the Gap and work to progress the treaty in the Northern Territory.

The CLC has not yet formed a position on a preferred body to review bills for their impact on First Nations peoples, but we have outlined some guiding principles.

Assessments of statements of compatibility with certain measures of self-determination and human rights, including the United Nations Declaration of the Rights of Indigenous People (UNDRIP) and Closing the Gap priority reform and socioeconomic targets could be incorporated in the review process.

Finally, whatever model may be adopted, a process to review bills for their impact on First Nations Territorians is not a substitute for early engagement with Aboriginal people and their organisations. The Productivity Commission Review of the National Agreement on Closing the Gap has highlighted the fundamental change that is still needed in the way that governments work with Aboriginal people.

Chair, we can elaborate on any of the points raised and provide further detail on each of the points as requested. Thank you, and I hand back to you, Chair.

**Mr CHAIR:** Thank you, Dr Douglas, for the opening statement.

Before we start, I remind committee members that we have a button in front of the microphone and the light needs to be red so that Hansard can pick up on our commentary and questions.

I now open the floor for questions.

**Ms BOOTHBY:** Thank you so much for joining us today to present to us and answer our questions.

I am curious about the scrutiny committees that you mentioned. I was wondering if you see that potentially as another level of scrutiny that could slow down any legislation that might otherwise give better outcomes, and therefore take longer to happen. Would that impact you?

**Dr DOUGLAS:** The preference of the CLC is that legislation is made following proper processes and that time is taken to adequately take on board the views and opinions of Aboriginal community members and their representative organisations. This is basic, good governance and we know that scrutiny mechanisms are common in most parliaments, especially unicameral ones.

**Ms O'BRIEN:** Thank you for the question. A recent example illustrates the time that can actually be saved through having proper scrutiny mechanisms. I draw your attention to the passage of the Burial and Cremation Bill that is now the *Burial and Cremation Act*. That highlights the perils of inadequate engagement with Aboriginal Territorians when drafting legislation and, in fact, the benefits of early engagement.

When the Burial and Cremation Bill was first introduced in 2019 in parliament, land councils and other organisations raised significant concerns that the bill did not respect Aboriginal laws and traditions in relation to burial practices. Subsequently, the bill was withdrawn from parliament.

The bill was brought before a scrutiny committee and it was in the public hearings of that scrutiny committee that these matters were identified. The Territory then proceeded to work with land councils and other key stakeholders through each stage of developing a new bill. This result was a collaborative

process and the legislation, the *Burial and Cremation Act*, met the needs of government while still respecting Aboriginal rights, laws and traditions.

That turnaround from draft legislation that was widely criticised through to the passage of an act with broad support shows what can be achieved through a collaborative approach. Yes, it did take a bit of time, but that time could have been saved if organisations like councils and other representative bodies had been engaged very early on in the process. If the NT had worked with those organisations in drafting the initial bill it is our view that significant time and government resources would have been saved and there would have been no delays to the process.

**Ms BOOTHBY:** Are you saying that if there was some engagement before the bill was introduced to parliament then that could significantly reduce the time for anything that needs to come up about it from the community's point of view?

**Ms O'BRIEN:** Yes. If there is sufficient engagement with organisations early on in the process then those concerns are addressed as part of the formation of policy rather than at a very late stage where people seek to delay introduction or passage of the bill.

**Ms BOOTHBY:** Do you have another example of when there was engagement before a piece of legislation was tabled, where you had really good engagement and it was able to be implemented by the parliament successfully?

**Ms O'BRIEN:** The Burial and Cremation Bill is an example of how legislation was introduced and then withdrawn and engagement then happened properly. Ideally, that would have happened before the first bill was introduced, but it did happen in the end.

**Mr CHAIR:** Given the balancing out of the business of the Legislative Assembly and the need to conduct it in a timely manner in terms of introducing bills, what would you consider an appropriate time frame for the review of bills that would impact First Nations Territorians?

**Ms O'BRIEN:** The impact of the legislation itself needs to be factored in when answering that question. For some bills the impact upon Aboriginal Territorians is likely to be much less and so a much shorter time frame would be needed. For bills which would have a very significant impact a reasonably fulsome time period is required.

Any committee that is set up in order to scrutinise legislation would need to be able to call for and receive submissions, to hold public hearings and to take evidence from witnesses and engage technical expertise as required. We acknowledge that process does not happen overnight, but it is essential in order to make sure that the legislation is appropriately balanced and takes into account the needs of First Nations Territorians.

As happens in Queensland, a report from a scrutiny committee may be issued as to whether amendments should be made. Committees generally have between six weeks and six months in order to report on a bill, and in most cases we understand that process takes around about two months.

**Mr EDGINGTON:** I am interested to hear more about early engagement in the development of legislation. You mentioned the *Burial and Cremation Act*, which, as you said, the first bit of legislation was withdrawn. Then there was consultation and the new bill went through parliament pretty quickly after that engagement. How often is the CLC engaged in the development of legislation? Can you give an example of when that last occurred?

**Dr DOUGLAS:** I will make some comments and then pass to Kate to give some examples of pieces of legislation we have engaged with over the last six months, so recent examples.

Given the absence of a review in the NT parliament, we consider that at a minimum, the outcome of this inquiry should be the re-establishment of a form of parliamentary scrutiny committee or committees as an essential mechanism to improve the accountability and transparency of the legislature.

A legislative review mechanism alone is not sufficient. It is not a substitute for early engagement with Aboriginal people. However, the absence of any guaranteed opportunity for input to the legislative process compounds the challenges that Aboriginal people and organisations face in having our views heard, particularly when the government is not meeting its commitments to consultation and partnership made in the National Agreement on Closing the Gap.

To go to some specific examples, I will now hand to Kate.

**Ms O'BRIEN:** I will talk through four different examples. Of these, they are not going back into history; they are from the last six months. In fact, two of them have not even passed parliament yet. The first two examples are where consultation has taken place, but the input from organisations like the Central Land Council has been effectively ignored.

The first example is the Environment Protection Legislation Amendment (Mining) Bill and the Legacy Mines Remediation Bill. The Central and Northern Land Councils made a detailed joint submission to the Territory identifying flaws in both bills, particularly how those bills would impact differentially and disproportionately on Aboriginal people.

A draft submission was provided on 19 September 2023. Final submissions were provided on 13 October 2023. The bill was introduced to parliament less than two weeks later. Parliamentary drafting is not a quick process and to take those submissions into account, that is an incredibly short time frame. The legislation then passed parliament on 28 November 2023, and the concerns raised by the land councils had not been adequately addressed.

There are other examples where consultation takes place but the period of consultation is too brief, based on limited information or occurs at a time that is culturally inappropriate for the land council to conduct meaningful consultations with traditional owners. The example I give here is the Livestock and Other Legislation Amendment Bill 2024, which I understand is up for consideration this week.

That was released for public comment on 11 December 2023, with submissions due on 11 January 2024. That comment period, one month over summer, is too short to allow meaningful engagement. It took place over summer, while cultural business was occurring in communities and while staff representing the organisation were on leave.

The CLC anticipated the difficulty this would cause and, before the release of that public consultation, wrote to the minister and asked that this bill be put on hold to allow for meaningful consultation to occur early in the new year. That request was ignored. Not only was the consultation period too short and at an inappropriate time, but it appears that the submissions that the Central Land Council made were yet again ignored. The bill was introduced to parliament a month later and the substantive submissions that the Central Land Council had made were not taken into account, and significant concerns remain with that legislation.

A final example is the reform to the Territory's mineral royalty scheme. Royalties paid to the Territory for mining on Aboriginal land are critically important to Aboriginal Territorians who benefit directly and indirectly from the payment of royalty equivalent amounts into the Aboriginals Benefit Account under the Aboriginal Land Rights Act of the Commonwealth Parliament.

The Central Land Council and the Northern Land Council repeatedly sought data ...

[Fire alarm test.]

**Mr CHAIR:** That is okay; we will wait for the fire alarm test to finish.

**Ms O'BRIEN:** It appears to have halted for now. I will keep going unless the fire alarm continues.

The Central and Northern Land Councils repeatedly sought data and modelling from the Territory about the impact that this proposed royalty change would have on the Aboriginals Benefit Account. Without that data it is impossible to properly assess how the reforms would affect Aboriginal people in the Territory. In the early stages of consultation that data was promised. However, it was never provided. As a result the CLC was only able to provide high-level in-principle comments and we still remain uncertain as to the impact of that legislation on people who are going to be directly and indirectly affected by it. It appears that the impact of the legislation will disproportionately impact upon Aboriginal Territorians, but we are not able to quantify that because of the lack of information available.

It also appears that the desire to see the new scheme commence on 1 July 2024 takes precedence ...

[Fire alarm test.]

**Ms O'BRIEN:** We have just been given the all clear.

It appears that a desire to see the new scheme commence on 1 July 2024 took precedence over consulting fulsomely with the Aboriginal people who are going to be directly affected by changes to the scheme through the impact it will have on the Aboriginals Benefit Account.

To reiterate, these are four examples from the last six months. They are examples where the Central Land Council on behalf of its constituents has had things to say about critical legislation that has been

mooted in some cases for many years but is being rushed through in the last sittings before the election. Some of the bills have not passed parliament yet ...

[Fire alarm test.]

**Ms O'BRIEN:** Hopefully that will be the last interruption. I will leave it there, unless you have more questions about those examples.

**Mr EDGINGTON:** Thank you for providing those examples. If there was a scrutiny committee, in your submission you have suggested that there should be a body to either participate in that scrutiny committee or assess legislation potentially to either be part of that scrutiny committee or assess legislation on their behalf. What would that body to conduct the review look like?

**Dr DOUGLAS:** Certainly we support such a mechanism, given that Aboriginal Territorians represent 30% of the population in this jurisdiction. I can say that we have not yet formed a position on a preferred body to review bills for their impact on First Nations people. Our policy positions are always directed by our 90-member council, and the timing of this inquiry has meant that CLC has not been able to consult council for their views on the preferred way forward with the respect to a future body.

However, based on the views articulated by our council over many years, we have put forward principles that should guide the development of such a body. These are that the development of the body must be done in consultation with land councils, other representative organisations and Aboriginal communities; and the design of the body, the mechanism, should be a shared decision between Aboriginal representative organisations and the government. The body must be Aboriginal led; it must be empowered to have a meaningful impact on the legislative process; parliament must be required to give proper consideration to all recommendations made by the body; and if recommendations are not implemented, parliament must be required to explain why.

As I already noted, the New Zealand recommendations made by the majority of the committee and agreed to by the House, and amendments recommended unanimously by the select committee, are adopted as part of the bill for its second reading.

Furthermore, this mechanism must be adequately resourced and empowered to carry out consultations with Aboriginal people likely to be affected by the bill. Consideration needs to be given to how it works alongside representative bodies, in particular land councils, given their statutory representative functions. It should serve to strengthen commitments to Closing the Gap in the NT.

The model needs to be sufficiently flexible to accommodate review of bills across a broad range of subjects, with the ability to call in subject matter experts. There must be sufficient opportunity for Aboriginal people and their representative organisations to provide input.

There may be value in requiring departments to draft statements of compatibility against specific measures of self-determination and human rights instruments, including the rights contained in the *Aboriginal Land Rights (Northern Territory) Act*, the *Native Title Act* and the UN Declaration of Human Rights. However, to be effective, this process should guide the development of legislation, with departmental staff considering the requirements of the statement at the start of the process of drafting legislation. The review body should be empowered to critically assess whether it agrees or disagrees with the draft statement and make recommendations as to any further work required to meet the measures.

This inquiry should be a starting point for further consideration of this important matter. We strongly recommend further consultation with the land councils, other Aboriginal representative bodies and community members to develop options for a body that can appropriately assess and provide advice to parliament on the impact of legislation on First Nation Territorians.

**Mr CHAIR:** Member for Barkly, I am conscious of the time. We will come back to you. I believe the Member for Casuarina has a question.

**Ms MOSS:** I do, along those lines. Noting that you also suggested in your submission and just now that there would need to be further conversation and consultation about the development of any review body and what that looks like, do you have an initial view on how a review body of some description would work most effectively with representative bodies like yours?

**Dr DOUGLAS:** I start by referring to the Productivity Commission and its recently released report on the three-year review of the Closing the Gap agreement. It points to fundamental principles about how government has fallen well short of its commitments made. The recommendations that are most

pertinent to this inquiry are that power needs to be shared and mainstream government systems and culture needs to be fundamentally rethought.

As the report states, governments have not fully grasped the scale of change required to their systems, culture, operations and ways of working to deliver their unprecedented shift they have committed to in the agreement. It also points to stronger accountability needed to drive behaviour change. These themes accord with the CLC's experience of the implementation of Closing the Gap in the NT.

I also acknowledge the hard work of the Office of Aboriginal Affairs.

Those three principles feed directly to the importance of a scrutiny committee on legislation that will have impacts on Aboriginal Territorians.

**Ms O'BRIEN:** The role of the scrutiny committee and representative bodies like land councils is complementary. The four land councils have functions that are enshrined in Commonwealth legislation, and they include protecting the interests of traditional Aboriginal owners and other Aboriginal people interested in Aboriginal land, and ascertaining and expressing the wishes of Aboriginal people as to the management of Aboriginal land and legislation concerning that land.

Not only is the legislative mandate for advocacy for bodies like the CLC clear, but the governance of the CLC itself means that 90 Aboriginal elected delegates convene regularly to talk about matters that affect their lives and communities. Those delegates frequently express views and reach consensus about government policies and how those policies will impact upon them. That direction, leadership and clarity of position should be valued for the input it can provide in policy development and the consideration of legislation that may come before the parliament.

Governments of all levels and persuasions should welcome such expert advice at an early stage, even before the legislation is drafted. Unfortunately, at the moment that does not always occur. We have already talked about some examples of savings and efficiencies that could be made if representative bodies like land councils were engaged early on, rather than at the late stage when legislation has already been introduced to parliament.

To reiterate, we see the roles as complementary rather than completely overlapping or distinct.

**Dr DOUGLAS:** I will further add that it should go without saying that Aboriginal people are experts in our own lives. Sadly, however, in this country it does not—the principle that Aboriginal people know what they need and should have a say in matters that affect them was a simple principle that underpinned the Voice to Parliament. This inquiry is an opportunity to explore what options exist to ensure that Aboriginal people's voices are heard and their rights upheld when laws are being made.

Again, we emphasise that the involvement of Aboriginal people in the policy process should not be limited to the review of bills. We need to be engaged from the outset, our expertise sought and our views respected and acted upon.

**Ms MOSS:** I have a question in regard to recommendation 11, which was your recommendation about evaluation of a review body, should the parliament adopt one. I know this is probably a challenging question, but should the parliament adopt a review body of some structure, what would you think the appropriate point to evaluate that and how it is working?

**Ms O'BRIEN:** The first point to make is that review process would need to be done in conjunction with Aboriginal organisations and people, for whom this committee is designed to be of benefit. The discussion we have had so far today has emphasised that the CLC has outlined points to do with the principles for establishing that body, and that body needs to be a co-designed process in partnership between Aboriginal organisations and people and the parliament.

The review process definitely needs to be incorporated in order to ensure that it is working effectively for the people whom it is intended to benefit, but the period of that review ought to be captured in the design process. Rather than us giving a number now we would suggest that it be factored into the design of the body itself.

**Dr DOUGLAS:** It goes to the guidelines in terms of what constitutes best practice, and best practice always to our mind incorporates a review process. It is like a health check to see if things are on track and progressing as they should be to the needs and wants of all parties.

**Mr CHAIR:** Are there any further questions? I note the time is 12.50 pm. We have to hear from NAAJA next and we need to get back to sittings.

**Mr BROWN:** Given the size of the jurisdiction and obviously engaging with the other land councils there are language barriers and all that sort of stuff, I was interested in your comment on consultation fatigue, getting the message out, and how you will go about getting everyone on side when you are pushing for this?

**Ms O'BRIEN:** Part of the Central Land Council, and in fact all of the land councils' roles, is to consult with traditional owners and people who may be affected by any legislation or proposals to do with Aboriginal land. Consultation is a very important part of the work that we already do. It is something that land councils have expertise in and if we were consulting about this proposal our first port of call would be to consult with the governance body of the council itself. The land council is the 90-member land council; they are elected delegates from each of their communities and they are the ones who set the policy direction for the land council itself.

**Dr DOUGLAS:** Thank you, Kate. I further add—I am aware of the time—to make the point that consultation fatigue occurs when people are asked for their advice and this very advice is ignored. It happens too when bureaucrats or consultants engaged do not do their homework. Too often information is sought from communities that has already been documented, but one part or level of government is not talking to the other, or a new government wants to put its own stamp on a policy and program initiated by a previous government. Too often communities give their time and expertise only for that advice to be ignored and not acted upon.

An example of this is the Royal Commission into the Protection and Detention of Children in the Northern Territory. It involved 54 days of public hearings, including 13 public community meetings across the Territory attended by more than a thousand people. It made more than 200 recommendations. The NT Government accepted these recommendations and released its five-year implementation plan. The plan Safe, Thriving and Connected was supposed to be completed by 2023. Here we are in 2024 and a number of key recommendations, including the closing and replacing of Don Dale, the introduction of family group conferencing and the introduction of a single act for children and young people are not complete, and in the case of a single act do not appear to be intended to be implemented.

These are the matters that go to consultation fatigue. I can also point to the work of the Treaty Commission. It undertook an extensive consultation process that culminated in the development of a detailed, carefully thought through pathway for treaty for the NT. The NT Government's response was wholly inadequate, releasing a short statement on 29 December 2022, and there is something to be said about government releasing statements around the Christmas break time.

The Treaty Office was shut down. There were calls for further consultation rather than taking steps to substantially advance with the four NT land councils and representative bodies the recommendations of the Treaty Commissioner's report.

There are some examples of consultation happening and they are not being listened to, being ignored or putting out statements over the Christmas break.

**Mr CHAIR:** I believe we have one or two more questions from the Member for Barkly.

**Mr EDGINGTON:** Yes. I want to ask a couple more questions about a body to conduct legislative review. My understanding is that APO NT is the peak organisation representing all peak Aboriginal organisations, including the CLC. Where would you see APO NT in the context of a review body?

**Dr DOUGLAS:** The CLC is a founding member of APO NT. We currently remain a member in terms of the important work of APO NT. As has already been articulated, the roles of representative bodies such as the land councils and the peak such as APO NT would be complementary to this parliamentary review mechanism or body.

**Mr EDGINGTON:** When you say 'complementary', would a review body include APO NT or would the review body be separate or again?

**Dr DOUGLAS:** APO NT is a standalone alliance of members. It would be able to put forward its views to whatever body that is established, as would be the case for the land councils and the CLC putting forward views.

**Mr EDGINGTON:** Would APO NT, as a peak body, not be able to seek feedback from organisations such as yours, being the CLC and other members of APO NT, to be able to put a collective view back to a review body?



**Dr DOUGLAS:** APO NT, speaking to its membership, would certainly be able to put a view into whatever scrutiny mechanism is put in place.

**Mr EDGINGTON:** In addition to CLC, or would CLC be part of that collective position put forward by APO NT?

**Dr DOUGLAS:** The alliance would work in that it would be a joined-up approach. The views of APO NT reflect its membership, and the CLC is a member. Of course, there are matters the CLC would lead on in terms of matters to do with land, the *Aboriginal Land Rights (Northern Territory) Act*, the *Native Title Act* or significant pieces of legislation that have Aboriginal land rights and native title interests. At the centre of it, CLC would certainly be putting forward our view on those pieces of legislation.

**Mr EDGINGTON:** That is exactly what I was thinking. Being a peak body there would be members which would have a specific interest in different parts of legislation. Would it be appropriate, in your view, for APO NT to either be a review body or provide feedback on behalf of the peak organisations in regard to the review or scrutiny of legislation impacting on Aboriginal people?

**Dr DOUGLAS:** APO NT—the Aboriginal Peak Organisations NT—is a policy and advocacy alliance. What you are suggesting would need to be considered by the governing group of APO NT.

**Mr CHAIR:** We are running out of time, Member for Barkly, so I will ask that this be your last question.

**Mr EDGINGTON:** Going back to a couple of questions before, you indicated that you need further time to consult with your elected members. How much further time would you need to consult with them to form an overall position in regard to what a review body would look like?

**Dr DOUGLAS:** We have not had a council meeting in the new year period; we have our council meeting coming up. Our council meets three times a year and we have a monthly executive meeting to consider matters as required. We would need to take this to our council meeting that is coming up next.

**Ms O'BRIEN:** For a major policy like this one, it is important that it goes before the Central Land Council, so the 90-member council rather than just staff, which is what we are talking about here—we are drawing upon guidance previously given by council—or before the executive committee, which is a subcommittee of council.

Furthermore, Josie talked about consultation fatigue previously. If this were to be a serious proposition, it would need to be seriously considered by council, and their views would need to be listened to in order to avoid that consultation fatigue.

**Mr CHAIR:** We have run out of time; we have actually gone over time.

**Mr EDGINGTON:** I have lots of questions.

**Mr CHAIR:** I understand that, but we have run out of time. If there are any further comments from the CLC, send them through to Julia and we will make sure that is added to the report.

I thank Dr Josie Douglas and Kate O'Brien for attending today on behalf of the Central Land Council, and acknowledging Central Land Council to push for a public hearing. We thank you for this important work.

---

The committee suspended.

---

### North Australian Aboriginal Justice Agency

**Mr CHAIR:** On behalf of the committee, I welcome everyone to this public hearing into a process to review bills for their impact on First Nation Territorians.

I welcome to the table to give evidence to the committee from the North Australian Aboriginal Justice Agency Phil Brown, Acting Chief Executive Officer; Leeanne Caton, Acting Deputy Chief Executive Officer; and Charlotte Grover Johnson, Manager, Law and Justice Projects. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast on the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and take your evidence in private.

Could you please each state your name and the capacity in which you are appearing?

**Mr Phil BROWN:** Phil Brown, the Acting Chief Executive Officer of NAAJA.

**Ms CATON:** Leeanne Caton, Acting Deputy CEO of NAAJA.

**Ms GROVER JOHNSON:** Charlotte Grover Johnson, Manager of Law and Justice Projects at NAAJA.

**Mr CHAIR:** Would you like to make an opening statement?

**Ms CATON:** Yes, please, Chair. I will start by acknowledging that we are meeting on Larrakia country and pay my respects to elders past, present and emerging. I also acknowledge the other Aboriginal people in the room—the Members for Arafura and Daly—and the rest of the members.

This is my third week in the role as Acting Deputy CEO. We have our Acting CEO and Charlotte is day two at NAAJA. This is our test. I will start my opening statement.

The North Australian Aboriginal Justice Agency—NAAJA—provides high-quality, culturally appropriate legal aid and justice services to Aboriginal people throughout the Northern Territory. We are the largest provider of legal services in the Northern Territory and play a leading role in policy and law reform in areas affecting Aboriginal people's legal rights and interests.

NAAJA was formed in February 2006, bringing together the Aboriginal legal services—in Darwin, North Australian Aboriginal Legal Aid Service; in Katherine, Katherine Regional Aboriginal Legal Aid Service; and in Nhulunbuy, Miwatj Aboriginal Legal Services. Since 1 January 2018, NAAJA has provided legal services for the southern and central regions of the Northern Territory formerly provided by the Central Australian Aboriginal Legal Aid Service—CAALAS.

NAAJA and its earlier bodies have been fighting for the rights of Aboriginal people since their establishment. NAAJA's key vision is to achieve true justice, dignity and respect for Aboriginal people. We represent and assist Aboriginal adults and children throughout the continuum of the justice system.

NAAJA's experience in providing legal services informs our approach to law and justice on broader justice issues for Aboriginal people. We speak with authority and credibility on Aboriginal justice issues because we work on the ground alongside Aboriginal people and communities.

NAAJA is a party to the Northern Territory Aboriginal Justice Agreement 2021–2027 and is also a member of the APO NT governing group.

While NAAJA welcomes this inquiry into a process to review bills for their impact on First Nation Territorians, its terms of reference do not go far enough. Unfair, discriminatory, paternalistic laws which disproportionately impact Aboriginal peoples and laws which fail to protect Aboriginal peoples from discrimination and exploitation have repeatedly been made in the absence of, or without due consideration of, the voices of the very people they will impact.

Time and time again NAAJA has seen successive Northern Territory Governments pass laws that lead to broken lives and broken promises, authorise the removal of Aboriginal children from their families, displace Aboriginal peoples from their lands and waterways and deny Aboriginal people the right to practise their traditional laws and customs. Many of these laws have been made under the guise of the protection, or in the best interests, of Aboriginal people in communities. As a result many laws have not only been ineffective in improving the health and wellbeing of Aboriginal peoples and their social, political and economic status, they have resulted in the continued control and marginalisation of Aboriginal peoples in the Northern Territory.

Viewed in this context the terms of reference for this inquiry are unduly narrow in focusing only on a process to review bills introduced into the Assembly for their impact on First Nations Territorians. The Northern Territory Government has told Territorians that it supports the Uluru Statement from the Heart and it is time that the Northern Territory Government hears Aboriginal peoples on matters that directly affect them through the establishment of a Northern Territory Aboriginal Voice or

representative body or statutory authority. The Northern Territory should commit to a body that generally seeks to hear the voices of Aboriginal peoples in the Northern Territory.

Aboriginal people are left out of the process of making laws in the Northern Territory, basically. This is despite the laws often having the most intrusive and damaging consequences for our people. Including Aboriginal people in the development of legislation supports Aboriginal self-determination, is in line with government's commitment on Closing the Gap and respects the dignity, experience and wisdom of our people. As we saw in the development of the burial and cremation legislation, engaging with Aboriginal people early and in genuine partnerships can also contribute to high-quality legislation as well as saving the government valuable time and money.

We support the formation of this body. NAAJA supports this proposal to establish a process to review bills to assess their impact on First Nations Territorians. Aboriginal people know what is best for them and what they need to improve their lives.

As many others have already said, NAAJA wants to see Aboriginal people engaged and consulted throughout the whole process of legislation development, not just once the bill has been introduced to parliament. We do not just want to wait until the legislation has been drafted to hear about changes. We want to be involved when the proposal comes forward and throughout the drafting and development of the legislation.

We prefer a statutory body made up of First Nations Territorians over an advisory committee. The important part is that whatever form this body takes it needs to have teeth.

If this body is formed it is important that the decision about whether a bill will have an impact and be referred to the review mechanism is made separately from the government. As we wrote in our submission, it is not for the government to decide whether a bill will have an impact on First Nations Territorians. That question should be determined by an Aboriginal-led decision-making forum as part of a staged process as recommended in the CLC and NLC written submissions.

The body should also have a role in the evaluation of legislation. We support the NLC and CLC submission which also recommends that legislation be evaluated once it has become operational. Based on past experience that even where there is high-quality well drafted legislation in place, this legislation is not always implemented faithfully and in line with its intention. This is particularly in the case of the child protection systems and in NT policing practices where our lawyers commonly find that NT Government decision-makers are not making decisions in accordance with legislation.

I will give you another example. Three months before the alcohol restrictions were to be lifted across the Northern Territory the NT Government met with the APO NT governing group and sought advice as to whether to lift the alcohol restrictions. APO NT made a strong recommendation to absolutely not lift the alcohol restrictions and they went ahead and lifted them anyway. The difference between advisory and statutory authority makes all the difference.

For this reason we consider the body may benefit from having some powers to evaluate where the legislation is working as intended after it has been passed by the House, and then making recommendations to government to address problems with the operation of the legislation.

The Productivity Commission's final report on the progress of the National Agreement on Closing the Gap tells us clearly that the status quo is not working. Closing the Gap indicators are going backwards in the Northern Territory and we need a much stronger approach. The development of an independent body of First Nations representatives to oversee the development, drafting and preparation of legislation would be a positive step to achieving a stronger voice and better lives for our people.

Thank you for your time. We appreciate the opportunity to present at this public inquiry and welcome any questions you may have.

**Mr CHAIR:** Thank you, Leeanne, for your opening statement. I now open the floor for questions.

**Mr BROWN:** You stated that this body needs some teeth to present to parliament. In regard to representation and membership, and I am thinking about the remote mob, how will members be selected to be on this voice?

**Ms CATON:** We just had the opportunity to listen to the Central Land Council's presentation, and we actually echo their processes that speak to the representative bodies on the ground—that is, their

members. We are a member of the governing group of APO NT and would support those consultation protocols.

We absolutely agree with the issue of consultation fatigue, which Dr Josie talked about. Our people are consulted on numerous things. In a community, sometimes government people are called seagulls—fly-in, consult, fly-out. A lot of Aboriginal people see that as a tick-a-box approach now, because there is a train of thought that the consultation is not genuine and that it is ticking a box, that people give their information freely, with goodwill, and that nothing is ever done, there is never any feedback and the lid is never closed.

It needs to be done by Aboriginal people for Aboriginal people, and ensuring we get right down to the grassroots for our people to understand. Whether that includes involving an interpreter service, we do whatever means it takes to ensure there is a mutual understanding of what we are talking about.

**Ms MOSS:** In your opening statement and your submission, you talked about the function of reviewing bills being too narrow for what we are talking about here. Are there other formal functions you think it should have? What is the scope of that from your perspective?

**Ms CATON:** Being too narrow—this is one area, reviewing legislation; we are asking to have input into the development, from the concept that needs to be developed, right through to development, implementation and evaluation. It is like a selection panel; you do not come in just to do the interviews, but you are involved from the start and see the process right the way through.

**Mr CHAIR:** Do you have any further questions, Member for Casuarina?

**Ms MOSS:** No, but just for clarity, you are talking about part of the legislative ...

**Mr CHAIR:** Sorry, Member for Casuarina. We have just been advised that Hansard did not pick up the answer.

**Ms CATON:** In response, we were talking about the scope being too narrow. We were suggesting that this body we are recommending be formed not just to review legislation once developed; we are talking about being around from the outset so there has been consultation and agreement that there needs to be some legislation or a bill developed, that people need to be involved in the development, the drafting, the implementation and the monitoring and evaluation—throughout the whole process, not just coming in at the last moment when it needs to be reviewed.

**Mr EDGINGTON:** I am interested to explore this review body a bit further. What type of bodies currently exist in the Northern Territory, particularly in regard to Closing the Gap? Is there a body looking into those issues?

**Ms CATON:** There is the Aboriginal Peak Organisations Northern Territory, whose governing group consists of, as Dr Josie said, the four land councils, AMSANT—the Aboriginal Medical Services Alliance; NAAJA; the Northern Territory Indigenous Business Network; and some work is being done to establish a peak education body to sit on that governing group.

The answer to your question is APO NT. You have the governing group and then the policy section. They would normally collate all the feedback they get from the individual members of the governing groups after consulting with their own agencies, and then collate a response to government. They are around in a policy and advocacy role at the moment, but in my view particularly, and I believe would be NAAJA's view, they do not have the capacity to take it to the next level, which is what we are talking about—a statutory authority or entity that works with legislation.

**Mr EDGINGTON:** But if they had more resources they could do it; is that what you are saying?

**Ms CATON:** Possibly, if they had more resources and were restructured, that would be an option.

**Mr EDGINGTON:** There would be a role for each organisation that makes up APO NT to go away and do their own consultation, would there not?

**Ms CATON:** That is what happens. Each individual governing group member consults with their agency and members. As Dr Josie said, they have 90 members of the CLC council, which then consults with them. It would be the same with the other agencies that are members of APO NT, where the feedback goes to APO NT, the responses are collated and provided to wherever they are supposed to be.

**Mr EDGINGTON:** Is there a government-controlled committee at the moment, looking at Closing the Gap targets and the Aboriginal Affairs Strategy? Is there a body already doing that work?

**Ms CATON:** APO NT is represented on the department of the Chief Minister's Closing the Gap committee, but I do not believe there has been a meeting for some time.

**Mr EDGINGTON:** Is that a committee?

**Ms CATON:** It is not really a committee; it is a working group.

**Mr EDGINGTON:** What is their role?

**Ms CATON:** They look at the reports that come in from individual NTG agencies in relation to compiling their Closing the Gap report on an annual basis. They were to meet—I could be wrong as I have been out of that space for some time—quarterly, and then they would meet just prior to the Closing the Gap report going to Canberra. DCMC would collate all the government's responses to their areas of Closing the Gap. It would go to the working group to be endorsed or not endorsed, then put into a report to go to Canberra.

**Mr EDGINGTON:** So, the working group that includes APO NT would then go away and consult with all its members to give feedback on whatever report it is, and NAAJA would go away and talk to its stakeholders, so there would be a whole lot of work going on in the background, to report back on how Closing the Gap targets are going. Is that right?

**Ms CATON:** Correct. That is from APO NT's perspective, and NTG would do the same with their individual agencies through a Cabinet process.

**Mr EDGINGTON:** There is a fair bit of work going on there. If APO NT had the resources, potentially there could be further work done on the scrutiny of legislation. Is that possible?

**Ms CATON:** I would say there would need to be a review of APO NT's capability to look at restructuring and re-establishing an entity that APO NT would be a part of. I would see APO NT sitting underneath the statutory authority.

**Mr EDGINGTON:** Given NAAJA's role, has it ever been asked to comment on legislation that is being prepared or considered? Has NAAJA been asked to give input or feedback in regard to proposed legislation ever?

**Mr Phil BROWN:** Yes, we have. We recently wrote to the Chief Minister that we would be part of the consultation with the youth justice review she announced a couple of weeks ago. We are waiting on a response from her.

NAAJA is a part of the national Aboriginal legal aid service in Australia. We consult with them in relation to any legislation review, when it comes through the channels from APO NT, and then we take the feedback back to APO NT. We want that overarching statutory above APO NT to take all our recommendations through to government.

**Mr EDGINGTON:** That is over and above what is happening now. The government has asked NAAJA to comment specifically about a youth justice review, and I do not know if there is any proposed legislation, but they are seeking feedback on the current *Youth Justice Act*. You have been given the opportunity to provide some input.

**Mr Phil BROWN:** Yes, we have asked to be part of the consultation on the review.

**Mr EDGINGTON:** Do you know if APO NT is also involved in that?

**Mr Phil BROWN:** I am not too sure at this stage, sorry.

**Mr CHAIR:** In terms of the review of bills in relation to the business of the Legislative Assembly, there is usually a lot of pressures and we see it with governments that want it done in a timely manner, considering the political cycles that we have here. What would be an appropriate time frame for review of bills that would impact First Nations people that would align with the Legislative Assembly?

**Ms CATON:** I would say three months. If you look at how long public discussion papers are out for circulation prior to policies and legislation being developed from the mainstream sector, it is around the same time, and because of the remoteness of our jurisdiction we understand how remote and how far we might need to travel to make sure that we do it properly, so I would say at least three months.

**Mr Phil BROWN:** I was part of the Aboriginal Justice Agreement Reference Group and I participated in some of the 160 consultations across the Territory in remote communities. It depends on the

complexity of it and how big the legislation will have an impact on it. It could take a fair while. When the AJA did the consultations with the 160 remote communities it took at least two years.

**Mr EDGINGTON:** I want to talk about the statement of compatibility which has been raised. Has NAAJA ever seen or be part of consultation to develop a statement of compatibility for legislation?

**Mr Phil BROWN:** No; we are not aware of that, Member for Barkly.

**Mr EDGINGTON:** My understanding is a statement of compatibility would be developed by perhaps the relevant department putting that legislation together. I assume that they would consult with people; they have a remote engagement coordination strategy. Have they spoken to you about different proposals to form part of a statement of compatibility?

**Mr Phil BROWN:** I can only say that the Deputy CEO and I have only been in these positions for a couple of weeks now, so we have not participated in any of that and we are not aware that it happened in the past.

**Ms GROVER JOHNSON:** Our impression is that statements of compatibility often turn into box-ticking exercises at the end of a process developed by the government, and that is its assessment of how it is going according to the statement of compatibility. What we were asking for earlier is that we would like to be involved in the process of determining whether that statement has been met. Aboriginal people need to be involved in that. Our impression is that if we are involved, it is not in a deep or meaningful way. We would like to be much more deeply involved.

**Mr CHAIR:** Noting we have gone 15 minutes over time, is there anything else you would like to add before we close?

**Mr Phil BROWN:** No.

**Ms CATON:** No, thank you. Thanks for the opportunity to come here and speak to you all today.

**Mr CHAIR:** Thank you. We appreciate your time to give evidence in front of the committee today. It is important work that we are all doing.

---

The committee concluded.

---