FULL SELF-GOVERNMENT

THE FURTHER TRANSFER OF POWER TO THE
NORTHERN TERRITORY

A

SUBMISSION TO THE
COMMONWEALTH

NORTHERN TERRITORY OF
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The Northern Territory is unique in that it has experienced such substantial change and development since it became the Northern Territory. Unlike the Australian mainland where development and responsibility for community services are undertaken by the States, the Northern Territory has never been subject to major investments in structural and economic development. This situation is essentially because:

- the original settlement of New South Wales in 1836 and
- 1839, a portion of the Northern Territory was included in the Colony of New South Wales. As a result, so the whole of the Northern Territory was part of the Colony of New South Wales.

Accordingly for constitutional reasons the Northern Territory was administered from Sydney. Responsible for the administration of the Northern Territory ceased to be New South Wales in 1912 and
- the Northern Territory was granted a separate constitution until the year 1978. From 1959, the Northern Territory was part of the original
- State of South Australia

From 1978 to 1979 the Northern Territory was administered by the
- Commonwealth. Nevertheless, it was considered for many years,
- during this period, operational development remained part of the
- jurisdiction of a Commonwealth Minister in 1979 and the delegation of a
- Commissioner to the Territory.

However, the Commonwealth government and the Territory have
- agreed to a new constitutional arrangement that will provide for a
- new Northern Territory Assembly consisting of a
- Legislative Assembly and a
- Executive Council.
INTRODUCTION

The Northern Territory is unique in Australia in that it has experienced an evolutionary process of constitutional change. Unlike the Australian States, whose existence, status and responsibilities are enshrined in the Australian Constitution and the Australia Act 1986, the Territory has undergone a process of change and constitutional development since the time of first European settlement. This process is continuing.

Between the original settlement of New South Wales in 1788 and 1828, a portion of the Northern Territory was included in the colony of New South Wales. From 1828 to 1863, the whole of the Northern Territory was part of the colony of New South Wales.

Accordingly in a constitutional sense the Northern Territory was administered from Sydney. Responsibility for the administration of the Northern Territory passed to South Australia in 1863 and the Northern Territory was annexed to South Australia until the year 1911. From 1901 to 1911 it formed part of the original State of South Australia.

From 1911 to 1978 the Northern Territory was administered by the Commonwealth. Territorians were disenfranchised for many years. During this period, constitutional development proceeded with the creation of a Legislative Council in 1947 and the creation of a fully elected Legislative Assembly in 1974. In 1977 the Commonwealth vested certain minor powers in members of this Assembly.
On 1 July 1978 the Northern Territory achieved a form of self-government and members of the Legislative Assembly assumed responsibility for a range of State-type matters at that time.

Six months after the self-government date the Northern Territory assumed responsibility for the health and education functions of government. Shortly thereafter, the Territory assumed responsibility for its own Supreme Court and for making its own judicial appointments.

In 1986, amendments were made to Federal legislation empowering the Territory to establish its own Court of Appeal.

This process of constitutional evolution is not complete and it is appropriate that it should continue in an orderly way and under an agreed and acceptable timetable.

The objective is that the Northern Territory be placed as closely as possible to the same position as the Australian States. This includes the authority of the Territory Government to undertake the same range of responsibilities as State Governments throughout Australia.

The constitutional position of the Northern Territory at the present time is that it has limited self-government. Under the provisions of the Northern Territory (Self-Government) Act 1978, the Commonwealth reserved its authority over certain important State-type responsibilities and a range of other matters. Significantly, these reservations limit the authority of the
Northern Territory Government to exercise responsibility over matters which elsewhere in Australia are clearly established to be the responsibility of State Governments.

These limitations on the Northern Territory and its transitional constitutional status need to be addressed. The Commonwealth has moved to regard the Northern Territory as a State, particularly for financial purposes and has expressly treated the Northern Territory as a State since 1 July 1988 with respect to intergovernmental financial arrangements.

The current limited self-governing status of the Northern Territory is not consistent with its State-like treatment for financial purposes. This lack of balance in the continuing process of constitutional evolution needs to be addressed. Those areas where authority has been reserved to the Commonwealth need to be identified and a process agreed between the Territory and the Commonwealth whereby the Territory Government will assume responsibility for the full range of State-type responsibilities consistent with its treatment by the Commonwealth for financial purposes.

The Northern Territory has experienced eleven years of self-government. Over that period the Territory has experienced considerable economic growth and a State-like economic, social and administrative infrastructure has been developed. The Territory Government has produced balanced budgets for each of the years of self-government. The process of financial evaluation conducted through the Commonwealth Grants Commission
indicates a high degree of financial responsibility. In this sense, the self-government record of the Northern Territory offers no basis on which to deny the further transfer of powers to the Northern Territory Government.

However, the issue is not one of justifying the Territory’s readiness to assume further responsibilities. It is rather that the fundamental concept of federalism in Australia which underpins the relationship between the Commonwealth and the States and which establishes the rights, responsibilities and obligations of all Australians, requires that Territorians be placed on an equal footing with other Australians. Currently this is not the case. It cannot be the case where the elected government of the people of the Northern Territory is unable to exercise the full range of authority on a basis totally consistent with State Governments throughout Australia.

The further transfer of powers to the Northern Territory is a matter of enhancing the standing of Territorians as equal Australians with equal constitutional rights. For the people of the Northern Territory, full self-government is a right, not a privilege.

It is appropriate and timely for the Commonwealth and the Northern Territory to establish an agenda and a timetable for the transfer of those reserved powers to the Northern Territory. As a first step, it is essential to identify all of the matters which would need to be addressed in the transfer of powers exercise and to agree that those powers are to be transferred.
Some matters are likely to be more complex than others, and the issue of timing will therefore need to be considered. Following agreement on the principle of the transfer of powers, an agreed timetable should be established which would allow, if necessary, a series of dates for the actual transfer to be achieved.

As a target date, the Northern Territory believes that 1 July 1990 should be established for the completion of the transfer of powers to the Northern Territory. It would be understood that a later date may need to be determined for particularly complex issues, but this would be a matter of implementation, not a matter of principle. An earlier target date should be established for an announcement that the further transfer of powers exercise is to be pursued.

To develop these issues and to identify the steps involved, a joint Commonwealth/Northern Territory Working Party should be established with specific terms of reference and specific target dates.
THE ISSUES

Pursuant to the Northern Territory (Self-Government) Act 1978 and the Regulations to that Act, the matters which should now be addressed in the further transfer of powers from the Commonwealth to the Northern Territory are:

1. procedures to require consultation with the Territory for the appointment of the Administrator of the Northern Territory

2. removal of the powers of the Commonwealth Minister to instruct the Administrator of the Northern Territory

3. abolition of the power of the Commonwealth to reserve and disallow Northern Territory legislation

4. review of the National Parks and Wildlife Conservation Act 1975 and its subordinate legislation to transfer administration of Commonwealth National Parks in the Northern Territory to the Northern Territory

5. amendment of the Atomic Energy Act 1953 to transfer the ownership of uranium and other prescribed substances in the Northern Territory to the Northern Territory and the transfer to the Northern Territory of executive authority in these matters
6. the transfer to the Northern Territory of land currently held by the Commonwealth but not required for clearly identifiable Commonwealth purposes

7. transfer to the Northern Territory of ownership of minerals on Commonwealth land and the establishment of the sole authority of the Northern Territory to issue mining titles within all areas of the Northern Territory

8. renegotiation of the Gove/Nabalco agreement to introduce the Northern Territory as a party to the agreement and to secure the continuation of the mine and the long-term future of the township of Nhulunbuy

9. re-incorporation of the Island Territory of Ashmore and Cartier within the Northern Territory

10. the grant to the Northern Territory of full legislative and executive authority in all matters relating to industrial relations

11. patriation to the Northern Territory of the *Aboriginal Land Rights (Northern Territory) Act 1976* under special arrangements which would maintain an appropriate role for the Commonwealth in ensuring the protection of Aboriginal interests
12. the immediate grant to the Northern Territory of additional representation in the Federal Parliament of two Senators and one Member of the House of Representatives.
1. The Appointment of the Administrator

Background

Under current arrangements the Administrator of the Northern Territory is appointed by the Governor-General on the advice of the Commonwealth.

Broadly speaking, the Administrator plays a similar role to that of a State Governor. By convention, Governors (and the Administrator) preside over the relevant Executive Council and assent to legislation passed by the relevant Parliament. The Administrator of the Northern Territory carries out this role pursuant to the provisions of the Northern Territory (Self-Government) Act 1978.

Existing arrangements for the States provide for the appointment of State Governors by the Queen, acting on the advice of the State Premier, without the involvement of the Commonwealth. Short of Statehood, this procedure is not possible for the Northern Territory in relation to the appointment of the Administrator.

Consistent with the status of the Northern Territory as a self-governing entity, it is appropriate that the Northern Territory Government be more directly associated with the procedures relating to the appointment of the Administrator. It is acknowledged that there may be constitutional difficulties with
a requirement that the Governor-General be advised on the appointment of the Administrator by the Northern Territory Government.

There are, however, no similar difficulties with a requirement that the Commonwealth must first consult the Northern Territory in relation to the appointment of the Administrator. This procedure would be consistent with the approach used in relation to appointments to the High Court. Under these procedures, there is a requirement that the Commonwealth Attorney-General consult with the States (and the Northern Territory) on High Court appointments under the High Court of Australia Act.

**Northern Territory Objective**

The current arrangements are inconsistent with the Northern Territory’s status and with the general approach which the Commonwealth has adopted towards the Northern Territory.

The Northern Territory therefore proposes that arrangements be put in place under which the Administrator of the Northern Territory would be appointed by the Governor-General only after consultation with the Chief Minister of the Northern Territory (which, in practice, would be effected through the Commonwealth). The same procedures would apply to the removal of the Administrator or the termination of an appointment.

This consultative arrangement could be achieved through an appropriate amendment to Section 32(1) of the Northern Territory (Self-Government) Act 1978.
2. The Powers of the Commonwealth Minister to instruct the Administrator of the Northern Territory

Background

Pursuant to Section 32(3) of the Northern Territory (Self-Government) Act 1978, the Administrator of the Northern Territory is bound to exercise his powers in accordance with the tenor of his Commission and to comply with the instructions of the relevant Commonwealth Minister. This requirement to comply with the instructions of the Commonwealth Minister does not apply in respect of matters for which executive authority has been transferred to the Northern Territory nor to the appointment and designation of Northern Territory Ministers.

The power of the Commonwealth Minister to instruct the Administrator relates to those matters which have not been transferred to the Northern Territory including:

. matters relating to the mining of uranium; and

. rights to land under the Aboriginal Land Rights (Northern Territory) Act.

The Administrator is also legally subject to any instructions of the relevant Commonwealth Minister in regard to:

. the calling of Northern Territory elections;
calling sessions of the Legislative Assembly; and
prorogation of the Legislative Assembly.

Northern Territory Objective

Over the eleven years of self-government the relevant Commonwealth Minister has never instructed the Administrator under the provisions of Section 32(3) of the Northern Territory (Self-Government) Act. This power is regarded as inappropriate and inconsistent with the status of the Northern Territory, and with developing conventions.

The Northern Territory proposes the amendment of Section 32(3) of the Northern Territory (Self-Government) Act 1978 to remove the power of the Commonwealth Minister to instruct the Administrator of the Northern Territory.

With respect to matters such as the mining of uranium, the removal of this power of the Commonwealth Minister would necessarily follow the transfer of authority for this function to the Northern Territory. A similar situation would apply in relation to rights to land under the Aboriginal Land Rights (Northern Territory) Act. The Northern Territory recognises, however, the special concerns relating to Aboriginal land rights and in the context of this proposal for the further transfer of powers to the Northern Territory, is prepared to make special arrangements associated with the patriation of the
Aboriginal Land Rights (Northern Territory) Act to the Northern Territory. These arrangements are discussed in more detail below.
3. Reservation and Disallowance of Northern Territory Legislation

Background

Under existing arrangements, the Administrator of the Northern Territory may reserve any Northern Territory law which, in whole or in part, deals with a non-transferred power. The Administrator can be directed by the relevant Commonwealth Minister to take such action. These powers and arrangements are contained in subsections 7(2), 8 and 32(2) of the Northern Territory (Self-Government) Act 1978.

Under section 9 of the Self-Government Act the Governor-General may disallow any Northern Territory Government legislation assented to by the Administrator of the Northern Territory within six months of that assent. This power to disallow is not limited to non-transferred matters and can apply to any legislation enacted by the Northern Territory.

The Australia Act has effectively abolished the powers of reservation and disallowance in the States.

The power of disallowance has not been exercised by the Commonwealth since Self-Government. However, the provision in the Self-Government Act still stands and is available to the Commonwealth. This places the Northern Territory in a significantly lesser position than the States. Given the general approach by the Commonwealth to treat the Northern Territory as
a State, and in line with developing convention, this is inappropriate.

The powers of reservation and disallowance are not required by the Commonwealth even in the case of non-transferred matters. The superior legislative position of the Commonwealth Parliament is well established and is adequate protection for the Commonwealth. This superior position has consistently been demonstrated vis-a-vis the States over a period of many years.

**Northern Territory Objective**

Sections 7(2), 8 and 9 of the *Northern Territory (Self-Government) Act 1978* should be amended to abolish the powers of reservation and disallowance of Northern Territory legislation.
4. **National Parks**

**Background**

There are two Commonwealth controlled National Parks in the Northern Territory:

- Kakadu (which includes the town of Jabiru); and
- Uluru.

Kakadu is partly Aboriginal land leased by the traditional Aboriginal owners to the Director of the Australian National Parks and Wildlife Service and partly land vested absolutely in the Director of the Australian National Parks and Wildlife Service.

Uluru is held by the Director on long term lease from an Aboriginal Land Trust. In the case of Uluru, the Director is assisted in the management of the Park by a Board.

The two Parks were declared under the *National Parks and Wildlife Conservation Act 1975* of the Commonwealth, and the associated Regulations. This Act and its Regulations have unique application in the Northern Territory. There are no other national parks established and administered in this manner anywhere in mainland Australia.
Both parks resulted from initiatives taken before Self-Government and before the Australian National Parks and Wildlife Service legislation came into force. Both parks may be traced back to the Northern Territory Reserves Board.

Executive authority in the matter of parks and reserves has already been transferred to the Northern Territory. The continued operation of these two Parks by the Commonwealth is directly contrary to that transfer of authority and represents an inconsistency in the Commonwealth's approach to the Northern Territory.

The Northern Territory operates a range of Territory parks throughout the Northern Territory and has the capacity to control and manage both Kakadu and Uluru National Parks. The management of Kakadu and Uluru by the Australian National Parks and Wildlife Service is in isolation and separate from the management of all other parks and reserves in the Northern Territory.

The administration of the two National Parks is currently costing the Commonwealth some $13 million per annum. While administration of the Parks would be a significant cost for the Northern Territory which would need to be reflected in funding arrangements, transfer of the Parks to the Northern Territory would reduce the overlap and duplication that exists between the Australian National Parks and Wildlife Service and the Northern Territory Conservation Commission.
Northern Territory Objective

The ownership, administration and control of Kakadu and Uluru National Parks should be transferred to the Northern Territory. The Territory would undertake to continue the existence and operation of these parks under appropriate arrangements and with adequate safeguards. The Territory would assume responsibility for plans of management for the parks and would provide for appropriate Aboriginal participation in their management and control.

Transfer of the administration and control of the Parks to the Territory would be achieved by a comprehensive review of the National Parks and Wildlife Conservation Act 1975 and its subordinate legislation. Existing leases, sub interests and contracts would also be transferred. To effect this transfer, the Northern Territory Conservation Commission would take the place of the Australian National Parks and Wildlife Service for
the purposes of the National Parks and Wildlife Conservation Act 1975, under appropriate transitional arrangements.

An appropriate adjustment to the Northern Territory’s funding arrangements would need to be made to enable the Northern Territory to accept responsibility for the ongoing administration of the Parks.

The Northern Territory would enter into an agreement with the Commonwealth to ensure that any international obligations incurred pursuant to World Heritage arrangements continued to be recognised by the Northern Territory.
5. Environmental Legislation

Background

The Commonwealth Parliament has enacted several pieces of legislation which have unique application in the Northern Territory. These include:

- National Parks and Wildlife Conservation Act 1975;
- Environment Protection (Alligator Rivers Region) Act 1978 which established the Office of the Supervising Scientist and the Alligator Rivers Region Research Institute and the Co-ordinating Committee for the Region; and

These Acts establish, within the Northern Territory, Commonwealth powers and arrangements which do not apply to any of the Australian States. In some cases they provide an administrative and monitoring structure which duplicates that already in place in the Northern Territory.

This duplication of environmental monitoring and control has a significant cost penalty. For example, the current level of
expenditure by the Commonwealth for regulatory costs, through the Office of the Supervising Scientist, is $6.5 million per annum.

The Northern Territory has in place the legislative and administrative capability to undertake all of the functions in this area that are currently carried out by the Commonwealth. The appropriate transfer of responsibility to the Northern Territory would therefore achieve significant cost benefits.
Northern Territory Objective

The Commonwealth environmental legislation which applies uniquely to the Northern Territory should be repealed. The Northern Territory is prepared to consider enacting Northern Territory legislation, or to amend existing legislation, to ensure the full extent of legislative authority required in this area is in place.

The Northern Territory would seek an appropriate adjustment to its funding arrangements with the Commonwealth to enable it to properly assume responsibility for the administration of the additional functions which resulted from the repeal of Commonwealth legislation and the transfer of functions to the Northern Territory.
6. Ownership of Uranium

Background

The ownership of uranium and other prescribed substances in the Northern Territory remains with the Commonwealth. The Territory Government has the power to deal with prescribed substances under Territory laws with Commonwealth concurrence.

In this regard, the treatment of the Northern Territory differs from that of the States where the ownership of uranium lies with the relevant State.

The existing arrangements also provide that royalties from uranium mining in the Northern Territory flow to the Commonwealth. The Northern Territory receives a partial reimbursement of the uranium royalties collected by the Commonwealth. The Northern Territory is neither compensated in full for this royalty revenue which is lost nor is it able to exercise discretion over the level of royalty payments to be levied on the companies concerned.

As a practical matter, and by agreement with the Commonwealth, the mining leases granted to Pan Continental and Queensland Mines were granted under Northern Territory law.

A number of considerations apply in respect of the Ranger Authority grant by the Commonwealth pursuant to the Atomic Energy Act 1953. There are currently in place a number of
agreements associated with the Ranger Authority. They include agreements between the Commonwealth, the Ranger Joint Venturers, the Northern Land Council and the Director of the Australian National Parks and Wildlife Service.

There is also current litigation between the Commonwealth and the Northern Land Council in relation to the Commonwealth's liability to make certain payments to the Northern Land Council pursuant to an agreement associated with the Ranger Authority.

Northern Territory Objective

The mining industry continues to be a major economic activity in the Northern Territory. It is essential for the continued growth and development of the Northern Territory that the growth and expansion of the industry be encouraged and appropriately administered. It is also essential that the industry contributes to the general development of the Territory, for example through the payment of royalties, under arrangements which reflect relevant Northern Territory considerations and aspirations.

The ownership of uranium, and other prescribed substances as defined in the Atomic Energy Act 1953 located within the Northern Territory, should be transferred to the Northern Territory. This could be achieved by an amendment to the Atomic Energy Act 1953 and section 69 of the Northern Territory (Self-Government) Act.

Associated with this legislative action, the Northern Territory should be granted executive authority in relation to uranium and
those substances prescribed in the Atomic Energy Act 1953. This could be achieved by an amendment to Regulation 4(2)(a) of the Northern Territory (Self-Government) Regulations to give Northern Territory Ministers such authority.

The Ranger Authority and the associated agreements should be transferred to the Northern Territory. This would be achieved by passage of Commonwealth legislation which would transfer the Ranger Authority to the Northern Territory with the effect that the Authority is treated as if it had been granted under Territory law. Various associated agreements would have to be novated and this novation would be provided for in the Commonwealth legislation.

The Northern Territory would seek from the Commonwealth an appropriate indemnity in respect of the litigation currently proceeding between the Commonwealth and the Northern Land Council and, more generally, in relation to any past events.
7. **Commonwealth Land**

**Background**

At the time of Self-Government, the basic title to all land in the Northern Territory was automatically transferred to the new Northern Territory body politic. However, the Commonwealth was given 12 months within which to reacquire a fee simple interest without compensation.

Significant tracts of Northern Territory land were reacquired by the Commonwealth under this arrangement. The most notable example of this reacquisition was in the Alligator Rivers Region.

Most of the land reacquired in the Alligators Rivers Region by the Commonwealth has since been granted as Aboriginal land or vested in the Director of the National Parks and Wildlife Service. Some Commonwealth owned land remains in the Alligator Rivers Region, including some public roads and the Conservation Zone.

The Commonwealth continues to hold significant areas of land within the Northern Territory.

The basic Territory position is that radical title to all land in the Territory owned or controlled by the Commonwealth or Commonwealth Authorities should be transferred, without cost, to the Northern Territory.
The current "windows" in the Kakadu area are Commonwealth land held for State-type purposes. These should transfer to the Northern Territory.

It is appropriate for the Commonwealth to own land which may be reasonably required for Commonwealth purposes. It is not, however, appropriate for the Commonwealth to retain ownership of land not reasonably required for its own purposes. For example, ownership of a substantial area of land around the Alice Springs Airport has recently passed to the Federal Airports Corporation. The extent of this land is clearly much greater than is necessary for the operation of the airport and related activities.

**Northern Territory Objective**

The Northern Territory proposes the transfer to the Northern Territory by the Commonwealth, at no cost to the Territory, of all land held by the Commonwealth except those areas which the Commonwealth and the Northern Territory agree are reasonably required for the Commonwealth's own purposes.

The Northern Territory also proposes that any such land held by the Commonwealth would transfer at no cost to the Northern Territory when the Commonwealth need for such land ceased.
8. The Ownership of Minerals on Commonwealth Land

Background

The Commonwealth reacquired significant areas of land within the Northern Territory following Self-Government. As part of this process of reacquisition and under Section 70 of the Self-Government Act, the Commonwealth also acquired the minerals on those areas of land.

The Commonwealth has retained the title to most of these minerals, even where the land has subsequently been granted as Aboriginal land or where it has become a National Park.

The Commonwealth thus owns the land and minerals in the Conservation Zone adjacent to Kakadu National Park Stage III.

The Commonwealth has amended its Lands Acquisition Act to facilitate the grant of mining titles by the Commonwealth and with the power to override earlier Northern Territory titles.

Consistent with the spirit and meaning of Self-Government, the Northern Territory's position is that all resources within the Northern Territory should be owned and controlled by the Territory. This includes ownership and control of off-shore resources, to the same extent as the States.
Where the Commonwealth has granted land as Aboriginal land, and mining has occurred on that land, an obligation exists on the Commonwealth to make payment to the Aboriginal Benefit Trust Account equivalent to the royalties received.

This obligation should continue to be a liability of the Commonwealth, given the Northern Territory’s non-participation in these arrangements.

**Northern Territory Objective**

The Northern Territory objective in respect of the ownership of land currently held by the Commonwealth is set out above. The transfer of Commonwealth-owned land to the Northern Territory should include the transfer of minerals to the Northern Territory without cost.

In respect of those areas of land which it is agreed should remain with the Commonwealth, the ownership of minerals associated with such land should transfer to the Northern Territory without cost.

All mining titles issued after such a transfer should be issued pursuant to Northern Territory legislation and the power of the Commonwealth to override Territory mining titles should be repealed.
9. Renegotiation of the Gove/Nabalco Agreement

Background

The parties to the Gove/Nabalco agreement are the Commonwealth and the Gove Joint Venturers (Swiss Aluminium Australia Pty Ltd, Gove Alumina Ltd and Nabalco Pty Ltd).

Since Self-Government, the minerals have belonged to the Northern Territory and the special mineral lease and special purpose leases associated with this project are held from the Northern Territory. However, the residual effect of the pre-Self-Government agreement has continued to impose some limitations on full Territory control.

The Gove/Nabalco agreement should have been transferred to the Northern Territory (with appropriate amendments) at the time of self-government. This was not done and has not subsequently been done.

The existing arrangements are inconsistent even with the limited self-government arrangements which currently apply to the Northern Territory. They contain a number of provisions which are incompatible with the transfer of responsibility for minerals and mining to the Northern Territory.

Major concerns of the Northern Territory are the continuation of the mine under acceptable arrangements and securing the long-
term future of the town of Nhulunbuy if/when mining ceases in the area, under arrangements which are consistent with Aboriginal interests.

Achieving these objectives involves the Commonwealth, the Northern Territory, the Gove Joint Venturers and the Aboriginals.

**Northern Territory Objective**

The Gove/Nabalco agreement should be renegotiated and the Northern Territory introduced as a party to that agreement. In effect, this renegotiation is to achieve the transfer of the agreement to the Northern Territory. The renegotiation is to secure continuation of the mine under acceptable arrangements and to secure the long-term future of the town of Nhulunbuy.

Given that the Northern Territory is not presently a party to the Gove agreement it will be necessary for the Commonwealth to initiate and facilitate the renegotiation.
10. The Ashmore and Cartier Islands

Background

Before 1978 the Ashmore and Cartier Islands were annexed to, and deemed to form part of, the Northern Territory. This annexation was broken at Self-Government in 1978 by the Ashmore and Cartier Islands Acceptance Amendment Act and the Commonwealth assumed responsibility for the Islands. This action was taken by the Commonwealth without consultation with the Northern Territory.

From 1938 to 1978 the islands were part of the Northern Territory, with a working and current system of law. This situation operated with appropriate efficiency and thoroughness.

A basic principle of Australia's federal system is that the Commonwealth exercises responsibility for matters of national concern while the States (and the Northern Territory) exercise responsibility for underlying domestic issues. The Ashmore and Cartier Islands should be provided with a current and comprehensive system of domestic law and administration.

Current administrative arrangements for the Ashmore and Cartier Islands are confused and inappropriate. Although the Islands no longer form part of the Northern Territory, most Northern Territory laws still apply and Northern Territory Courts enforce those laws. The 1978 Acceptance Amendment Act continued Northern
Territory laws in force as at 30 June 1978. However, the Northern Territory has no power to act upon or amend those laws, and the Commonwealth has neither the administration to enforce the laws, nor the legislative priority to keep them up to date.

In essence, the current situation is that the Northern Territory has the administrative competence to administer the laws applicable to the region but not the power to do so, while the Commonwealth has the power, but not the administrative competence.

It is illogical and unrealistic to attempt to meet the domestic legislative requirements of the region with Northern Territory laws, Northern Territory administration and the Northern Territory judiciary, while regarding the region as outside the Northern Territory.

The status of the Ashmore Reef as a national nature reserve also needs to be addressed. This portion of the region is administered by the Australian National Parks and Wildlife Service.

All of the powers necessary for the management of this reserve are available in existing Northern Territory legislation, and the administrative capacity is also available to ensure appropriate management of the Reef.

The Island Territory of Ashmore and Cartier has its own adjacent area which is covered by off-shore petroleum legislation. The
Commonwealth Minister has designated some of his responsibilities as the Designated Authority to the Northern Territory Minister for the administration and enforcement of that legislation, but the Northern Territory has no entitlement to any royalties under the current arrangements. The Commonwealth does pay a sum to the Northern Territory to cover its costs for administering the Ashmore and Cartier Islands in relation to petroleum legislation.

The existing arrangements need to be reviewed. In 1985 the Commonwealth sought to address the deficiencies of the existing arrangements through the Ashmore and Cartier Islands Acceptance Amendment Act 1985. This Act was passed by the Federal Parliament, but has not been commenced. It applies the current system of Northern Territory law to the region, and then through a complex system of directions and delegations, it invests Northern Territory administration with the power to administer those laws in their operation to the Islands.

The only logical and rational approach to these problems of the current status of the region is its re-incorporation within the Northern Territory.

The Northern Territory supports the Offshore Constitutional Settlement, but contends that its administration in the Territory of Ashmore and Cartier Islands should be common with that applying in the Northern Territory. The present situation in which the respective adjacent areas are administered under different legal regimes is illogical. Significant anomalies in the exercise of powers result, for no valid reason.
Restoration of the region as part of the Northern Territory would greatly improve arrangements in the petroleum industry by creating one legal structure containing a single Designated Authority and Joint Authority. The Commonwealth's concerns would be protected by its superior legislation, and its prevailing view within the Joint Authority.

**Northern Territory Objective**

The administration of the Ashmore and Cartier Islands has increasingly fallen to the Northern Territory. This has been seen as the only sensible and effective means of exercising appropriate responsibility for this region.

In line with this trend, and with the status of the Islands before 1978, the Island Territory of Ashmore and Cartier should be re-incorporated within the Northern Territory.

Appropriate adjustments to the funding arrangements between the Commonwealth and the Northern Territory would need to be made to provide for the effective administration of the Island Territory by the Northern Territory.
11. Industrial Relations

Background

Under Section 53 of the Northern Territory (Self-Government) Act 1978, the Commonwealth industrial relations system is extended to the Northern Territory. The extension of the Commonwealth system includes its application to internal Northern Territory industrial awards, common rules and related matters.

The Legislative Assembly of the Northern Territory has only a very limited grant of legislative power in the area of industrial relations, although Ministers of the Northern Territory do have executive authority in the area of labour relations.

The withholding of full authority in industrial relations from the Northern Territory is inconsistent with the Northern Territory's current political status. Industrial relations matters are the prerogative of the States in the Australian Federal system, except for particular matters where the interests of more than one State are concerned. There is no logical argument for withholding full State-like authority for the Northern Territory in this area.

Northern Territory Objective

The Northern Territory seeks the transfer of full legislative and executive authority in all matters relating to industrial relations on the same basis as the States.
This transfer is to be without prejudice to the particular industrial relations system and arrangements which the Northern Territory might seek to put in place in due course. The Northern Territory’s immediate intention following the transfer of full legislative and executive authority would be to continue the existing arrangements for industrial relations matters.
12. Aboriginal Land

Background

The Aboriginal Land Rights (Northern Territory) Act 1976 is an Act of the Commonwealth Parliament which has unique application in the Northern Territory. The Land Rights Act does permit the enactment of complementary Northern Territory legislation on a limited range of matters relating to Aboriginal land and adjacent waters.

Within the Australian Federal system one of the fundamental prerogatives of State Governments is their responsibility for land administration within their borders. The application of the Aboriginal Land Rights Act in the Northern Territory precludes the exercise of this responsibility by the Northern Territory over very significant and substantial areas of land. This not only denies the Northern Territory a basic political and administrative responsibility; it further serves as a substantial impediment to the orderly development of some important areas of commercial and economic potential. This impediment is to the detriment of Aboriginals and the wider Northern Territory community.

The current application of Commonwealth legislation in this area to the Northern Territory has also called into question the application of certain key laws of the Northern Territory. The continuation of this uncertainty is unacceptable having regard
to the Territory's proper exercise of those areas of responsibility for which it has executive authority.

The sensitivity of those matters covered by the Aboriginal Land Rights Act is acknowledged by the Northern Territory. In seeking to secure a full State-like responsibility for all land, the Northern Territory is not seeking to diminish in any way the principles on which the Aboriginal Land Rights Act is founded.

The Northern Territory is therefore prepared to enter into particular arrangements in relation to Aboriginal land rights which recognise the interests of Aboriginal people and the legitimate concerns of the Commonwealth and which ensure an appropriate degree of protection for Aboriginal interests.

Northern Territory Objective

The Aboriginal Land Rights (Northern Territory) Act 1970 should be patriated to the Northern Territory.

The preferred course for this patriation would be the repeal of the Commonwealth Act and the contemporaneous enactment by the Northern Territory Legislative Assembly of a new Northern Territory Act.

The Northern Territory would be willing to enact the existing Commonwealth legislation as its own legislation without change (except for any necessary consequential amendments). This undertaking by the Territory Government would be a demonstration
of its good faith in relation to its administration of Aboriginal land rights. It does not detract from the Northern Territory's clear and often repeated view that the existing Aboriginal Land Rights Act has significant deficiencies.

The Northern Territory has consistently argued that ownership of Aboriginal land should be under Northern Territory title. Land granted under the patriated Aboriginal Land Rights Act would therefore, after patриation, be granted with Northern Territory title.

Beyond this, the Northern Territory is prepared to consider special arrangements which would maintain effective powers of reservation and disallowance for the Commonwealth in relation to any subsequent amendment to a patriated Aboriginal Land Rights Act.

Consistent with the patriation of the Act to the Northern Territory, the Northern Territory would seek amendment of Regulation 4(2)(b) of the Northern Territory (Self-Government) Regulations to give Ministers of the Northern Territory executive authority in relation to Aboriginal land matters in the Northern Territory.

Further arrangements would need to be made in respect of payments of royalties or royalty equivalents to Aboriginals where these have been granted by the Commonwealth out of Northern Territory Crown land without the concurrence of the Northern Territory.
It is the Northern Territory's view that continuing liability for such royalty payments should lie with the Commonwealth.
13. Federal Representation

Background

At present, under the Commonwealth Electoral Act, the Northern Territory has Federal representation of two Senators and one Member of the House of Representatives.

The Electoral and Referendum Amendment Bill 1988 currently before the Senate proposes to amend the Commonwealth Electoral Act to provide a quota basis for Northern Territory representation for the House of Representatives (while preserving the current minimum level of representation). Under this Bill, the Northern Territory would maintain its existing Senate representation, but would not be entitled to an additional Senator until its population was sufficient for six House of Representative quotas.

The Northern Territory opposes this proposed legislation on the grounds that it is discriminatory against the Northern Territory and would provide for future representation of the Northern Territory in the Federal Parliament at a level significantly inferior to that of the States. This is totally inconsistent with the principles of federalism.

Given the clear and unequivocal statements by the Commonwealth that the Northern Territory is to be regarded as a State and treated as a State. The Northern Territory is clearly under-represented in the Federal Parliament.
The now well accepted view of Federal representation for a Territory is that there is no constitutional obligation to grant a Territory any Federal representation. But of greater relevance, there is no numerical limit as to the level of representation that may be provided.

The issue of the rotation of terms for Territory Senators is also a matter which needs to be addressed.

Under existing arrangements the two Senators for the Northern Territory are both elected at each general election of the Federal Parliament. This is in contrast with the position of Senators from the States who hold office for a fixed term of six years, with half rotating at each general election in the Federal Parliament (subject to a double dissolution of the Federal Parliament).

**Northern Territory Objective**

In line with the Territory's current population and the numbers on the Electoral Roll, the Northern Territory seeks additional Federal representation of:

- two Senators; and
- one Member of the House of Representatives.

Northern Territory Senate representation should be rotated on a fixed term basis in line with the Senators from the States.
CONCLUSION

Since Self-Government in 1978, the Commonwealth has established a relationship with the Northern Territory which places the Northern Territory broadly in the same position as the Australian States. The Northern Territory participates in the range of Ministerial Council meetings on an equal footing with the States and the Chief Minister is a full and equal participant with State Premiers in Premiers Conference meetings.

In 1988 the Commonwealth confirmed this view of the Northern Territory and specifically indicated that the Northern Territory was to be treated as if it were a State for the broad financial arrangements between the Commonwealth and the Territory.

The Northern Territory has consistently accepted this relationship and its State-like responsibilities.

The current Self-Government arrangements do not, however, provide for full self-government for the Northern Territory. A range of powers and responsibilities remain with the Commonwealth in areas which are typically the responsibility of the Australian States. This reservation by the Commonwealth of certain powers is inconsistent with the political and financial relationships which are now firmly in place between the Commonwealth and the Northern Territory.
There is no constitutional or legal impediment to the transfer to the Northern Territory of those State-like responsibilities which have not yet been transferred. Consistent with the underlying principles inherent in Australian Federalism, the transfer of these powers should be pursued.

A timetable needs to be established and the Commonwealth and the Northern Territory should determine a target date by which these further transfers of power would be effected.

Supporting administrative arrangements should be in place through the establishment of a joint Commonwealth/Northern Territory working party to develop the details of legislative and other measures which would be required, and to schedule the necessary work.

The Northern Territory is willing to commit to this process in a spirit of cooperation and to work constructively to ensure that the reasonable objectives of the Northern Territory are met.