

Mining and the environment

Mining in the Northern Territory

- 8.1 The mining sector makes the largest contribution to the Northern Territory economy with a gross production value of over \$3 billion in 2005-06 representing 25 per cent of nominal Gross State Product. The mining sector directly employs about 4,500 people in the Territory and indirectly supports the employment of an additional 10,000 people.¹
- 8.2 In 2005-06, the mining sector in the Northern Territory continued to gain in importance by registering the strongest growth, increasing by 35.5 per cent.² The Committee heard that 'the Territory is currently undergoing a resurgence of interest and activity in the minerals, in particular uranium, petroleum and petrochemical sectors'.³
- 8.3 It appears that much of this resurgence relates to the world price of commodities. Applications for exploration licences (ELs) have more than doubled between 2004-05 and 2006-07:

There are currently 843 granted ELs, of which 249 are on Aboriginal land, and there are also currently 879 EL applications on foot, of which 614 of the as yet ungranted

1 Statehood Steering Committee, Northern Territory Mines and Minerals, Fact Sheet No. 27.

2 Northern Territory Treasury, Gross State Product, November 2006, p. 2.

3 Ms Purick, *Transcript of Evidence*, 16 November 2006, p. 50.

applications are on Aboriginal land, and 200 of those are currently in the veto category.⁴

- 8.4 The *Native Title Act 1993* provides for the negotiation of Indigenous Land Use Agreements (ILUAs) between a native title group and others about the use and management of land and waters:

At 10 November 2006 there were 78 registered ILUAs in relation to land in the Northern Territory, dealing with such matters as exploration and mining (20), petroleum, gas and pipeline projects, community living areas, government projects and infrastructure, and various forms of development (including the agreements about national parks and reserves). They make up 30 per cent of the national total of 260 registered ILUAs.⁵

- 8.5 The Committee heard that there are few Aboriginal companies that own exploration licences or undertake mining activities.⁶
- 8.6 The major pieces of Northern Territory legislation regulating mining in the Territory (including uranium mining) are the *Mining Act 1980* and the *Mining Management Act 2001*. The Northern Territory *Mineral Royalty Act 1982* enables the Territory to levy royalties for most mining activities. Royalties for uranium mining and mining on Aboriginal land are paid directly to the Commonwealth and distributed back to the Territory.

Future ownership and control of uranium resources

- 8.7 The issue of uranium mining and nuclear power has recently gained prominence following the report of the Uranium Mining, Processing and Nuclear Energy Review. That Review identified an opportunity for Australia to increase significantly the export of uranium over the next 25 years.⁷
- 8.8 Unlike other minerals, uranium resources in the Territories are the property of the Commonwealth under Part II of the *Commonwealth*

4 Mr Adams, *Transcript of Evidence*, 16 November 2006, p. 63.

5 National Native Title Tribunal, *Submission No. 8*, p. 13.

6 Mr Whitfield, *Transcript of Evidence*, 16 November 2006, p. 66.

7 Uranium Mining, Processing and Nuclear Energy Review, *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia*, 2006, p. 31.

Atomic Energy Act 1953. Mineral resources in the states (including uranium) are the property of the Crown in right of the states.⁸

- 8.9 The Commonwealth retains export control of uranium under the *Commonwealth Customs Act 1901* and associated regulations. Uranium in Australia is mined almost solely for export.
- 8.10 The Commonwealth has expressly reserved executive authority over the mining of uranium and other prescribed substances in the Northern Territory by means of subregulation 4(2)(a) of the *Northern Territory (Self-Government) Regulations 1978*.
- 8.11 A number of other Commonwealth Acts cover the involvement of the Commonwealth in the regulation of uranium mining, such as the *Environment Protection (Alligator Rivers Region) Act 1978*, which established the Office of the Supervising Scientist, and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- 8.12 Since 1978, the regulation of uranium mining in the Northern Territory has been shared between the Commonwealth and Northern Territory Governments by virtue of a series of intergovernmental agreements. The arrangement has been characterised as one whereby the Commonwealth focuses on the environmental protection of the Alligator Rivers Region (containing the Ranger and Jabiluka mine sites) while the Northern Territory Government oversees the day-to-day regulation of uranium mining.
- 8.13 The Northern Territory Government has indicated its view in the past (1987, 1996) that, with regard to the ownership of mineral deposits, the transfer of ownership and control of all uranium and other minerals to the new State upon statehood would ensure constitutional equality between the new State and the existing states.⁹
- 8.14 Consistent with the principle of eventual equality with the states, the Statehood Steering Committee has indicated that the Northern Territory should gain the responsibility for the ownership and

8 See Senate Environment, Communications, Information Technology and the Arts References Committee, *Regulating the Ranger, Jabiluka, Beverley and Honeymoon uranium mines*, 2003, p. 2. South Australia is the only other jurisdiction currently operating uranium mines.

9 Northern Territory Statehood Working Group, *Final Report*, May 1996, p. 47. See also the earlier publication of the Northern Territory Statehood Executive Group, *Towards Statehood: Minerals and Energy Resources Upon Statehood*, 1987, p. 1.

management of mineral resources including uranium upon statehood.¹⁰

- 8.15 The Northern Territory Minerals Council also supported the transfer of the responsibility for uranium to the new State:

... there are approximately 445 nuclear power plants around the world and the number is growing. Australia has approximately 40 per cent of the known world resources. It is low cost, high grade uranium ... The potential for the Northern Territory to gain economically is enormous in the future, assuming the explorers can get out there and explore, find the deposits, shore them up and start to develop.¹¹

- 8.16 The transfer of ownership of uranium resources to the new State would have minimal implications for financial relations with the Commonwealth depending on any changes to the existing royalty payment arrangements. The implications of statehood and royalty payment arrangements for the financial relationship between the new State and the Commonwealth were discussed in Chapter 7.

- 8.17 The future arrangements for royalty payments is a matter to be negotiated between the Commonwealth and Territory Governments and relevant Aboriginal bodies as it also dependent on any change to the *Aboriginal Land Rights (Northern Territory) Act 1978* upon statehood.

- 8.18 State ownership of uranium resources would also require changes to regulatory structures, management and monitoring, and the arrangements for the operation of the Ranger mine. The future of operational and regulatory arrangements of the Ranger mine would need to be negotiated by the Territory and Commonwealth Governments.¹²

- 8.19 The Statehood Steering Committee informed the Committee that there is a level of confusion over the Commonwealth and Territory responsibilities for the control and administration of the uranium industry in the Territory, and that this confusion threatens the

10 Statehood Steering Committee, *Submission No. 1*, p. 14.

11 Ms Purick, *Transcript of Evidence*, 16 November 2006, p. 61.

12 The Uranium Mining, Processing and Nuclear Energy Review also found that existing arrangements for the regulation of uranium mining could be streamlined, namely, by removing existing legislative provisions from Section 140 A in the EPBC Act 1999. See *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia*, 2006, p. 126.

economic growth of the Territory. Further, the split in responsibilities does not seem logical.

As an example; the Territory administration, controls the prosecuting authority which saw the Ranger mine being penalised for the contamination of workers' drinking water in March 2004. The incident however, was identified by the Supervising Scientist who is a Commonwealth appointee under the ARR arrangements to ensure the mine does not compromise the integrity of the surrounding Kakadu National Park (also administered by the Commonwealth).

The Commonwealth retains all minerals not just uranium in the ARR, whereas the Territory controls other minerals occurring elsewhere in the Territory.¹³

8.20 The Committee heard that from the Environment Centre of the Northern Territory perspective, it did not particularly matter whether the new State or the Commonwealth controlled uranium mining:

... if the Commonwealth government opposed uranium mining, then we would prefer it was with them, and if the Territory government opposed it, then we would prefer it was with them.¹⁴

Future management of radioactive waste

8.21 In December 2005, the Commonwealth Parliament passed the *Radioactive Waste Management Act 2005*. The Act commenced on 15 December 2005. The Act empowers the Commonwealth to select specified Commonwealth land for the establishment of a low and medium level radioactive waste management facility.

8.22 The Explanatory Memorandum to the *Radioactive Waste Management Bill* summarises the power of the Minister under the Act and the effect of the Bill:

The Bill provides that the Minister may declare one, or a specified part of one, of the specified sites, as the place where a facility may be established and operated. The Bill also provides that the Minister may declare land to provide for suitable road access to the declared site.

13 Statehood Steering Committee, *Submission No. 1*, pp. 14-15.

14 Ms King, *Transcript of Evidence*, 16 November 2006, p. 61.

...The Bill effects the acquisition or extinguishment of all interests in the site, or part of the site, chosen for a facility that the Commonwealth has not already acquired or extinguished (if any), and provides for any affected parties to be compensated.¹⁵

- 8.23 Schedule 1 to the Act lists the three sites in the Northern Territory that have been specified as potential locations for a radioactive waste management facility: Mt Everard and Harts Range (both near Alice Springs), and Fishers Ridge (near Katherine). All three sites are Defence Department properties on Commonwealth land.¹⁶
- 8.24 The issue of radioactive waste management, and the Act itself, have generated considerable controversy. The Northern Territory Government, with the support of the opposition, opposed the radioactive waste management plan for the Northern Territory. In October 2005 Chief Minister the Hon Clare Martin MLA described the Commonwealth plan as the 'worst-ever federal attack on Territory rights - worse than the overthrow of the Rights of the Terminally Ill Act in 1997'.¹⁷
- 8.25 However, it is not clear that the dispute over the waste management facility is a statehood issue. The Northern Territory *Nuclear Waste Transport, Storage and Disposal Prohibition Act 2004* prohibits such a facility in the Territory. While the *Radioactive Waste Management Act 2005* overrides the Northern Territory legislation, the Commonwealth *Australian Nuclear Science and Technology Organisation (ANSTO) Act 1987* already empowered the Commonwealth to store ANSTO radioactive waste in states and territories.¹⁸
- 8.26 The Committee was advised that the community concern over the waste facility centred more on the scientific and environmental issues rather than the lack of rights of the Territory in relation to the Commonwealth.¹⁹
- 8.27 On the other hand, as a state, the Northern Territory may have had stronger grounds to oppose the *Radioactive Waste Management Act*

15 Explanatory Memorandum to the Commonwealth Radioactive Waste Management Bill 2005, p. 2.

16 The sites were first announced on 15 July 2005 in a media release by the Hon Dr Brendan Nelson MP, (then) Minister for Education, Science and Training.

17 Nigel Adlam, 'Nuclear warfare', *Northern Territory News*, 14 October 2005.

18 Statehood Steering Committee, 'Statehood and the Proposed Radioactive Waste Management Facility', Fact Sheet No. 22.

19 Professor Carment, *Submission No. 2*, p. 4.

2005 if it were not subject to the full legislative power of the Commonwealth under s. 122 of the Constitution. Furthermore, with lower representation in the Federal Parliament compared with states, the Northern Territory had less capacity to block the Commonwealth legislation.²⁰

- 8.28 The Northern Land Council emerged as a supporter of the Commonwealth Act and entered into discussions with traditional owners to negotiate with the Commonwealth on a site at Muckaty Station.²¹ The Land Council also supported amendments to the Act in 2006 which sought to 'ensure, should a volunteer site be selected for the facility, that there is a mechanism for the land to be returned to its original owners or successors when the site is no longer required for the facility'.²²
- 8.29 The Statehood Steering Committee does not have a view on the merits of the radioactive waste management plan.²³

Future ownership and management of Commonwealth National Parks and Marine Protected Areas

Kakadu and Uluru-Kata Tjuta National Parks

- 8.30 Title to approximately 50% of Kakadu National Park is held by Aboriginal land trusts which have leased the land to the Director of National Parks. Title to the remainder is held by the Director of National Parks, with a majority of that remainder currently under claim by Aboriginal people. The Park is jointly managed by the Aboriginal traditional owners and the Director of National Parks.
- 8.31 Title to Uluru-Kata Tjuta National Park is held by the Aboriginal traditional owners who have leased the Park to the Director of National Parks on a 99-year lease basis. The Park is jointly managed by the Aboriginal traditional owners and the Director of National Parks.

20 Statehood Steering Committee, *Submission No. 1*, p. 17.

21 Statehood Steering Committee, *Submission No. 1*, p. 17.

22 The Hon Ms Julie Bishop MP, Second Reading Speech, Radioactive Waste Management Legislation Amendment Bill 2006, *House of Representatives Hansard*, 2 November 2006, p. 1.

23 Statehood Steering Committee, Fact Sheet No. 22.

- 8.32 The Commonwealth retains responsibility for managing certain activities such as research, commercial activities in Kakadu and Uluru-Kata Tjuta under the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*.
- 8.33 Title to National Park land in the states generally belongs to the states. The Northern Territory Government has indicated its view in the past (1986, 1996) that in this context it should be admitted as a state on the basis of equality with the existing states.²⁴ The Statehood Steering Committee also maintains this view and argued that the Commonwealth should state its position on the matter.
- The Commonwealth needs to determine as a matter of policy whether it wishes to retain control over the two subject national parks as a term or condition of Northern Territory Statehood or whether it would transfer the land held on its behalf by the Director of National Parks to the Northern Territory along with the assignment of any lease from traditional owners.²⁵
- 8.34 Transfer of the national parks to the Northern Territory would also require the agreement of the traditional owners.²⁶

Other national parks

- 8.35 The 2002 High Court judgement on *Western Australia v Ward* put in doubt the validity of 49 Northern Territory Parks.²⁷ The Northern Territory Government received legal advice that re-declaring the parks would not resolve claims made under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993*.
- 8.36 The Northern Territory Government consulted and negotiated with Land Councils, traditional owners and native title holders to establish new park management arrangements. This process resulted in the *Northern Territory Parks and Reserves (Framework for the Future) Act 2003* 'to provide a framework for negotiations between the Territory and the traditional Aboriginal owners of certain parks and reserves

24 Northern Territory Statehood Working Group, *Final Report*, May 1996, p. 54. See also Northern Territory Statehood Executive Group, *Towards Statehood: Land Matters Upon Statehood*, November 1986, p. 1, and *Towards Statehood: National Parks Upon Statehood*, September 1987, p. 1.

25 Statehood Steering Committee, *Submission No. 1*, p. 19.

26 Mr de Koning, *Transcript of Evidence*, 16 November 2006, p. 65.

27 *Western Australia v Ward* (2002) 213 CLR 1.

for the establishment, maintenance and management of a comprehensive system of parks and reserves'.²⁸

8.37 The *Parks and Reserves (Framework for the Future) Act 2003* set out three schedules for parks and reserves:

- Schedule 1 – Parks and reserves to be added to schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, by the Commonwealth, to become freehold Aboriginal title (including Corroboree Rock Conservation Reserve and Finke Gorge National Park);
- Schedule 2 – Parks and reserves over which freehold title is to be granted (including Dulcie Range National Park and Kuyunba Conservation Reserve); and
- Schedule 3 – Parks and areas to be subject to joint management agreements (including Alice Springs Telegraph Station Historical Reserve and Flora River Nature Park).²⁹

8.38 In 2005 the Northern Territory Government negotiated 31 Indigenous Land Use Agreements under the Commonwealth *Native Title Act 1993*. The agreements involved cooperative planning and management arrangements between the Territory Government and Aboriginal groups covering over 27 national parks and reserves.³⁰

8.39 Arrangements under the *Parks and Reserves (Framework for the Future) Act 2003* are still in their early stages and the Northern Territory Parks and Wildlife Commission are undertaking capacity building with Aboriginal groups in some areas. Nonetheless, the Committee heard that the Northern Territory Parks and Wildlife Commission are happy with the joint management arrangements for the parks and reserves. Nitmiluk National Park, which has been under joint management arrangements for about 18 years, was identified as a particular success.³¹

28 *Parks and Reserves (Framework for the Future) Act 2003*, Section 3.

29 *Parks and Reserves (Framework for the Future) Act 2003*.

30 National Native Title Tribunal, *Submission No. 8*, p. 13.

31 Mr de Koning, *Transcript of Evidence*, 16 November 2006, p. 65.

Ashmore Reef National Nature Reserve and Cartier Island Marine Reserve

- 8.40 Ashmore Reef National Nature Reserve is a Marine Protected Area some 840 km west of Darwin and 610 km north of Broome. From 1938 to 1978 the area was annexed to the Northern Territory and administered by the Territory. It was established as Ashmore Reef National Nature Reserve in 1983 and is managed by the Commonwealth under the EPBC Act.
- 8.41 Cartier Island Marine Reserve is a Marine Protected Area 45 km south-east of Ashmore Reef. As with Ashmore, prior to Northern Territory self-government the area was annexed to the Northern Territory and administered by the Territory, until its transferred to the Commonwealth in 1978. It was established as Cartier Island Marine Reserve in 2000 and is managed by the Commonwealth under the EPBC Act.
- 8.42 The House of Representatives Standing Committee on Legal and Constitutional Affairs recommended in its 1991 report *Islands in the Sun* that the Ashmore and Cartier Islands should be incorporated into the Northern Territory. The Commonwealth Government response was that such incorporation was being considered in the context of statehood proposals for the Northern Territory.³²
- 8.43 The Northern Territory Government has argued in the past (1989, 1996) that the Islands were 'disannexed' from the Northern Territory without consultation and that they should be reincorporated within the Northern Territory.³³
- 8.44 While the Ashmore and Cartier Islands are under Commonwealth jurisdiction, they nonetheless fall under the legal jurisdiction of the Northern Territory. Adjacent to (but not within) the Reserves are a number of petroleum tenement areas and petroleum fields. Petroleum related activities in that area are controlled by the Commonwealth but administered by the Northern Territory. The Committee heard that the Northern Territory Minerals Council would support the transfer of Ashmore Reef National Nature Reserve and Cartier Island Marine

32 Government Response to report of the House of Representatives Standing Committee on Legal and Constitutional Affairs titled *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, 1991 p. 4.

33 Northern Territory Statehood Working Group, *Final Report*, May 1996, p. 73. See also the submission of the Northern Territory Government to the Commonwealth, *Full Self-Government, The Further Transfer of Power to the Northern Territory*, 1989.

Reserve back to the Territory while recognising the national and international responsibilities of Australia to protect the areas.³⁴

- 8.45 The Statehood Steering Committee advised the Committee that there is no reason for the Commonwealth to wait for discussions over statehood to commence in order to consult and determine the arrangements for the future control of the Ashmore and Cartier Islands.³⁵

The future status of Commonwealth land in the Northern Territory

- 8.46 The Northern Territory Government has indicated its view in the past (1989) that all land held by the Commonwealth in the Territory should be transferred to the new State at no cost except areas agreed to be reasonably required for Commonwealth purposes.³⁶
- 8.47 The Statehood Steering Committee has indicated to the Committee that the future status of Commonwealth land in the Northern Territory is a matter to be negotiated between the Commonwealth and Territory Governments.³⁷

Hon Peter Slipper MP

Chairman

34 Ms Purick, *Transcript of Evidence*, 16 November 2006, pp. 51.

35 Statehood Steering Committee, *Submission No. 1*, p. 20.

36 Northern Territory Statehood Working Group, *Final Report*, 1996, p. 67, citing the submission of the NT Government to the Commonwealth, *Full Self-Government, The Further Transfer of Power to the Northern Territory*, 1989.

37 Statehood Steering Committee, *Submission No. 1*, p. 13.

