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**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Public Accounts Committee**

**Report on the Actual  
and Contingent Liabilities  
of the Northern  
Territory Government**

**REPORT NUMBER 2**

**NOVEMBER 1987**

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PUBLIC ACCOUNTS COMMITTEE

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OF THE NORTHERN TERRITORY GOVERNMENT

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CHAPTER ONE

THE NORTHERN TERRITORY PUBLIC ACCOUNTS COMMITTEE

The Northern Territory Public Accounts Committee was first established by temporary Standing Order 21A of the Legislative Assembly on 16 August 1986.

As a Committee of the Assembly, its authority is derived from the Northern Territory (Self Government) Act of the Commonwealth and the Legislative Assembly (Powers and Privileges) Act.

The Committee is comprised of five (5) members, presently three (3) Government and two (2) Opposition members.

The duties of the Committee are:-

- (a) to examine the accounts of the receipts and expenditure of the Northern Territory and each statement and report transmitted to the Legislative Assembly by the Auditor-General, pursuant to the Financial Administration and Audit Act;
- (b) to report to the Legislative Assembly with such comments as it thinks fit, any items or matters in or arising in connection with those accounts, statements or reports, or in connection with the receipt or disbursement of the monies to which they relate, to which the Committee is of the opinion that the attention of Parliament should be drawn;
- (c) to report to the Legislative Assembly any alteration which the Committee thinks desirable in the form of the public accounts or in the method of receipt, control, issue or payment of public monies;
- (d) to inquire into and report to the Legislative Assembly on any question in connection with the public accounts of the Territory -
  - (i) which is referred to it by a resolution of the Assembly; or
  - (ii) which is referred to it by the Administrator or a Minister; and
- (e) to examine the reports of the Auditor-General laid before the Legislative Assembly with the accounts of a

Public Authority of the Northern Territory (including any documents annexed or appended to those reports).

The concept of a Standing Committee, comprised of Members of Parliament, charged with the task of conducting inquiries into public expenditure has its roots in the Westminster System of parliamentary practice dating back to the reign of Queen Victoria in 1861.

A select Committee on Public Moneys was required by British Parliament in the 1860's to consider the then level of accountability of the Sovereign and Government in areas of public expenditure. That committee presented a report in 1860 which reached four conclusions:-

- (a) that to control spending effectively it was insufficient for the House (the House of Commons) merely to appropriate funds and to control their issue through the Exchequer;
- (b) that departments ought to present regular and detailed records of the final application of funds so that the House might see if moneys were spent as ordered (this was the origin of the system of Appropriation Accounts now submitted to the House of Commons);
- (c) that if those accounts were to be useful as a means of control they must be examined efficiently and that in practice this meant an examination on behalf of the House by an expert auditor who must be a servant of the House, (this explains the status and position of the Comptroller and Auditor-General); and
- (d) that, thus supplied with information sifted and made intelligible by an expert - the Comptroller and Auditor-General - a select Committee could then and only then, exercise an effective scrutiny and check of the accounts - this Committee completed what Gladstone called the "circle of control").

As can be seen from this early development, it was the original and continuing intention that a body accountable to the Parliament, specifically the Auditor-General, would be responsible for providing a professional and objective report to Parliament on the performance of the public sector, including the Crown, for further more detailed enquiry, where necessary, by a select committee of the Parliament. This committee was to be the Public Accounts Committee.

Parliamentary scrutiny of the public account in the Territory prior to enactment of Self-Government legislation in 1978 was the

responsibility of the Commonwealth. Although the matter of a Public Accounts Committee being established by the Northern Territory Parliament was the subject of a number of debates during the first 7 years of self-government, it was generally held that during this period accountability was satisfied through offices of the Treasury, Public Service Commissioner, Internal Audit Bureau and the Auditor-General. The latter office, although not formally established within the Northern Territory until 1982, was provided prior to that year on an agency basis by the Commonwealth Auditor-General.

The general trend towards greater accountability by governments in areas of public expenditure has since been recognised by the Northern Territory Legislative Assembly and this saw the Government move for the establishment of a Public Accounts Committee on 18 June 1986.

The structure and duties of the Northern Territory Committee are based on traditional lines followed by the Commonwealth and other states. Five members of the Legislative Assembly, 3 Government and 2 Opposition, are elected by the Parliament and are required to select their own Chairman from the Government members. The work of the Committee falls largely into 2 categories. Firstly, the Committee is charged with considering the Annual Report of the Auditor-General and determining which, if any, matters raised require further inquiry. The second vehicle for providing work is by a reference to be made by either of:-

- (a) the Administrator of the Northern Territory;
- (b) the Northern Territory Legislative Assembly; or
- (c) a Minister of the Northern Territory Government.

It is important to note that the only practical limitation on the Committee is a proviso in its Terms of Reference that it "shall examine only those accounts of receipts and expenditure of the Northern Territory and reports of the Auditor-General for financial years commencing after 30 June 1986: provided that this shall not prevent the consideration by the Committee of matters included in reports of the Auditor-General for the year ending 30 June 1986 which have or may have a continuing effect on the form of the public accounts; the method of receipt, control, issue or payment of public moneys."

The rationale for this limitation is that the Assembly requires the Committee to consider current issues and future trends without being distracted by matters which are no longer subject to change.

**CHAPTER TWO****COMMITTEE MEMBERS**

Members of the Public Accounts Committee are:-

**MR MICK PALMER, MLA** Chairman  
Country Liberal Party  
Member for Karama. First elected 1983.  
Other Committees:- Constitutional Development

**MR BRIAN EDE, MLA**  
Australian Labour Party  
Member for Stuart. First elected 1983. Deputy Leader of  
Opposition and Shadow Minister for Education and Tourism,  
Aboriginal Affairs & Electoral Reform, Constitutional  
Development.  
Other Committees:- Constitutional Development

**MR TOM HARRIS, MLA**  
Country Liberal Party  
Member for Port Darwin. First elected 1977.  
Other Committees:- Nil

**MR DANNY LEO, MLA**  
Australian Labour Party  
Member for Nhulunbuy. First elected 1980.  
Shadow Minister for Mines & Energy, Labour & Administrative  
Services and special responsibility for Racing and Gaming.  
Other Committees:- New Parliament House, House Committee.

**MR ERIC POOLE, MLA**  
Country Liberal Party  
Member for Araluen. First elected 1986.  
Other Committees:- Environment, Subordinate Legislation and  
Tabled Papers, Standing Orders, Publications. Deputy Chairman of  
Committees.

### CHAPTER THREE

#### CHAIRMAN'S REVIEW

The Public Accounts Committee has spent considerable time on its inquiries into the matter of Government liabilities as referred by the Legislative Assembly on 28 August 1986. Initial studies were undertaken by the first Public Accounts Committee under the Chairmanship of Mr Marshall Perron. The reference was reinstated following the Territory general election earlier this year, and matters were reassessed by the present Committee.

This inquiry has been most interesting in that an issue of much debate in the Assembly has been thoroughly analysed by a Committee representative of both the Government and Opposition. Those matters of greatest interest are the involvement of public moneys, either directly or by guarantee, in major tourism development projects. The nature of these projects is that they are commercially competitive ventures and as such many details, if made publicly available, could seriously affect their market position. For this reason, much of the information collected and analysed by the Committee is presented in this report in summary form only.

My overall impressions of the extent and nature of the actual and contingent liabilities of the Northern Territory Government are that they are:-

1. consistent with other Government Policy to encourage private development initiatives and to meet the recurrent costs of maintaining an effective public sector; and
2. in regard to the major tourism development projects, properly secured by appropriate company structure and contractual arrangements to maximise the prospects of at least a full return of all public moneys allocated by the Government.

As a forerunner to taking evidence on the Yulara and Sheraton projects, the Committee was briefed by Miss Elizabeth Nosworthy of Morris, Fletcher and Cross on the topic of project risk management.

Miss Nosworthy provided the Committee with a detailed insight into the concept of risk management and it was around the information provided in her brief, that the Committee sought evidence from both Treasury and officials of Investnorth Management Pty. Ltd.

Appended to this report is a paper by Miss Nosworthy on "Project Risk Management" the reading of which provides insight into the approach adopted by the Committee in the taking of evidence.

Perhaps the contents of the paper are best summarised in an answer provided by Miss Nosworthy to a question put by myself at the opening of the Committee's briefing session:-

**Mr Palmer:** . . . . Elizabeth, I was wondering if first you could provide a brief to the Committee on basically the topics raised in this paper of yours entitled "Project Risk Management" and giving particular cognizance to issues government should address itself to when, having taken the decision to involve itself in projects such as the Sheratons and the Yulara deal and those issues that Government should then consider and look to to protect its interests and its risk exposure in those projects.

**Ms Nosworthy:** Thank you, Mr Chairman. Well, I take it that all members of the Committee have seen this paper which I wrote, dated back in 1984. Although it is a couple of years old now I do not resile from anything in that paper, the paper was written to set out the general principles that ought to be looked at by Governments and particularly the Territory Government when entering into documentation of major projects. It is written to set out general principles and I should just say by way of preamble that that is the way it should be taken. I mean I think one has to understand that when you go into a project of any description, the Government has its best position to try and obtain and every other party has the same and you get where you are going by a process of negotiation. So one should not think that there is a list of requirements which must be present in the documentation of any project and which are "givens" and which cannot be moved away from. It is a matter of getting the best position that you can obtain and making sure that all the parties are happy about it and in trying to do that, which I am really saying in this paper is that there are certain things that Government should think about which are perhaps a little bit different from the things that ordinary commercial parties think about.

Following Miss Nosworthy's briefing the Committee prepared a list of questions to Treasury and those questions, along with the responses, are also appended. Aside from those questions, the Committee spent many hours taking evidence in relation to the three tourism development projects.

The Committee was most fortunate in being able to obtain the services of Miss Nosworthy and I thank her for her valuable contribution.

The task faced by the Committee in reporting on the actual and contingent liabilities of Government was an onerous one and one which if not handled with care and consideration, could have seriously impacted upon Government's future dealings with private investors.

The Committee has deliberately omitted from the report some of the more sensitive commercial information surrounding the Yulara and Sheraton projects with a view to protecting the Territory's future interests in those projects. The information omitted relates generally to the values expected to be realised at the winding up of each of the projects and it is the Committee's view that publication of such could compromise the viability of those projects.

Such omissions should not be seen as a move by the Committee to cover anything up or to misinform the Parliament and hence the Territory electorate but, as stated above, a responsible approach to protecting the Territory's taxpayers commercial involvement in Yulara and the two Sheratons.

There has been in recent times public calls for the sale of the three projects. It is my view that the greatest risk to the Territory of the contingent liabilities associated with each of the projects becoming actual, lies in a future Government prematurely collapsing the current arrangements. Because of the tax loss facilities associated with the Yulara and Darwin Sheraton projects, it is impossible for the Government to arbitrarily collapse those arrangements prior to the agreed date without risking a substantial penalty. Also it would be illogical for the Government to divest itself of the Alice Springs Sheraton prior to that property's investment potential being realised.

Included in the report and in respect to the three projects, is a summary of annual direct returns to Government provided by the projects and an estimation of the generator effects the projects have on the Territory's economy overall. This information is provided so that a true balance sheet appraisal of the nett effect of the projects can be made.

I wish to acknowledge the contribution made by officers of both Treasury and Investnorth Management and in particular, thank Mr Otto Alder for his frank and forthright approach before the Committee.

Finally, I would like to express my appreciation of the co-operation by my colleagues on the Committee and the able assistance afforded the Committee by its staff and other staff of the Assembly.

MICK PALMER  
CHAIRMAN

CHAPTER FOURTERMS OF REFERENCE

As recorded in the Minutes of Proceedings of the Legislative Assembly for Thursday, 28 August 1986, the then Member for Arafura, Mr Bob Collins, moved that the following matter be referred to the Public Accounts Committee:-

"the actual and contingent liabilities of the Northern Territory Government, in particular:-

- (a) the Yulara development;
- (b) the Alice Springs and Darwin Sheraton hotels;
- (c) the Alice Springs and Darwin casinos; and
- (d) the proposed development on Myilly Point, on and adjacent to the site of the old Darwin Hospital."

That motion was passed with an amendment put by the Chief Minister that:-

"in considering this reference the Public Accounts Committee shall not consider the appropriateness or otherwise of Government decisions or policies."

At the Committee's meeting of 9 September 1986 it was agreed that financial arrangements relating to the Beaufort Centre, including the link with the Performing Arts Centre, would also be included as a specific part of this reference.

CHAPTER FIVEINTRODUCTION

There has been a noticeable increase in community interest and awareness regarding public debt at both federal and state levels and the resultant call for greater accountability in Government spending, for a variety of reasons, extends beyond Australia into much of the western world. The lessons being learned show that the previously held conception that public sector spending would stimulate the economy no longer applies and efforts are being made throughout the world to reduce the cost of the bureaucracy; to achieve more with less. The need to stimulate private industry is now being satisfied through far more direct strategies in the form of guarantees and indemnities.

Private sector entrepreneurs will invest in development projects when:-

- (a) the risk climate in the relevant jurisdiction is acceptable; and
- (b) the present value of the forward projection of the returns generated is as good as, or better than, alternative investment proposals available to them.

In the Territory's case it was demonstrated, by canvassing the marketplace at the time, that investors saw the Territory to be a new and risky environment to enter, and that the returns on the tourism projects while good in the long term would be poor through the uncertainty period.

Anticipating spin off benefits to the Territory economy in tourism related investment, the Government accelerated private involvement in advance of the normal course of events by offering some underwriting support. In each case it was intended that the investment be recoupable in the long term.

The Government believed that by promoting the Territory's tourism industry in such a direct way allowed the Territory to participate in the tourism boom where it otherwise could have been directed elsewhere.

The lack of understanding regarding the extent of the Northern Territory's guarantees and indemnities at a time of economic restraint has focussed interest on the NT Government's liabilities, particularly in tourism development.

Although the Territory's involvement in tourism development projects is discussed in terms of actual and contingent

liabilities incurred, the Committee accepts that Government, when considering economic benefits accruing from such projects, also looks beyond the short term outlay to consider the longer term net effects on the Territory's economy.

As an illustration of the immediate investment value of the major hotel developments at Yulara, Alice Springs and Darwin, there was \$32.2M in duties and taxes paid to the Commonwealth and N.T. Governments during the construction phase alone. The current staffing of around 650 employees together with licensing and utility services charges will have continuing direct and indirect returns to both governments. A more detailed assessment of accruing benefits from each of the tourism projects is appended.

Obviously, any long term capital appreciation of the projects will also have a positive net effect on government's equity position.

## CHAPTER SIX

### SCOPE OF REVIEW

This reference was first considered by the Public Accounts Committee at its meeting on 9 September 1986. The Committee received a number of briefings and consulted interstate committees regarding reporting practices in their respective states.

A call for public submissions was issued through Territory newspapers and one Public Session of the Committee was notified and subsequently held.

For the purposes of this inquiry the Committee decided that 30/6/87 would be the date on which all liabilities then existing would be assessed.

The Government's position in relation to the Amadeus Basin to Darwin Gas Pipeline project was also considered.

### DEVELOPMENT PROJECTS

The popular discussion topics, such as the Government's commitments via agreement to financially support major tourist infrastructures, obviously consumed most of the Committee's time and attention. However in dollar terms these projects represent only a small fraction of the Government's total expenditures.

### OTHER EXPENDITURES

Government expenditure embraces a number of other categories that allow varying degrees of discretion as to whether funds need to be committed and appropriated. These range from public sector employment benefits such as furlough, where little discretion exists, to expenditure on capital works where substantial costs may be incurred, as funds permit.

The Committee has not conducted an exhaustive analysis of Government expenditure outside the development projects specified by its parliamentary Reference, but has rather concentrated its attention on those items with potential to impact significantly on the Territory economy.

Information was thus gathered on the following topics:-

- . superannuation;

- . recreation leave;
- . recreation leave airfares;
- . furlough;
- . leasing;
- . loans.

With the exception of loans repayable by Government, figures provided on these topics were indicative only, due to the very extensive task of obtaining accurate information across all areas of Government.

The basis of such indicative calculations was provided and the Committee was satisfied that sufficient accuracy was present for the purpose of consideration within the terms of reference.

Four of the items listed are directly related to staffing levels in the public service and statutory authorities and therefore will vary from time to time with changes in numbers and conditions of employment.

## CHAPTER SEVEN

### THE LIABILITIES

Any discussion of liabilities, for the sake of completion, must give equal consideration to respective assets. For example, a decision to commit funds could be seen on one hand as a liability whilst on the other hand that expenditure may produce a positive net return in time. It would therefore be misleading to present only one side of the "balance sheet".

Whilst it might be desirable, from many points of view, that Government should provide as comprehensive a statement of finances as in a balance sheet, the Treasurer's annual financial statements are not bound by the Companies Act and Government financial arrangements in the main are based on annual appropriations of cash as opposed to the accrual system used by business.

The fact that Governments are not required to prepare balance sheets has made the extent of actual and contingent liabilities difficult to assess. Fortunately however, the Northern Territory Government's relatively comprehensive monitoring of contingent liabilities together with the co-operation of the Northern Territory Treasury has greatly assisted the Committee.

The distinction between actual and contingent liabilities is less than clear and this has been a fundamental issue addressed by the Committee. Liabilities can take a variety of forms. Actual liabilities may be precisely determined, e.g. an unpaid invoice; or they may require estimation, e.g. interest repayments where the interest rate varies with market conditions. Contingent liabilities, on the other hand, do not become liabilities until the occurrence of some specified future event. If this future event does not occur the contingent liability never becomes a liability.

The Northern Territory Government's interest in major development projects is represented by a registered commercial company, Investnorth Management Pty. Limited.\* This is effectively a Northern Territory Government owned company registered with the Companies Office and run as a totally commercial operation. In this way the Government is able to become directly involved in development projects such as Yulara, the Sheratons and the casinos without the constraints associated with a public instrumentality.

The corporate structures established to provide financing of the development projects, including arrangements involving the

Northern Territory Government, have been very carefully developed in full consultation with the Australian Taxation Office.

It is most important to note that any changes to the Territory's involvement in these arrangements would need to be considered in the light of the then prevailing views of the Tax Office. The current taxation advantages enjoyed by participants in these projects are available for the duration of the existing corporate structures. It is pertinent that each of these projects is in direct competition with other tourist destinations operating commercially with the full range of allowable taxation deductions. Any corporate structure changes, including the N.T. Government's position, could seriously affect the taxation position and hence the viability of the projects.

The Committee did not consider it appropriate to comment on specific taxation arrangements associated with those projects.

\*Investnorth Management evolved through a name change of the company established to oversight development arrangements for the casinos, Abington Pty Limited. Its sphere of interest was then extended to provide a commercial management focus for the Government's support for Yulara and the Sheratons. The company objectives are contained within the appendices to this report.

YULARA

The Yulara development project was conceived by White Industries Limited in conjunction with Citi National.

Following detailed consultation and consideration the Northern Territory Government formally agreed to support the project. The Yulara Development Company was established to oversee the financing, development and performance of Yulara on behalf of all parties with direct interest in the project. White Industries and Citi National shareholding in the Yulara Development Company were taken up by National Mutual Royal Bank (1987) and Henry & Walker (1984) who joined with the Territory Insurance Office as partners.

The company responsible for the day to day operations of Yulara is the Yulara Corporation which is a subsidiary of the Yulara Development Company. Although under the Companies Act all shareholders of the YDC have equal rights, the interests of the government in its participation in this venture have been fully protected by the documentation.

It is a generally accepted principle that any investment in a new hotel type operation will produce a loss to the investor in the first few years of operation. On this understanding, a number of partners and financiers formed a company, Yulara Nominees, who were prepared to take an equity position in the project in order that any financial losses could be offset against profits being made in other ventures. The complex arrangements necessary to support this approach have been ratified by the Australian Taxation Office. This agreement had the dual advantage of involving companies who were already large scale profit making concerns with the availability of relatively cheap finance for the project's development. The substantive equity partners are:-

Commonwealth Trading Bank of Australia

National Commercial Banking Corporation of  
Australia Limited

National Westminster Finance Australia Ltd

Capel Court Corporation Limited

Beneficial Finance Corporation Limited

James Hardie Finance Limited

In order that Yulara Nominees would not suffer financially from their enterprise, it was a condition that the Northern Territory Government guarantee to contribute an annual sum of money

equivalent to any cash deficiency incurred during the operations of the venture. The Government provides this support through quarterly cash flow statements as to the affairs of Yulara Nominees prepared by Investnorth Management.

Through Yulara Nominees an amount of \$26.5M was injected into the project as development capital. Yulara Nominees seek to gain financial advantage from their investment in the project in 3 distinct ways. Firstly, in view of the previously discussed expectation that the project would not operate as a profit-making concern for a number of years, partners to Yulara Nominees will gain a taxation benefit through being able to reflect losses in respect of Yulara against other profit-making concerns. This is by far the most important investment strategy to Yulara Nominees. Any return from the operations of the Yulara project will only be supported by the Northern Territory Government to produce the results guaranteed under the agreed profile. This is the Contribution Agreement entered into by the Northern Territory Government and has been assessed through the life of the project to September 1996 as a cumulative Government cash contribution of \$164.074M. At this point in time the sale value of the complex is conservatively expected to fall only slightly short of the combined Government cash contribution and partnership debt financing. In fact if the projections are continued beyond 1996 the sale value of the resort will produce an investment return on the Government's cash contribution.

Secondly, Yulara Nominees is entitled to rentals and any profits from management agreements with the Sheraton and Four Seasons hotels and lease arrangements with the lodge, camp grounds, shops and other buildings. The extent of these may reduce the government contribution if the project does well.

The ultimate advantage flowing to the equity partners is that they are guaranteed a rate of return negotiated between the companies concerned.

The company structure of the Yulara project included a group of redeemable preference shareholdings in the Yulara Development Corporation. These shares did not provide voting rights and were therefore fairly straightforward investments on the parts of:-

The NSW Government Insurance Office	\$15M
The National Australia Bank	\$30M
Union Carbide	\$ 5M
Blue Circle Southern Centre	\$ 3M
Car Owners Mutual Ltd	\$12M
Washington Soul Paterson	\$ 5M

This arrangement expired at 29 September 1987 and shareholders capital was returned with interest.

Government contributions, including provision for interest to date, total \$24.518M (30 June 1987).

**SHERATON ALICE SPRINGS**

The Northern Territory Government effectively owns the Sheraton Alice Springs hotel. The project is managed by Investnorth Management on behalf of the listed owner Investnorth Limited, which is a public company, the shareholding substantially with the Territory Insurance Office.

The financing arrangements for the purchase of the hotel saw a loan provided by the State Bank of South Australia to Investnorth Limited with security offered by the Northern Territory Government through a Territory Loan Management Agreement.

This agreement provides for any nett loss from operating costs relative to revenue to be met by a loan from the Government to the extent necessary to meet repayment obligations of Investnorth Limited to the State Bank of South Australia.

As can be seen from the above arrangements, this project does not strictly reflect a contingent liability but rather an actual liability to repay a loan that has been invested in a commercial venture to the extent that commercial revenue is insufficient to meet the repayments.

A financial modelling facility available to the Public Accounts Committee has been applied to the project to gauge the extent of Government liability in the project. This has been assessed as at 30 June 1987 as follows:-

Loan principal outstanding	-	\$28M
Equity funding plus Treasury loan	-	\$19.1M
Interest due to Government	-	<u>\$ 2.2M</u>
Total	-	<u>\$49.3M</u>

Whilst the Northern Territory Government liability has been assessed at \$49.3M as at 30 June 1987, the Committee has noted that this liability should be offset by the sale value of the project at a future point in time. Although that value, as assessed, is not available in this report, it is reasonable to expect that the value of the property will increase during the period of the loan and that it may well be expected that the investment undertaken by the Government should produce a nett profit to the people of the Northern Territory.

DARWIN SHERATON HOTEL

The Northern Territory Government involvement in the Darwin Sheraton Hotel is by way of an agreement to ensure firstly that sufficient funds are available to compensate for any operational loss and secondly, for any finance necessary to make 6 monthly rental payments to the owner-partners Foraker Pty Limited.

Government contributions are secured in that they take the form of loans and have rated a relatively high priority in any distribution of realised capital at the time of sale of the property.

The Public Accounts Committee has considered projections of the Darwin Sheraton Hotel project through to October 1996 and has assessed the nett loss to the Northern Territory Government at \$23.5M. This loss is the shortfall in interest which could have been expected had the Government invested the funds in an interest bearing deposit of 15 percent per annum. What is not reflected in this loss is the value of the contribution to the Northern Territory economy of the project which might, if costed, produce a nett return.

Government contributions, including provision for interest to date, total \$5.763M (30 June 1987).

THE BEAUFORT CENTRE, INCLUDING THE PERFORMING ARTS CENTRE

The owners of the Beaufort Hotel project, Burgundy Royale Investments, have been assisted by the N.T. Government in two ways. Firstly, Burgundy Royale was granted two development loans through what was the Northern Territory Development Corporation in recognition of the projected viability and value to the Territory economy of the project. As at 30 June 1987 the status of those loans was assessed at:-

Loan No. 1	-	Principal outstanding	-	\$328000	(no interest)
Loan No. 2	-	Principal outstanding	-	\$520000	(@ 4% p.a.)
Loan No. 2	-	Arrears	-	\$ 20819	
		Total		\$868819	

The second form of assistance was an agreement to rent four floors of office space in the complex's office block. The nature of the rental agreement differs from other property rentals in that in June 1986, \$1.6M was paid as advance rent for five years. In addition, the Territory or lessee is required to contribute to the complex's common services such as airconditioning.

Financial support for the Performing Arts Centre has been provided by four separate means:-

The Capital Cost of \$13.2M saw the Territory contribute \$11M with the balance paid by the Darwin City Council. An outstanding dispute over a further \$1.6M exists between Burgundy Royale and Jennings (the constructor).

The Capital Cost of Airconditioning and Heating Plant saw the Territory pay \$259,700 in September 1986 as its agreed contribution to Burgundy Royale. This was a first and final payment.

An Operating Cost Subsidy for the Performing Arts Centre has required the Territory to contribute \$487,000 to 30 June 1987 and a further \$175,000 is budgetted for 1987/88.

The final method of providing finance in support of the Performing Arts Centre has been the extension of four loans to the Darwin City Council at varying rates of interest from 12.5% to 13.4%. The outstanding principle at 30 June 1987 was \$1.73M.

#### MYILLY POINT LANDS

The Northern Territory Government had no outstanding liability in respect of Myilly Point including areas of the old Darwin Hospital as at 30 June 1987.

#### ALICE SPRINGS AND DARWIN CASINOS

The Northern Territory Government had no outstanding liability in respect of either the Alice Springs or Darwin Casinos as at 30 June 1987.

#### GAS PIPELINE PROJECT

The Committee also considered briefing papers on the Territory's liability position in relation to the gas pipeline development project.

The following summary of those liabilities was provided by the N.T. Power and Water Authority.

"The Power and Water Authority is obliged to make 39 half yearly payments of approximately \$16M. One of these 39 payments was made to 17 June 1987. The payments vary directly with interest rate fluctuations. The Territory supports PAWA's obligation to meet these payments in that, should the Amadeus Basin to Darwin Gas Pipeline financing

facilities, put in place in December 1986, be terminated prior to the end of the contract term, the Territory has undertaken to stand behind, and if necessary, underwrite the refinancing of the outstanding debt.

The Power and Water Authority is obliged to pay a sum of approximately \$60M (nett present value) to NT Gas as per the Construction Agreement over a period of 20 years. The maximum estimated liability of these payments as at 30 June 1987, is \$60M. This obligation is payable 50% (or \$30M) in the first five years and the remainder over the subsequent 15 years. The first two payments have been made. The Territory has provided an indemnity in relation to these payments.

Gasgo Pty Limited, a company incorporated in the Northern Territory and 100% controlled and beneficially owned by PAWA, has entered into Gas Purchase Agreements with two separate gas producers respectively, the Mereenie Producers and the Palm Valley Producers. Under the Agreements the company has agreed certain "take-or-pay" obligations following the Date of Initial Delivery of gas. PAWA's total minimum "take-or-pay" obligation to the year 2012 is 200 Petajoules (PJ), being 153 PJ to the Palm Valley Producers and 47 PJ to the Mereenie Producers. The current cost of this gas is \$1.58 per Gigajoule and this price escalates generally at 25% of CPI over the contract period.

PAWA gas consumption has significantly exceeded Gasgo's "take-or-pay" obligations entered into between PAWA's subsidiary company Gasgo Pty Limited and the Palm Valley and Mereenie gas producers. Over the remaining contract period, the estimated total value of this "take-or-pay" obligation is (in nett present value terms), \$200M.

Gasgo also has an \$11.5M facility to fund development work which is charged through to PAWA on a per unit of gas consumed basis. This facility is interest only for five years and interest plus principal over the remaining five years."

#### **SUPERANNUATION**

The Territory's superannuation liabilities are accruing at the rate of \$51M per year, based on recent actuarial estimates.

Government contributions are being set aside on a partial funding basis with assessed liabilities of \$201M exceeding funds set aside by \$124M as at 30 June 1987.

A table of assessed superannuation liabilities to 1991 is appended.

**RECREATION LEAVE (PUBLIC SECTOR)**

The Government's Recreation Leave liability accrues at 2 1/2 days per month per employee.

The annual cost of Recreation Leave is approximately \$46M based on staffing of 15,500 at an average salary cost of \$25,500.

Leave entitlement provisions are:

- . NTPS staff can accrue up to 12 weeks leave
- . Compulsory transferees can accrue up to 18 weeks leave
- . Shift workers are in some cases entitled to an extra weeks leave per annum.

Maximum accrual is 12 or 18 weeks on the date of the next leave accrual. Therefore, an employee may accumulate 17 weeks 4 days or 23 weeks 4 days provided that at least 12 weeks leave is commenced prior to 31 December.

Departments have the authority to grant an additional leave credit equal to a forfeited credit, which must be used within a maximum period of 6 months.

Precise figures for accrued recreation leave are not readily available without reference to Departments and Authorities.

If leave in excess of the entitlement is accrued and no attempt is made to reduce it, the leave is forfeited. Conversion to cash is not possible.

**RECREATION LEAVE AIRFARES (PUBLIC SECTOR)**

Based on staffing of 15,500, the annual airfare liability as at 30 June 1987 has been estimated at \$7.8M. In addition to the annual cost, there is an outstanding liability in respect of accrued fares.

A recent survey undertaken to determine the extent of accrued airfare liability indicated that, at 30 June 1987, an outstanding accrued liability of \$10M existed. This amount includes fares for dependants and employees.

In addition to recreation leave airfares, employees in remote localities are eligible for FOILS (fares out of isolated communities). These fares are provided once in the year a recreation leave fare is accrued and twice each year where no recreation leave fare is accrued. Estimates for the cost of FOILS have not been included in the \$7.8M amount.

Further details on accruals and conditions of usage of leave airfares is appended.

**FURLOUGH (PUBLIC SECTOR)**

Furlough or long service leave is available in the NTPS after 10 years continuous service.

At the point of 10 years service, the employee is entitled to 3 calendar months leave on full pay. However, if the employee resigns, a cash payment equivalent to 90 calendar days, not including compensation for weekends or public holidays, is payable.

For each year of continuous service in excess of 10 years, the employee is entitled to .3 calendar months long service leave.

Estimated furlough liability at 30 June 1987 is \$5.5M (80% annual - 20% accrual) based on an annual salary bill of \$400M.

Paragraph 79(b) of the Memorandum of Understanding states that the Commonwealth accepts liability for payments in lieu of furlough to transferred officers who retire or resign subsequent to 1 July 1978. Payments have been made in respect of actual retirees since Self Government. However, a once and for all payment to discharge the Commonwealth from this liability is under consideration. It is likely that the matter will be resolved this financial year.

**LEASING**

Property leasing for Departments is administered by the Office of the Public Service Commissioner, Properties Branch. Statutory Corporations are funded individually for their requirements.

In the main, property leasing relates to office accommodation and costs for 1986/87 are as follows:

Property Management Division	\$18.8M
Authorities (Approximate)	<u>5.0M</u>
Total	<u>23.8M</u>

A basic dissection of the leasing costs is estimated as follows:

Rental	69%
Cleaning	5%
Electricity	23%
Other	3%

Regional dissection of the \$18.8M is:

Darwin	\$16.2M
Alice Springs	1.8M
Tennant Creek	0.3M
Katherine	0.6M

Space leased by the Government as at 30/6/87 in the CBD - Darwin was approximately 50436 square metres against government owned floor space of 16401 sqm. Average cost is \$159/sqm, per annum.

Leases range from 2 to 10 years with option to extend for a similar period.

Most contracts include provision for annual increases of rental payments. Property leasing expenditures for the past few years are as follows:

82/83	(\$000)	12651
83/84		14242
84/85		15826
85/86		20691
86/87		18841

#### COMPUTER LEASING

Government leasing of computers ranges from the mainframe in the Chan Building to personal computers used within Departments.

Leasing expenses for 1986/87 are estimated to be \$5.8M for central computing facilities. (NCOM)

The collection of information to item level is not aggregated by Treasury and more detailed information has not been sought from Departments.

#### LEASING OTHER

Again, as with computer leasing, no aggregate figures are maintained centrally. However, to provide an indicative figure covering leasing of computers, phone systems, word processors, photocopiers, and motor vehicles, it has been estimated by NT Treasury that 2% of the total Subdivision 2 expenditure (Administration and Operational Expenses) would be considered reasonable. Based on 1986/87 expenditure, leasing costs would be in the order of \$6.4M p.a.

In the main the decision to purchase or lease was left to Accountable Officers. In more recent times, as funds have

tightened up, Departments have had less cash to purchase equipment outright but may have had sufficient to lease the desired equipment.

Indications have been that a proper cost/benefit analysis may not have formed part of the decision process in many cases. In recognition of this developing trend, the General Tender Board and Treasury's Budgets Division have agreed to analyse any such proposals lodged with the General Tender Board or specifically identified in budget processes.

General market lease periods are from 2-4 years depending on the type of equipment being procured. Leasing of this nature represents future liability for the Government of say \$25.6M over the next 4 years.

### LOANS

Loans repayable by the Northern Territory Government cover a range of categories:-

- . N.T. Government Loan Raisings;
- . repayments to the Australian Government in respect to assets transferred to the Territory at self government;
- . housing and home finance advances;
- . Loan Council repayments;
- . Brucellosis and Tuberculosis eradication; and
- . Rural Adjustment Scheme.

The assessed value of outstanding loans at 30 June 1987 was assessed at \$1206.2M. Details are contained within the appendices.

### CONCLUSIONS

#### The Committee:

Is satisfied that, given the Government's policy to support the Yulara and Sheraton projects, the arrangements entered into in respect of each of the projects provide adequate protection of the Government's interest in each of those projects;

Notes that the potential for loss in each of the three projects is limited to the amount by which any sale of the projects is insufficient to meet Government outlays;

Is generally satisfied that most public sector liabilities involving Government guarantees and indemnities are properly recorded in a central register, but is concerned that all may not be recorded and that appropriate mechanisms may not be in place that would in all circumstance prevent an unwitting default by Government; and

Is confident that the Territory debt in respect of those projects considered by the Committee is not such at this stage that it could impact seriously on a future government's ability to service adequately the needs of the Northern Territory. However, the Committee, whilst recognising that the Northern Territory Government Superannuation Scheme is partially funded, is concerned that the emerging costs associated with the scheme may in future impact unreasonably upon Territory budgets.

#### The Committee also notes that in respect to:

Yulara - the project is currently performing better than anticipated and that as a result the total Government commitment to the project should be substantially reduced;

The Alice Springs Sheraton - the projected performance has not been achieved and a full return to Government, including interest, may be delayed;

The Darwin Sheraton - that insufficient operating history precludes a fair assessment of its current position in relation to actuarial projections;

Beaufort Darwin Centre - action is being taken to protect the Government's interests in relation to the capitalised office rental and common services contribution and that it

can reasonably be expected to recoup outstanding Territory taxes and charges.

The Committee also notes the ongoing need to monitor the Territory's position in relation to the above projects and may from time to time present further reports.

RECOMMENDATION

The Committee recommends that:

In view of the commercial sensitivities the Committee continues to monitor the Territory's interests in the Yulara and Sheraton projects;

The existing Central Register of Government guarantees and indemnities be maintained and every effort be made to ensure that all such guarantees and indemnities are included in the register and that the Territory's interest be protected by continued monitoring.

MICK PALMER  
Chairman

APPENDIX A

NORTHERN TERRITORY LEGISLATIVE ASSEMBLY

PUBLIC ACCOUNTS COMMITTEE

TERMS OF REFERENCE



# Legislative Assembly of the Northern Territory

## PUBLIC ACCOUNTS COMMITTEE

Telephone 81 2262  
Telex AA 85154  
Telegrams Comparlas

G.P.O. Box 3721  
Darwin  
N.T. 5794

### TERMS OF REFERENCE

(Minutes of Proceedings - Tuesday 28 April 1987)

1. The following provisional Standing Order, to operate on a trial basis as a Sessional Order, be agreed to:

#### 21A PUBLIC ACCOUNTS COMMITTEE

- (1) A Standing Committee of Public Accounts to consist of five Members shall be appointed at the commencement of each Assembly.
- (2) The duties of the Committee shall be -
  - (a) to examine the accounts of the receipts and expenditure of the Northern Territory and each statement and report transmitted to the Legislative Assembly by the Auditor-General, pursuant to the Financial Administration and Audit Act;
  - (b) to report to the Legislative Assembly with such comments as it thinks fit, any item or matters in or arising in connection with those accounts, statements or reports, or in connection with the receipt or disbursement of the moneys to which they relate, to which the Committee is of the opinion that the attention of Parliament should be drawn;
  - (c) to report to the Legislative Assembly any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them or in the method of receipt, control, issue or payment of public moneys;
  - (d) to inquire into and report to the Legislative Assembly on any question in connection with the public accounts of the Territory -
    - (i) which is referred to it by a resolution of the Assembly; or

- (ii) which is referred to it by the Administrator or a Minister; and
  - (e) to examine the reports of the Auditor-General laid before the Legislative Assembly with the accounts of a Public Authority of the Northern Territory (including any documents annexed or appended to those reports).
- (3) The Committee shall examine only those accounts of receipts and expenditure of the Northern Territory and reports of the Auditor-General for financial years commencing after 30 June 1986: provided that this shall not prevent the consideration by the Committee of matters included in reports of the Auditor-General for the year ending 30 June 1986 which have or may have a continuing effect on the form of the public accounts; the method of receipt, control, issue or payment of public moneys.
- (4) Prior to determining whether to undertake an inquiry into any matter which may have arisen in connection with the public accounts of the Territory, pursuant to paragraphs (2) (a) and (e), with the concurrence of the Committee, the Chairman is empowered to write to the Chief Executive Officer of the relevant Department or Public Authority for a report on the matter.
- (5) The Committee shall take care not to inquire into any matters which are being examined by a Select Committee of the Assembly especially appointed to inquire into such matters and any question arising in connection therewith may be referred to the Assembly for determination.
- (6) The Committee shall elect a Government Member as Chairman.
- (7) The Chairman of the Committee may, from time to time, appoint a Member of the Committee to be the Deputy Chairman of the Committee and the Member so appointed shall act as Chairman of the Committee at any time when there is no Chairman or when the Chairman is not present at a meeting of the Committee.
- (8) In the event of an equality of voting, the Chairman, or the Deputy Chairman when acting as Chairman, shall have a casting vote.
- (9) The Committee shall have power to appoint sub-committees and to refer to any such sub-committee any matter which the Committee is empowered to examine.

- (10) Three Members of the Committee shall constitute a quorum of the Committee and two Members of a sub-committee shall constitute a quorum of the sub-committee.
  - (11) The Committee or any sub-committee shall have power to send for persons, papers and records, to adjourn from place to place, to meet and transact business in public or private session and to sit during any adjournment of the Assembly.
  - (12) The Committee shall be empowered to print from day to day such papers and evidence as may be ordered by it and, unless otherwise ordered by the Committee, a daily Hansard shall be published of such proceedings of the Committee as take place in public.
  - (13) The Committee may proceed to the despatch of business notwithstanding that all Members have not been appointed and notwithstanding any vacancy.
  - (14) The Committee shall report annually and shall have leave to report from time to time and to report its proceedings and evidence taken; and any Member of the Committee shall have power to add a protest or dissent to any Report.
  - (15) Unless otherwise ordered by the Committee, all documents received by the Committee during its inquiry shall remain in the custody of the Assembly: provided that, on the application of a department or person, any document, if not likely to be further required, may, in the Speaker's discretion, be returned to the Department or person from whom it was obtained.
  - (16) The Committee shall be provided with all necessary staff, facilities and resources and shall be empowered, with the approval of the Speaker, to appoint persons with specialist knowledge for the purposes of the Committee.
  - (17) The foregoing provisions of this Resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders; and
2. That, unless otherwise ordered, Mr Ede, Mr McCarthy, Mr Leo, Mr Palmer and Mr Poole be appointed as Members of the Committee.

**APPENDIX B**

**ACTUAL V. CONTINGENT LIABILITIES (ALDER)**

PUBLIC ACCOUNTS COMMITTEE  
Inquiry into Actual and Contingent Liabilities of Government  
Extract from Submission by Mr O. Alder, Chief Executive Officer  
Investnorth Management Pty. Ltd

ACTUAL V. CONTINGENT LIABILITIES

Actual liabilities are amounts which are recognised as having to be paid to parties under contractual arrangements.

The fact that the amounts due are not able to be quantified until the moment of payment does not change their status. For example, the cost of fuel for buses/vehicles will vary because of external oil prices; interest on loans may vary as rates move with economic conditions; an undertaking to fund a hotel deficit may be affected by room revenues achieved in the competitive world tourism market; the rent of office space may be increased by the C.P.I.; employee entitlement to salaries and wages may move unpredictably according to national wage determinations or award variations.

Actual liabilities are recognised in appropriations made. Such appropriation may be either more than adequate, adequate, or less than adequate depending on actual outcome versus assumptions.

Contingent liabilities are liabilities which, by their nature, are remote and not worth quantifying, or not capable of being quantified. They represent the potential financial outcome of risk acceptance, usually on behalf of others, but, for government, rather more broadly, as provisions are not made and insurance not taken for some risks in a commercial manner.

Contingent liability is a balance sheet disclosure item designed to give a complete picture of potential as well as actual condition.

In commerce, contingent liabilities disclosure is usually restricted to notes as to guarantees or indemnities given and, perhaps, significant court judgments pending for which no provision of funds has been made.

It is to be recognised that in judging the significance of contingent liability disclosure the degree to which security has been taken to match the risk should also be considered. For example, mortgages may have been taken in support of guarantees given, or counter-claims mounted against those who have prosecuted an action. Accordingly, if full security is available, it may well be that no contingent risk needs to be exposed in giving a full and fair view.

Repayment of the principal sum of moneys borrowed, even where events may precipitate an accelerated payment, is not regarded as a contingent liability. Principal repayment is an actual liability made according to the terms of the associated documentation. Early repayment should have no balance sheet effect (notwithstanding possible trauma) as both sides of the balance sheet are reduced at the same time.

In government, contingent liabilities may be said to include not only guarantees and indemnities (net of security taken) but also potential payments, made necessary by the emergence of unusual circumstances, in respect of which no or inadequate accumulated provision has been made. As stated, because of the cash orientation of government accounting, it is not the common practice for provisions to be made.

For example, a sudden exodus of staff may result in a large sum being paid for accumulated benefits; widespread destruction of assets which must be replaced may require immediate expenditure; a major accident may cause large workmen's compensation liability.

In commerce or in government the significance of net contingent liability can only be judged relative to the size of the enterprise as a whole, i.e. the capacity of that enterprise to readjust its activities to cope with its satisfaction without fundamental disruption of its pursuits.

APPENDIX C

PROJECT RISK MANAGEMENT

MORRIS, FLETCHER & CROSS,  
Barristers & Solicitors,  
Darwin Plaza,  
The Mall,  
Darwin. N.T. 5790

Telephone: 817333

1. The Doctrine of Sovereign Risk

A basic concept found in most legal systems today is that the State is not bound by contracts it makes and is not obliged to submit itself to the jurisdiction of Courts at home or abroad. This is the concept of crown immunity.'

In many countries (including Australia) governments have cut across this basic rule by providing in legislation that certain types of contracts are binding on the State and, in some cases, by providing also for submission to the jurisdiction of local courts.

However, even where a State has waived its immunity by legislation, it is always open to the State to alter the legislation so as to re-instate its own immunity or to render void or voidable a contract which it has previously entered into.

Accordingly, parties dealing with governments frequently make a judgment as to whether a contract should proceed not on the basis that the contract will be irrevocably binding but rather by accepting the risk that the government has the power to change the deal retrospectively or to reassert its immunity and by making a judgment as to the bona fides of the particular government and State and the likelihood of its adopting such a course of action.

This is commonly called the doctrine of Sovereign Risk.

In other words, the contracting party looks behind the technicalities of the documentation and makes a judgment as to the good faith and financial stability of the government and the State with which it is dealing.

It is therefore important for a government which is negotiating a contract to be aware that the other parties will be approaching the deal in this light and to be sensitive to the wider implications of the arrangements which are proposed.

Some of the general policy issues which can arise for consideration by the Northern Territory in the course of negotiation of arrangements and which are specifically relevant to the Sovereign Risk concept are:

1.1 Governmental Responsibility in vouchsafing the assets of the Crown

In the Northern Territory the assets of the Territory are immune from attachment and execution. In other words they cannot be seized by creditors of the Territory. In this the law of the Territory follows the traditional common law doctrine of sovereign immunity.

However in many overseas jurisdictions and in some Australian States it has become more common in recent years for the State to waive its immunity, even to the extent of submitting all or some of its assets to attachment and execution.

In some jurisdictions it is provided that, where a State enters into an ordinary commercial transaction, the other parties to that transaction have, as of right, the benefit of a waiver of immunity from the State, including any immunity from attachment and execution. The problem then arises of categorising

each separate transaction as a governmental or a commercial transaction, so that the appropriate position on immunity can be established.

In some States there is no such general rule but governments are prepared to give a waiver where the particular circumstances of the transaction make it necessary or desirable in order to negotiate acceptable arrangements. Alternatively the right to attachment and execution may be limited to specific crown assets only.

Similar considerations arise where assets of the Territory or some statutory corporation of the Territory are proposed to be mortgaged or charged in support of financing arrangements. Once again policy issues arise as to whether such assets should be charged and, if so, in what circumstances.

As a matter of general principle, it might be said, for example, that to agree to attachment and execution and/or to agree to mortgage Territory assets is an admission by the Territory of the possibility that it may default in a payment thus necessitating seizure of Territory assets.

From one point of view it could be argued that such a default is inconceivable and that therefore it is unnecessary for a contracting party to have the right to seize Territory assets. This is the ultimate statement of the doctrine of Sovereign Risk i.e. you are dealing with the Crown in right of the Territory

- it is unthinkable that the Territory will default.

From a more pragmatic point of view, it is difficult for the Territory to maintain this posture, at least in the international money market, where defaults by States in their international borrowings are not unknown in recent years.

It is clearly desirable for the Territory to develop a consistent policy on these matters which policy can be applied in a way which will maintain the credibility of the Territory in its various negotiations and will also, so far as possible, minimize the expense of Territory assets to possible seizure by mortgagees or to attachment and execution.

#### 1.2 Ramifications of default by the Territory.

In the short term a default by the Territory in its obligations could lead to:

- (i) loss of credibility for the government of the day with the possibility of political consequences flowing from this;
- (ii) immediate financial impact on the project in respect of which the default has occurred and possibly on other projects already on foot (see Part 3 below);
- (iii) immediate adverse repercussions in respect of other projects presently in the course of negotiation;

(iv) possible loss of confidence by the public in the financial status of the Territory.

In the longer term further ramifications of the default may become evident. In this context it is important to note that the financial community, and in particular the international financial community, makes its judgment as to Sovereign Risk in respect of the relevant State and not simply in respect of the government of the day. Accordingly a default brought about by a particular government will influence the financial community in its view of the Territory in the long term (as well as its view of the particular government of the day) and this may well inhibit the ability of future governments to raise funds.

Further, at the very least, default by the Territory will mean that future deals will only be negotiated on terms much more restrictive, so far as the Territory is concerned, than deals documented to date.

In short, the doctrine of Sovereign Risk works on the basis that the risk is acknowledged but is accepted. The basis of this acceptance is that there has been no default. Once default occurs there is a strong likelihood that the risk will not be accepted at all or that the conditions of its acceptance will be unpalatable to the Territory.

1.3 Implications of the Northern Territory's actions for the position of the Commonwealth and the States.

It is not necessary here to set out in detail the financial arrangements between the Territory and the Commonwealth.

For the purposes of this paper it is really necessary to have regard only to three general principles:

- (i) the Territory is still, and will in the foreseeable future continue to be, dependant upon the Commonwealth for the provision of a substantial part of its funds;
- (ii) the Commonwealth is perceived by the financial community as being similar to a "lender of last resort" to the Territory;
- (iii) to a lesser extent the same "lender of last resort" view is held by the international financial community with respect to the relationships between the various States and the Commonwealth.

Accordingly if the Territory were to reach the position that it could not pay its debts there is an expectation in the financial community that the Commonwealth would act to make monies available to avert any such default. For this reason it is possible that a failure by the Territory to meet a financial commitment might be interpreted immediately as a sign that the Commonwealth government has failed to provide financial back up to the Territory.

This could reflect adversely both on the Commonwealth's own fund raisings and also on similar commitments being made by the various States. It is possible that such a default could lead to some change in Australia's overseas borrowing rating and/or in ratings given to those of the Australian States which have established themselves overseas as separate borrowing entities.

For these reasons it is important that documentation negotiated by the Territory has incorporated into it sufficient lead times and grace periods to enable it, if necessary, to make alternative financing arrangements (including an approach to the Commonwealth for funds) before any default occurs. In this way the spectre of a failure by the Commonwealth to back up the Territory will not arise solely because there has been no time allowed in which an approach for assistance can be made.

1.4 Responsibility not to prejudice on-going services.

In entering into any contractual arrangement the government must ensure that it does not inhibit or restrict its ability to meet its other contractual commitments and, most importantly, its on-going governmental obligations. In other words the Territory should only enter into arrangements which the government is confident that it can carry out in conjunction with and not to the detriment of its other obligations. If care is not taken on this point when the deal is being negotiated, there is a

real possibility that pressure will be brought to bear from other quarters at a later date to persuade the Territory to back away from the deal in order to fulfil other governmental obligations. Any such action must inevitably put the credibility of the Territory in jeopardy.

Experience shows that, if the terms imposed on the Territory during negotiations would restrict its ability to perform in other areas, this problem is better disclosed at once so that a compromise solution can be found rather than not considered until long after the deal is done.

In this context it is also important to take into account the operation of the doctrine of Executive Necessity. Under this doctrine, which is a well established part of the common law and is operative in the Territory, a State cannot by contract bind itself not to do something or to act in a particular way, if this failure to act or this particular action would cut across or frustrate some other action which it is necessary for the executive arm of government to carry out in order properly to discharge its functions. Any such agreement by a State is void and not enforceable by the other party to the agreement.

This doctrine provides a convenient way out for a government in some circumstances. However although a government may be legally correct in raising the doctrine as a reason for breaking a commercial agreement there is an inevitable loss of credibility on the part of the government and the State since, it

is said, the government knows its own commitments best and should have anticipated the conflict which has arisen.

2. Methods by which Liability is Incurred.

The following are some of the ways in which the Territory can incur a financial liability:-

- (i) the provision in legislation of a standing appropriation in support of some stated obligation of the Territory (e.g. Section 30(1) of the Territory Insurance Office Act 1979).
- (ii) the making of a specific contract containing a financial commitment on the part of the Territory (e.g. a direct commitment by the Territory to purchase or lease certain property, occupancy guarantees, insurance commitments etc).
- (iii) the giving of a guarantee or indemnity to a third party in support of an obligation undertaken by a statutory authority or corporation of the Territory (e.g. a direct guarantee to a third party to support a financing arrangement made by the NTDC).
- (iv) the making of a financial commitment by a Territory corporation where such commitment is, by statute, automatically guaranteed by the Territory (e.g. Section 19(1) of the Territory Development Act).
- (iv) the giving of a guarantee or indemnity to a statutory authority or corporation of the Territory which is back to back with a similar commitment made by the

authority or corporation to a third party (e.g. NTDC agrees to lend funds to X; Territory agrees to indemnify NTDC if X does not repay);

- (v) Letters of comfort (rather than guarantees or indemnities) covering the matters referred to in (iii) and (iv);
- (vi) an undertaking, letter or some other non-legally binding commitment made by the Territory to a third party in respect of a financial commitment.

There are a number of policy matters which arise for consideration when the Territory is considering assuming a liability in one of the ways referred to above or by way of other similar transactions.

#### 2.1 Loan Council Programme.

A matter for priority concern must be whether the proposed arrangement falls within current Loan Council guidelines and, if so, whether it is desirable that the arrangement be structured differently so as to fall outside the guidelines. This may necessitate a substantial change in the structure of the deal and the form of the documentation (not only that relating specifically to the liability being undertaken but more generally in respect of the total documentation of the deal).

#### 2.2 Accounting/Balance Sheet Considerations.

At an early stage in any transaction it is desirable to focus on the manner in which the liability being

assumed will be treated by the Auditor-General and/or any other relevant auditor or accountant for any party. In particular consideration should be given to whether (if at all) the liability should be shown as an actual or contingent liability of the Territory or one of its statutory or corporations and, if so, in what way, when and for how long. The answers to these questions will often indicate the form which the documentation should take and the desirability or not of the obligation being assumed directly by the Territory. Once again extreme care must be taken to ensure that the transaction is documented in a fashion consistent with the most advantageous accounting treatment.

2.3 Policy of direct Territory involvement.

In many instances the question will arise whether, as a matter of general policy, the Territory should be giving any direct commitment for a third party. Apart from any of the matters referred to in 2.2 above, there may be other practical and/or political reasons why it is undesirable for the Territory to ally itself too closely with a particular project or a particular party. Further, the more often the Territory itself makes a direct commitment the more precedents are created which will limit its freedom to negotiate in later deals. If such a policy is to be adopted generally, or with respect to any particular transaction, it is desirable that this be laid down prior to negotiations commencing so that all

parties clearly understand the degree of Territory involvement from the outset. Adoption of such a policy may dictate, for example, that in lieu of direct Territory involvement there be offered a direct commitment by a Territory corporation either without any Territory backing or, supported by a Letter of Comfort only from the Territory.

2.4 Legislative consistency and appropriateness.

In order to ensure that the Territory and its corporations are able to enter into financing and other arrangements when required, it is necessary to keep the relevant legislation under review so as to ensure some consistency of approach and also so as to ensure that the necessary powers on the part of the particular corporations are set out in the legislation.

Without attempting a comprehensive review, a quick inspection of some of the relevant Acts discloses, for example, the following differences in approach:

(i) Power to Borrow

NTDC has no specifically stated power to borrow although this power is probably included in the general powers under Section 16(1) of the Territory Development Act. However, this general power is probably limited in terms of Section 63 of the Financial Administration and Audits Act.

Racing and Gaming Commission - Same as for NTDC - There is a general power in the Racing and Betting Act under Section 18(1). The Financial Administration and Audit Act would apply.

Agricultural Development and Marketing Authority - Same as above - General power in Section 14(1) of the Agricultural Development and Marketing Act - The Financial Administration and Audit Act applies.

Accordingly, it appears that the borrowing powers of each of these corporations is limited in terms of Section 63 of the Financial Administration and Audit Act. Additionally, where those borrowings are not guaranteed by the Commonwealth or borrowings from the Territory, any borrowing by the corporation (which must be authorised by the Treasurer) is guaranteed by the Territory. Accordingly, the Territory has a contingent liability in respect of such moneys.

Territory Insurance Office - Has a specific power to borrow under Section 6(2)(m). Section 22A(2) provides that the Financial Administration and Audit Act does not apply and accordingly and such borrowing is not guaranteed by the Territory.

(ii) Power to Raise (as distinct from borrow) Money

The power to raise money is important since many funding exercises today take place by way of Commercial Bill Facilities, Letter of Credit Facilities, Promissory Note Facilities etc. which constitute fund raisings rather than fund borrowings.

None of the corporations have the power to raise money other than any power which may be inherent in their general powers clauses.

(iii) Power to Lend Money

NTDC has specific power to lend under Section 18 of its Act subject to the consent of the Minister either specifically or by way of a standing approval.

R. & G.C. - No specific power to lend although such a power may be inferred from the general power under Section 18(1) of its Act.

ADMA - Same as for Racing and Gaming Commission - general power under Section 14 of its Act.

TIO - No specific power to lend save by way of investment in approved Public Trustee investments. General power in Section 6(1) of the Act may be sufficient.

(iv) Power to Guarantee

NTDC - Power to guarantee loans under Section 19. Further power to guarantee loans under Section 19A.

R. & G.C. - No specific power to give guarantees - General power under Section 18(1) may be sufficient.

ADMA - Specific power to give guarantees under Section 14(m) and under Section 16.

TIO - No specific power to give guarantees - general power under Section 6(1) may be sufficient.

(v) Power to Give Indemnities

NTDC has specific power under Section 19A.

All of the other corporations must rely upon their general powers clause to give an indemnity.

Even this brief consideration of a small number of sections shows different approaches taken in respect of different corporations. While there may be good reasons for the particular differences identified above, it is clearly important for these matters to be kept under review, particularly if the Territory wishes to utilize statutory corporations in the financing of and support for different projects to be developed in the Territory. The more differences

that are created between the wording of different statutes and between the approach adopted in respect of different corporations, the more questions will be raised by financiers as to the powers and authorities of the different corporations. Further, although general powers Clauses may be sufficient to enable corporations to enter into transactions, many financiers require the existence of a specific power so they can assure themselves that the transaction is not ultra vires the corporation. Once again, this is a policy matter for the Territory, but it seems appropriate for some general co-ordinating checks to be kept on legislation of this type.

2.5 Significance of instruments acknowledging liability.

Apart from straightforward fund raising documents such as loan agreements, bill facilities, letter of credit facilities and so on, there are a number of other types of financing documents some of which have already been mentioned, which are commonly being utilised at the present time to provide government support for projects and therefore to involve the Territory in direct or contingent liability.

Examples of some of these different types of documents are as follows:

(i) Guarantees

Under a guarantee the Territory or a Territory authority or corporation undertakes to pay a

specified sum to a third party if another party defaults in payment of that sum.

Here the liability is contingent in that the obligation to pay will not arise unless a default occurs. However the amount is fixed (usually the principal sum under a loan agreement or similar arrangement together with interest) and is the same as the amount which the defaulting party should have paid.

(ii) Indemnity

An indemnity is given in similar circumstances to a guarantee. Traditionally, however, the liability of the indemnifier is not limited to the amount of any default sum but extends to cover all loss (including consequential loss) which arises as a consequence of the default. An indemnity is therefore usually wider than a guarantee and care is required in drafting the document to ensure that it is not drawn more widely than necessary.

(iii) Leases

The usual form of lease involves a lessor handing over possession of real or personal property to a lessee on certain terms and conditions including the payment by the lessee of a regular rental in respect of the property. In recent times, however, this basic concept has been expanded by the

introduction of variable rental clauses whereby the rental varies either at a set rate or upon demand by the lessor and is so structured as to enable the lessor to meet all or a specified part of its obligations from the rental moneys. In circumstances where the Territory is the lessee under such a lease, it can readily be seen that such a device will enable the Territory to provide financial support to a particular party on a needs basis. In other words, the additional rental is payable only when it is required to enable the lessor to meet its financial commitments. This provision for additional rental often appears in a separate rental clause or in an indemnity provision in the lease.

Accordingly, it is important for the Territory to be aware of its likely actual exposure under the lease over and above the amount of any regular rental payments and also to have some idea of the timing of demands likely to be made for additional rentals so that the appropriate budgetary steps can be taken.

(iv) Insurance and Self-insurance

Where the Territory owns property the question arises as to whether such property should be insured in respect of the usual risks against damage or destruction. Many States take the view that they should not pay insurance

premiums but, rather, should self-insure the property. The Territory may take the same view. In such a case, the Territory is of course exposed financially in the sense that, if the property is destroyed or badly damaged, it will be necessary for the Territory to find out of its own funds moneys sufficient to reinstate or replace the property. Whilst this is not "a liability" in the sense that the Territory will be obliged to replace or reinstate the property because of an obligation to another party, it is still a financial commitment which the Territory will presumably wish to make. Accordingly the question arises whether very substantial assets such as, for example, a hotel or an office building owned by the Territory should be left entirely uninsured given the substantial cost to the Territory of replacement or reinstatement of the building if major damage or destruction occurs.

In addition, however, the Territory and some of its statutory corporations and certain companies in which one or more of these parties have an interest are now entering into various projects as a result of which they are incurring liabilities to other parties to insure properties. For example, whenever the Territory takes a lease over property, one of the usual terms of the lease will oblige the

Territory (as lessee) to insure the whole or part of the property. Once again, the question arises as to whether these properties could be self-insured. Some other States take the view that, even where they have a liability to another party to insure, they would still prefer to self-insure and take the risk of having to reinstate or replace the property. Of course in this circumstance the difference is that the decision to replace or reinstate does not rest with the Territory or a Territory corporation but with a third party so that the potential financial exposure of the Territory is contingent only upon damage occurring and not also upon the Territory making a decision to replace or reinstate.

In some projects recently, the Territory or a Territory body has endeavoured to solve this problem by agreeing to insure but only through the Territory Insurance Office. This of course has the desirable result that the premiums, in effect, do not leave the Territory. On the other hand, in several recent cases where this has been done, questions have been raised about the extent of re-insurance carried out by the Territory Insurance Office and the Office has been asked to produce evidence to investors in projects that re-insurance to an acceptable level and with acceptable parties has been effected. If this practice of

insuring through the Territory Insurance Office continues, it can be expected that further such requests will be made, at least until the Territory Insurance Office substantially increases in size.

(v) Occupancy guarantees

This type of commitment arises in relation to the development, sale and financing of projects such as hotels, office buildings and other forms of residential accommodation for which regular payment is to be made by the occupants.

The viability of such developments of course depends upon regular occupancy of the facilities and, in projects where the Territory or some statutory corporation of the Territory is involved, the developers frequently seek some assurance from the Territory or Territory body that some minimum percentage of the building will be occupied by the Territory or a Territory corporation at least during the early years after construction or, alternatively, if it is not so occupied that a payment will be made to the owners of the building sufficient to ensure revenues to the project as if the minimum occupancy rates had been achieved.

Where buildings such as office buildings are involved, the Territory is often able to meet such a commitment by leasing certain areas in the building for use by Government Departments. However, as the number of such office buildings in the Territory increases, the question arises as to whether the Territory public service and other such bodies will continue to grow at such a rate that space taken in new office buildings can be put to good use. If not, rental moneys will be been paid in vain.

It should be noted in this context that, once a lease is signed, the obligation to pay rental is an actual (and not a contingent) liability whether or not the leased space is fully occupied by the lessee.

An alternative course of action may be for the Territory or a Territory corporation to undertake to make payments designed to top up revenues from the particular project to the extent that there is a shortfall in minimum occupancy figures. Here the liability is contingent upon there being a shortfall and the expectation would be that over a few years the moneys actually paid out would gradually diminish to zero as the building becomes fully tenanted or the project becomes viable.

On the other hand, the Territory is getting no benefit back for the moneys paid in contrast to the situation under a lease where the Territory has the use of the leased premises. Further, if the project does not do well in the early years, the financial commitment of the Territory will be much higher under a make-up payment arrangement and the Territory will also suffer from the budgetary inconveniences of such an arrangement where the amount for payment fluctuates from year to year.

(vi) Letters of Comfort

In the commercial sphere, letters of comfort are used where, for example, the holding company of a group does not wish to enter into a formal guarantee in respect of the obligations of one of its subsidiaries but instead writes a letter to a financier or other third party dealing with the subsidiary advising that it is aware of the commitment undertaken by the subsidiary, that it will ensure that the subsidiary meets its obligations and that it will, if necessary, put the subsidiary in funds in order to enable it to do so.

The letter is usually expressed in such a way that it does not constitute a legal obligation on the part of the holding company and accordingly has the advantage that the obligation of

the holding company is not one which must be disclosed in the holding company's balance sheet and other accounts.

A similar approach is frequently used by governments where it is desirable to give a financier or another third party the comfort of a moral commitment undertaken by the relevant State but it is also desirable, in the government's view, that this commitment not be one which is required to be disclosed in published accounts.

In recent years, the Territory has used the device of letters of comfort as support in respect of a number of financing arrangements.

It is important to note, however, that the use of such letters raises squarely the concept of the doctrine of sovereign risk. Here the recipient of the letter is being asked to accept a moral rather than a legal and binding commitment and accordingly must make a judgment as to the credibility and financial stability of the party offering the letters. Although the Territory may, from a technical and accounting view point, not regard letters of comfort as legal and binding obligations, a breach by the Territory of the terms of such a letter would certainly be regarded by the financial community as if the Territory had

breached a legal obligation and accordingly, within government, the liability assumed under such letters of comfort should, for all practical purposes, be regarded as if it were legal and binding.

Once again, therefore, it is important to consider what is the actual financial exposure of the Territory under such a letter and as to the likely timing of any demand for funds upon the Territory in order to meet that commitment.

There are other similar arrangements which may result in off-balance-sheet and/or contingent liability arising on the part of the Territory or one of its corporations. Because such liabilities are often not disclosed in public accounts and because they are often contingent and not actual liabilities, it is easy for them to be overlooked unless some centralised record is kept and some regular review process takes place.

3. Legal consequences of default and types of default

3.1 Legal consequences of default

Some practical consequences of default have already been examined in this paper. In addition, however, a number of technical legal consequences flow from an act of default under a financing document. The default can have substantial consequences not only

for the particular project in respect of which default is made but also in respect of the continued financing and operation of other projects.

The usual consequences for a project where an act of default occurs are:-

- (i) an immediate suspension or termination of the flow of further funds to the project;
- (ii) a demand for an immediate repayment of all of the moneys previously advanced together with interest notwithstanding that, if the default had not occurred, those moneys would not have been payable for some time;
- (iii) appointment of a receiver or a receiver and manager in respect of project assets;
- (iv) possible mortgagee sale of the project assets;
- (v) judgment for debt followed by attachment and execution against project assets;
- (vi) a demand upon any party who has provided guarantees, indemnities or other similar financial support for payment of any moneys outstanding. This would of course include demand upon the Territory or any Territory corporation which has given such support. Once again this demand would be on an accelerated basis.

(vii) where such guarantor etc. does not meet its commitment, the possibility of legal proceedings for debt followed by attachment and execution etc. against that party.

In addition, most financing documents contain a provision whereby, if the borrower goes into default in any other financing document, that default in itself constitutes an event of default under the present financing document giving the financier a right to terminate the facility, make an immediate demand on an accelerated basis for moneys due and payable etc. In other words, most financing arrangements are constructed on the domino principle so that the borrower is always at risk that even a minor or technical breach of a financing agreement may lead to cross default under all of its other financing agreements with the result that all of its liabilities are called up virtually simultaneously.

In circumstances where the Territory has given some form of support to a project, the possibility that the developer or project vehicle might be placed in this situation is of substantial budgetary importance to the Territory since the rolling up of all of the developer's obligations will make it that much more likely that the Territory will be required to meet any guarantee it has given in support of particular obligations to that developer.

Further, where, as has occurred recently with respect to the Yulara project, the Territory and/or any

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Territory corporation has given substantial support to a substantial number of different financing arrangements for the project, it is very possible that a default by the project vehicle in respect of one of those arrangements could result in accelerated demands being made under all of these arrangements with the result that the Territory and/or such corporation would receive accelerated demands in respect of the total funds outstanding on all of these facilities.

Finally if the Territory or a Territory corporation were to default, in turn, in meeting any such accelerated demands on the due date for payment, this would constitute a default by the Territory which could bring into operation cross default clauses in other agreements entered into by the Territory in respect of different projects with the possibility of accelerated demands being made on the Territory in respect of its total commitment for those projects also. These possibilities have extremely serious budgetary implications for the Territory.

### 3.2 Types of default

In broad terms, the events which can give rise to default under a financing document can be categorised as follows:-

- (i) non-payment of moneys due;
- (ii) non-performance by the borrower of covenants given by it in the document -

- e.g. - failure to insure the project assets
- failure to provide reports and notices to the lender within the time limits set down
  - failure to keep the relevant premises open for business
  - failure to give the lender and its representatives access to the site
  - failure to maintain and repair the relevant premises

(iii) events which demonstrates financial instability in the borrower -

- e.g. - arrangement or composition with creditors
- bankruptcy
  - appointment of provisional liquidator, liquidator, receiver, receiver or manager etc.
  - appointment of inspector under the Companies Code
  - failure to pay debts
  - attachment and execution levied against borrower's property
  - substantial litigation or arbitration commenced against borrower.

(iv) events which in other respects are material to the return expected by the lender or to the viability of the project or give rise to a reasonable concern that the borrower may be unable to continue to meet its commitments -

- eg. - failure by borrower to carry on its business in a satisfactory manner
- failure to obtain all necessary consents and approvals (Reserve Bank, FIRB, tax etc) to enable drawdown of funds to continue
  - imposition of statutory or Reserve requirements which are unattractive to the lender and which lead the lender to terminate the facility
  - condemnation or resumption of a substantial part of the project assets
  - governmental intervention by way of legislation or otherwise which affects the business of the borrower and/or the project.

In addition to these general types of events, financing arrangements frequently contain specific provisions relating to events which could occur in relation to the project and which may bear upon government policy. For

example, under the financing documents for the Yulara project, it is an event of default if regular airline services to Ayres Rock are terminated. It is also an event of default if the Federal Government policy (as announced by the Federal Minister) in relation to destruction or removal of premises within the Uluru National Park is not completed by a specified date. Similar types of provisions may be inserted in other financing documents with reference to actions or policies of the Territory government.

Before such events of default can be negotiated and agreed to, it is necessary to consider carefully whether agreement to the inclusion of such provisions, with the consequences which may follow upon a default occurring if the government then changes its policies at a later date, constitutes an unacceptable restriction upon the future actions of the Territory.

(v) False representations -

In most financing documents a substantial number of representations are required to be made by the borrower both as at the date of execution of the documents and as at the date of each drawdown of funds under the arrangement. A number of these representations relate to the legal and financial status of

the borrower and of the Territory and/or any Territory corporation involved in the transaction and the legal and binding nature of the documentation. For example, representations are made that:

- the borrower is a company which is duly incorporated and able to carry on business in the relevant Territory or State
- the Territory corporation has all necessary power under the relevant legislation
- that all necessary consents and approvals have been obtained to execution of documentation by all parties (including any Cabinet, Ministerial, Board or other approvals required in respect of the execution of documentation on the part of the Territory or any Territory corporation)
- that the documentation is legal valid binding and enforceable
- that none of the parties to the documentation knows of any reason why all the covenants in the documents cannot be carried out

- that none of the parties knows of any event of default which has occurred and which has not been waived.

In addition specific representations are often sought in respect of particular matters relevant to the project including representations in respect of government policy or attitude to particular matters. Once again, these provisions could not be included in any such agreement without discussion with the Territory or its representatives.

Further, care must be taken in checking the representations to ensure that they are accurate as at the date of execution and also that they are capable (so far as can then be foreseen) of continuing to be made truthfully as at the date of each drawdown. Most financing documents contain a statement that it is a pre-condition to drawdown of funds that the representations are made or deemed to be made and are true as at the date of drawdown. If after drawdown the representations or any of them are found to be untrue, then an event of default has occurred. Accordingly, if it is foreseeable from the outset that certain of the statements which are required to be made, although they can be made at the date of execution, may not be capable of being made at some date in the

future, then this is a matter which should be discussed at the time of negotiation of documentation rather than included in the documents with the possibility that a default may later eventuate. Further, given the fact that certain types of commitments made by the government (eg. Letters of Comfort) do not constitute legal commitments, care must be taken in respect of representations relating to the binding nature of documentation executed by the Territory.

- (vi) Finally, financing arrangements (as stated earlier) usually contain cross default clauses making it an event of default under the relevant documents if the borrower has defaulted in its commitments under other financing arrangements to other parties.

#### 4. Minimisation of risk

The risk of default under financing arrangements can be minimised, to some extent, by proper documentation and proper administration.

The documentation should concentrate on three aspects of minimisation of risk:

- (i) Clear definition of the extent and type of risk.
- (ii) Provisions for monitoring the performance of the relevant borrower and the project.

- (iii) The insertion of provisions which afford opportunities for the default event to be remedied before action can be taken.

4.1 Extent and type of risk

It is important to ensure that the liability accepted is defined only as widely as is necessary to support the particular project so that, wherever possible, the government can quantify the amount of the risk and take the necessary steps to budget for it. Wherever possible, a limitation in dollar terms should be inserted in the document. This particularly applies where liabilities such as indemnities, occupancy guarantees, make up payments etc. are being accepted. In cases where it is impossible to place a dollar limitation on the liability in the documentation, it is still important for some calculations to be done during the negotiation stage so that a clear indication of the extent of the likely liability being undertaken is known and accepted before the documentation is finalised.

Further, the Territory or its statutory corporation should, wherever possible, obtain security from the parties whose obligations are being supported whether that security is by way of charge over assets or by way of some undertaking or indemnity to repay. Once again this is not always possible to negotiate but is clearly desirable.

Where guarantees and indemnities are given in support of financing arrangements, it is desirable, if possible, to negotiate a situation whereby, if the borrower defaults in a payment, the guaranteeing or indemnifying body (eg. NTDC) steps in and continues to meet payments to the financier as they fall due (and not on an accelerated basis) with a provision whereby, if the borrower at a later stage again becomes able to meet its commitments, the borrower will then step in and take over the continued obligations in respect of the financing arrangements. Indemnities in this form have been negotiated in respect of certain financing arrangements supported by the NTDC in recent years. Once again, this is not a situation which all financiers will accept but it is a desirable position to achieve since it at least enables the Territory or the relevant corporation to meet guaranteed payments as they fall due over a period rather than on an accelerated basis.

An alternative provision would be to state that the guarantee or indemnity provided is a residual one only. In other words, that demand can only be made under that guarantee or indemnity once the financier has exhausted any rights it may have against the borrower and the borrower's assets. This could mean, for example, that if a borrower fails to make a payment, the financier might be obliged to exercise rights under a mortgage to step in, seize and sell the project assets, apply the sale proceeds in diminution of the amount outstanding and then, only

if a shortfall results, make demand under the relevant guarantee or indemnity on the Territory for payment of that shortfall amount. Although this would still require payment on an accelerated basis, it does defer the timing of that payment and diminish the size of the payment ultimately to be made by the amount received from the sale of the project assets. Before inserting such a provision in the document, however, consideration should be given as to whether it is desirable, in the eyes of the Territory, that the project should be stopped and the assets sold. Once again, this is a policy matter and it may well be that the Territory's view is that it would prefer to make a payment earlier in the day with the hope of keeping the project on foot under new management.

Finally, if the Territory is obliged to make payments out in respect of a borrower or a project, then the documentation should ensure that the Territory then has some rights over the project assets in place of the financier who has been paid out.

#### 4.2 Monitoring performance of borrower

The principal means by which the performance of a borrower or a project can be monitored and assessed by the government is to provide in documentation that, as a condition of government support, a range of financial and other information will be provided to it. Although this is clearly a desirable provision, care must be taken to ensure that:

- (i) the information obtained is meaningful and useful to Territory representatives in monitoring the project; and
- (ii) the provision of the information does not impose too onerous burden on the borrower.

Most financing arrangements contain standard terms obliging borrowers to make available half-yearly and annual accounts. Whilst these reports are of course useful, they may not be the best means of establishing the position of the borrower and/or the viability of the project. The information required should be determined taking into account the circumstances of the particular project. However, consideration should be given to seeking such information as copies of annual and other budgets, copies of cash flow statements, copies of reports on financial and other relevant matters which are made by the management to the Board of Directors of the borrower and copies of quarterly or more regular reports signed by Directors of the borrower setting out particular matters which are relevant to the project. Matters which could be covered in such regular Directors' reports would include any major deviations from the budget, details of any major litigation or arbitration proceedings commenced against the borrower, details of any event of default or possible event of default which has or may have occurred in respect of any documentation signed by the borrower etc. During the construction period of a project, consideration can also be given

to obtaining copies of construction timetables and programmes prepared by the project manager, copies of reports and certificates furnished by the architect, copies of reports furnished by other specialist consultants etc. Finally, consideration could be given to seeking the right to be represented at site meetings during construction and generally at meetings of the Board of Directors of the borrower. Alternatively, consideration could be given to seeking the right to appoint a Director onto the Board or to requiring the borrower to appoint a specified or an acceptable financial or accounting adviser who would provide independent reports to the Territory.

It is important when documenting the reporting requirements to ensure that, so far as possible, the borrower is not placed in a position where it must assume an overally onerous burden either financially or in terms of time in order to comply with the Territory's requirements. Accordingly, before a list of reporting requirements is inserted in the document, it is important to make enquiries of the borrower or the project developer as to what other information it is being asked to supply to other parties (such as financiers) and to see whether the Territory's requirements can be met simply by obtaining copies of those reports rather than by seeking the preparation of fresh reports prepared specifically for the Territory. If possible, an endeavour should be made to settle an agreed format

for reporting information which will satisfy the requirements of the Territory and of other financiers so that all parties concerned get the same information and so that the information is useful in monitoring the project and is provided in a meaningful and accessible format. This will substantially reduce the burden on the borrower. In other words, some attempt should be made to tailor the documentation to fit the situation of the particular borrower and also to meet the requirements of the Territory rather than simply laying down a standard list of reporting terms which are regarded as mandatory in every Territory arrangement whether or not the information contained in them will be relevant in the particular circumstances.

#### 4.3 Remedy provisions

Most financiers usually take the view that, if any default occurs, they should have the right to make an immediate demand for payment upon any guaranteeing or indemnifying party. However, it is usually possible by negotiation, to make some inroads into this attitude and to achieve a situation whereby, once an event (such as the events categorised in 3.2 above) has occurred, some time is given to the borrower to endeavour to remedy the default and that thereafter some further period is given to the Territory to find the money to meet the demand before any right of acceleration arises. In this way, it should be possible to ensure that if a mere technical

default has occurred or if some other more substantial event of default has occurred which is capable of being remedied, the borrower and/or the Territory is given some time within which to take the necessary steps to remedy the matter before any right arises to terminate the facility, make demand for payment, etc.

In negotiating such position, some attention should be paid to the seriousness of the event which has occurred and its likely effect upon the status of the financier. The usual attitude of financiers is to categorise all events of default as being the same. However, this is demonstrably not so. Clearly if the borrower becomes insolvent and is put into liquidation, the financier has a serious problem. On the other hand, if the default complained of is simply the failure to provide a quarterly Directors' report, then this is something that can be remedied and some reasonable time should be given to enable this to be done.

In other words, it is important to try to negotiate documentation which distinguishes between the different types of default and the materiality of the default and also provides grace periods for remedying the particular default which are relevant to the time which might be required in order to remedy the problem.

In addition, in situations where the Territory is providing support for a project, it is important for

a Territory or the relevant Territory corporation to require that any notice served on a borrower in respect of a default or requiring the remedying of a default be simultaneously served on the Territory or the corporation so that it has the earliest possible notice of the fact that a default situation has emerged.

It is not always possible to negotiate default clauses in this way, but any concession that can be gained along these lines will obviously be of benefit to the Territory.

5. Implications of Disclosure of Liability

Reference has already been made in 2.2 above to the accounting implications which require consideration in connection with the question of whether a liability undertaken by the Territory or a Territory corporation should be disclosed in annual accounts and other such reports.

In addition, it is perhaps also appropriate to note that, if liabilities are structured in such a way that, because of auditing and other requirements, they must be disclosed in such reports, the practical problem may arise that the size of the assets available to be shown in such reports as offsetting such liabilities may be substantially less than the amount of the liabilities.

These concerns are particularly relevant in the case of liabilities undertaken by statutory corporations (such as NTDC or TIO) and accordingly some careful thought needs to

on the one hand and his more general duty to carry out his Ministerial responsibilities.

(ii) Reference has previously been made in 1.4 above of the responsibility of the government not to prejudice its on-going governmental obligations and it is clearly a duty of Ministers of the Crown to take account of this responsibility. On the other hand, this duty may be in conflict with what is perceived by certain Ministers to be their duty to take advantage of or to promote some particular development by entering into financing arrangements or commitments on behalf of the Territory.

(iii) In circumstances where a project development entity (such as a company or a trust) has been incorporated and where an official of the Territory has been appointed to serve on the Board of Directors or governing body of that entity, that official may well be in a position of having a conflict between his duty as director of the entity to promote the interests of the entity and his duty to act in the best interest of the Territory or a corporation of the Territory. This would extend not only to making decisions as to commitments to be made by either party but also would extend to questions such as whether the official should disclose to the Territory or to a Territory corporation information which comes into his hands as a director of the entity or, alternatively, whether he has any duty to disclose to the entity information which he has obtained from the Territory. The strictly legal position is that

he must clearly distinguish between the two duties and keep the information separate and confidential to the respective parties. On the other hand, there would certainly be an expectation on the part of the Territory that, if he has been appointed to the position in order to safeguard the interests of the Territory there must be a disclosure of information gained from the project entity.

The above are only examples of types of concerns that can arise. However it is necessary to take some care when designing documentation and financing structures to avoid these types of conflicts so far as is possible.

Further, it is clearly very important that persons who may be placed in such a position of conflict are properly informed as to the nature of the transactions they are entering into and are made aware of the conflicting nature of their responsibilities so that they can make the appropriate decisions both in their own interests and in the interests of the parties which they represent.

7. Co-ordination of policy and practice

The preceding parts of this paper have demonstrated, in a relatively short over-view, some of the complex problems which arise for consideration by governments when engaging in major financing transactions.

One thing that is immediately evident is that many of these problems are inter-related and that it would be prudent for decisions not to be taken in respect of such financing arrangements without the persons making the decisions and

negotiating the arrangements having the benefit of understanding government policy on all relevant matters and also without understanding the impact that decisions made in respect of the particular arrangements may have upon other arrangements proposed to be made or previously made by the Territory.

It seems an inescapable conclusion that there is a need for some central point through which many of these considerations can be channelled so that all relevant parties are properly informed.

From the point of view of government parties, it is clearly necessary that all relevant government departments and agencies affected by the proposed arrangements are properly consulted and, so far as is possible, that their concerns are accommodated in the documentation. It is also very important that the persons within government making the decisions with respect to the Territory's involvement should have an accurate and comprehensive briefing in respect of the various issues which arise for consideration and that this briefing be given against the background of impact on future projects and/or on other arrangements which have previously been made by the Territory. On the other hand it is also important that the persons charged with the responsibility of actually negotiating the documentation should be fully aware of the government's policy on the various issues raised and of any particular sensitivities or problems which are inherent in the proposed arrangements. Only in this way will it be possible to ensure that the documentation encompasses and protects the various requirements and concerns of the Territory.

1 This paper has not dealt with another important aspect of the decision making process, namely, the quantification of the liability to be undertaken and its impact in dollar terms upon other liabilities of the Territory. Clearly this is also an area in respect of which some detailed consideration is required by persons with expertise in financial and statistical analysis. It seems logical that any focal point for decision making must have available to it, in addition to information on the matters raised in this paper, financial and statistical information in respect of the liability to be assumed.

Of course once the commitment has been made by the Territory, the necessity still arises for a monitoring of the project and for management of the commitment over the term of the agreement. In some cases, all that will be required is for reports to be checked on a regular basis and for some budgetary provisions to be made against the possibility of the Territory having to meet a claim. In other cases, for example where regular make up payments and lease payments are being made, some more detailed form of monitoring will be required. Further, where borrowing vehicles are being set up with Territory support, and where those vehicles are then managing large amounts of money on a day to day basis, it may be necessary to consider whether certain officials within the public service in the Territory should be given the responsibility of managing those funds and of pooling them together with other Territory funds so that the best rate can be obtained and the funds be managed in such a way that the interests of the Territory are

protected and that the funds are managed economically and by properly qualified persons.

It is also noted that, in addition to special financing arrangements which the Territory may be making in respect of the development of projects, the Territory is also engaged in the on-going business of government and in the administration of substantial Territory funds including a semi-government loan program. It seems logical that the negotiation and management of special arrangements be considered against the background of these on-going services and that the administration of funds arising from such arrangements should not be carried out in complete isolation from the overall task in administering governmental funds.

It also perhaps worth remarking that, given the complicated nature of some of the issues raised in this paper and given the undoubted expertise which is required in placing and managing large amounts of funds, one real advantage which will accrue to the Territory from some form of centralised control will be the development of significant expertise within the Territory public service which will, over a period, enable the Territory and its corporations to make more informed decisions in respect of proposals which are brought before them for consideration and which would also enable them to reduce somewhat the cost of such arrangements by reducing the dependence of the Territory on outside advisers.

It is probably true to say that it is possible to separate out problems relating to formation of policy generally and

the negotiation of documentation and regard these matters are independent from the monitoring and administration of the arrangements once they have been put in place.

Accordingly, it may be thought appropriate for these matters to be handled in separate departments. Alternatively, some special unit could be created to cover the whole range of these matters.

This paper does not attempt to address the question of how any form of centralised administration would be operated or by whom. That is clearly a matter for decision by the Territory and for debate within its public service. This paper merely expresses the conclusion that there is a need for some centralised form of consideration, negotiation and administration of such arrangements if the best interests of the Territory are to be protected.

Finally, this paper returns to where it began - that is, to the doctrine of sovereign risk. No matter how financial arrangements are expressed, the basis of the arrangement must be the financier's trust in and acceptance of the credibility and financial stability of the Territory. A centralised system of control must significantly reduce the possibility which now exists of the Territory taking conflicting views on similar points in different documentation and of entering into arrangements without the benefit of a detailed appreciation of the financial and other exposure entailed. In the long term, therefore, the Territory's ability to maintain a creditable stance in the financial community and to continue to meet its commitments

without difficulty will be materially enhanced by the establishment of some centralised system of control in respect of the matters referred to in this paper.

E.A. NOSWORTHY

5 March 1984

EAN555-8-050384

APPENDIX D

INVESTNORTH MANAGEMENT PTY LTD

# INVESTNORTH MANAGEMENT PTY LTD

Registered Office  
74 Cavenagh St  
Darwin

GPO Box 588  
Darwin  
Northern Territory 8734  
Australia

Incorporated  
in the  
Northern Territory

Telephone (089) 81 7088  
Telex AA84023  
Fax (089) 81 4487

2 November 1987

File:

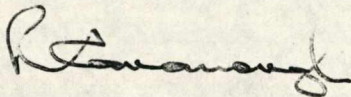
Public Accounts Committee  
Legislative Assembly of the  
Northern Territory  
Mitchell Street  
DARWIN NT 5790

FOR THE ATTENTION OF MS JUDY CUMBERLAND

As requested in your telephone conversation of this afternoon I enclose a copy of the Memorandum of Association of Investnorth Management Pty Ltd which contains the objects for which the company was established.

I also have enclosed a copy of the Certificate for the change of name from Abington Pty Ltd to Investnorth Management Pty Ltd.

Yours faithfully



R.W.B. CAVANOUGH  
Financial Controller

*Companies Act*

No. of Company

Section 21(6)

.....CL6983.....

*Certificate of Incorporation on  
Change of Name of Company*

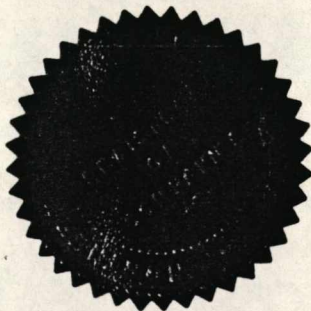
*This is to Certify that* ABINGTON PTY. LTD.

*which was, on the* Ninth *day of* November 19 83  
*incorporated under the Companies Act, did on*  
*the* Twenty-sixth *day of* March 19 86  
*change its name to* INVESTNORTH MANAGEMENT PTY. LTD.

*and that the company is* a company limited by shares and  
that the company is a proprietary company

*Given under my hand and seal, at*

Darwin, this Twenty-sixth  
day of March , 19 86



*B. R. Thompson*

DEPUTY REGISTRAR OF COMPANIES

THE NORTHERN TERRITORY OF AUSTRALIA

COMPANIES ACT

COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

of

ABINGTON PTY. LTD.

M. F. C.  
12/1983

A. The name of the Company is ABINGTON PTY. LTD.

B. The objects for which the Company is established are:

1.(a) To carry on -

(i) any profession; or

(ii) any trade; or

(iii) any business as investors, commercialists, industrialists, bankers, financiers, concessionaires and/or merchants generally;

and carry on and execute all kinds of financial, commercial, industrial, trading or other operations, and generally to undertake and carry out all such obligations, dealings and transactions as an individual, professional, tradesman, commercialists, industrialists, banker, financier, concessionaire or merchant may lawfully undertake and carry out;

(b) To act as a trustee and to undertake all the obligations duties and powers of a trustee in connection with any trust in respect of which the Company may accept appointment as trustee;

2. To purchase or by any other means acquire real property and any estate or interest in and any rights, privileges and easements over or in respect of real property and to purchase and by any other means acquire personal property and to improve, develop, sell, mortgage, transfer, lease, let, exchange, hypothecate and (without limiting the effect of the foregoing general words) in any other manner dispose of or deal with or use such property or rights or any of them or any part thereof.

3. To act as agents for any person, firm, company or corporation in the purchase, sale or management of any business, lands, tenements or hereditaments.

4. To lay out the lands of the Company as the Directors shall think fit and to erect or cause to be erected offices, shops, warehouses, factories, houses, flats and buildings, structures and erections of any kind and to develop, improve and repair the property of the Company.

5. To carry on the businesses of auctioneers, carriers by land, sea and air, commission agents, stock and station agents, insurance agents and brokers, business and property managers and investors.

6. To carry on the, businesses of general merchants, importers, exporters, indentors, warehousemen, manufacturers, wholesalers, dealers and retailers or any of the said businesses in all or any of their several branches.
7. To carry on every class of hire purchase, cash order, discount, finance and money lending business.
8. To carry on and conduct any profession or calling of any description whatsoever.
9. To carry on any business profession or calling which in the opinion of the Directors can conveniently be carried on with any other business profession or calling for the time being carried on by the Company.
10. To prospect, explore and search for minerals and other valuable deposits and otherwise to carry on the business of a mining exploration company in all its aspects.
11. To carry on the business of a mining company in all its branches.
12. To acquire authorities to prospect, mining rights, lands, mines, mineral and other properties of any tenure and grants, concessions, claims, rights, leases, licences and options and any rights over the same and to mine, prospect, work, develop, dredge and explore for metals and mineral substances, petrol, oil, gas and precious stones and other valuable deposits and generally to work the mines of the Company over which the Company has rights and to carry on the business of an exploration company or of mine owners in any part of the world and to treat such metal, minerals or precious stones or valuable deposits and to render the same merchantable and fit for use.
13. To acquire upon such terms as the Directors think fit all or any of the stocks, shares and securities of and the whole or any interest in the undertaking and business of any companies, firms or persons and to carry on the same.
14. To conduct and manage the business and affairs of any other company, corporation, co-partnership or person whether such business be manufacturing, mercantile, commercial, financial, insurance or otherwise.
15. To take over, apply for, purchase or otherwise acquire, maintain and prolong any copyrights, trade marks, designs, letters of registration, patents, brevets d'invention, licences, concessions or any interest therein and the like conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the Company or the acquisition of which may seem calculated directly or indirectly to benefit the Company, and to use, exercise, develop or grant licences in respect of or otherwise turn to account the property, rights or information so acquired.
16. To give any indemnity that may seem expedient whether in respect of a customer or not.

17. Either alone or with any other corporation or person to guarantee or become liable for the payment of money with or without interest thereon (including money payable or to become payable under a fluctuating overdraft) or for the performance of any obligations by any corporation or person whatsoever or whomsoever and for the purpose of securing the payment of any moneys (including any such moneys as aforesaid) or the performance of any obligations for which this Company has become or may become liable under or by virtue of any guarantee or other contract now or hereafter entered into by the Company to mortgage or charge the whole or any part of the assets of the Company present and future including its uncalled capital for the time being.

18. To purchase or otherwise acquire and undertake all or any part of the business, property and liabilities of any person, firm, company or corporation carrying on any business which this Company is authorised to carry on or possessed of property suitable for the purposes of the Company for such consideration as the Company may think fit, and in particular for shares, debentures or securities of this Company.

19. To pay for any property or rights acquired or to be acquired by the Company either wholly or partially in cash or in shares, with or without preferred or deferred rights in respect to dividends or repayments of capital or otherwise, or with or subject to any condition either in respect of the increase or non-increase of capital or otherwise, or by any securities which the Company has power to issue, or partly in one mode and partly in another, and generally on such terms as the Directors may approve.

20. To enter into any arrangement with any government or authority supreme, municipal, local or otherwise and to obtain from any such government or authority all rights, concessions and privileges that may seem conducive to the Company's objects or any of them and to carry out, exercise and comply with same.

21. To enter into partnership, union of interest, joint venture, reciprocal concessions or co-operation with any person, firm, company or corporation carrying on or engaged in or about to carry on or engage in any business or transaction which this Company is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit this Company, and to take or otherwise acquire and hold shares or stock in or securities of and to subsidise or otherwise assist any such company or corporation, and to sell, hold, re-issue with or without guarantee or otherwise deal with such shares or securities.

22. To establish and support or to aid in the establishment and support of associations, institutions, trust funds or conveniences calculated to benefit the employees or ex-employees of the Company or its predecessors in business, or the dependants or connections of such persons, and to and to make payments towards insurance and generally to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public general or useful objects.

and to make payments towards insurance and generally to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public general or useful objects.

23. To promote any company or companies, corporation or corporations for the purpose of acquiring all or any of the property, rights and liabilities of this Company, or for any other purpose which may seem directly or indirectly calculated to benefit this Company.

24. To lend, invest and deal with the moneys of the Company not immediately required upon such securities (if any) and in such manner as may from time to time be determined.

25. To obtain any Order-in-Council or Act of Parliament for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution or for any other purpose which may seem expedient, and to oppose any application or other proceedings which may seem to this Company calculated directly or indirectly to prejudice the property or rights of the Company.

26. To borrow or raise or secure the payment of money for the purposes of the Company whether the same shall have been borrowed or is intended to be borrowed on overdrawn account or otherwise in such manner and upon such terms as may seem expedient and to secure the repayment thereof and of moneys owing or obligations incurred by the Company by bonds, debentures or debenture stock (either payable to bearer or otherwise) or by mortgage or charge or in any such manner as may be determined and for such purpose to charge all or any part of the property of the Company both present and future (including its uncalled capital) and to pay interest on such borrowed money.

27. To draw, accept, endorse, discount, execute and issue bills of exchange, promissory notes, debentures, bills of lading and other negotiable or transferable instruments or securities.

28. To distribute any of the property of the Company in kind amongst its members, or any class or classes of its members or any of its members.

29. To procure the Company to be recognised and registered and to establish local registries in any part or parts of the world.

30. To remunerate any parties for services rendered or to be rendered in placing or assisting to place any shares in the Company's capital, or any debentures, debenture stock or other securities of the Company or in or about the formation or promotion of the Company or the conduct of its business.

31. To undertake and execute any trusts the undertaking whereof may seem desirable, and either gratuitously or otherwise.

32. To open any account or accounts with any bank, building society or other financial institution and to operate by and in all usual ways any such account or accounts.

33. To do all such things and exercise all or any of the powers contained in the Third Schedule to the Companies

Act of the Northern Territory as if the same had been set forth at length herein as a separate object or power as the case may be.

34. To do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

It is hereby expressly declared that each sub-clause of this clause shall be construed independently of the other sub-clauses hereof, and that none of the objects mentioned in any sub-clause shall be deemed to be merely subsidiary to the objects mentioned in any other sub-clause.

C. The liability of the members is limited.

D. The share capital of the company is TEN THOUSAND DOLLARS (\$10,000.00) divided into Ten thousand (10,000) shares of ONE DOLLAR (\$1.00) each.

E. The names, addresses and descriptions of the subscribers to this Memorandum are:

NEIL ROBERTSON PHILIP,  
9 Goulburn Street,  
WOODLEIGH GARDENS, N.T.


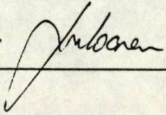
Legal Practitioner

JAMES MAURICE NOONAN,  
78 Nightcliff Road,  
Nightcliff, DARWIN.

Legal Practitioner

We, the subscribers hereto, are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

DATED the 3rd day of October 1983

No.	Signatures of Subscribers:	Number of Shares taken by each Subscriber:
1.		One
2.		One

WITNESS to all the above signatures:

NAME: Robyn Milligan  
ADDRESS: 8 Henry Ellis Street,  
Alawa, N.T.

OCCUPATION: Secretary  
SIGNATURE: R Milligan

REGISTERED in the office of the Registrar of Companies at  
Darwin in the Northern Territory of Australia this  
day of 19 .

Registrar of Companies

Darwin

**APPENDIX E**

**THE YULARA GROUP OF COMPANIES**

1. THE YULARA GROUP OF COMPANIES

1.1 OBJECTIVES OF THE YULARA GROUP

1.1.1 The Yulara Development Company Limited

The Company provides a comprehensive range of facilities and services for visitors to the Uluru (Ayers Rock - Mt. Olga) National Park. Its aim is to do so profitably, over a reasonable term, by providing at Yulara an integrated Resort based experience which is internationally competitive.

The Company acts as the managing partner of the Yulara Tourist Resort Partnership. During the establishment phase its specific objectives are: To improve the scope and efficiency of commercial, public and utility services; to refine the management strategies which will maximise income and minimise expenditure; correct minor design deficiencies; to maximise the overall financial status of the group and ensure that the return expected by its partners is achieved.

An important and more general objective is to develop and adopt marketing and operational strategies to increase both the numbers and length of stay for guests, particularly those who choose hotel accommodation.

1.1.2 Yulara Corporation Pty. Ltd.

The objectives of the Corporation are; to manage public affairs including good order within the Resort recognising the interests of both visitors and the community of Yulara; maintain efficient and reliable operation of utility services; to organise and where necessary provide essential services; to administer residential accommodation; to recover direct operating costs over a reasonable term; and to perform a range of services for, and on the direction of, the Yulara Development Company Limited.

1.1.3 Yulara Nominees Pty. Ltd.

As owner of the assets, on behalf of the Yulara Tourist Resort Partnership, the Company acts as an agent and nominee for that Partnership.

1.1.4 Investnorth Management Pty. Ltd.

By formal agreement, Investnorth Management Pty. Ltd (I.M.P.L.) provides executive and administrative support for the Yulara Development Company Limited.

Within I.M.P.L. is a centralised pool of executive, financial and project expertise. It acts in a similar capacity for the owners of the Alice Springs Sheraton, the Darwin Casino, and the Northern Territory Development Corporation. Its wholesale tourist marketing business, N.T. Territory Holidays, promotes holiday packages designed to lift occupancy in the hotels with which it is associated. Because of economies of scale arising out of organisation in this way, and the co-ordination opportunities provided, efficiency and economy in satisfaction of asset ownership and management responsibilities is being assured.

## 1.2 OPERATIONS OF THE YULARA GROUP

### 1.2.1 The Yulara Development Company Limited

The Yulara Development Company Limited was formed on 16 April 1982 to design, construct, arrange finance and manage the Yulara Resort.

The principal elements of the Resort include the 234 room international standard Sheraton Ayers Rock Hotel, the 100 room domestic standard Four Seasons Ayers Rock Hotel, the 230 bed budget style Ayers Rock Lodge, quality campground facilities, a retail shopping square, a Community Hall and outdoor amphitheatre facility, a visitor centre which incorporates and interpretative display area, and a theatrette.

Additional facilities within the Resort include a police station, fire station, a primary school, the Mobil Service station, a mechanical repair workshop, communication facilities, Aboriginal living area, housing for 500 permanent residents, and associated physical infrastructure.

The founding shareholders were the Territory Insurance Office (T.I.O.), White Industries Limited and CitiNational Limited. In November 1984 the shares of CitiNational Limited were acquired by the Territory Insurance Office and sold to Henry & Walker Limited in January 1985 (at that time the only public listed company in the Northern Territory).

The Board of Directors and Company personnel as at 30/9/86 are as follows:

#### Directors

Mr Henry G. Ewing, O.B.E. (Chairman)	- Nominee of T.I.O. Shareholding
Mr Alan J. Wells	- Nominee of White Industries Limited Shareholding

Mr Richard V. Ryan

- Nominee Henry & Walker  
Limited Shareholding

Mr Otto K. Alder

Company Officers

Chief Executive Officer

- Mr Otto Alder

Company Secretary

- Mr Graham Ride

Public Officer

- Mr Mark Lewis

Auditors

Pannell Kerr Forster

Shareholding

Territory Insurance Office, 3000 'A' class shares

White Industries Limited, 2999 'B' class shares

Henry & Walker Limited, 2999 'B' class shares

Mr Richard Vincent Ryan, 1 'B' class share

Mr Alan John Wells, 1 'B' class share

Valuta Limited, 15,000 cumulative redeemable first preference 'C'  
class shares

Valuta Limited, 30,000 cumulative redeemable first preference 'D'  
class shares

Valuta Limited, 5,000 cumulative redeemable first preference 'E'  
class shares

Valuta Limited, 3,000 cumulative redeemable first preference 'F'  
class shares

Valuta Limited, 12,000 cumulative redeemable first preference 'G'  
class shares

Valuta Limited, 5,000 cumulative redeemable first preference 'H'  
class shares

The following companies have indirectly invested in the Yulara  
Development Company Limited by taking up the above preference  
shares on a back to back basis with Valuta Limited:

. Government Insurance Office, N.S.W. ('C' class shares	\$15M
. National Australia Bank ('D' class shares)	\$30M
. Union Carbide Ltd. ('E' class shares)	\$ 5M
. Blue Circle Southern Cement Ltd ('F' class shares)	\$ 3M
. Car Owners Mutual Insurance Co. Limited ('G' class shares)	\$12M
. Washington H Soul Pattinson & Co. Ltd ('H' class shares)	
	5M
	<u>\$70M</u>

1.22 Yulara Corporation Pty. Ltd

Yulara Corporation is responsible for the day to day operation of the Resort, its utility services and associated municipal activities, and certain management functions by agreement with the Yulara Development Company.

Yulara Corporation Pty. Ltd., is a wholly owned subsidiary of The Yulara Development Company Limited, and was incorporated on 17 June 1983.

To empower the Corporation to charge rates, make by-laws and carry out certain management tasks, the Northern Territory Government passed the Yulara Tourist Village Management Act 1984.

The Board of Directors and Company personnel are as follows:

Directors

Mr H.G. Ewing, O.B.E. (Chairman)

Mr G.R. Waterson  
Mr J.D. Waithman  
Mr C.D. Roger Smith  
Mr O.K. Alder

Company Officers

Chief Executive Officer	-	Mr Otto Alder
Company Secretary	-	Mr Graham Ride
Public Office	-	Mr Mark Lewis

Shareholding

The Yulara Development Company Limited, 2 ordinary shares.

1.2.3 Yulara Nominees Pty. Ltd

Yulara Nominees Pty. Ltd. was incorporated on 10 January 1984. The Company is a wholly owned subsidiary of the Yulara Development Company Limited. Yulara Nominees was incorporated to hold the assets and liabilities for a special purpose equity partnership formed in connection with the financing of Yulara.

The Company met on 12 August 1986, 5 September 1986, 24 September 1986 and 30 September 1986, and approved leasing and documentation amendments as directed by the Yulara Development Company Limited.

The Board of Directors and Company personnel are as follows:-

Directors

Mr O.K. Alder - Yulara Development Company  
Nominee

Mr H.G. Ewing, O.B.E.  
Mr Robert Kirk  
Mr Richard Ryan

Company Officers

Chief Executive Officer - Mr Otto Alder  
Company Secretary - Mr Graham Ride  
Public Officer - Mr Mark Lewis

Auditors

Pannell Kerr Forster

Shareholding

The Yulara Development Company Limited, 2 ordinary shares.

1.2.4 Yulara Tourist Resort Partnership

With the exception of most staff accommodation and utility services owned by the Northern Territory Government and the Mobil Service Station owned by Mobil Australia Ltd., the Yulara Resort is beneficially owned by a special purpose partnership of investors. The partners are:

- . Beneficial Finance Corporation Ltd
- . Capel Court Corporation Limited
- . Commonwealth Trading Bank of Australia
- . James Hardie Finance Ltd
- . National Australia Bank
- . National Westminster Finance Australia Ltd
- . Rinope Pty. Ltd
- . The Yulara Development Company Limited (managing partner)

**APPENDIX F**

**SUPERANNUATION LIABILITIES SUMMARY**

**NT SUPERANNUATION LIABILITY (JUNE 1987 PRICES)**

	1987/88	1988/89	1989/90	1990/91	1991/92
<u>Funds set aside for superannuation</u>					
Carried forward balance	53M	77M	103M	132M	163M
plus Contributions from funding authorities (note i)	6M	6M	6M	6M	6M
plus Appropriation	15M	15M	15M	15M	15M
plus Investment income and capital appreciation (note ii)	5M	8M	11M	14M	17M
less Emerging cost of benefits	- 2M	- 3M	- 3M	- 4M	- 4M
Closing Balance	77M	103M	132M	163M	197M
<u>Superannuation Liabilities</u>					
Liabilities at start of year	152M	201M	249M	297M	344M
plus Accruing liabilities	51M	51M	51M	51M	51M
less Emerging cost payments (note iii)	- 2M	- 3M	- 3M	- 4M	- 4M
Liabilities at end of year	201M	249M	297M	344M	391M

Note : (i) Improved estimate plus inclusion of Water Authority (includes DIT, PAWA, TAB, Port Authority)

(ii) Assumed investment return of about 10%-11%

(iii) Accruing liabilities based on recent estimate by Actuary of \$48M p.a. at June 1986  
(equivalent to \$51M p.a. at June 1987)

**NT SUPERANNUATION OFFICE**

**NOVEMBER 1987**

APPENDIX G

LOANS REPAYABLE BY THE N.T. GOVERNMENT

## LOANS REPAYABLE BY NORTHERN TERRITORY GOVERNMENT

As at 30 June 1987 (Figures in Brackets 30 June 1986)

### - Northern Territory Government Loan Raisings

- All funds raised by the Territory Government through Public and Private subscription of inscribed stock is covered by a Commonwealth Guarantee. Interest paid on inscribed stock varies between 10.4% - 15.7% annually, with maturities varying between 2 years - 10 years.

Balance outstanding : \$321,278,695.00  
(\$222,322,000.00)

### - Northern Territory Electricity Commission

- All assets were transferred to the Northern Territory from the Commonwealth, 30 June 1978. An annual instalment of principal and interest is paid 30 June each year. (Annual instalment \$6,441,608.50) Assets were valued at \$55,983,000 and this debt is to be repaid over 20 years at 9.7%

Balance outstanding : \$42,422,785.70  
(\$44,543,659.25)

### - Water and Sewerage

- All assets were transferred to the Northern Territory from the Commonwealth, 30 June 1978. An annual instalment of principal and interest - 5% is paid 30 June each year. (annual instalment 1986/87 \$881,606) Assets were valued at \$16,000,000.

Balance outstanding : \$14,776,000.00  
(\$14,912,000.00)

### - Commonwealth Staff Housing

- Houses were transferred to the Northern Territory from the Commonwealth, 30 June 1978. An annual instalment of principal and interest is paid 30 June each year (annual instalment \$2,211,977.99). The houses were transferred at a cost of \$19,000 each and the total debt is repayable to the Commonwealth over 53 years at 5% pa. The repayment figure is based upon 2153 houses giving a total debt of \$40,907,000.

Balance outstanding : \$43,842,225.99  
(\$39,315,851.19)

- **Home Finance Trustee Advances**

A debt of \$4,559,518.09 which was outstanding at 30 June 1978 was consolidated into one loan and repayable by the Northern Territory to the Commonwealth over 45 years at 6.0% pa. An annual instalment of principal and interest is paid 30 June each year (Annual instalment \$295,003.08) (Interest varies on advances between 4.5 - 14.40%)

Balance outstanding : \$4,313,236.33  
(\$4,347,395.63)

- **Housing Advances for Public Housing**

Debts transferred from the Commonwealth to the Northern Territory at 30 June 1978 for Housing advances received by the Housing Commission to provide public housing from, 1960 - 1978. An annual instalment of principal and interest is paid each year. (Annual instalment \$3,379,736.05), interest varies between 4 - 7%).

Balance outstanding : \$60,300,778.53  
(\$60,911,085.60)

- **Repayable Subsidies for Commonwealth Houses**

Repayable subsidies in respect of houses which originally attracted a subsidy from the Commonwealth Government and were subsequently sold. The subsidy then became repayable. An annual instalment of principal and interest is paid 30 June each year (annual instalment \$185,790.58 interest varies between 4½ - 12%)

Balance outstanding : \$2,450,581.87  
(\$2,466,008.05)

- **Commonwealth Payment to the States**

General purpose capital assistance from the Commonwealth to the Northern Territory is made available through the Loan Council each year under a State Government Loan Council Program. These funds are allocated by way of Aust Savings Bonds and Govt Bonds and the debt is serviced by bi-monthly interest payments on this stock (interest payments can vary between \$3M - \$11M monthly).

Balance outstanding : \$587,349,033.00  
(\$557,708,484.70)

- **Commonwealth State Housing Agreement**

Under successive Commonwealth State Housing Agreements (CSHA) since self-government, part of the assistance has been provided by way of loans, repayable in equal annual instalments over 53 years at a concessional fixed rate of interest of 4.5 per cent.

Balance outstanding : \$122,561,642.42  
(\$72,021,621.67)

- **Brucellosis and Tuberculosis Eradication Campaign**

Under the Brucellosis and Tuberculosis Eradication Campaign (BTEC) the Commonwealth provides, inter alia, on a dollar for dollar matching basis, concessional loans for capital improvements essential for eradication purposes.

Balance outstanding : \$3,878,612.50  
(\$3,354,240.00)

- **Rural Adjustment Scheme**

Under the Rural Adjustment Scheme (RAS), the Commonwealth provides funds to assist pastoralists with sound prospects of long term commercial viability, who are unable to obtain commercial finance on reasonable terms, to adjust to structural change, and to assist those who are non-viable to adjust out of the industry.

Under revised financial arrangements introduced on 1 July 1985, assistance is provided as an interest subsidy of 50% for a maximum of seven years on funds raised from commercial sources.

Balance outstanding : \$3,040,608.83  
(\$3,032,800.74)

**TOTAL BALANCE OUTSTANDING**

\$1,206,214,200.17  
(\$1,024,935,146.83)  
=====

**APPENDIX H**

**MAJOR TOURISM PROJECTS 1986/87  
INDICATIVE BENEFITS TABLE**

MAJOR TOURISM PROJECTS 1986/87 INDICATIVE ANNUAL BENEFIT TABLE

	YULARA	SHERATON DARWIN	SHERATON A. SPRINGS	BENEFIT TO GOVERNMENT	
				C'WLTH	N.T.
Tourist Revenue (1)	\$34.4M	\$6.9M	\$8.2M		
Labour Force (2)	1186	238	283		
Population Effect (3)	2372	476	566		
Salaries Generated (4)	\$23.7M	\$4.8M	\$5.7M		
Personal Income Tax (5)	\$4.7M	\$1.0M	\$1.1M	\$6.8M	
Company Tax (6)	\$0.1M	-		\$0.1M	
Payroll Tax (7)	\$1.0M	\$0.3M	\$0.3M		\$1.6M
Sales Tax	\$4.8M	\$0.4M	\$0.4M	\$5.6M	
Liquor Tax	\$0.1M	\$0.1M	\$0.1M		\$0.3M
Petroleum Excise	\$1.0M	-	-	\$1.0M	
Commonwealth Grant (8)	\$11.4M	\$2.3M	\$2.7M		\$16.4
Aircraft Landing Fees	\$0.2M	-	-		\$0.2M
<b>TOTAL:</b>				<u>\$13.5M</u>	<u>\$18.5M</u>

- Notes (1) Yulara include whole Resort/Bus/Alice-Yulara airline revenue. Other: only hotel revenue.
- (2) Using tourism sector multiplier of 0.345 jobs per '000 tourist revenue.
- (3) Average dependent of one (lower than average, reflecting special industry)
- (4) Average salary assumed \$20,000 p.a.
- (5) Tax at average 20% of salary.
- (6) Covering smaller independant business enterprises at Yulara.
- (7) Reduced from 6% of salaries for Yulara to allow for small employers.
- (8) Based on \$4,800 grant per resident.

**APPENDIX I**

**LIABILITIES QUESTIONNAIRE**

**N.B. ANSWERS PROVIDED BY N.T. TREASURY AND INVESTNORTH  
MANAGEMENT PTY. LTD**

**TO WHAT EXTENT IS CONSIDERATION GIVEN TO LONG TERM COMMITMENTS AFFECTING SUCCESSIVE GOVERNMENTS IN NEGOTIATING GUARANTEES, INDEMNITIES AND OTHER ARRANGEMENTS WITH CONTINGENT LIABILITY IMPLICATIONS.**

As a general principle, financing documentation is drawn in such manner that the government's contribution of funds under support mechanisms is equivalent to a progressive take-up of equity in the project concerned.

Also, the contribution obligation is expressed as a fall-back one in the sense that the revenue generated by the particular project is always the first source of funds for use in respect of operating costs, payment of interest and repayment of external equity and debt.

The effect of these measures is to smooth the flow of contributions through the term of involvement of successive governments. In aggregate, as the cash-flow of the projects improves, either the annual level of contribution declines or the invested sum increases, or both.

Care has been taken in drafting the various default clauses to ensure, so far as is practicable, investors cannot take precipitate action against the government of the day by demanding accelerated sums. This is achieved by negotiating grace periods so that if a default occurs the government has some time in which to obtain funds and remedy the position.

**IS CONSIDERATION GIVEN TO THE ABILITY OF FUTURE GOVERNMENTS TO ECONOMICALLY MAINTAIN FINANCIAL COMMITMENTS AT THE TIME THOSE COMMITMENTS ARE BEING ARRANGED.**

The ability of governments to maintain commitments over the financing term is zealously examined by the financiers, the governmental representatives and by the government which makes those commitments.

The judgment of the financier will prevail if capacity is seen to be lacking either at the outset or some future time. Financiers are not keen to become involved in projects which are not commercial and in respect of which a significant call on government support is inevitable or probable.

Documents have been drafted so that the Territory can budget and plan for contributions during the annual cycle and have prior knowledge of likely calls upon funds.

If, then, the government involvement in the various structures is properly managed it should be possible to estimate these flows and thus lessen the likelihood of default and possible acceleration of repayment of outstanding moneys.

In estimating the orders of magnitude of these cash flows the government also has regard for the benefits from the project in terms of employment, payroll tax, liquor tax, tourism development, population and so forth.

IN DETERMINING THE ABILITY OF A PRESENT OR FUTURE GOVERNMENT TO ABIDE BY CONTRACTUAL ARRANGEMENTS INVOLVING GUARANTEES AND INDEMNITIES, IS CONSIDERATION GIVEN NOT ONLY TO THE CASH FLOW SITUATION THEN EXISTING BUT ALSO TO THE ACCRUAL AFFECT OF PRE-EXISTING COMMITMENTS.

In each case the government's accruing level of contribution is structured as an investment, in the sense that at the end of the financing period, or upon sale, the government funds are recoupable with interest before any other investor takes any benefit.

**HAS THE NORTHERN TERRITORY GOVERNMENT AVAILABLE TO IT A COMPLETE REGISTER OF ALL CONTINGENT LIABILITIES INVOLVING GUARANTEES AND INDEMNITIES.**

The Northern Territory Treasury maintains a register of guarantees and indemnities (with similar effect as a guarantee) and the contingent liabilities arising thereunder.

It is compiled from information available to Treasury including returns supplied by all Departments and Statutory Corporations.

Treasurer's Direction 13.32 requires Accountable Officers of all Departments and those Statutory Corporations subject to Treasurer's Directions to report this information by 31 July each year for the period to 30 June, and a return each quarter on any changes since their last report.

However as Northern Territory Ministers have the power to enter into contracts (including guarantees and indemnities), it would be possible that the register may not be complete because Departments and Statutory Corporations may not be aware of all such contracts.

**WHAT IS THE RANGE OF INFORMATION KEPT SHOULD SUCH A REGISTER EXIST.**

The register consists of a number of records which contain information under the following general headings.

Section 1:

1. Project Name/Record Title
2. Original Amount - applies to total value of financing guaranteed.
3. File References - reference to relevant Treasury file.
4. Type of guarantee/indemnity i.e. whether issued by the Territory or a Statutory Corporation.
5. Legislation - including section under which the guarantee or indemnity is given.
6. Approved by - Minister who gave approval.
7. Approval date - date guarantee/indemnity executed.
8. Expiry date of guarantee or indemnity - if applicable.

Section 2: Details of Beneficiary

1. Name - of Company or person
2. Address - registered business address
3. Government Contact Officer - name of Contact Officer handling the matter including address and telephone number.

Section 3:

1. Estimated Contingent Liability - if possible to determine.
2. Updated as at - date of last update of information.

Section 4: Comments - a description of the facts surrounding the record or project with information on recent developments.

IS IT POSSIBLE FROM SUCH A REGISTER TO ASSESS THE GOVERNMENT'S CURRENT LEVEL OF COMMITMENT BY WAY OF GUARANTEE AND INDEMNITY AT ANY POINT IN TIME.

As the total contingent liability under some guarantees and indemnities is by its nature unquantifiable, the answer is no.

However, wherever possible an estimate is made of current exposure or potential commitment.

**IS PROVISION NORMALLY MADE FOR RE-NEGOTIATION OF FINANCIAL UNDERTAKINGS IN CONTRACTS ENTERED INTO ON BEHALF OF THE GOVERNMENT.**

Financing documentation does not include provision for re-negotiation. Each party reaches the best possible position have regard to the circumstances of the day and commits to that position. It is crucial that this should be so, as, on the one hand, the financier must be assured as to his flow of repayments and security position and, on the other, the borrower must be assured that the facility will not be arbitrarily withdrawn or have its terms changed to disadvantage during the term.

Such contracts are, nevertheless, agreements between defined parties and are always capable of amendment by re-negotiation and subsequent agreement. Amendments have occurred in respect of the agreements associated with the subject developments and will no doubt occur in future.

In dealing with arrangements which include a governmental party lenders are aware that the potential will always exist for legislation to be made which may impinge upon or nullify the agreements reached, especially if a government changes. It is usual that the documentation is drawn to establish such unilateral action as an event of default but the fact remains that if a government will not meet its obligations then there is really no effective remedy. They have to rely on the doctrine of sovereign risk and the extreme ramifications which would be visited upon government should such situation emerge.

IN NEGOTIATING SUCH CONTRACTS, IS CONSIDERATION GIVEN TO THE EFFECT OF DEFAULT BY THE NORTHERN TERRITORY ON THE FINANCIAL CREDIBILITY OF THE COMMONWEALTH AND/OR OTHER STATE GOVERNMENTS AND IF SO IS THAT CONSIDERATION A MANDATORY REQUIREMENT.

In every negotiation with Financiers the issue of remedy in the event of default by government is considered. This would be so in respect of similar borrowings involving the States and the Commonwealth.

In each case the response is, simply, that the Crown does not default and, consequently, the effect of that default which might be incorporated into the documentation is not entertained.

Lenders are well aware that whilst they may obtain a judgment for moneys owing by the government in a court, such judgment is not an effective remedy, as execution cannot be taken against government property and nor can the Treasurer pay the judgment debt unless appropriation for the purpose is granted by the legislature. (Claims by and against the Government Act)

ON WHAT BASIS WOULD PROSPECTIVE CO-FINANCIERS DETERMINE RISK WHEN ENTERING INTO CONTRACTUAL ARRANGEMENTS INVOLVING GUARANTEES/INDEMNITIES BY THE NORTHERN TERRITORY GOVERNMENT. FOR EXAMPLE, WOULD INFORMATION ON THE CENTRAL LIABILITIES REGISTER OR OTHER CASH FLOW INFORMATION BE AVAILABLE TO THOSE FINANCIERS.

Prospective financiers in making their decision to lend to a party supported by government look to:

- (a) the commercial projections demonstrating the ultimate viability of the project;
- (b) the stability of the governmental structure;
- (c) the history of the government's satisfaction of its obligations over time;
- (d) the overall capacity of the government to meet its obligations of all kinds, not just the projections of contributions to this and other projects, through the term: In particular the certainty of revenue from taxes and from the Commonwealth.

The contents of the liabilities register is not made available to the financiers. They have access to the summary of liabilities which appears in Statement 6 in the annual financial statements as a public document. This covers that aspect.

Liabilities outside of that register are far more interesting to the lenders. For example, the obligation to meet commitments to permanent staff and the capacity to meet insurable risk.

DO TAXATION AND INVESTMENT ADVANTAGES AVAILABLE TO COMPANIES IN WHICH THE NORTHERN TERRITORY GOVERNMENT HAS AN INTEREST EVENTUALLY FLOW BACK TO THE NORTHERN TERRITORY GOVERNMENT TO ANY EXTENT.

To the extent possible the financing arrangements allow a take-up of the taxation deductions and allowances available by the project owner in a manner which reduces the contribution required of government to the equivalent extent.

The Yulara and Darwin Sheraton projects are effectively structured in that way and the Alice Springs Sheraton is about to be refinanced to that end.

It is to be remembered that the introduction of a tax effective structure reduces flexibility, pre-empts early project sale, and results in documentation complexity.

At the same time tourism projects in competing destinations take advantage of such available benefits and measures designed to encourage hotel development. Not to take advantage of these concessions puts the project in a competitively disadvantageous position.

ARE COMMITMENTS ENTERED INTO BY STATUTORY AUTHORITIES UNDER THEIR OWN LEGISLATION CONSIDERED BY TREASURY AS TO THE OVERALL AND LONG TERM IMPLICATIONS OF THOSE FINANCIAL UNDERTAKINGS ON THE NORTHERN TERRITORY. IF SO, HOW.

The direct answer is no.

However, Section 64 of the Financial Administration and Audit Act stipulates that Prescribed Statutory Corporations must prepare estimates for approval by the relevant Minister, and that expenditures may only be made against such estimates. This imposes a measure of control, which is reinforced for those Prescribed Statutory Corporations which are partially dependant on appropriation for their funding.

Effectively, this applies to all significant Prescribed Statutory Corporations at the present time.

For these Prescribed Statutory Corporations, the centralised budgeting mechanism co-ordinated by Treasury, imposes a further measure of control over the level of future commitments which they are able to make.

For Departments and Statutory Corporations subject to Treasurer's Directions the control mechanism is tighter and more direct, and is effected through sections 16 and 17 of the Financial Administration and Audit Act.

There are also some Statutory Corporations which are not "Prescribed" by law or under Treasurer's Directions e.g. The Menzies School of Health Research, Darwin Institute of Technology and University College of the Northern Territory.

The only immediate constraint on their commitments arises from their practical need to justify expenditures when seeking funds from the Territory.

IN VIEW OF THE IMPLICATIONS ON THE FINANCIAL CREDIBILITY OF NOT ONLY THE NORTHERN TERRITORY BUT THAT OF THE COMMONWEALTH AND OTHER STATE GOVERNMENTS REGARDLESS OF WHETHER COMMITMENTS ARE COVERED BY INDEMNITY, GUARANTEE, LETTER OF COMFORT, OR OTHER SUCH SURETIES, WHAT THEN IS THE RATIONALE FOR VARIOUS TYPES OF UNDERWRITING APPLIED IN THE CASE OF:-

YULARA  
SHERATON ALICE SPRINGS  
SHERATON DARWIN

The underwriting of the three listed projects has no implication for government credibility unless there is default.

It is a role of government to promote development and cater for economic expansion. Default in one of these projects in the tourism field, would be precisely the same as a default in financing for power supplies, governmental buildings or contracts for road construction.

In each of these cases the underwriting achieved the establishment of a network of 5 star hotels ahead of the commercial risk-takers who would otherwise have made such investment at some future point.

The arrangements are structured to achieve a return of the government investment over time.

**IS PROVISION TO AVOID CROSS-DEFAULT EFFECTS ON OTHER EXISTING  
FINANCIAL ARRANGEMENTS WRITTEN INTO CONTRACTS FOR:-**

**YULARA  
SHERATON ALICE SPRINGS  
SHERATON DARWIN**

No. The possibility of a default in one agreement not affecting another agreement cannot be avoided by the wording of the first. Each agreement affects only the relationship between the parties thereto.

The documents concerned are carefully worded to give every opportunity to avoid default occurring, thus reducing that possibility and its flow-on effects both for other agreements and the credibility of governments.

IN ADDITION TO THE CROSS-DEFAULT CONSIDERATIONS, IS ANY PROVISION MADE TO AVOID THE POSSIBILITY OF ACCELERATED PAYMENTS THROUGH DEFAULT IN EACH OF:-

YULARA  
SHERATON ALICE SPRINGS  
SHERATON DARWIN

In each financing facility a period of grace has been negotiated to ensure that time is available to have funds assembled to meet notices received or to remedy non-monetary conditions of default.

NOTE: A more detailed response was available to the Committee on this question and the above summary is provided to protect otherwise commercially sensitive material.

**WHAT ACTION WOULD BE AVAILABLE TO THE NORTHERN TERRITORY GOVERNMENT IN THE EVENT OF DEFAULT BY A CREDITOR IN EACH OF:-**

**YULARA  
SHERATON ALICE SPRINGS  
SHERATON DARWIN**

In each case the relationship of the creditor is directly with the proprietor of the property concerned or its agent.

With Yulara the responsibility for the collection of moneys due to Yulara Nominees (as owner and supported to the extent of cash requirements by government) rests with the Yulara Corporation by clause 2.2(e) of the Town Management Agreement. The Yulara Corporation, through its Directorships, is controlled by the government and is also subject to Ministerial Direction under Section 4(1) of the Yulara Tourist Village Management Act.

With Sheraton Alice Springs creditors of Investnorth Limited (having the right to draw loan funds from government to meet cash deficiencies) are pursued by that company the management of which is controlled to the benefit of the T.I.I. as a shareholder.

With the Darwin Sheraton revenue owed to Manolas Hotels accrues under the Sheraton Management Agreement, as all day to day affairs are delegated to Sheraton. Under that Agreement Sheraton is bound to pursue and account for all moneys owing in sound commercial manner and both Manolas and the government have audit rights over records.

**WHAT PROVISIONS ARE IN PLACE TO ENSURE NON-DEFAULT BY THE  
NORTHERN TERRITORY IN CONTRACTS RELATING TO EACH OF:-**

**YULARA  
SHERATON ALICE SPRINGS  
SHERATON DARWIN**

For both Yulara and Sheraton Alice Springs compliance by the companies owning the properties with the financing agreements is the responsibility of the Investnorth Management Pty Ltd, a company controlled by the government through Directorships and executive staff.

That company in its management of the overall financial affairs of those projects provides Treasury with rolling forecasts of expected top-up cash contribution requirements by government. This information enters the Territory budget process as an element of the Treasury estimates, resulting in an appropriation of the expected amount.

Investnorth Management arranges for requests for contribution to be made in accordance with the Contribution Agreement (between Yulara Nominees and the Territory) and with the Territory Loan Agreement (between Investnorth Limited and the Territory). The commitments are satisfied by payments out of the appropriation to Yulara Nominees and to Investnorth Limited, respectively, enabling the obligations in cash of those companies to be met.

With Darwin Sheraton the claims for cash contribution are made by Manolas Hotels on the Territory Loans Management Corporation (as successor to the N.T.D.C). Again, the obligations of government under the project documentation are monitored by Investnorth Management for T.L.M.C. and financing forecasts leading to appropriation are regularly provided to the Treasury. The treasury provides funds through T.L.M.C. to Manolas Hotels out of that appropriation to the extent certified by T.L.M.C. as being necessary to meet the cash shortfall of Manolas Hotels after it has received all other revenues.

Should an unexpectedly high claim for contribution be made then the sum would be met by savings in the head of appropriation available to the Treasury, or alternatively application would be made by Treasury for an advance by the Treasurer for subsequent adjustment of appropriation.

Senior qualified accounting staff are engaged in Investnorth Management for these purposes. In the Treasury there is a single focus for these relationships.

Investnorth Management maintains the centralised repository of all project agreements and has a comprehensive diary system to ensure all obligations are met on time. The firm is also responsible to ensure compliance with all reporting requirements to financiers and to government.

**WHAT METHODOLOGY IS IN PLACE TO ENSURE A SUFFICIENT AND RELIABLE FLOW OF INFORMATION IS REGULARLY AVAILABLE TO GOVERNMENT ON THE STATUS OF EACH PROJECT IN WHICH IT HAS A FINANCIAL INTEREST.**

The centralisation of project management and risk assessment in Investnorth Management enables:

- (a) application of uniform accounting and computer systems;
- (b) attention to and an understanding of the commercial variables common to the projects, particularly tourist flows and interest rates;
- (c) a single focus of corporate banking and commercial legal advice;
- (d) an overview by government of the projects position and management in one source;
- (e) experienced attention to financing precedents and a co-ordinated approach to the operators of the leased premises;
- (f) a sound working relationship with lending institutions, paving the way for new or expanded loan facilities as and when required.

Now that this position has been achieved it is possible for project information for immediate budget purposes, for long-term projections, and for strategy development, to be kept up to date and translated at any point into comprehensive reports for the company Boards, for government, and (in rather different style) for the lenders.

Regular reporting patterns have been established.

**HOW IS THE LEVEL OF GOVERNMENT COMMITMENT IN EACH PROJECT DETERMINED.**

Computer models of the finances of each project are well established within Investnorth Management, enabling sensitivity analysis to be performed for any variable significantly affecting long-term results, government commitments investment return, and taxation optimisation.

IS IT NORMAL PRACTICE FOR THE TERRITORY TO BE REPRESENTED ON THE BOARD OF COMPANIES IN WHICH IT HAS A FINANCIAL INTEREST IN RELATION TO INDEMNITIES, GUARANTEES ETC. IF SO, HOW IS THE POTENTIAL FOR CONFLICT OF DUTY AND DUTY FOR THAT REPRESENTATIVE ADDRESSED IN EACH OF:-

YULARA  
SHERATON ALICE SPRINGS  
SHERATON DARWIN

Individuals employed by or associated with government are represented through Directorships on the Boards of the Yulara companies, on the Board of Investnorth Limited (owner of Sheraton Alice Springs) and on the Board of Investnorth Management.

The Territory has no representation on the Boards of the companies associated with the Darwin Sheraton.

The principle applied is that the Directors must, by law, act in the interests of the shareholders and in accordance with their duties under the Companies Act. There is no governmental shareholding in the Manolas Group.

It is, in theory possible for a Director to face a conflict of duty in a decision which may be to the shareholders advantage, e.g. T.I.O., but to the disadvantage of the government, e.g. by effectively increasing the cash flow beyond available funding. For this reason those Directors have been granted indemnities by the government. These indemnities are not regarded as creating contingent liabilities, rather they are in the nature of insurance cover.

**APPENDIX J**

**LEAVE AIR FARE CONDITIONS OF USAGE**

## LEAVE AIR FARE CONDITIONS OF USAGE

### 1. COMPULSORY TRANSFEREES

No change in previous conditions, i.e. fares to mainland capital cities except Canberra, depending upon the employee's head station.

### 2. EMPLOYEES RECRUITED FROM OUTSIDE OF THE NT PRIOR TO 4 JUNE 1985

- (a) Fares Accrued Prior to 4 June 1985

Fares to any capital city

- (b) Fares Accrued Between 4 June 1985 and 3 June 1989

(PSC Determination 102 of 1987)

Fare entitlement based upon the value of the return economy class air fare from the employee's head station to either Adelaide or to the place from which the employee was recruited, on the election of the employee at the time of utilisation of the fare. Fares taken as vehicle allowance for travel by private vehicle are also assessed in accordance with this provision.

The maximum value of fares used for travel by a means other than air, except travel by private vehicle, is restricted to the value of the return economy class air fare from the employee's head station to Adelaide.

### 3. EMPLOYEES RECRUITED FROM WITHIN THE NT PRIOR TO 19 NOVEMBER 1985

- (a) Fares Accrued Prior to 19 November 1985

Fares to any capital city

- (b) Fares Accrued Between 19 November 1985 and 31 July 1987

(Public Service By-laws 1 of 1985 - Transitional Provisions)

Fares to any capital city

- (c) Fares Accrued After 1 August 1987

(Public Employment (Modification to Terms and Conditions of Employment) Act 1987)

Fares to the value of the return economy class air fare from the employees head station to Adelaide only

**4. EMPLOYEES RECRUITED FROM OUTSIDE OF THE NT BETWEEN 4 JUNE AND 18 NOVEMBER 1985**

- (a) Fares Accrued Prior to 19 November 1985

Fares to any capital city

- (b) Fares Accrued Between 19 November 1985 and 31 July 1987

(Public Service By-Laws 1 of 1985 - Transitional Provisions)

Fares to any capital city

- (c) Fares Accrued After 1 August 1987

(Public Employment (Modification to Terms and Conditions of Employment) Act 1987)

Fares to the value of the return economy class air fare from the employees head station to Adelaide only.

**5. EMPLOYEES RECRUITED BETWEEN 19 NOVEMBER 1985 AND 31 JULY 1987**

- (a) Fares Accrued Between 19 November 1985 and 31 July 1987

(Public Service By-laws 1 of 1985 - Transitional Provisions)

Fares to any capital city

- (b) Fares Accrued After 1 August 1987

(Public Employment Modification to Terms and Conditions of Employment) Act 1987)

Fares to the value of the return economy class air fare from the employees head station to Adelaide only.

**6. EMPLOYEES RECRUITED AFTER 31 JULY 1987**

Public Employment (Modification to Terms and Conditions of Employment) Act 1987

No leave air fares.

**Secretariat**

DAVID RICE, SECRETARY  
JUDY CUMBERLAND, RESEARCH ASSISTANT

Legislative Assembly of the  
NORTHERN TERRITORY

**Public Accounts Committee**

G.P.O. BOX 3721  
DARWIN, N.T. 5794

Telephone (089) 46 1411  
Telex AA85154  
Telegrams Comparlas  
Facsimile 812529