

- 2.5 In 1978 a substantial grant of Self-government was made to the newly created political entity known as the Northern Territory of Australia and the basic title to all land in the Northern Territory was statutorily vested in that new entity. However, corresponding with that grant and immediately following it, the Commonwealth of Australia acquired back from the Northern Territory without compensation a fee simple title to the land in the Alligator Rivers Region, ("the Region") including the land in Kakadu (Stage 2), for the expressed purpose of a "National Park".
- 2.6 Prior to the grant of Self-government to the Northern Territory of Australia, a number of steps had been taken to conserve and protect areas in the Region once they became more accessible by road. In 1964, the Woolwonga Aboriginal Reserve, within the Region, was declared a wildlife sanctuary under a law of the Northern Territory. In 1972 a wildlife sanctuary and protected area was proclaimed over part of the Region, also under a law of the Northern Territory. These areas subsequently became part of Stage 1 of Kakadu National Park and are not in Kakadu (Stage 2). In addition, a corridor one mile wide along both sides of the Arnhem Highway which connects the major population centre to the Region was declared a protected area under a law of the Northern Territory.
- 2.7 Much of the area of Kakadu (Stage 2) was granted by the Commonwealth of Australia in the form of Mudginberri and Munmarlary pastoral leases as from 1969. Following the discovery of minerals in the Region, the Commonwealth of Australia established the Ranger Uranium Environmental Inquiry. The report of that Inquiry in 1977 recommended that a major national park be established in the Region, including at least one major total river catchment, preferably the South Alligator River, and that the two pastoral leases be resumed both for this purpose and also to facilitate the consideration of whether the land should be granted as Aboriginal land. This resumption occurred just prior to the

grant of Self-Government to the Northern Territory of Australia in 1978.

- 2.8 There were a number of proposals going back to 1965 to establish Kakadu National Park as a national park under Northern Territory law. The history of these various proposals is set out in the Second Report of the Ranger Uranium Environmental Inquiry, Chapter 10, at pp 199-204 (see Schedule 4 hereto). It will be observed from the maps of these various proposals (at pp 200-201) that, although they all included all or most of Stage 1 of Kakadu National Park, only one proposal included all of Kakadu (Stage 2) - see Map 13D (at p.200 of Schedule 4), a proposal which also extended into a large section of the adjacent Arnhem Aboriginal Reserve to the east and included the whole catchments of the four main rivers. On the other hand, four of the proposals deleted large areas of Kakadu (Stage 2) and one proposal - see Map 13C (at p.200 of Schedule 4) - included none of Kakadu (Stage 2).
- 2.9 The Ranger Uranium Environment Inquiry Second Report, presented in 1977 prior to the grant of Self-Government to the Northern Territory of Australia, contemplated that the major national park it recommended would be established under the National Parks and Wildlife Conservation Act 1975 of the Commonwealth. However, upon the grant of Self-government in 1978, Ministers of the Northern Territory Government acquired executive authority in respect of parks and other related matters in the Northern Territory with respect to which the Conservation Commission has statutory functions (see above at 1.15). It was not unreasonable to assume that the proposed National Park would be established by the Northern Territory Government under a law of the Northern Territory and that the Conservation Commission, or its predecessor, the Northern Territory Reserves Board, would manage the Park.

- 2.10 However the Commonwealth of Australia chose otherwise, and following amendments to various pieces of legislation, it proclaimed Stage 1 of the Kakadu National Park in 1979 under the National Parks and Wildlife Conservation Act 1975 of the Commonwealth. No further action was taken to proclaim Kakadu (Stage 2) National Park until 1984, despite the fact the the resumption of the two pastoral leases had been completed following litigation, in 1981, and that the enquiry by the Aboriginal Land Commissioner into traditional Aboriginal ownership of the area, resulting in his recommendation that only a small portion of the land (7%) be granted as Aboriginal land, was made in July 1981 (see below at 3.3). There was some suggestion of making the area of Kakadu (Stage 2) a conservation zone prior to the further proclamation of the National Park, but this was not in fact done. However, a number of inholdings or "windows" which exist within the external boundaries of the Park were excluded from the proclamations of Stage 1 and Stage 2, four of which have relevance to mining operations (see Technical Report accompany this Submission at 1.2).
- 2.11 Further, although a plan of management was brought into operation for Stage 1 of Kakadu National Park, no plan of management was brought into operation for Kakadu (Stage 2) National Park. Kakadu (Stage 2) operated without any plan of management for two and a half years. The plan of management for Stage 1 expired at the end of 1985. A plan of management covering both Stage 1 and Stage 2, as contained in the new declaration of Kakadu National Park on 19 December 1985, did not come into operation until the end of 1986.
- 2.12 Notwithstanding the compulsory acquisition of the pastoral leasehold interests, the Commonwealth of Australia decided in 1982 to grant a licence to a company to carry on the business of a buffalo abattoir on the nominated property. This arrangement at present is being continued.

- 2.13 In June 1987, Kakadu (Stage 3) comprising an area of approximately 4500 square kilometres was added to the Park bringing the total area of the Park to 17552 square kilometres. The boundaries for the last stage of the Park have again been dictated by the boundaries of two pastoral leases which have been yet to be resumed but are within the area of the compulsory acquisition that occurred just prior to the grant of Self-Government (see above at 2.5.)
- 2.14 A Conservation Zone of approximately 2250 square kilometres, which is within the external boundaries of Kakadu (Stage 3) but not part of the Park, was also proclaimed in June 1987. The Zone incorporates a large portion of the South Alligator River headwaters. The Conservation Commission understands that the boundaries of the Zone were dictated by high degree of mineral prospectivity in the Zone. The objects of the Conservation Zone as defined in section 8A of the National Parks and Wildlife Conservation Act 1975 of the Commonwealth are "... the protection and conservation of wildlife in, and the protection of the Natural features of, an area of land or sea in the Region until a decision is made whether or not to declare the area to be a park or reserve". Allowances are made under the National Parks and Wildlife Conservation Act 1975 for "operations for the recovery of minerals" in the Conservation Zone.
- 2.15 A map of Kakadu National Park depicting the various stages of proclamation is contained in Schedule 5 to this submission.
- 2.16 The present boundaries to Kakadu (Stage 2) bear no particular relevance to any ecological values or to factors related to any concept of cultural or natural heritage. These boundaries are a product of a number of historical arrangements, comprising -

- (a) the northern boundary of the area of the former Woolwonga Aboriginal Reserve, subsequently granted as Aboriginal land and leased back to the Director of National Parks and Wildlife for incorporation in Stage 1 of Kakadu National Park;
- (b) the boundaries of the areas granted earlier as pastoral leases, comprising not only Mudginberri and Munmarlary pastoral leases, but also the existing pastoral leases that border on Kakadu (Stage 2), comprising Point Stuart, Wildman River, Annaburroo, Mount Bunday, and Goodparla pastoral leases;
- (c) the small area to the north-east, comprising the land between the Mudginberri and Munmarlary pastoral leases and the East Alligator River, which was granted as Aboriginal land and leased back to the Director of National Parks and Wildlife for incorporation in Stage 1 of Kakadu National Park;
- (d) the boundaries of the mining areas excised for Pancontinental (Jabiluka) and for the Ranger Project Area, which the Commonwealth of Australia decided were not to be included in the National Park.

2.17 An example of how these boundaries bear no particular relevance to factors arising under the Convention is to be found in the case of the eastern boundary of Kakadu (Stage 2) (see map at Schedule 5). This boundary is based on the former eastern boundary of Mudginberri pastoral lease. That lease was basically in the shape of a rectangle with the eastern boundary cutting through the middle of areas of wetlands and escarpment. From this was excised the areas allocated to Jabiluka and Ranger, being areas designed to accommodate the mining interests of those respective operations. The resultant eastern boundary of Kakadu (Stage 2) is located where it is by a combination of these factors.

2.18 The straight line boundaries of the Park bear no relevance to ecosystems, catchment areas, cultural values etc. In order to enclose a complete catchment, the boundaries of the property can not merely follow old pastoral lease boundaries. There may be some value in including a reasonable buffer zone in a listing but with the original straight line boundaries not even this objective is achieved.

3. ABORIGINAL LAND CONSIDERATIONS

3.1 The Parliament of the Commonwealth of Australia enacted the Aboriginal Land Rights (Northern Territory) Act in 1976. This Act, although made by the federal Parliament, applies only to the Northern Territory.

3.2 The Ranger Uranium Environmental Inquiry Second Report dealt with a claim to a grant of Aboriginal land in the Alligator Rivers Region under the above Act on the basis of traditional Aboriginal ownership. The ascertainment of traditional Aboriginal ownership under that Act requires a finding that the Aboriginal claimants have common spiritual affiliations to a site on the land such that there is primary spiritual responsibility for that site and for the land. The Report did not consider a claim to Mudginberri and Munmarlary pastoral leases as they were alienated from the Crown by those pastoral leases at that time and were thereby not subject to claim. However, as to the unalienated Crown Land, the Report recommended a grant of virtually all of the land contained in Stage 1 of Kakadu National Park (other than Woolwonga Aboriginal Reserve, which was to be granted as Aboriginal land under the Act in any event, and the area of the Jabiru townsite). Its recommendations extended only very slightly into the unalienated portions of Kakadu (Stage 2) (see pp 277-283 of Schedule 4 hereto), leaving substantial areas not recommended for grant, on the basis of insufficient evidence.

- 3.3 Kakadu (Stage 2), including the area of the resumed Mudginberri and Munmarlary pastoral leases, was the subject of a further claim to and inquiry by the Aboriginal Land Commissioner under the Aboriginal Land Rights (Northern Territory) Act 1976. In his 1981 Report, the Commissioner recommended that only small areas of Kakadu (Stage 2), mainly to the east and only 7% of the land claimed, should be granted as Aboriginal land. As to the rest, he found that the Aboriginal population was small and Aboriginal ownership could not be proven. In many cases there was no evidence of sites upon the claimed area.
- 3.4 The recently proclaimed Kakadu (Stage 3) together with the Conservation Zone have been made available for Aboriginal land claim and have now been claimed. No inquiry has been conducted into that application to date.

4. WORLD HERITAGE PROPOSALS

- 4.1 Following the proclamation of Stage 1 of Kakadu National Park in 1979, a nomination of that property was made by the Commonwealth of Australia to the World Heritage Committee to list the whole area of Stage 1 on the World Heritage List. This submission was presumably made in 1980, and the area was subsequently listed by the Committee in October 1981. As noted above (at 1.3), the nominated property at that time did not include any of Kakadu (Stage 2). The listing of Kakadu (Stage 1) occurred following consultation with and the agreement of the Northern Territory Government (see below at 6.6).
- 4.2 Although the Conservation Commission does not have a copy of the transcript or minutes of the meeting of the World Heritage Committee on that occasion, it has no reason to doubt the statement made by the Commonwealth of Australia in the nomination document for the listing of Kakadu (Stage 2) on the World Heritage List, at page 14, as follows -

"In October 1981, when accepting the nomination of Stage 1 of Kakadu National Park, the World Heritage Committee noted that the Australian Government intended to proclaim additional areas in the Alligator Rivers Region as part of Kakadu National Park and recommend that such areas be included in the site inscribed on the World Heritage List and that in the Region the environmental protection measures specified in the relevant legislation continue to be enforced."

It is not known if this is a verbatim statement of what was said at the time.

- 4.3 It is respectfully submitted that the above statement should only be regarded as an indication by the Committee that, should Kakadu (Stage 2) subsequently be nominated for inclusion on the World Heritage List, the Committee would look favourably upon the nomination. As a matter of law, it is respectfully submitted that it is not open for the Committee to go any further. The Convention itself in Article 3 makes it clear that it is up to each State Party to identify and delineate the different properties situate in its territory comprising the cultural and natural heritage. The obligation of identification is again mentioned in Articles 4 and 6.2. Under Article 11, the State Party must submit to the Committee an inventory of property forming part of the cultural and natural heritage suitable for inclusion on the World Heritage List, which in turn gives rise to the obligation to identify and delineate the property in Article 3. It seems clear that this process of identification and delineation for inclusion on the World Heritage List was not undertaken for Kakadu (Stage 2) prior to the nomination by the Commonwealth of Australia in September 1986. (As stated above (at 1.21), the Commonwealth of Australia has not submitted to the World Heritage Committee an inventory as required by Article 11). It is respectfully submitted that, in any event, the present Committee now considering the nomination should not be constrained by the considerations of the Committee as constituted in 1981.

- 4.4 In case it be argued that Kakadu (Stage 2) can be included in the World Heritage List by an abbreviation or simplified process of mere addition to Stage 1, without prior detailed inquiry, the Conservation Commission respectfully refers the Committee to the Guidelines. These require State Parties to nominate particular properties for inclusion on the World Heritage List in the form of a closely argued case (paragraphs 8 and 10). The nomination must include a map which precisely delimits the perimeter of the nominated area (paragraph 41(f)(i)). The Committee then decides whether the nominated area (but not any additional areas) should, in whole or part, be included on the World Heritage List. There is no provision in the Convention or the Guidelines for any extension of or addition to the nominated area, whether by agreement or otherwise. It is clear that any additional areas must be nominated and processed separately in accordance with the Convention and Guidelines. Indeed, there would appear to be some difficulty in contemplating the addition of a property to an existing World Heritage Property where its area is equal to, or, greater than the area of the listed property. In fact, the area of Kakadu (Stage 2) as proposed for listing exceeds the area of Stage 1 by 12.8%.
- 4.5 Further, it is also clear that there is no connection between the proclamation of a national park under Australian municipal law and the listing of a property on the World Heritage List under the Convention. The sole issue of relevance in the case of the Convention is whether the nominated property meets the criteria contained in the definition of "cultural heritage" and "natural heritage" in Articles 1 and 2. The status of the property as a national park can have no bearing one way or the other on this issue. Thus, although Stage 1 of Kakadu National Park is on the World Heritage List, the fact that Kakadu (Stage 2) subsequently became a separate National Park, and has since been joined with Stage 1 as one larger National Park, has no bearing at all on the possible World Heritage Listing of the property Kakadu (Stage 2) now included in this larger single National Park. The factors that determine whether an area

should be a national park under municipal law are not the same as those that determine whether a property should be listed on the World Heritage List.

5. WORLD HERITAGE PROCEDURE

- 5.1 It is assumed that the procedure set out in the Guidelines were followed on the listing of Stage 1 of Kakadu National Park on the World Heritage List. Under paragraph 43 of those Guidelines, the deadline for the receipt by the Secretariat of nominations to be processed during that year is 1 January of that year. Following the processing of the nomination, the Committee examines the nomination between October and December of that year. It is at this stage that the Committee examines any problems of application of the relevant criteria following the report of the Bureau of the Committee and determines which properties are to be entered on the List.
- 5.2 Paragraph 43 makes it very clear that nominations received after 1 January of a given year will be considered during the following year and that the Committee will not consider nominations where the deadline for their submission has not been respected. The only exception to this is contained in paragraph 44 of the Guidelines in the case of properties which, in the opinion of the Bureau after consultation with the competent N.G.O., would unquestionably meet the criteria for inclusion in the World Heritage List and which have suffered damage from disaster caused by natural events or by human activities. Such nominations are processed on an emergency basis. There is no evidence that Kakadu (Stage 2) is in the latter category. In fact, that area is already covered by a regime under Australian law designed to protect and conserve the area and which effectively excludes (in so far as it is possible to do so) any likelihood of a disaster of the nature contemplated in paragraph 44 (see below at 7.1). There is evidence of damage to the Park from feral animals and weeds, but measures are already in hand to reduce the extent of the problems resulting therefrom.

- 5.3 Notwithstanding the provisions of the Convention and Guidelines, the nomination of Kakadu (Stage 2) was only made in September 1986 and the Commonwealth of Australia proposed that it be considered by the World Heritage Committee in November of that year. Ultimately, at that Tenth Session of the World Heritage Committee, the leader of the Australian delegation requested the Committee to defer, until further notice, the consideration of the nomination of Kakadu (Stage 2) following an interlocutory order made by the Federal Court of Australia which was read to the Committee and made available to delegates. The interlocutory order was obtained by a mining company which claimed to be entitled to certain mining interests over an area of approximately 65 square kilometres within the boundaries of Kakadu (Stage 2). Following a trial of the action in December 1986, the trial judge declared the decision of the Commonwealth Executive made on 16 September 1986 to nominate Stage 2 of the Kakadu National Park for inclusion on the World Heritage List to be void as a decision made in denial of natural justice. The Commonwealth of Australia appealed that decision to the Full Federal Court of Australia which allowed the Commonwealth's appeal. The application by the mining company seeking special leave to appeal to the High Court of Australia was refused on 13 November 1987.
- 5.4 In the Conservation Commission's respectful submission, the Commonwealth of Australia does not seem to have provided any compelling basis on which it could be argued that Kakadu (Stage 2) has been nominated in accordance with the Convention and the Guidelines. Nominations in the form of mere extensions to existing properties on the World Heritage List are not contemplated by the Convention or the Guidelines: the fact that Kakadu (Stage 2) is physically adjacent to an area already on the World Heritage List cannot, of itself, provide an adequate reason. Nor can such an argument follow from the fact that Kakadu (Stage 2) was formerly a separate National Park, but has now been joined with Stage 1 as one larger National Park, for reasons already explained above (at 4.5).

- 5.5 It is clear that the Commonwealth of Australia, acting through the National Parks and Wildlife Service, does not regard Kakadu (Stage 2) as a new nomination. This is indicated by the evidence of Mr. Early to the Australian Senate Estimates Committee D of 7 October 1986 at p 1127 (Schedule 6 hereto). The Commonwealth of Australia views the nomination as an extension of the existing area in Stage 1 that has already been listed. This is borne out by the evidence of Professor Ovington to the Senate Estimates Committee D on 10 April 1986 at p 53 (Schedule 7 hereto), in which he said that the Committee would not be proclaiming a new World Heritage area, but an addition to an existing area. He said that the Committee had already indicated its belief that these additional areas should be added. He added that it was not clear whether it was necessary to go through all of the normal procedures for proclaiming Kakadu (Stage 2) and advice had been sought from the "International Heritage Commission". According to Professor Ovington, its advice was that it was not necessary to go through that process and that this could be done "by some kind of agreement". As a result, it was not necessary to have a formal nomination. Professor Ovington still accepted that it was necessary to make a rigorous scientific justification, and that the Committee would expect a detailed justification on the scientific merits just as though it were a new nomination.
- 5.6 The Conservation Commission does not have access to any such advice from the World Heritage Committee or from any other source on this point. It relies on the terms of the Convention and the Guidelines. Even the Northern Territory Government has not received a copy of this advice from the Commonwealth of Australia, despite a request for same.
- 5.7 With respect to these matters, the Conservation Commission respectfully submits as follows :-
- (a) That the Convention does not provide for an extension or addition to an existing World Heritage Listing. This has already been discussed above (at 4.2 - 4.5).

- (b) That the Guidelines do not provide for an alteration of the procedures and the calendar to facilitate such an extension or addition in the manner contemplated in the present circumstances. Each nominated area must be processed in the normal way (except in emergencies) in accordance with the Convention and Guidelines and must be considered by the Committee on its merits.
- (c) It is not possible to list a property on the World Heritage List by "some kind of agreement" between the Committee and the nominating State Party.
- (d) As a matter of international law the Committee is required to list nominated properties on the World Heritage List only where it has determined that they form part of the cultural and natural heritage as defined in Articles 1 and 2 of the Convention, such that those properties are of an outstanding universal value and also meet the criteria the Committee has established (Article 11.2). The procedure and calendar in the Guidelines have clearly been adopted to facilitate an accurate and impartial determination of this question and should, it is respectfully submitted, be followed.
- (e) Failure to observe the Convention and the Guidelines in any substantial way places at risk the integrity and standing of any resultant World Heritage listing and therefore the World Heritage List itself.
- (f) If an ad hoc procedure and calendar is adopted for a particular nomination which precludes the receipt of information and advice of critical relevance to World Heritage Committee's consideration of that nomination, the World Heritage Committee could well be seen as acting in an arbitrary and unscientific fashion.

5.8 Should the Committee defer the nomination as has been respectfully submitted by the Conservation Commission and, require that its procedures and calendar as set out in the Guidelines be followed, nothing is lost. If after consideration of all the relevant evidence, most importantly the comparative data that will then be available, the Committee then determines that Kakadu (Stage 2) should be listed in whole or part on the World Heritage List, that listing will take its place in conjunction with the existing listing for Stage 1 of Kakadu National Park, and will in effect, still achieve the result desired by the Commonwealth of Australia. The nominated property will not suffer any loss or damage or otherwise be prejudiced if this course of action is followed. No adverse effects will accrue to the nominated property (see below at 7.1) and the integrity of the World Heritage List will have been maintained.

6. CONSULTATION

6.1 The Conservation Commission is concerned that it has not been possible to present to the Committee an agreed position with the Commonwealth of Australia and submits that this failure is a matter in relation to which the Committee should rightly be concerned. In view of this failure the Commission sees itself as having a duty to provide an explanation to the Committee, also making reference to actions the Northern Territory Government, that could have facilitated agreement so far as the Conservation Commission is concerned.

(a) Process for Nominating Australian Properties for World Heritage Listing

6.2 There was no consultation between the Commonwealth body which runs Kakadu National Park in the Northern Territory, Australian National Parks and Wildlife Service (ANPWS), and the Conservation Commission of the Northern Territory prior to the nomination of Kakadu (Stage 2) for inclusion on the World Heritage Listing. Indeed, no consultation has even taken place since the meeting of the World Heritage Committee

in November 1986 to the present time (see below at 6.8 (i)). To the knowledge of the Commonwealth of Australia a number of studies have been undertaken by Northern Territory Agencies, some with the assistance of the Commonwealth Government, since the nomination in September 1986. These studies would have provided additional data for comparative assessment as required under the Guidelines. Indeed there has been no consultation between the Government of the Commonwealth of Australia and the Northern Territory Government. Had any approach been made, it is undoubted that the full cooperation of the Conservation Commission and of all resources available to the Northern Territory Government would have been rendered and made available to ensure that a fulsome and proper nomination was made of the areas within Kakadu (Stage 2) of outstanding universal value. It would seem that the Commonwealth of Australia and ANPWS deliberately set its face against seeking the assistance and cooperation of the Conservation Commission either directly or through the Northern Territory Government.

6.3 The procedures have been agreed between the Commonwealth of Australia and the State and Territory Governments before a property in Australia is nominated for World Heritage Listing. These procedures are set out in an agreement reached at the July 1984 meeting of the Australian Council of Nature Conservation Ministers (CONCOM). A description of the agreement is provided at pages 6 and 7 of the publication, "Australia and the World Heritage Convention", published by the Australian Department of Arts, Heritage and Environment, in February 1986 (see Schedule 8 hereto). Included in that publication is a statement that:

"The Commonwealth Government has indicated, however, that it will not take unilateral action to nominate areas for World Heritage Listing without the agreement of the State or Territory concerned."

- 6.4 The Northern Territory Government had been provided with specific assurances by the Australian Government that the CONCOM agreement would be applied to any consideration of the listing of Kakadu (Stage 2). This was confirmed in a letter from G.P. Early, Director, National Estate and World Heritage Section, Department of Arts, Heritage and Environment, dated 26 June 1986, to Mr. Doug Scott, an officer of the Northern Territory Government (see Schedule 9 hereto). It was again affirmed in a letter from the Australian Minister for Arts, Heritage and Environment to the Northern Territory Minister for Mines and Energy dated 16 September 1986 (see Schedule 10 hereto). Both letters categorically state that should the Commonwealth of Australia decide to pursue World Heritage listing of the Kakadu (Stage 2), the Northern Territory Government would be consulted in accordance with the CONCOM agreement prior to any approach being made to the World Heritage Secretariat in Paris.
- 6.5 However, on the same day as the letter of 16 September 1986, the same Minister of the Commonwealth of Australia in conjunction with another Commonwealth Minister issued a joint Press Statement stating that immediate steps should be taken to nominate Kakadu (Stage 2) for inclusion on the World Heritage List (Schedule 11 hereto). It is understood that the nomination by the Commonwealth of Australia of Kakadu (Stage 2) was made to the Committee on the day following the Minister's letter of 16 September 1986.
- 6.6 As a result, the Northern Territory Government was not consulted at all by the Government of the Commonwealth of Australia in accordance with the CONCOM agreement specifically on the proposed nomination of Kakadu (Stage 2). On 7 October 1986, three weeks after the nomination had been transmitted to the World Heritage Secretariat, an official of the Department of Arts, Heritage and Environment, giving evidence before a Senate Committee, inferred that some sort of approval for the extension of the listing had been obtained from the then Chief Minister of the Northern Territory Government in 1980. For the avoidance of doubt,

copies of the exchange of correspondence referred to between the Prime Minister and the Chief Minister at that time is provided in Schedules 12 and 13 hereto. It is quite clear that the area proposed for listing in the Prime Minister's telexed letter of 21 January 1980 was the wetlands area only under the Convention on Wetlands of International Importance of 1971. Likewise the additional areas which the Chief Minister noted in his response dated 7 March 1980 were specifically wetland areas. Only a minority of the area of Kakadu (Stage 2) is wetlands. The Chief Minister's additional reference in the letter of 7 March 1980 to the listing of Kakadu National Park on the World Heritage Register can only be taken as a reference to Stage 1 of that Park, as Stage 2 did not exist until 1984.

6.7 There were indications from the Commonwealth of Australia going back some years that it was considering nominating the area of Kakadu (Stage 2), but no firm proposals to that effect were made until the 1986 nomination. The Northern Territory was not in a position to consult with the Commonwealth of Australia on the matter without a firm proposal, and was lead by the Commonwealth of Australia to assume that there would be adequate advance notice from the Commonwealth of Australia before any nomination would be made.

6.8 This failure of the Commonwealth of Australia to consult with the Northern Territory was in breach of the CONCOM agreement, and can only be described as deceptive. Whilst the CONCOM agreement is primarily a matter of concern to the various Governments of the Australian federation, it is however relevant to the nomination of Kakadu (Stage 2), for the following reasons -

- (i) It has precluded an adequate consideration of the proposed nomination by either the Conservation Commission or the Northern Territory Government, both being organisations with resources and expertise available to them which could have

assisted in the preparation of a nomination of the areas within Kakadu (Stage 2) of outstanding universal value in conformity with the Guidelines. It was anticipated that, following the deferment of the consideration of the nomination of Kakadu (Stage 2), the Commonwealth of Australia would avail itself of the opportunity to seek the assistance of the Conservation Commission and consult with the Northern Territory with a view to the joint preparation of a revised nomination which would comply with the World Heritage Committee Guidelines and demonstrate more clearly that the property meets the criteria for listing. The adoption of such a course of action would have been consistent with the CONCOM agreement of June 1984 and would have ensured that a proper assessment could have been undertaken to satisfy the World Heritage Committee that the property met the criteria for listing. Copies of an exchange of correspondence between the Chief Minister of the Northern Territory and the Prime Minister of Australia wherein the Chief Minister suggested that a joint assessment of Kakadu (Stage 2) be carried out by both Commonwealth and Northern Territory officers and offering every co-operation in that task appear at Schedules 14, 15 and 16 hereto. The Chief Minister's last letter of 1 July 1987 has gone unanswered by the Prime Minister. Again the Commonwealth has refused the opportunity to take advantage of the Conservation Commission's and the Northern Territory's expertise. Indeed, it was only following the Chief Minister's letter in schedule 16 hereto in conjunction with other informal and formal requests (the latter specifically under the Commonwealth Freedom of Information Act) that officers of the Conservation Commission were given access to relevant unpublished reports and studies on Kakadu National Park held by ANPWS. Following the receipt

of these reports and in the absence of any consultation with or co-operation from the Commonwealth of Australia, the Northern Territory Government requested the Conservation Commission to conduct the studies that have lead to the production of the Technical Report accompanying this Submission.

- (ii) In view of the consultation problems that have occurred, serious doubts must be entertained as to the methodology employed by the Commonwealth of Australia in relation to the way it has gone about nominating this property.

- (iii) The Commonwealth of Australia has not paid proper regard to Article 34 of the Convention, which applies to States Parties which have a federal or non-unitary constitutional system, particularly given the fact that the Northern Territory Government has partial responsibility for the legislative and executive measures necessary to implement the Convention following any listing of the nominated property. The Northern Territory Government understands that consultation is common in other federal or non-unitary States before any nomination proceeds. For example, it is understood that before Nahanni Park in the Canadian North West Territories was listed on the World Heritage List, considerable consultation occurred between the Canadian Federal Government and the Government of the North West Territories and the communities in that area. The result was that the Government of the North West Territories did not oppose the listing. The fact that the Northern Territory Government supports and has agreed to the nomination of Uluru also to be considered by the Committee in this session illustrates that the consultation process can work effectively and serves to illustrate the points made above.

(b) Aboriginal Traditional Owners

6.9 It is also of considerable concern that, as far as is known, no consultation has taken place with representatives of the traditional Aboriginal landowners of the nominated property on this matter prior to or since the nomination. There is no reference to any such consultation having taken place in the nomination document itself and the Conservation Commission is not aware of any such consultation from other sources.

6.10 The case for the listing of the Kakadu (Stage 2) as a cultural heritage is based almost entirely on the continuous occupation and use of at least a portion of the area by Aboriginal people over many thousands of years. It is respectfully submitted that it is not acceptable that the Australian Government did not see fit to consult with the living descendants of these people and obtain their assent to the nomination before it was made. This supports the argument that the nomination should not be dealt with without compliance with the Guidelines.

7. NO IMMEDIATE DANGER TO THE AREA

7.1 World Heritage Listing is not necessary to protect Kakadu (Stage 2) as it already enjoys full protection as a National Park under the National Parks and Wildlife Conservation Act 1975 of the Commonwealth. In May 1987, the Act was amended to further provide that there shall be no operations for the recovery of minerals carried on in Kakadu National Park. In addition, the Plan of Management for Kakadu National Park came into operation in December 1986. In the unlikely event that there is a repeat Aboriginal land claim to any part of the property and that any area is granted as Aboriginal land, under the relevant legislation the grant will be on the condition that it is leased back to the Director of National Parks and Wildlife as a National Park.

7.2 There is no basis for waiving the normal procedures and calendar for the nomination and the processing of the nomination. The area is not presently at risk and will not be put at risk by a deferral of the nomination hearing.

8. FINAL CONCLUSION

8.1 The Conservation Commission is a "public organisation" within Article 10.2 of the Convention.

8.2 The Conservation Commission has information of critical relevance to the Committee's consideration of the nomination of Kakadu (Stage 2).

8.3 The nomination by the Commonwealth of Australia of Kakadu (Stage 2) for inclusion on the World Heritage List is not in conformity with the Convention and Guidelines in that -

- . the procedures, including the calendar, for nomination of the property have not been complied with, in particular, there is no provision under the Convention or the Guidelines for processing an "extension nomination" of the type proposed by the Commonwealth of Australia

- . no comparative evaluation of properties of the same type or having similar features found in other countries has been provided by the nominating state party in conforming with paragraph 41(e) of the Guidelines.

8.4 As evidenced by the papers making up the accompanying Technical Report, no sufficient data is available at this stage to make a comparative assessment of the nominated property, such as to justify its inclusion on the World Heritage List in whole or in part.

8.5 The nominated property is not at risk and has full protection as a National Park under the National Parks and Wildlife Conservation Act 1975 of the Commonwealth.

8.6 Given the above, in order to ensure that the integrity of the World Heritage List is maintained, the Conservation Commission recommends to the Committee that further consideration of the nomination by the Commonwealth of Australia of Kakadu (Stage 2) for inclusion on the World Heritage List should be deferred until such time as a full assessment, including a comparative assessment, of the nominated property can be undertaken.

20 November 1987
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TECHNICAL REPORT - NUMBER

KAKADU STAGE 2



**A PRELIMINARY ASSESSMENT
WITH PARTICULAR REFERENCE
TO THE OPERATIONAL GUIDELINES
FOR THE IMPLEMENTATION OF THE
WORLD HERITAGE CONVENTION.**

CONSERVATION COMMISSION OF THE NORTHERN TERRITORY
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CONTENTS

FOREWORD

1.	INTRODUCTION	1
1.1	Scope of this Document	3
1.2	The Area	5
1.3	World Heritage Property, Criteria for Listing and Other Guidelines	
1.4	Biogeographic Provinces	17
2.	NATURAL VALUES	
2.1	Surface Geology of Kakadu National Park (Stage 2) C.A. Mulder	19
2.2	A Biogeographical Assessment of the Geomorphology of Kakadu National Park (Stage 2) in relation to World Heritage Listing. J.W. Burgess	21
2.3	A Biogeographic Assessment of the Land Systems of Kakadu National Park (Stage 2) in relation to World Heritage Listing. B.T. Lynch & B.G. Wood	41
2.4	A Biogeographical Assessment of Kakadu National Park (Stage 2) Vegetation Communities in relation to World Heritage Listing. P.L. Wilson	53
2.5	Is Kakadu National Park (Stage 2) a World Heritage area?: Floristic evidence. D.M.J.S. Bowman & B.A. Wilson	65
2.6	A floristic and biogeographic assessment of Kakadu National Park (Stage 2): Mangrove assemblages in relation to World Heritage Listing. G.M. Wightman	79
2.7	Rare and Threatened Plants of the Monsoon Tropics of the Northern Territory with special emphasis on Kakadu National Park. G.J. Leach	85
2.8	Mammals, Reptiles and Amphibians: relevance to the Listing of Kakadu National Park (Stage 2) for World Heritage. W.J. Freeland	89

2.9 The bird populations of Kakadu National Park: an assessment of Stage 2 in relation to World Heritage listing. **S.C. Tidemann** 99

2.10 Waterbirds, Feral Animals and Mimosa in Stage 2 of Kakadu National Park. **P. Whitehead** 107

2.11 Macroinvertebrates of Kakadu National Park (Stage 2) **M. Malipatil** 129

2.12 The Fishes of Kakadu Stage 1 and 2. **H.K. Larson** 131

2.13 An Aesthetic Evaluation of Stage 2 of Kakadu National Park: a comparison with the Top End and the North Western Woodlans Biogeographic Provinces. **C. Harding, A. Jarman, R. Eddy, M. Nolan, D. Moores** 139

3. CULTURAL VALUES

3.1 Notes on Aboriginal Cultural Heritage Kakadu Stage 2 159

3.2 Aboriginal Sites P No

4. FINDINGS

4.1 Availability of data for comparative assessment P no

4.2 Kakadu (Stage 2) assessment data availability P no

4.3 Conclusions of the individual papers P no

4.4 General findings P no

5. GENERAL REFERENCES