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**The economic impact of mining
moneys: the Nabarlek case,
Western Arnhem Land**

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ABSTRACT

This discussion paper presents the results of a consultancy undertaken for the Northern Land Council (NLC) on the economic impacts of the payment of mining moneys with respect to the Nabarlek uranium mine in western Arnhem Land. The particular focus of the research is on the operations of the Nabarlek Traditional Owners Association (NTOA) since 1988, but this contemporary emphasis is contextualised with reference to complex historical, legislative and sociopolitical legacies that have greatly influenced the Association's performance. In terms of regional economic development, empowerment and the establishment of a long-term economic base, the NTOA has been unsuccessful. For these reasons, it is instructive to consider what lessons can be learnt for the future from this case study especially as it is the first major resource development project in the post-land rights era to close. The passage of the *Native Title Act 1993*, and the potential for the payment of agreement moneys to native title holders with respect to commercial development of their land, enhances the significance of the research findings and recommendations in this paper.

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Foreword

In May 1993, the Centre for Aboriginal Economic Policy Research (CAEPR), Faculty of Arts, Australian National University and the Northern Land Council (NLC) signed an agreement for preliminary research to be undertaken on the economic impact of mining in Western Arnhem Land. This research was undertaken between June and September 1993 by Ms Diane Smith and myself as consultants. An important feature of the contract was provision at paragraph 4.4 (i) that research outcomes be published in the CAEPR Discussion Paper series. This requirement is stipulated in any consultancy work undertaken by CAEPR.

A draft report was completed in September 1993 and submitted to the NLC seeking comment. At the same time, the report was submitted to several readers for confidential academic peer review. This discussion paper is the published version of the final consultancy report provided to the NLC in May 1994. The only difference in this version is that the executive summary and recommendations that prefaced the report provided to the NLC are included here as an attachment at the end of the paper.

It is important to emphasise that the findings presented here are those of independent consultants; our views are not necessarily shared by all NLC staff or the members of the Nabarlek Traditional Owners Association. As we emphasise in the report, many problems that we highlight have their genesis in legislative, administrative and historical ambiguities. There is no suggestion that the NLC, as currently constituted, would allow such problems to occur today. Nevertheless, we do believe, as did the NLC when commissioning this research, that there are very important lessons to be learnt from the Nabarlek case, both for other Aboriginal associations that might receive mining moneys, and especially, in the contemporary post-native title legislation policy environment.

Jon Altman
Series Editor
June 1994

In 1993, the Northern Land Council (NLC) commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) to conduct a preliminary assessment of the economic impact of mining moneys paid to the Nabarlek Traditional Owners Association (NTOA). It was a strategic move on the Land Council's part, given the intense interest surrounding resource development and compensation issues in the post-Mabo policy environment, but one not without risks. In the Northern Territory, the payment of mining moneys to Aboriginal people residing near major resource developments located on Aboriginal land has been one of the fundamental mechanisms created by the *Aboriginal Land Rights (Northern Territory) Act 1976* to improve the economic status of both traditional owners and other residents of areas affected by resource development projects. However, the mechanisms created under the Act to transfer mining moneys to Aboriginal interests are complex. In addition, there have been significant changes in the procedures by which such payments are made; in the interpretation and operation of the legislative framework; and in views of the land councils' role in these matters. There has also been considerable confusion regarding the nature and purposes of mining moneys: Are such moneys private Aboriginal or public moneys? Are they compensation payments or mineral rent? Not surprisingly, there have been noticeable variations in the performance of what are frequently, and perhaps inappropriately, termed 'royalty associations'.¹

The NLC is aware that significant financial resources have been wasted in West Arnhem Land and that its own role in negotiating and monitoring the payment of mining moneys, though ambiguously stipulated under the Land Rights Act, nevertheless subjects it to intense public scrutiny. Such scrutiny often unfairly exceeds that to which many other State and Commonwealth bodies also involved in such matters are subjected. The NLC has fully supported the publication of this research. It is commendable that in the interests of learning from the mistakes of the past such research is being sponsored and that it is providing input to further review of the NTOA currently under way.

The focus here is on the Aboriginal beneficiaries from mining moneys paid in relation to the Queensland Mines Limited (QML) uranium mine at Nabarlek in Western Arnhem Land. Attention has been directed to the impact of only two types of mining moneys paid to Aboriginal people: payments made in accordance with mining agreements under s.43 of the Land Rights Act, and payments made in accord with s.64(3), sometimes referred to as 'areas affected moneys'. The latter moneys are a stipulated share (30 per cent) of royalty equivalents paid to Aboriginal people residing in the area affected by mining operations. The specific research focus is on the NTOA. But whereas payments from the mine have been made since the signing of the QML Agreement in March 1979, the NTOA has only been in existence since 1988. Prior to that, payments were made to a number of incorporated Aboriginal associations in the region and even to

unincorporated groups of traditional owners. From 1982-88, payments were made to the Kunwinjku Association that was wound up in 1988.

The Nabarlek case is of significance on a number of counts. First, the uranium mine is the first post-land rights mine in the Northern Territory to close; while the QML Agreement expires in 1995, milling at Nabarlek stopped in 1988. While some agreement payments are still made to the NTOA, mining moneys paid to the region have declined rapidly since 1988. Even though other royalty associations have experienced income fluctuations, this is the first case where mining moneys have declined to negligible amounts. Second, it has already been established in the literature (see Australian Institute of Aboriginal Studies (AIAS) 1984; Altman 1983; Kesteven 1983; and O'Faircheallaigh 1988b, 1993a) that the financial performance of the Kunwinjku Association has been one of the worst in the post-land rights era. All told, in the period 1979-93 approximately \$14 million was paid to Aboriginal people in the West Arnhem region with respect to the QML mine and it now appears clear that few resources have been utilised for long-term investments that would allow the creation of an economic base for future generations. The Kunwinjku Association had widely publicised financial difficulties in the early to mid 1980s. Many reasons for its failure have been assessed by O'Faircheallaigh (1988a, 1988b, 1993a, 1993b). The financial performance of the NTOA is inextricably linked to that of its predecessor, the Kunwinjku Association, and any assessment must take into account the legacy of that earlier Association.

The performance of the NTOA has not been reviewed to date. This paper not only presents such a review, but also assesses the role of numerous agencies, including the NLC, key Commonwealth and Northern Territory departments, and QML, and their ability to strategically respond to the difficulties encountered by the NTOA subsequent to its establishment in 1988.

Inevitably, many contending viewpoints and areas of confusion mentioned above have been raised by our research. For this reason, the legislative complexities have been outlined in some detail below and the particular circumstances of the NTOA's establishment, so central to its subsequent poor financial performance, have been examined. In conclusion, we highlight how obvious problems, the products of a complex legislative and historical legacy, might be avoided in future in establishing other royalty associations.

Research methodology

The consultants undertook this research task with a considerable research background, working both in the West Arnhem region and on mining-related issues. For example, Altman examined the operations of the QML

Agreement and the establishment and early operations of the Kunwinjku Association (Altman 1983). Subsequently, in 1984, both Altman and Smith worked on the review of the Aboriginals Benefit Trust Account (ABTA), the institution now operating under the bureaucratic umbrella of the Aboriginal and Torres Strait Islander Commission (ATSIC) that receives and disburses mining equivalent payments from mining on Aboriginal land (Altman 1985). In 1990, Altman and Smith worked in the region as part of a consultancy for the Resource Assessment Commission's Kakadu Conservation Zone Inquiry (Altman and Smith 1990). Altman has examined other economic issues in the region: working at outstations in West Arnhem Land (1979-81); for the Gagudju Association (1983); on tourism in Kakadu (1986); and on the regional arts and crafts industry (1989). Smith undertook research on traditional ownership of land in West Arnhem Land in 1982 (Kesteven and Smith 1984).

Fieldwork for this particular preliminary phase was very brief, being limited to a five day visit to Darwin and five days in Jabiru, Oenpelli and Naborlek in late June 1993. Very useful discussions were held with the NTOA manager in the NLC Jabiru office. The consultants met with the NTOA Committee and a number of Association members for discussions at Gunbalanya. At these meetings we emphasised that our report would be frank. Discussions were also held with officers of the Gunbalanya Council, Injalak Arts and Crafts and the Demed Outstation Resource Association in Gunbalanya. After two meetings at Gunbalanya, the NTOA approved the continuation of the preliminary research with the stipulation that our preliminary findings would be presented to the anticipated Annual General Meeting of the NTOA in late September 1993.²

Discussions were held in Darwin with a number of NLC staff, representatives of QML, staff of the ABTA, ATSIC, the Northern Territory Office of Aboriginal Development and the Australian Nature Conservation Agency. This research has benefited from access to two draft chapters titled 'Aboriginal mining payments' and 'Mining payments: evaluating and explaining policy outcomes' by Ciaran O'Faircheallaigh that will form part of a monograph he is writing tentatively titled *Evaluating Government Policies: Uranium Policy and Aboriginal People in Australia's Northern Territory, 1977-92*.

Outline and caveats

Many of the economic and policy problems associated with the utilisation of mining moneys in West Arnhem Land have their roots in legislative ambiguities and institutional dilemmas, a number of which have already been raised in the literature. But problems have been exacerbated by inappropriate structures, ineffective support from key agencies, and by regional Aboriginal politicking. We divide the period since the signing of the QML Agreement in March 1979 into three distinct time frames:

- Phase 1: 1979-82, the period when agreement payments were made with respect to the mine, but prior to the payment of areas affected moneys;
- Phase 2: 1982-88, which corresponds with the life of the Kunwinjku Association, established to receive both agreement and areas affected moneys; and
- Phase 3: the period since 1988 which marks both the demise of the Kunwinjku Association and its replacement by the NTOA, and the completion of milling at Nabarlek.

While an assessment of each phase is presented, the greatest emphasis is placed on the period since the establishment of the NTOA in 1988 to the time of our research (June to September 1993).

A concluding section outlines the policy issues and implications that emanate from this historical analysis and review. The focus is primarily on regional issues pertinent to the likely future of the NTOA and the role of the NLC, and to a lesser extent on the wider issues in relation to the utilisation of compensatory mining moneys, particularly in the context of discussions about native title legislation and compensation payments that may be made under the new *Native Title Act 1993*.

This discussion here focuses very specifically on the utilisation of mining moneys in the West Arnhem region. This emphasis is driven, in large part, by the need to assess the commonly-held expectation that Aboriginal empowerment in the regional economy would result from the strategic utilisation of mining moneys. The research conducted is not a social impact study; such a study would require long-term residence in the region and the collection of both longitudinal and qualitative primary data. Interestingly, such a study was undertaken in the region between 1978 and 1983 (see AIAS 1984). While research from that project was actively utilised in the establishment of the Kunwinjku Association, disputation over the payment of mining moneys was already a *modus operandi* that continued to have a significant impact on the operations of the new Association.

The legislative context

The payment of mining moneys has a long history in the Northern Territory context which needs to be briefly summarised. Many of the contemporary problems and difficulties experienced by Aboriginal 'royalty' associations arise from the origins of these payments and the ill-defined nature of Aboriginal property rights in mining moneys. Questions have been asked in the past about whether mining moneys are intended as compensation or mineral rent, or both (Altman 1983, 1986, 1993), and whether they are Aboriginal (private) or public moneys (Altman 1985).

This complex issue is of particular significance in the Nabarlek case because Aboriginal people in West Arnhem Land have received both agreement and 'areas affected' moneys. According to statute, at least, the former are mineral rent and private, and the latter are probably compensatory and public. However, many contending opinions continue to hold sway about the nature of mining moneys. Certainly, the very strong belief of many Aboriginal associations, communities, groups and individuals and their representative organisations, is that all moneys paid in respect to development on Aboriginal land are Aboriginal, and therefore private, moneys. The issue remains an important one: expectations of how public moneys should be administered and expended are not the same as they are for private income.

Pre-land rights

Since legislative amendment to the Commonwealth *Northern Territory (Administration) Act 1952* and complementary amendment to the *Northern Territory Mining Ordinance 1953* and *Aboriginals Ordinance 1953*, Aboriginal people have been distinguished in the benefits they receive when mining occurs on Aboriginal land (then reserves). At that time it was proposed that mining could be undertaken on reserves, but only on payment of a double royalty that would be payable to Aboriginal people via the Aborigines Benefits Trust Fund (ABTF). The reasons for this special arrangement have been outlined in some detail elsewhere (Altman 1983: 3-9). What is of significance is that even in 1952, prior to the operationalisation of these arrangements, anomalies were created. In particular, while the double royalty was reserved for Aboriginal people, there was no requirement that these moneys be paid directly to those affected by the mine.

It was not till 1965 that the first agreement for mining on an Aboriginal reserve, the Groote Eylandt Mining Company (GEMCO) Agreement was completed. As stipulated, statutory royalties were paid to the ABTF at double the standard rate (that is, at 2.5 per cent ad valorem), but in addition, a negotiated royalty of 1.25 per cent was paid direct to Aboriginal interests on Groote Eylandt via an agreement struck between the Church Missionary Society and Broken Hill Proprietary Company Ltd (BHP). In 1968 the special *Mining (Gove Peninsula Nabalco Agreement) Ordinance* was passed. This agreement ignored the double royalty requirement and provided no additional payments whatsoever to Aboriginal people of the Gove region. After the plaintiffs failed to halt mining at Gove in the case *Milirrumpum and others v. Nabalco and the Commonwealth* in 1971, Cabinet decided to allow 10 per cent of statutory royalties paid to the ABTF with respect to Nabalco to be paid to the local Yirrkala Dhanbul Association from 1972. In 1973, a similar decision was made with respect to GEMCO statutory royalties. It was not stipulated at that time if such payments were compensation, and if they were, how they should be distributed or expended.

The Aboriginal Land Rights Commission

The Woodward Aboriginal Land Rights Commission recommended that the existing formula be changed and that 30 per cent (not 10 per cent) of statutory royalties made with respect of a mine should be paid to communities in areas affected by the mining operation. The new formula also recommended that 40 per cent of statutory royalties be used to finance Aboriginal land councils and 30 per cent be paid, in a broadly compensatory manner, to or for the benefit of Aboriginal people in the Northern Territory. Woodward (1974) recommended that communities in areas affected be those located within 60 kilometres of a mine site. While Woodward's 'letters patent' invited him to transfer mineral ownership to Aboriginal land owners, he explicitly refused to make such a recommendation. Rather, he emphasised that the payment of royalties to areas affected were compensatory and were not mineral rent: as traditional owners did not own the minerals he recommended that they should not have any primacy in access to mining moneys. Instead, the clear emphasis was that mining moneys should collectively benefit Northern Territory Aboriginal people, not selectively privilege certain groups above others.

The land rights legislation

The *Aboriginal Land Rights (Northern Territory) Act 1976* maintained much of the spirit of Woodward's recommendations and, in particular, incorporated at s.64(3) a requirement that 30 per cent of statutory royalties be paid to Aboriginal councils, incorporated groups or communities whose members are the traditional owners of, or reside in, areas affected by a resource development project. However, the extent of 'areas affected' was not defined in statute, thereby creating enormous difficulties for land councils in their negotiation of the financial aspects of mining agreements and subsequent distribution of moneys. The statute also allowed land councils to negotiate additional mining payments beyond statutory royalties and these could be paid in accord with specific conditions laid down in an agreement. One of the key statutory requirements in the Land Rights Act is for land councils to act as intermediaries between developers and traditional owners with respect to any commercial development on Aboriginal land. A difficulty created by this statutory requirement is that while mining agreements have to be negotiated directly with traditional owners of the land, subsequently these traditional owners are not necessarily treated as the primary or sole potential beneficiaries of an agreement. This frequently places land councils, as intermediaries between traditional owners and miners, in an invidious situation. It likewise places potential Aboriginal beneficiaries, both traditional owners and residents of 'areas affected', in a competitive situation.

These difficulties are at the heart of many problems that have eventuated with respect to the distribution and utilisation of mining moneys in the past 15 years. It is clear that from an Aboriginal perspective, mining moneys belong primarily to traditional owners of the mine site. This is partly due to

the fact that they have been required to participate in negotiations and approve agreements. But it is also due to the indigenous view that resources extracted from the land belong to the traditional land owner: Aboriginal people do not accept Crown ownership of minerals. On the other hand, changed administrative arrangements since 1978, when the ABTA (established as the royalties clearing house by the Land Rights Act) became operational, have added further complications. In June 1978, the Northern Territory became self-governing and ownership of all minerals (except uranium) were transferred to the Northern Territory. From that date, most mining royalties were paid to the Northern Territory Treasury and the equivalents of these royalties were paid to the ABTA from consolidated revenue. Statutory royalty equivalents became, in a legal sense, public moneys. The considerable historical confusion over the nature of mining moneys was thereby further exacerbated by the ambiguities inherent in the concept of 'royalty equivalents' that are public moneys.

One problem created by this changed administrative arrangement is that there continues to be a wide divergence between Aboriginal perceptions that statutory royalties are Aboriginal moneys and private, and the politico-legal view that these moneys are public and therefore require accountability.³ An additional problem created is that under the Land Rights Act there are now two potential types of mining payments: those paid directly from mining companies to land councils to traditional owners and people in areas affected (s.43 and s.44 payments), and those paid from consolidated revenue (as equivalents) to the ABTA then to the land councils, to Aboriginal councils, communities or incorporated groups in areas affected. Accordingly, land councils have faced considerable difficulties in interpreting and administering the array of complex and often ill-defined mechanisms to be followed in negotiating mining agreements and distributing moneys paid with respect to subsequent resource development projects.

Key unresolved issues

As recently as 1991, the Industry Commission highlighted the absence of clear property rights in minerals in the Northern Territory. Aboriginal people do not own the minerals prior to extraction (ownership is vested in the Crown), but do have a full right to a royalty paid as an equivalent and the ability to negotiate for additional payments, a negotiation right bestowed by the right to veto exploration (Altman and Peterson 1984).⁴ The Industry Commission (1991) referred to Aboriginal interests as having *de facto* mineral ownership. Subsequently, the Industry Commission strongly emphasised that mining moneys are a form of mineral rent rather than a form of compensation, reinforcing Aboriginal views that the moneys are private.

The Industry Commission recommended that Aboriginal interests (they refer to traditional owners) should be given *de jure* mineral rights and a greater share of mining moneys to provide greater incentive to allow mineral exploration and mining on their land. The Industry Commission recommended that 70 per cent of royalty equivalents, and presumably all agreement moneys, should be paid to traditional owners of land on which a mine might be located. This is entirely counter to the specific wording in s.35(2) that communities, councils and incorporated groups whose members are traditional owners of, or residents in, areas affected (undefined) should receive 30 per cent of royalty equivalents from a mine.

The lack of clarity with regard to Aboriginal property rights in minerals has important implications with respect to how mining moneys are utilised. As noted above, since 1978 royalty equivalents paid to residents in areas affected have come to be regarded by the Commonwealth as public moneys because they are paid from consolidated revenue. On the other hand, agreement payments are clearly not 'public' in the sense that they are being made by mining companies to land councils and then to Aboriginal interests. However, as also noted, there continues to be a lack of understanding of, and agreement about, these complex legislative and administrative arrangements. This lack of resolution has hampered the effective distribution of mining moneys and created ambiguity with respect to monitoring the utilisation of these moneys which frequently cannot be differentiated in the financial statements of royalty associations. It has also created uncertainty about the exact role of the land councils in relation to the subsequent monitoring of Aboriginal royalty associations. In the case of mining moneys from Nabarlek, there was, initially, considerable confusion within the NLC and amongst Aboriginal people in West Arnhem Land concerning the different types of payments and the variable criteria for their distribution.

Nabarlek Phase 1: 1979-81

The initial phase in the payment of moneys in relation to mining at Nabarlek dates from the signing of the QML Agreement on 22 March 1979, to the incorporation of the Kunwinjku Association in January 1982. Much of the early history has been documented for over a decade (see AIAS 1979, 1981, 1984; von Sturmer 1982; Altman 1983; Carroll 1983; and Kesteven 1983) and is only briefly summarised here to provide essential background.

The QML Agreement

The QML Agreement signed between the NLC and QML was problematic from the outset. Unlike the Ranger Agreement completed with respect to the nearby (and much larger) uranium mine at Jabiru in 1978, the QML Agreement featured sizeable negotiated rental and up-front payments,

referred to as agreement moneys. Part of the rationale for such payments that were to be channelled directly to traditional owners was to maximise financial benefits from the Agreement to regional, rather than wider Northern Territory Aboriginal, interests by by-passing the ABTA. (The differences between the Ranger and QML Agreements have been discussed in some detail by Altman 1983: 56-61.)

Administration of the QML Agreement faced a number of immediate difficulties. Some were linked to technical aspects of the Agreement itself. Agreement moneys that were expected to be the equivalent of an ad valorem royalty rate of 2 per cent were to be distributed under s.35(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* in accordance with the Agreement. The Agreement stated under clauses 4.3c and 4.3d that half of the agreement moneys were to be applied by the NLC for the benefit of traditional owners of, and Aborigines interested in, the project area (which comprised the Nabarlek mine site and Wunyu beach barge landing) and that the other half was to be distributed to an incorporated group comprising the traditional owners of land affected by the project. The potential beneficiaries under these two clauses were not mutually exclusive and their inclusion as beneficiaries was linked to the approach taken by the NLC to definition of the 'area affected'.

The looseness of much of this legislative terminology created enormous difficulties both for the NLC and Aboriginal people. In the early days of the NLC's operation there was no register of traditional owners or land interest register for the region (as then stipulated under the Land Rights Act) and no clear delineation of land that might be affected by the project. Potential beneficiaries of the Agreement (that is, traditional owners of all areas affected by the project), furthermore, resided in communities throughout Western Arnhem Land, including Croker and Goulburn Islands and represented a culturally and linguistically diverse population. Almost immediately, as the mine site was developed in 1980, these issues were contested, with the traditional owners of the Nabarlek to Cahills Crossing road (many of whom resided at Gunbalanya) arguing, quite legitimately, that their land and their lives were also affected by the project (AIAS 1981).

Distribution of moneys : policy and practice

Prolonged negotiation over the QML Agreement in the face of considerable regional opposition to the mine resulted in a strong expectation of immediate financial benefit from both those who supported and opposed the mine. The former group, and especially key traditional owners of the mine site, had been courted by QML and were under the impression that they were to receive direct and substantial payments in much the same way as the non-Aboriginal person who held the original exploration licence over the mine site. (These earlier payments were conceptually in the nature of mineral rent and were directly tied to the value of minerals (Altman

1983: 61)). The latter group, on the other hand, were seeking financial compensation to offset anticipated negative impacts of the mine.

In a situation fraught with tensions between Aboriginal interests, conflict between Commonwealth and Northern Territory Governments over uranium policy and resource development, and with NLC staff inexperienced in the interpretation and conduct of complex legislative functions, the NLC did not develop a consistent policy or appropriate mechanisms for disbursing mining moneys from the Agreement. Not surprisingly, it responded to enormous political pressure from Aboriginal interests in the region to distribute mining moneys. A combination of factors, including wider governmental and public pressures on the NLC to demonstrate that the Land Rights Act could facilitate mining activity, and regional threats to establish a break-away land council, induced an over-hasty response.

Rather than undertake the detailed, time-consuming research needed to determine traditional ownership and the extent of 'affectedness' (now a standard procedure), the NLC convened large meetings of people from the region to consider distribution options. Attempts were made to explain the meaning of the Agreement, but these foundered. In these early days of administering the *Aboriginal Land Rights (Northern Territory) Act 1976*, the difficulties presented in cross-cultural communication were only gradually becoming apparent. This problem was exacerbated by the fact that NLC staff assigned to undertake the task did not themselves understand their statutory functions or the terms of the Agreement. In particular, they misunderstood that payments needed to be made in accordance with the Agreement under s.35(3) of the Aboriginal Land Rights Act rather than to incorporated groups under s.35(2) of the Act.

Subsequently, in four distribution rounds made in 1979 and 1980, variable and very inconsistent formulae were used (see Altman 1983: 128). This occurred in part because NLC staff sought direction at very large regional meetings. Such meetings, with participants representing an estimated 1,200 to 1,400 potential beneficiaries, became a forum for interest group lobbying. Some key individuals had undue influence over NLC staff and members, while other leaders were extremely effective in representing their particular Aboriginal constituencies. There was a high degree of contestation at these meetings with resulting distributions being inequitable and ad hoc.

Nabarlek Phase 1: assessment

The complexities of the QML Agreement, the absence of any formulated policy, the lack of clear mechanisms to guide the distribution and utilisation of mining moneys, and the absence of any monitoring of expenditure has left a regional legacy that is evident today.

Agreement moneys in the period 1979 to 1981 were distributed almost exclusively in two ways: as cash payments to individuals and groups, or as consumer goods, mainly vehicles (Kesteven 1983). At the time there was considerable policy pressure from both the Commonwealth Government via the Department of Aboriginal Affairs (DAA), and from within the NLC itself, to facilitate local Aboriginal self-determination. Accordingly, the NLC allowed total discretion to regional meetings to decide how mining moneys should be utilised.

Despite concern about the social impact of such distribution practice articulated at the time in interim reports of the Social Impact of Uranium Mining project (for example, AIAS 1979, 1981), there was a total absence of institutional checks and balances within either DAA or the NLC to assess or alter such practice, even if only on the grounds of legal inconsistency with provisions in the Agreement. For example, there was no monitoring of clause 4.3c moneys by government or the NLC to ensure that they were applied 'to the benefit' of recipients and there was no incorporated group established as required under clause 4.3d of the QML Agreement.

Nabarlek Phase 2: the Kunwinjku Association, 1982-88

The Kunwinjku Association was not established until January 1982, some three years after the signing of the QML Agreement. The belated formation of the Association was largely an attempt by the NLC and the DAA to resolve the difficulties outlined above, and what was publicly perceived to be an ongoing waste of mining moneys. However, the operation of the Kunwinjku Association did not alleviate these problems. Rather, it exacerbated them.

Structure and membership

The Association structure and its constitution were extremely complex (see Altman 1983; Kesteven 1983; O'Faircheallaigh 1988a). Its organisational structure was devised to receive and utilise both agreement and areas affected moneys. The former were paid to traditional owners from three 'areas of interest' represented by separate sub-committees (Nabarlek, Arguluk and Wunyu) under s.35(3); the latter were paid to the whole region and dealt with by a separate overarching Aboriginal committee within the Association.

This structure attempted to integrate into one umbrella organisation groups identified as beneficiaries under the QML Agreement and communities that could potentially be compensated with s.64(3) 'areas affected moneys'. The wide definition given to the area affected resulted in an estimated Association membership of land owners and residents of some 1,300 to 1,400 people, dispersed across West Arnhem Land. Neither the NLC nor the Kunwinjku Association compiled a list of members. These factors

alone made sound financial planning and decision making extremely difficult.

Finances

During the period 1982-1987, the Association received \$8.3 million. There are extremely poor financial records available from the Association to indicate how these receipts were expended. Large sums appear to have been handed out as cash distributions. Overall, vehicles constituted by far the largest single item of Aboriginal expenditure (at over \$2 million). The Association's total administrative costs amounted to a massive \$2.8 million or 34 per cent of its income (O'Faircheallaigh 1988b: 140, 161).

In the mid-1980s the Association, under advice from its non-Aboriginal management, took over QML's road contract, bought an airline, an abattoir, a service station and a barge. However, these investments were poorly assessed and by the end of 1986 each one had incurred substantial losses. The Association also made losses on a number of large loans (some obtained illegally by its inaugural non-Aboriginal manager) and on projects initiated by management which were not for the benefit of Association members.

The net assets of Kunwinjku Association at March 1988 when it was legally wound up, were \$893,449 - 10 per cent of receipts - and it had a limited liability of \$250,000 that was transferred to the NTOA. In 1988, O'Faircheallaigh (1988b: 110-11) assessed the Association as owning insufficient assets to guarantee a future income stream to its members.

The reasons for Kunwinjku's poor financial performance included its complex and inappropriate structure; its widespread membership; lack of financial management systems; difficulties in hiring and supervising high calibre staff during its early years (the Association's first manager subsequently absconded and defrauded the Association of a significant amount of money); adverse precedents and conflicts generated by the earlier history of disorderly distributions by the NLC of large amounts of cash and vehicles; the impact of intense politicking by Aboriginal interests within the distributive economy that had developed around QML mining moneys; and the role of key Aboriginal players from Gunbalanya and other Aboriginal people with no affiliation with 'land affected by the Nabarlek mine', in making financial decisions.

Nabarlek Phase 2: assessment

Earlier research by the Social Impact of Uranium Mining project (AIAS 1984) noted the lack of experience in handling cash and addressing financial issues amongst the Gunbalanya Aboriginal population. The Association's overly complex structure and cumbersome membership model created considerable logistical and planning problems for the Association and raises the issue of whether members were able to understand and use the Association effectively.

Problems with the QML Agreement itself and confusion over the nature of moneys paid out also impeded the Association's financial performance. The financial decisions made by the Association were adversely influenced by key Aboriginal figures, local politicking, poor management and inadequate financial advice. Progressively, there appeared to be a total breakdown of financial management and planning. The inconsistency in Association and NLC decision making about distribution of moneys and membership left a considerable legacy that hampered the Association's performance.

If areas affected moneys were, in part, seen to be compensation for potential socioeconomic impacts related to mining at Nabarlek, then there is no evidence that the Kunwinjku Association directed money to alleviate those impacts. Agreement moneys primarily enabled a temporary increase in the personal expenditure of some individuals, mainly on vehicles. The Association's distribution mechanisms and expenditure regime seem to have been responsible for great social upheaval, in terms of contestation over distribution of moneys, rather than any alleviation of perceived negative social impacts from mining.

The financial operation of the Kunwinjku Association raised important questions about whether the financial benefits generated under the QML Agreement had been equitably distributed and how the interests of future generations of potential recipients should be taken into account. It also raised issues concerning the potential role of the NLC in establishing and monitoring such associations (AIAS 1984; Kesteven 1983; O'Faircheallaigh 1988b).

Nabarlek Phase 3: The NTOA, 1988-93

There is no published research currently available on the history or operation of the NTOA, though its history and role will be covered in a forthcoming monograph by O'Faircheallaigh. Our analysis of the NTOA's operation and financial performance is based primarily on extensive file material made fully available by the NLC.

In the late 1980s, after a joint DAA/NLC review of the Kunwinjku Association, there was growing consensus that the Kunwinjku Association had to be wound up and that a new association with a smaller, but specified, membership should be established to allow a fresh start. There were four main reasons for this decision. First and foremost, the Kunwinjku Association was not only insolvent, but had acquired massive additional contingent liabilities following the purchase of Aramunda Air. Second, it was recognised that the size of the Kunwinjku membership, and especially its geographic dispersion, hampered its effectiveness. Third, there was a belief (or hope) that if a new association were incorporated under Commonwealth legislation (as required after amendment of the *Aboriginal Land Rights (Northern Territory) Act 1976* and inclusion of

s.35(12) in 1987, although interestingly amended again in 1990) it could be held more financially accountable by the Office of the Registrar of Aboriginal Corporations. Finally, there was growing recognition that the future income stream from the Nabarlek mine was declining rapidly: it was estimated in 1987 that only a further \$1.6 million was forthcoming from the mill that was to be decommissioned in 1988 (NLC file 97/174). There was also a corresponding view that the Nabarlek core group, the more immediately affected traditional owners, should be the ones to reap the remaining financial benefit from the mine.

The NTOA was incorporated on 5th April 1988. It inherited the full financial legacy of the Kunwinjku Association and on the 23rd September 1987, officially took over all investments and liabilities of the Kunwinjku Trading Association which was wound up on the 3rd March 1988. An estimated \$13.8 million in mining moneys have been paid under the QML Agreement and s.64(3) of the Aboriginal Land Rights Act over the 14 year period 1979 to 1993. Of this, \$1.45 million was paid in agreement moneys prior to 1982, \$8.3 million was paid to the Kunwinjku Association to 1987, with an additional \$1 million being held in a trust account by the NLC in 1988, and just over \$3.3 million has been paid to the NTOA from 1988 to 1993. The NTOA's income for the period 1988-93 represented only about 25 per cent of the total income generated with respect to the Nabarlek mine. Its future financial success was clearly encumbered from the beginning.

The establishment of the NTOA should have provided an opportunity to create a more appropriate organisational structure for the particularities of the Nabarlek situation. However, in the event, the new Association's Constitution was poorly structured by the NLC and DAA. There were potentially positive initiatives such as the incorporation of the Association under Commonwealth legislation, a less complicated distributional mechanism, and a smaller membership. However, there remained a vagueness about the geographic coverage of its financial operations. There was frequent mention in the constitution of an undefined 'Oenpelli region' and 'the region', the communities, groups and individuals of which were to be the focus of Association activities. The NTOA may well have experienced difficulties in delimiting its own financial orientation in line with its newly restricted membership, when its Constitution appeared to reinforce a 'Kunwinjku focus' on an undefined, wide region of potential activity.

Membership

In reaction to the inclusive membership of the Kunwinjku Association and the related problems in financial planning and management, the NLC established rules for a more restricted NTOA membership (actual and potential) by focusing on traditional owners as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976* and applying it to the Nabarlek

mine area. The Constitution defines traditional ownership for membership purposes as:

the local descent group of Aboriginals of the Nabarlek Mine site who:

- (a) have common spiritual affiliation to the Nabarlek mine site, being affiliations that place the group under primary spiritual responsibility for the Nabarlek mine site; and
- (b) are entitled by Aboriginal tradition to forage as a right over the Nabarlek mine site.

The effect was to substantially reduce membership of the new Association to a total of 83 people, the precise identity of whom was listed in a schedule attached to the Constitution. The 49 adults and 34 children came from five 'clan' groups: Madjawarr 1 and Madjawarr 2, Murrwan, Mirrar and Djalama. This membership was, nevertheless, greater than the 19 Nabarlek traditional owners identified in 1979 (Altman 1983: 127). The expansion of the 'core group' from one clan group to five can be explained perhaps as another Kunwinjku Association legacy: the effect of the political negotiations and compromises required by the Nabarlek traditional owners in trying to reduce membership from the previously wide coverage.

The Constitution refers to future membership for the descendants of members, but specifies no bases or mechanisms whereby ongoing membership of the Association could continue to be determined by the current membership itself, as opposed to an outside agency. In the event, some decisions regarding membership have been determined by the NLC, while others have been made by senior land owners from the Association. The former arrangement of calling upon the NLC to make an adjudication may well have suited the Association membership, especially in circumstances of local conflict.

Quasi-members

An issue associated with membership has arisen with respect to the establishment of a supplementary list locally known as 'gift people'. This list currently stands at 22 people, all from Gunbalanya, and has been established as a system of preference primarily handed out by the NTOA Chairperson. These people have regularly received the same cash distributions as constitutionally-scheduled members and have requested and received vehicles. A 'gift person' is also currently on the NTOA Committee.

The continuing impact of regional Aboriginal politicking generated by the Kunwinjku Association membership model is inevitably apparent in the quasi-membership status of these 'gift people'. Their status can be seen as a strategic and legitimate Aboriginal mechanism whereby certain people excluded from membership in the new Association have been diplomatically 'incorporated' and appeased. It may well be that these people are also connected by close genealogical, ceremonial and territorial affiliations to the core groups of NTOA members. Certainly, their presence

as additional beneficiaries is a reflection of the considerable pressure that has been placed upon the NTOA Chairperson for access to the Association's funds.

The NTOA Constitution contains no provision for, or controls over, such a list of people, and given the previous problems in distributing Kunwinjku funds, it could be argued that it is contrary to the financial interests of the NTOA. Given the ongoing Aboriginal tensions apparent within the distributive economy over access to mining moneys, the effective expansion of Association membership should occur according to commonly understood and agreed upon procedures. Current NTOA members have found themselves in an invidious position, being required to cope with inevitable pressures generated by the scaling down of their membership. A set of more consistent procedures for dealing with the difficult issue of membership would help alleviate the enormous pressures placed on senior owners and Association office bearers.

Decision-making processes

The main management mechanism established by the Constitution is a Committee, made up of four members - a chair, deputy chair, secretary and treasurer - holding office for one year and elected by a majority of members voting at an annual general meeting of the Association. This Committee was not operationalised until late 1991, despite a requirement that it be set up within two months of incorporation. It is not clear if office bearers were elected at a full membership meeting. The Committee is given 'sole discretion' to distribute any property and income to any, or all, members of the Association. The only constitutional direction given to the Committee in asserting its considerable discretionary power is that it must 'reflect the interest of the members of the Association as a whole'. However, there are no checks and balances to encourage such accountability to the membership besides the normal opportunities to vote out office bearers at annual or special general meetings. During its period of recent operation, the Committee's major decisions have focused on vehicle purchase and maintenance. It has not developed into an effective management body for the Association, except in this role.

In its short period of operation, the Committee has had as members, people who are not listed as Association members. Again, their involvement signals the Association leadership's continuing social and political indebtedness to a wider Aboriginal network. It is a major oversight that the Constitution does not specifically stipulate that the members of the Committee be members of the Association, or even Aboriginal.

The current Chairperson has had a special and considerable role in the financial direction taken by the Association. At an early stage in the Association's affairs it was decided by the NLC that the Chairperson should operate a separate account, with sole discretion, for use as a 'Community

Trust Fund'. Regular and large sums of money put into this fund have benefited a relatively small group close to the Chairperson. The NLC has continued to act 'on instructions' from this person in the day-to-day administration of the Association's funds. While this influence is no doubt due to the Chairperson's widely recognised position as the senior traditional owner for the mine site, it is not clear why such discretionary financial powers have been given to one person, especially with respect to s.64(3) areas affected moneys. Certainly these powers have been a contributing factor in exacerbating the inordinate pressures placed on the Chairperson by members and non-members alike for access to cash and vehicles.

It is only at the instigation of the current NTOA Manager that the Committee has been formally operationalised; Committee financial decisions and policies have been systematically recorded; Committee minutes maintained; the membership informed of decisions via an irregular, but informative, newsletter; and accurate records of expenditure and distributions of cash kept. Under recent NLC management, the financial administration of the Association has improved considerably; systems for maintaining financial records have been established; and mechanisms for receiving and acting upon agreed authorisations have been negotiated. It would have been to the Association's considerable benefit if these management structures and processes had been established at the very beginning of its operation, especially in light of the earlier and acute shortcomings of the Kunwinjku Association.

Overview of financial performance

An NLC assessment of the NTOA at the end of 1989 noted that it had 'a number of substantial investments and derived substantial income from those investments'. In fact, this was not the case (see Table 1). At the end of 1989 the Association had net assets of just \$1.2 million, consisting mostly of income received for that year (see Table 2). From its first full year of operations the NTOA experienced a rapidly declining income stream. In 1990, milling stopped and in 1991 the last of QML's stockpiled ore was sold. From 1992, Agreement payments declined markedly.

From March 1988 until 30 June 1993 the NTOA received \$3.3 million (see Table 1). Section 64(3) royalty equivalents comprised only 25 per cent of this total, with the Agreement payments amounting to 40 per cent. There are two features of this income. First, of the total income of \$11.6 million that had been distributed between 1982 and 1993, NTOA total income represented only one-third; the remainder had already been distributed and expended by the Kunwinjku Association. Second, as with Kunwinjku, it was made up of two major types of income: negotiated agreement payments and areas affected moneys. The difference is that in the NTOA no attempt has been made to distinguish one form of payment from the other, counter to requirements in both the QML Agreement and in statute.

Table 1. Sources of Nabarlek Traditional Owners Association income, 1988-93.

	QML Agreement s.43 payments	Royalty equivalents under s.64(3)	Interest ^a	Other ^b	Total
1989	\$216,117 (19.5%)	\$357,534 (32.3%)	\$161,571 (14.6%)	\$372,605 (33.6%)	\$1,107,827 (100.0%)
1990	\$413,700 (63.1%)	\$107,979 (16.5%)	\$127,000 (19.4%)	\$6,839 (1.0%)	\$655,518 (100.0%)
1991	\$419,165 (38.7%)	\$317,043 (29.3%)	\$335,546 (30.9%)	\$12,164 (1.1%)	\$1,083,918 (100.0%)
1992	\$100,000 (44.2%)	\$37,980 (16.8%)	\$88,380 (39.0%)	\$328 (0.0%)	\$226,688 (100.0%)
1993	\$196,577 (72.0%)	-	\$34,441 (12.6%)	\$41,665 (15.3%)	\$272,683 (100.0%)
Total	\$1,345,559	\$820,536	\$715,938	\$433,601	\$3,344,634
Per cent	(40.2%)	(24.5%)	(21.4%)	(13.0%)	(100.0%)

a. Interest income is generated from member's accumulated funds; its presentation as a proportion of members funds are 13.2 per cent, 10.3 per cent, 21.4 per cent and 13.3 per cent for each year 1989-92.

b. Other income includes statutory lease payments from the Northern Territory Department of Mines and Energy, miscellaneous income and a one-off payment of \$352,753 from QML in relation to ELA 2508. In 1990, \$144,044 was recouped by the NLC owing to overpayment to traditional owners of ELA 2508 who were not members of the NTOA.

Source: NTOA Corporation, financial statements for the years ended 30 June 1989, 1990, 1991, 1992 and 1993.

Table 2. Nabarlek Traditional Owners Association financial performance, 1989-93.

	Income (Y)	Expenditure (E)	Members funds (Balance)	E/Y ratio Per cent
1989 ^a	\$1,107,827	\$777,099	\$1,224,177	63.4
1990	\$655,518	\$497,238	\$1,238,413	75.9
1991	\$1,083,918	\$754,586	\$1,567,745	69.6
1992	\$226,688	\$1,130,740	\$663,693	498.8
1993	\$272,683	\$363,312	\$573,064	133.2
Total	\$3,346,634	\$3,522,975		105.3

a. Members funds at 30 June 1989 comprised of members surplus for the period (\$330,728) plus total assets of the Kunwinjku Association (\$1,143,449) minus contingent liabilities of the Kunwinjku Association (\$250,000). In February 1990 it was established by Court Order that these liabilities totalled \$324,026.

Source: NTOA Corporation, financial statements for the years ended 30 June 1989, 1990, 1991, 1992 and 1993.

When the NTOA was established it inherited the assets and liabilities of the Kunwinjku Association and committed itself to maintain an investment of \$1 million held in a Westpac Investment Account for three years. As can be seen in Table 2, members funds of at least \$1 million were maintained by the NTOA until 1991-92. However, the NTOA does not appear to have devised a consistent financial policy to only spend a proportion of its income. The data on income and expenditure in Table 2 varied from 63 to 76 per cent for the period 1988-89 to 1990-91. However, in 1991/92, when income declined rapidly, expenditure increased. Overall, in the period since its incorporation, the NTOA has expended more than it has received. More importantly for its financial future, in the 1991-92 financial year the NTOA started running down its reserves to finance continued expenditure.

It can be argued that NTOA's income was effectively 'too little, too late'. But also, in terms of its subsequent use of the continuing, though smaller, income stream, the NTOA has been unable to break away from the precedent of a financial policy heavily skewed in favour of expenditure set by Kunwinjku. As a result, the NTOA is currently in a difficult financial situation. It has limited income and unless further mining agreements are negotiated, or expenditure is frozen, it is likely that the Association will cease to be financially viable.

While alternate scenarios can be easily proposed with hindsight, it would have been possible for the NTOA to merely expend its investment income for a year or two and build up its capital base to an extent that would have allowed sustainable, though limited, expenditure in the longer term. The fact that the Association did not pursue such a strategy indicates inadequate financial planning. However, as will be argued below, there were also political, organisational and cultural factors that reinforced the almost exclusive emphasis on expenditure.

Expenditure policy and practice

Table 3 details the major areas of expenditure, simplified to three categories, undertaken by the NTOA from early 1988 to mid 1993. Over that period, the Association expended a total of approximately \$3.5 million. Overall, as with the Kunwinjku Association, the purchase and maintenance of vehicles accounted for the majority of expenditure: 57 per cent over the five year period and between 32 and 76 per cent each year. Cash distributions to members and 'gift' people accounted for 28 per cent of expenditure over the period, although there are indications of a rapid decline in such distributions since 1988-89. Overall, 85 per cent of funds were expended on vehicles, vehicle maintenance, a house, boats and cash distributions.

The division of expenditure categories above are largely linked to accounting conventions in the NTOA's financial accounts. The remaining 12 per cent of expenditure under the 'other expenses' category was spread

across a myriad of smaller items including individual medical expenses, donations to the Gunbalanya school, payments for cultural events such as funerals, additional debts of the Kunwinjku Association and the administrative costs of running the NTOA. One positive feature initiated by NLC management in recent years has been the decline in the costs of operating the Association, from 34 per cent of income for Kunwinjku, to less than 8 per cent of income for the NTOA.

Table 3. Nabarlek Traditional Owners Association expenditure 1989-93, by major items.

Year	Vehicles, boats, expenses	Cash distribution	Other expenses	Total
1989	\$247,339 (31.8%)	\$485,227 (62.4%)	\$44,533 (5.7%)	\$777,099 (100.0%)
1990	\$220,972 (44.4%)	\$172,858 (34.8%)	\$103,408 ^a (20.8%)	\$497,238 (100.0%)
1991	\$518,409 (68.7%)	\$192,620 (25.5%)	\$43,557 (5.7%)	\$754,586 (100.0%)
1992	\$859,831 ^b (76.0%)	\$83,458 (7.4%)	\$187,451 ^c (16.6%)	\$1,130,740 (100.0%)
1993	\$171,803 (47.3%)	\$62,265 (17.1%)	\$129,244 (35.6%)	\$363,312 (100.0%)
Total	\$2,018,354 (57.3%)	\$996,428 (28.3%)	\$508,193 (14.4%)	\$3,522,975 (100.0%)

a. Of this amount \$74,026 were additional liabilities of the Kunwinjku Association.

b. Approximately \$100,000 to build a house for the chairperson.

c. \$61,955 of this to the Hannah Girrabul Community Trust.

Source: NTOA Corporation, financial statements for the years ended 30 June 1989, 1990, 1991, 1992 and 1993. The qualifying notes above are necessary because the NTOA changed accountants in 1991/92 and slightly different accounting conventions are now used.

Overall, the Association did not expend any of its income on establishing outstations, enterprises, educational scholarships, providing community or outstation amenities and essential services, purchasing land or other non-depreciating resources, or any of the other activities listed in its Constitution. The contribution of \$18,500 to the Gunbalanya school seems to have been the extent of its benevolent involvement in the wider Gunbalanya community. Comments made ten years ago by the AIAS (1984: 147), about the 'limited set of objectives' apparent amongst people in the region, remain appropriate to NTOA's expenditure activities: they have remained short-term and oriented to consumer goods and cash distribution. Association expenditure has also focused primarily on the immediate consumption needs and priorities of individuals, as opposed to

those of wider social groups and organisations within Gunbalanya or beyond.

Investment policy and practice

The NTOA's discernible investment practice appears to have been aimed at generating investment income in the short-term from a conservative portfolio held primarily with established trading banks. When the Association was formed in 1988, it was advised by the DAA and NLC to purchase blue-chip business property in the Darwin Central Business District with established long-term tenants. Such a sound investment would have generated rental income in the long term and would not have been immediately convertible to cash. However, this option was rejected by senior traditional owners. This is hardly surprising given that one of the underlying pressures behind the formation of the NTOA was the failed business enterprises of the Kunwinjku Association that made it insolvent.

As noted above, \$1 million of Kunwinjku assets was retained by the NLC in a trust account when the Kunwinjku Association was dissolved and invested as a lump sum. However, this was not formally established by the NTOA as a long-term investment commitment: from 1992, when expenditure priorities exceeded income, this investment was run down, despite warnings by the NTOA Manager and the NLC about the Association's worsening financial situation.

The major investment innovation by the NTOA was the creation of a Children's Fund that is very similar to that established by the nearby Gagudju Association (Altman 1983: 123). Upon reaching the age of 18 years each young adult member is given a sum of money, currently in the vicinity of \$9,000. Through this investment account the Association aims to provide future generations with some financial benefit from the mining Agreement. While individual benefits are small, the Fund represents an important commitment to intergenerational equity in respect to the receipt of mining moneys. In 1993, about \$400,000 remained invested in this Fund. However, as Association income receipts have declined, this Fund has come under pressure as a source of money for further expenditure. As the only remaining Association investment, the Fund is potentially the NTOA's only lasting financial achievement. Even so, while the Fund generates income paid to members at age 18 years, it is reported that the lump sum received is usually expended immediately by recipients and their kin. As such, it is debatable whether the Fund is any more 'productive' in terms of longer-term financial security than the other cash distributions made by the Association. Overall, the NTOA has not maintained a long-term commitment to investment.

The Toyota debate

The NTOA's financial performance is largely characterised by its involvement in the purchase and maintenance of vehicles. This has featured

significant expenditures on new and used vehicles, ongoing costs for repairs, frequent sale and swapping of vehicles with considerable loss, rapid depreciation and frequent complete destruction of vehicles, as well as inadequate records. In one month alone, in 1992, the Association spent \$19,500 on vehicle repairs. The pressure on the Chairperson and Manager, from members and non-members alike, to finance vehicle purchases and repairs has been constant. Any efforts by the Committee to establish means to circumvent this pressure have been overridden by the difficulties they face in resisting the persistent claims of many people.

Vehicles undoubtedly have served a positive purpose for individuals and families in providing transport for a many of activities. However, there have been important disadvantages for the Association as a whole, many of which have been pointed out to the Committee by the current manager. In particular, the demands on management to supervise vehicle purchase and repairs and to monitor resales and swaps was cited as being partly responsible for the increased Association administration costs submitted by the NLC. The uncontrolled sale of vehicles for immediate cash gain has also meant large losses. Arguably, vehicles have not provided lasting benefit to individuals or families owing to their rapid deterioration and frequent wreckage (few were used for transport to outstations, according to the Demed Outstation Resource Centre). Other investment or expenditure opportunities were forgone owing to the large amounts spent on buying and maintaining vehicles; and vehicles have not benefited all members equally as they have been unevenly distributed. Some members have had replacement vehicles every year, others have had several vehicles in any one year and yet others have had none.

In the 1980s, the ABTA was criticised for its large expenditures on vehicles, accounting in 1982 for some 70 per cent of grants (Altman 1985: 39). The ABTA was then cynically referred to as 'the Toyota Trust Account'. The name could also be applied to the NTOA. There continues to be debate about this issue. The Aboriginal need for vehicles to gain access to remote outstation communities and to service centres, to continue subsistence production activities, and for social and ceremonial reasons is apparent and considerable. There is also the very real issue of the right of individuals and the Association to determine the nature of their expenditure. This is linked, in turn, to the unresolved matter of whether mining moneys (and which part of those moneys) are public or private. An important question, not only for outside monitoring agencies, but also for the Association itself, nevertheless remains: should large amounts of money continue to be directed towards the recurrent and high costs of vehicles which depreciate rapidly on rough terrain under heavy use?

While social benefits may have accrued to NTOA individuals and families because of greater access to transportation, overall, expenditure on vehicles has been excessive and detrimental to the Association's financial viability.

Together with its failure to maintain any investment regime, vehicle expenditure has left the Association financially vulnerable. The current Association (or any future Association) will need a system of formalised structural checks and balances (constitutional and managerial) if it wishes to establish a controlled and consistent vehicle expenditure policy.

Nabarlek Phase 3: assessment

Phase 3 is still under way, but already there are indications that the specific factors that resulted in the NLC's attempt to recast the Kunwinjku Association into the NTOA have continued to hamper the new Association's effective financial performance. Despite the NLC's efforts to provide managerial and financial advice to the Association, discussions held with some Association members confirm that expenditure focused on the same pattern of vehicle purchase and cash distributions to individuals, that has occurred with Nabarlek mining moneys since 1979, and has been extremely difficult to change. The precedents set during the early phase of the QML Agreement have created entrenched expectations of continuing cash distributions and reinforced the view that expenditure on vehicles is the major function of the NTOA. The need to establish investments, expressed by some members, is weighted against this legacy and the Kunwinjku Association's very poor investment performance, and has failed to replace these expenditure priorities. These tensions continue to affect financial decisions made by the NTOA. In particular, it appears that the Committee is keen to avoid further conflict.

Until recently the Association has had no clear policy guidelines or procedures by which it managed its financial affairs. Informal, ad hoc decision-making arrangements were the norm. The absence of procedures in its early period of operation has meant that in practice, there have been frequent contradictions in decisions about resource allocations. More recent attempts by the NTOA Manager to formulate short-term financial policy and associated decision-making procedures, have continued to be undermined by the precedents of the past, and in particular, by the intense Aboriginal politicking for immediate financial benefit.

For the Association to have had a successful investment performance, specific guidelines for investment would have been needed in its Constitution. Indeed, one member made just such a suggestion to us. To date, the Association's Committee has been unable to give priority to the accumulation of financial assets as a long-term objective in the face of intense pressure to do otherwise. Its present limited reserves mean that the NTOA will not be able to take the fullest economic advantage of future opportunities afforded by the anticipated transfer of remaining mine site infrastructure assets in 1995.

The NTOA's financial vulnerability has been exacerbated, until recently, by poor investment advice and management support. It is crucial that the

Association's management has financial experience and skills to enable them to provide sound advice on investment and expenditure alternatives, or at least to be able to confidently seek out such advice from appropriate sources. These areas of expertise and management support are vital to an association, such as the NTOA, whose membership remains largely inexperienced in financial matters.

The NTOA is a small association in terms of its membership and has limited local political influence. Its marginal status in Aboriginal political terms has, at times, left it vulnerable to cross-cutting alliances and cleavages within the region. Seen in the light of the problems inherited from Kunwinjku, the pressure of regional Aboriginal politics, and the rapid decline in income, the NTOA has had little room to manoeuvre. Even so, it can be argued that in the absence of any investment strategy and owing to an entrenched preference for expenditure, the Association has failed to secure any longer-term financial benefits from the receipt of mining moneys. Certainly, the absence of any sustained investment activity must be viewed as a significant lost opportunity both for members and future generations. Importantly, there has been little apparent equity in the distribution of resources: some members have simply missed out in comparison to others.

Policy issues and implications

This case study of the economic impact of payment of mining moneys from the QML uranium mine at Nabarlek is replete with important policy, administrative and legislative issues. These have implications for the West Arnhem region, as well as for other Aboriginal groups in Australia.

Mining moneys: benefits and beneficiaries

If mining moneys are intended as compensation for adverse social and cultural impacts, then it is clear that these moneys have not been used to alleviate perceived social impacts, or establishing an economic base from which to generate continuing income after the cessation of the Nabarlek mine. While the NTOA has given some very limited assistance for cultural activities (primarily for funerals), support for local enterprises, outstation development, the establishment of community amenities, and the multitude of other community-oriented objectives listed in its Constitution has been absent. Clearly, association objectives and the geographic area of activity need to be specified and targeted to realistic and achievable ends. Otherwise, small associations like the NTOA will always be vulnerable to widespread competing objectives, without appropriate mechanisms available for exerting their own financial control.

One of the critical shortcomings of the *Aboriginal Land Rights (Northern Territory) Act 1976* is that the regional area affected remains undefined. In such circumstances there is a high likelihood of intense regional politicking

and potential for disputation. The nexus between traditional owners of the mine site and areas affected by the mine in a physical sense, and communities whose members reside in these affected areas, has never been resolved. This can be especially problematic if traditional owners are politically marginalised in their current place of residence. In the case examined here there has been enormous vacillation in targeting beneficiaries from both the Agreement and royalty equivalents. While the more recent focus has been on traditional owners of the Nabarlek mine site, this solution is apparently counter to both the QML Agreement and s.35(2) of the Land Rights Act that specifically states that areas affected moneys are to be applied to Aboriginal corporations whose members are the traditional owners of, or residents in, areas affected by mining operations. Recent practice has reinforced the Aboriginal perspective that all mining moneys belong to traditional owners and that such moneys are to be spent at their discretion. The area of geographic coverage and the specification of beneficiaries for particular types of payments need to be more fully addressed before future royalty associations are established.

It was noted at the outset that the focus of the research reported here was the payment of mining moneys with respect to the Nabarlek uranium mine. However, it cannot be overlooked that 70 per cent of the mining royalty equivalents transferred to the ABTA from consolidated revenue in respect of QML are paid to interests outside the area affected. In particular, QML royalty equivalents have funded Aboriginal land councils in their statutory functions (including claiming Aboriginal land and managing Aboriginal land) and have been utilised to, or for, the benefit of Aboriginal people throughout the Northern Territory.

There is an Aboriginal viewpoint, outlined previously, that the payment of these moneys is mineral rent and that its distribution outside areas affected is inequitable. It should also be recalled that earlier reviews of the ABTA emphasised its high rate of expenditure on vehicles (Altman 1985). It might be a little inconsistent and patronising to expect the Kunwinjku Association and NTOA not to expend what its members perceive as their financial resources on vehicles, when they are aware that others are expending 'their' resources on identical goods via the ABTA. Similarly, there have been positive external economies from the QML uranium mine for wider Aboriginal interests who have not borne any social disruptions associated with mining. It needs to be recognised that from a regional Aboriginal perspective, the wider distribution of royalty equivalents under the existing statutory formula further complicates an already complex royalty mosaic.

Other economic issues

It is apparent that in the disputation over the dispersal of mining moneys and associated administrative concerns, there has been a very evident absence of focus on other important economic commitments made by

QML in the Agreement. In particular, after the conclusion of the Social Impact of Uranium Mining project (AIAS 1984), there is no evidence that there has been any monitoring of employment and training guarantees specified in the Agreement, or any other social impacts. The major emphasis of external agencies like the NLC and DAA (now the Aboriginal and Torres Strait Islander Commission (ATSIC)) has been on controlling 'conspicuous' expenditure by the Kunwinjku Association and NTOA; and on monitoring environmental impacts. The urgent need for investment in human capital has been largely overlooked.

O'Faircheallaigh (1988a) has documented the shortcomings in sections of the Agreement dealing with employment issues and the attempts by QML to recruit local Aboriginal labour. Our attempts to gain access to more recent employment records proved unsuccessful. There is a prevailing view articulated at Gunbalanya by local potential employers, that while the licenced social club remains open twice a day during the working week, it will be impossible to recruit sufficient Aboriginal labour for township employment opportunities, let alone opportunities outside the town. The issue of employment and training does not appear to have been consistently monitored by the NLC which, as a signatory to the QML Agreement, has no data or records on Aboriginal employment, training or enterprises associated with the Nabarlek mine. Similarly, it appears that the NTOA has only erratically pursued the potential economic opportunities available via the Agreement.

Expenditure versus investment

There is always a tension, especially for poor people, between current expenditure and deferred expenditure (or investment) for the future. The expenditure practices associated with Nabarlek mining moneys from the outset emphasised regional distribution of resources, either as vehicles or cash. The opinion was voiced by some NTOA members that because members have been historically involved in large distributions and expenditures, they will exert considerable pressure for such expenditure to continue.

In these circumstances, it is highly unlikely that the NTOA Committee could successfully have maintained an investment fund or curtailed cash distributions or expenditure on vehicles, even though they have attempted to do so on a number of occasions. This indicates the need for statutory sanctions and/or association rules that specify a financial policy. The current financial policy of a number of royalty associations in the Northern Territory specifies that at least 50 per cent of income must be invested. Statutory or constitutional guidelines (as found in North America and in New South Wales land rights legislation) are essential, as is expert financial advice, especially if concern exists among members about the risks associated with investment.

It is certainly a rational economic decision to choose to spend now if there are excessive doubts about future access to resources and if there are high levels of socioeconomic disadvantage. However, even the most cursory assessment of the impact of the propensity for immediate expenditure and cash distributions reveals that little has been achieved in the alleviation of poverty amongst NTOA members.

The NTOA has had little room to manoeuvre. Even so, it is clear that since 1988 the Association has failed to secure any long-term benefits from the receipt of mining moneys. Unlike the adjacent Gagudju Association, the NTOA has not purchased any regional tourism infrastructure, partly because no clear opportunities or concessions existed in the West Arnhem Land region in contrast to Kakadu National Park. Nevertheless, an investment portfolio that prioritised relatively liquid assets made the option of shifting from investment to expenditure all too easy for the NTOA Committee. Some strategic investment advice and leadership (either from within or outside the region) was, and continues to be, urgently required. The NLC should not take on the sole burden of monitoring and supplying financial advice to the NTOA and other Aboriginal royalty associations. There is a clear need for a federation of royalty associations which could provide a forum for information sharing about financial and management options. There is also a need for utilisation of financial expertise, available on a commercial basis, in the market place.

The issue of the opportunity cost of the mining moneys stream foregone looms large, especially as an intergenerational equity issue. While it remains unclear, given the nature of the QML Agreement, what could have been achieved and how realistic a productive investment scenario would have been in the West Arnhem context, in the absence of secured investment and financial planning, the NTOA has limited future options.

The role of external agencies

What was, and is, the legitimate role of organisations like the NLC and other government departments like DAA in relation to 'royalty' associations? There can be little doubt that the NLC, DAA, and the other government departments both Territory and Commonwealth, have had responsibilities of varying kinds for closely monitoring the performance of 'royalty' associations. The NLC and DAA in particular, have played an ongoing part in decisions made about the establishment and reformation of association structures and membership. At the same time, the Commonwealth Government policy of self-determination, strongly supported by both organisations, has prevented them taking too great an active role in association affairs. However, it could be argued that it is irresponsible to maintain a hands-off approach under the guise of self-determination, self-management, or regional 'empowerment'. For it must be asked if, in circumstances such as those of the Kunwinjku Association and the NTOA, Aboriginal people have ever been in a position to assert

financial self-determination. The legacy of the QML Agreement's shortcomings, regional politicking, early inadequate management and poor financial advice have seriously hampered effective control of Association affairs by its membership, and at the very least, have impeded the emergence of informed decision-making by the Committee. Arguably, the grounds for Association self-determination have been weakened by the ambiguous role of the NLC in matters of Association financial management. There may well be a need for the NLC to seek clearer functions and establish policy guidelines in this complex area.

In the Kunwinjku Association and NTOA cases, a host of monitoring and support agencies clearly failed to exercise adequate care, including (in no particular order) the Northern Territory Registrar-General's Department in Darwin, the Office of the Registrar of Aboriginal Corporations in Canberra, DAA (and, since 1989 ATSIC), the NLC and Ministers for Aboriginal and Torres Strait Islander Affairs. External agencies may have cause to directly intervene when required, although it is difficult to clearly identify an independent arbiter to decide when intervention is justified or needed. It is also difficult to determine which agency has responsibility over particular issues. Even so, during the history of the QML Agreement, the NLC, DAA and various government Ministers have seen good and substantial reasons for intervening to assist in the resolution of difficulties encountered by Aboriginal Association members. Rather than such involvement being initiated in response to crises situations, a more formalised and constructive role, in particular for the NLC, might prove to be of considerable assistance to such associations. The more recent involvement of the NLC in providing stable and consistent financial administration for the NTOA has confirmed the potentially constructive role that the NLC could perform for individual associations or for a federation of such bodies. Such a role might more effectively establish the grounds for association self-determination.

A future for the NTOA?

Despite the fact that the NTOA's net assets are now very limited, there are still some strategic investment decisions that it can make. Of particular significance, is the forthcoming transfer of remaining mine infrastructure at Nabarlek to the NTOA in 1995. Remaining assets include an all-weather sealed airstrip, currently vacant accommodation previously used by the mine workforce, and other buildings. No members of the NTOA reside in the immediate vicinity of the mine site, but consideration needs to be given by the Association to how these remaining assets will be utilised: for example, as the basis for an Aboriginal community, a tourism enterprise, for the Demed Outstation Resource Centre, or some other purpose.⁵ It is questionable whether the NTOA can create a niche for itself in the regional political economy, primarily because of its poor financial position and its past record. The hopeful option being considered by NTOA members is that current exploration on Exploration Licence Application 2508 will realise commercial uranium prospects that will result in a new mine, future

milling at Nabarlek and a new stream of mining moneys. Such reliance immediately raises issues of royalty dependence. If such a scenario were to eventuate, then it is essential that more effective mechanisms are instituted to both direct and monitor mining moneys.

A final comment: post-Mabo implications

In the post-Mabo policy environment there are growing indigenous demands for compensation and rent when major resource development projects are established on land held under native title. Prior to establishing institutional arrangements for transferring mining moneys to indigenous interests, it would be instructive to consider the difficulties encountered in the Nabarlek case. As our research indicates there are continuing problems that still require urgent attention.

The same distributional, monitoring, administrative and financial issues that have been highlighted in this case study will arise with respect to native title. For example, under the recent native title legislation, compensation may be paid to corporate Aboriginal groups, but non-native title holders might also receive compensation on a regional criteria (Altman 1994). The experience of the NTOA suggests that it would be preferable to have a statutory stipulation of the purposes to which compensation moneys can be applied. The issues of intergenerational equity and distributive equity that have been highlighted here will also need to be addressed with respect to any payment of public money under native title legislation. Furthermore, in terms of their recently extended representational functions under the *Native Title Act 1993*, it is likely that Northern Territory land councils may find themselves in situations where they have to negotiate and monitor the financial interests of both traditional owners and native title holders, as members of complex associations that could include both types of owners. This additional potential complication suggests that statutory requirements to oversight the activities of royalty associations might be welcomed.

Notes

1. The term 'royalty association' is not entirely appropriate because most receive mining agreement moneys and rents as well as statutory royalty equivalents.
2. Altman met with the NTOA Committee and Manager to present and discuss research findings and recommendations at Jabiru and Gunbalanya on 28 September 1993 and with NLC staff in Darwin on 5 October 1993.
3. For a fairly detailed discussion of this debate, especially in relation to mining royalty equivalents see the *Report on the Review of the Aboriginals Benefit Trust Account (and Related Financial Matters) in the Northern Territory Land Rights Legislation* (Altman 1985).

4. Up until January 1990 when the *Aboriginal Land Rights (Northern Territory) Act 1976* was amended, the ABTA was not guaranteed full royalty equivalents owing to the existence of different royalty regimes specified in the Land Rights Act and operating in the Northern Territory after 1982. Today, consolidated revenue pays the full equivalents of any statutory royalties paid to the Northern Territory (except with respect to uranium) for mining on Aboriginal land. The remaining exception is royalties paid with respect to the Ranger Uranium Mine: 5.5 per cent ad valorem is levied on Energy Resources of Australia by the Commonwealth, but only 4.25 per cent is paid to the ABTA.
5. In July 1993, just after our visit to the Nabarlek mine site, Homeswest in Western Australia auctioned all buildings at the mining town of Koolyanobbing. Total sales realised just over \$200,000. This indicates that mine infrastructure may have more value in situ than on the open market.

Appendix

Executive summary and recommendations to the Northern Land Council

1. This report has been commissioned by the Northern Land Council (NLC) to address concern about the economic impacts on Aboriginal people in areas affected by the closure of a major resource development project and the loss of an income stream paid with respect to QML uranium mine at Nabarlek in Western Arnhem Land.
2. Our preliminary research indicates that, at one level, the closure of the Nabarlek uranium mine will have limited direct economic impact on the members and quasi-members of the NTOA. This is primarily because resources have been expended to meet immediate needs for vehicles and cash. Members will, no doubt, miss access to a ready source of additional and discretionary income, and some families in particular will need to curtail domestic expenditure owing to a sudden reduction in access to cash. However, there are no indications that long-term economic status will be adversely affected, as there are few indicators of a sustained improvement in lifestyle owing to access to mining moneys. In other words, the generally low economic status of most Aboriginal members of the Association remains unchanged.
3. A small number of people will experience greater difficulty in gaining access to specialist health services, in travelling to ceremonies and funerals, and in visiting relatives. These more personal day-to-day financial realities associated with diminishing access to mining moneys will be of significance to many Association members. Ongoing impact assessment, detailed financial records and a long-term field presence would be required to assess social impacts at this level. We can only conclude that, overall, a period of Aboriginal reliance on welfare and government programs has been supplemented for a decade with additional discretionary resources paid by QML and via royalty equivalents payments paid from the ABTA to regional interests. The cessation of mining will most likely see a return to the previous welfare regime.
4. If mining moneys are intended as compensation for adverse social and cultural impacts, then it is clear that these moneys have not been used in any manner associated with alleviating such social impacts, or establishing an economic base from which to generate continuing income after the cessation of the Nabarlek mine.
5. The absence of any lasting positive impacts on the regional economy from the resources transferred in relation to the Nabarlek uranium mine represents an important lost opportunity. While similar lost opportunities have occurred elsewhere in regional Australia, there is a lingering sense that more capable and stringent management of mining moneys could have created longer-term economic development opportunities in the region. It must be recognised though that the Aboriginal component of the West

Arnhem Land regional economy is narrowly based and there are limited commercial opportunities here in marked contrast to nearby Kakadu National Park. Only time will tell if this lost opportunity is unique, or whether it is to be repeated when further mines are established in the region.

6. The basis for the difficulties encountered in West Arnhem Land in utilising mining moneys to develop an economic base are major shortcomings in existing institutional and legislative frameworks. In particular, the *Aboriginal Land Rights (Northern Territory) Act 1976* has established ill-defined property rights in relation to mining on Aboriginal land and associated mining moneys. Subsequently, there has been little consensus as to whether mining moneys paid to traditional owners or residents of areas affected by a mining development are mineral rent or compensation. The potential role of the NLC in clarifying these complex issues on behalf of current and future royalty associations is crucial.

Recommendation A: It is imperative that in future mining agreements and royalty association structures, the mechanisms by which, and purposes for which, mining moneys are to be expended are clearly specified.

Recommendation B: It is important that the longer-term financial viability of royalty associations in areas affected is secured by a fallback statutory or constitutional stipulation that a minimum investment ratio be maintained if associations are performing irresponsibly.

Recommendation C: Immediate consideration should be given to amending legislation to ensure that the beneficiaries of mining moneys are clearly specified.

7. An analysis of a number of mining agreements to 1984 indicates that the QML Agreement incorporated the highest proportion of s.43 mining agreement payments to s.64(3) 'areas affected' moneys. This ratio over the life of the mine was expected to be \$3 agreement money: \$1 areas affected money. However, there are indications that agreement moneys expected to realise the equivalent of a 2 per cent royalty ad valorem only totalled between 1.25 to 1.5 per cent. Such payments of a de facto mineral rent (de facto because Aboriginal traditional owners do not own the minerals) provide a greater opportunity for Aboriginal interests to maximise income from regional resource developments. However, such payments also highlight the legislative and perceived ambiguities regarding the nature of royalty payments, and may create considerable complexity in the structural mechanisms needed to disburse moneys. Such complexities can seriously hamper effective Aboriginal participation in the financial management of royalty associations.

Recommendation D: It is imperative that future mining agreements provide the bulk of payments in a manner that requires accountability to recipients and ensures consistency of distributive mechanisms and decision making.

8. There is merit in recent agreements, such as the Mt Todd Agreement, that specify the creation of employment, training, education and enterprise opportunities and concessions for Aboriginal people. However, it must be recognised that the QML Agreement also included such provisions which were implemented, in part, by the mining company, but were not closely monitored by the NLC, regional associations or government.

Recommendation E: Mechanisms for achieving continued 'agreement accountability' and compliance need to be established at the earliest phase of any resource development project and should continue over the life of a development.

9. As a signatory of the QML Agreement (on behalf of traditional owners) and owing to its statutory functions, the NLC has a crucial role in the West Arnhem region. The requirement under s.35(2) of the Act that the NLC makes a determination in paying

'areas affected' moneys and the requirement under s.35(A) that associations financially report to it, provide the NLC with an unquestionable and very important statutory monitoring role. Such a role is not without considerable difficulties and raises practical and policy dilemmas in respect to the realisation of Aboriginal self-determination and economic advancement. Nevertheless, it is of some concern that for a variety of reasons, including wider political considerations, the NLC has been reluctant to directly intervene in regulating the activities of both the Kunwinjku Association (1982-88) and the NTOA. While a hands-off policy by the NLC can be readily justified in situations where mining moneys are utilised in a financially responsible manner, it cannot be justified where association management performance is clearly inadequate, when resources are expended wastefully, and where committee members are labouring under intense local pressures to disburse moneys against their better judgement.

10. In the early phases of the QML Agreement the NLC demonstrated procedural shortcomings in both disbursing and monitoring the payment of mining moneys. These primarily arose because of the NLC's initial unfamiliarity with the complex legal nuances of ambiguous directions set out in the Aboriginal Land Rights Act, compounded by a political environment which saw substantial government pressure on the NLC to conclude the agreement. For example, in 1979 and 1980, the NLC reinforced the emphasis on expenditure and cash distribution in the region by distributing s.43 moneys in accord with s.35(2), rather than s.35(3) of the Aboriginal Land Rights Act. More recently in 1990, agreement payments in relation to exploration on Exploration Licence Application 2508 were incorrectly paid to the NTOA, and earlier consultations over QML requests to conduct further exploration repeatedly referred to a 'new' mine in the Nabarlek region. Such irregularities exacerbate regional misunderstandings about the nature and role of mining moneys and about future options.

Recommendation F: There is a need for the NLC to seek a clearer set of statutory responsibilities in this complex area, and to establish policy guidelines to formalise a more constructive and consistent monitoring role.

Recommendation G: Equally, government has a responsibility to establish socioeconomic impact assessment as an ongoing feature of the development process, not simply at the agreement negotiation stage. These assessments should include mechanisms for monitoring ongoing agreement compliance and should be coordinated by the relevant land council and Aboriginal associations.

Recommendation H: It is crucial that the NLC establish policy guidelines and appropriate mechanisms to protect beneficiaries of mining from unreasonable external political and economic pressures.

11. The NLC and the Department of Aboriginal Affairs (DAA) perpetuated the continuation of inappropriate structures when reconstituting the Kunwinjku Association as the NTOA. Given the very poor financial performance of the former Association that resulted in its winding up, well-documented by NLC staff and other researchers, an inappropriate corporate structure was devised for the NTOA. In particular, there was urgent need for close monitoring and active support of the new Association. What eventuated was a reluctance by all institutions to actively intervene. The potential opportunity cost of such inaction for the regional economy are significant: the QML uranium mine at Nabarlek may have been a lost one-off opportunity to access critical masses of discretionary capital by traditional owners of the Nabarlek mine site and other Aboriginal people in the immediate vicinity of the mine.

Recommendation I: It is imperative that culturally-appropriate corporate structures with suitable constitutions are established in consultation with proposed members to ensure Aboriginal control and productive use of mining moneys paid for the one-off extraction of non-renewable resources.

Recommendation J: In particular, association structures should reflect a realistic assessment of the financial and administrative skills of association members. Burdened by cumbersome and complex structures, association members and committees may become effectively disenfranchised from asserting direct control and decision-making that is in their own best interests.

Recommendation K: Association objectives and the geographic area of potential activity, need to be carefully specified and targeted to realistic and achievable ends.

Recommendation L: Training for Aboriginal association members in necessary management and financial skills should be included in development agreements.

12. It is clear that royalty associations will inevitably encounter considerable obstacles in the early period of their establishment. The NLC should not have to bear the sole burden of monitoring and supplying financial advice to the NTOA and other Aboriginal royalty associations. It should encourage and facilitate options for royalty associations to seek financial and management advice from a diverse range of expertise, particularly in the private sector and on a commercial basis.

Recommendation M: There is need for the loose federation of royalty associations that used to regularly convene within the Northern Territory to be reactivated. Such a forum could provide valuable advice on the basis of experience to new associations, assess potential financial and management options, and coordinate mutually beneficial activities.

References

- Altman, J.C. 1983. *Aborigines and Mining Royalties in the Northern Territory*, Australian Institute of Aboriginal Studies, Canberra.
- Altman, J.C. 1985. *Report on the Review of the Aborigines Benefit Trust Account (and Related Financial Matters) in the Northern Territory Land Rights Legislation*, Australian Government Publishing Service, Canberra.
- Altman, J.C. 1986. 'The payment of mining royalties to Aborigines: compensation or revenue?', *Anthropological Forum*, 5 (3): 474-88.
- Altman, J.C. 1993. 'Economic dimensions of the Mabo High Court judgment', *The Australian Economic Review*, 103 (3rd Quarter): 26-34.
- Altman, J.C. 1994. 'Economic implications of native title: managing money effectively', in J. Fingleton, M. Edmunds and P. McRandle (eds) *Proof and Management of Native Title*, Summary of workshop proceedings, Native Titles Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.
- Altman, J.C. and Peterson, N. 1984. 'The case for retaining Aboriginal mining veto and royalty rights in the Northern Territory', *Australian Aboriginal Studies*, 1984/2: 44-53.
- Altman, J.C. and Smith, D.E. 1990. *The Possible Economic Impacts of Mining and Tourism in the Kakadu Conservation Zone on Aboriginal People*, Resource Assessment Commission Kakadu Conservation Zone Inquiry, Consultancy Series, Australian Government Publishing Service, Canberra.
- Australian Institute of Aboriginal Studies (AIAS) 1979. *Report to the Minister of Aboriginal Affairs on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory*, AIAS, Canberra.

- Australian Institute of Aboriginal Studies (AIAS) 1981. *Report to the Minister of Aboriginal Affairs on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory*, (for the period 1 October 1980 to 31 March 1981), AIAS, Canberra.
- Australian Institute of Aboriginal Studies (AIAS) 1984. *Report to the Minister of Aboriginal Affairs on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory*, (for the period 1 October 1980 to 31 March 1981), AIAS, Canberra.
- Carroll, P. 1983. 'Uranium and Aboriginal land interests in the Alligator Rivers region', in N. Peterson and M. Langton (eds) *Aborigines, Land and Land Rights*, Australian Institute of Aboriginal Studies, Canberra.
- Industry Commission 1991. *Mining and Mineral Processing in Australia*, Report No. 7, Australian Government Publishing Service, Canberra.
- Kesteven, S. 1983. 'The effects on Aboriginal communities of moneys paid out under the Ranger and Nabarlek agreements', in N. Peterson and M. Langton (eds) *Aborigines, Land and Land Rights*, Australian Institute of Aboriginal Studies, Canberra.
- Kesteven, S. and Smith, D.E. 1984. *Land Tenure in Western Arnhem Land: An Investigation of Traditional Ownership, Resource Development and Royalties*, unpublished report, Australian Institute of Aboriginal Studies, Canberra, and Northern Land Council, Darwin.
- O'Faircheallaigh, C. 1988a. 'Uranium royalties and Aboriginal economic development', in D. Wade-Marshall and P. Loveday (eds) *Northern Australia Progress and Prospects, Volume 1, Contemporary Issues in Development*, North Australia Research Unit, Darwin.
- O'Faircheallaigh, C. 1988b. *The Economic and Social Impact of the Nabarlek Uranium Mine on Aboriginal People, 1979-1987*, unpublished report, North Australia Research Unit, Darwin.
- O'Faircheallaigh, C. 1993a. 'Aboriginal mining payments', draft chapter for forthcoming monograph with working title *Evaluating Government Policies: Uranium Policy and Aboriginal People in Australia's Northern Territory, 1977-92*.
- O'Faircheallaigh, C. 1993b. 'Mining payments: evaluating and explaining policy outcomes', draft chapter for forthcoming monograph with working title *Evaluating Government Policies: Uranium Policy and Aboriginal People in Australia's Northern Territory, 1977-92*.
- Smith, D.E. 1984. 'That Register business': the role of the land councils in determining traditional Aboriginal ownership', in L.R. Hiatt (ed.) *Aboriginal Landowners*, Oceania Monograph No. 27, University of Sydney, Sydney.
- von Sturmer, J. 1982. 'Aborigines in the uranium industry: towards self-management in the Alligator River region', in R.M. Berndt (ed.) *Aboriginal Sites, Rights and Resource Development*, University of Western Australia Press, Perth.
- Woodward, A.E. 1974. *The Aboriginal Land Rights Commission*, Final Report, April 1974, Australian Government Publishing Service, Canberra.

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