Response to NTG revenue paper

Summary.

1. Revenue from Property.

The NT land development system is riddled with potential for corrupt behavior to occur with the 'capture' of the Territory and Local Governments and statutory bodies like the Development Consent Authority by developer interests making the entire process of development activity directed towards the interests of developers at huge cost to taxpayers.

> *A framework for corruption*
> *Environmental Defenders Office July 2015, Accessed 07 August 2017*
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> *…. Planning Minister, Dave Tollner [has] made a decision to spot rezone a large parcel of land in Darwin's Gardens precinct. This decision, along with many others over the past 12 months have generated significant debate in the community about the appropriateness of the NT's planning laws. In 2013, former NT Planning Minister, Peter Chandler is quoted as having said "it's important the public are given every opportunity to engage in the planning process; it's how we ensure good development and guarantee faith in our planning policies".*
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> **Double duty under fire**
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> *By CHRISTOPHER WALSH, NT News*
>
> *July 31, 2014*
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> *THE new head of the Territory's land development approval body, former chief minister Denis Burke, is registered as a lobbyist for major Darwin developer the Halikos Group. The potential conflict of interest has raised questions about the appointment of Mr Burke, who is listed as a registered lobbyist on the Australian Government Lobbyists Register, as of earlier this month.*

The highest priority must be given to complete and continuing transparency of all transactions that involve rezoning rights rather than being decided behind closed doors as is the case at present. There is an argument for creation of a "betterment tax", briefly considered by the Henry tax review, that would see rezoning triggering a fee that amounts to the value gain, payable by the landowner when they develop or sell the land. The current problem, viz. the value of property rights being able to be gifted through planning and zoning decisions is bigger than ever. It is now so entrenched in the social and political structures of the NT that a reasonable observer might think another economic depression is the only chance at changing it. Is it a coincidence that the company that has leased the Darwin port for 99 years for the paltry sum of $550 million has been given the development rights to prime real estate along side the city?

A proposal by Kevin Davis, research director of the Australian Centre of Financial Studies, is for state governments to sell their right to some of their future land tax collections in return for upfront payments. "In each year following the abolition of stamp duty, the government will no longer receive the large revenue amount which would arise from stamp duty on house sales

in that year," his paper says. "Suppose that were $100 million; it would be fairly straightforward for the government to issue very safe securities which provide the holders with the entitlement to the corresponding future stream of property tax revenue for the next 20 years." Professor Davis says a byproduct would be the creation of a new low risk, long-term asset class suitable for superannuation funds of the kind they get now by buying shares in privately run toll-roads and airports.

NTG needs to take a serious look at local government rates and taxes, particularly if it contemplates property taxes. A lack of governance has already seen Palmerston council placed in 'administration; and the only reason that the City of Darwin is permitted to continue to charge outrageously high rates is because it returns a surplus every year and is heading for $100 million in reserves. In addition, CoD has lost the plot when it comes to the services it offers. The degree of duplication and maladministration has now reached ridiculous proportions where the Council has ambitions to become an alternate supplier of the same services as the NTG. See https://rage2017.wordpress.com/2017/08/05/council-functions .

2. Revenue from Mining Royalties.

If the tax arrangements for individuals and companies not engaged in mining can be altered, then why can't the legacy profit-based royalty schemes be changed? Surely an insurance levy could be applied to the whole mining industry to ensure that those mines that have paid little or no royalty under the profit based scheme are covered for rehab with the cost paid by the whole industry. Why are those royalties actually collected from mining on non aboriginal land employed for the benefit of the whole Territory population while those from Aboriginal land confined to the land councils? The governance of Land Councils and other recipients of these royalties and the mechanisms for distribution of monies from the ABT are opaque and at the whim of the executives. There is little or no oversight of the activities of many of the Corporation supposed to be regulated by ORIC, leading to many examples of malfeasance in the expenditure funds by a number of Aboriginal corporations.

3. Revenue from Petroleum royalties

It appears the net back method has been a dismal failure compounded by the limited administrative and compliance provisions to support the collection of petroleum royalties. For example the petroleum royalty legislation does not detail the requirements for making payment and lodgement of returns and has no administrative review provisions if disputes arise. There is also no guidance for determining post–wellhead deductible costs. This lack of legislative detail creates uncertainty for producers and the Territory Revenue Office as to how and when royalty liabilities are to be met. The current project-by-project approach to settling petroleum royalty arrangements has significant compliance limitations, may be less attractive to investors due to the uncertainty for prospective producers and is less transparent than a more comprehensive, modern scheme.

It is therefore imperative to immediately introduce alternative methodologies for determining the value of the petroleum produced. Any such alternative would need to ensure the Territory receives a fair and relatively stable return, while providing industry with adequate profits. An alternative valuation method should not result in a negative value of petroleum. Principles of

transparency, certainty and simplicity are also important. The value of petroleum products, in particular LPG, are available in real time online so there should be no impediment to calculating the down stream value of production. If NTG can squander $250,000 on a website that shows Territorians how much they are being ripped off at the petrol bowser, surely it can work out how much LPG is being sold to Japan.

4. Revenue from other own-source revenue bases.

4.1 Pastoral lease rents - Government should move to a process of assessing pastoral leases based on the productivity of the land which would capture revenue derived from non-pastoral use diversification permits, allowing other activities on pastoral leases such as horticulture, aquaculture, tourism and forestry activities. Should the lessee choose not to use the land for production the lease rent would still be applied at the nominal rate dissuading lessees from “land banking”.

4.2 Participation in the carbon economy - NTG needs to sponsor more agreements between Indigenous land managers and LPG processors to offset greenhouse gas emissions as well as provide meaningful jobs for people on country. INPEX has not put in place any GHG offsets promised in it's EIS but will produce twice as much GHG as Darwin LNG, which in turn produces more GHG than the next biggest producer, PowerWater Corporation. An environmental levy should be applied [there is provision for this in the license] based upon the amount of GHG pollution not offset.

4.3 Land clearing permits. another source of savanna fires is burning off as a part of land clearing activities. And yet, land clearing permits are free. If the proponent is unable to clear land without generating GHG then they should have to pay a per hectare fee.

4.4 Resource exploitation bonds - toxic mine site rehab [legacy mines] and current mining [especially Mcarthur river mine]

4.5 Atmosphere pollution levy [LPG processing generates more GHG pollution than Power Water] and the transport of LNG through Darwin harbor will inevitably cause spills and other pollution [from toxic bilge etc.]. NTG needs to put in place a levy that will pay for insurance against the cost of these harmful events.

4.6 Affordable Housing - The residential property market must be uncoupled from the existing oligopoly of a few developers and profit driven financiers. By providing alternative finance options [e.g. Territory Seniors Bonds] and managed by not for profit Community Housing Providers [CHP], the cost of housing will gradually be reduced [leading to lower Local Government rates], and a planned development program will reduce the 'boom and bust' for the construction industry. Every transfer of 300 houses from Government stock to a CHP would save the taxpayer $8.4million annually in maintenance costs. The economy would be stimulated through greater activity in development and construction and additional, quality social and affordable housing stock would be generated at no additional cost to the NT taxpayer.

Property taxes

We want to ensure our mix of taxes on property is the best for promoting investment, growth and jobs in the Territory and continues to fund essential government services.
• Should we raise more revenue from property taxes?
• If stamp duty were reduced, what other sources of revenue could replace it?

The cycle of land speculation began with the First Fleet and has continued unabated ever since. It has been central to the Australian experience and resulted for a while in the highest rate of owner-occupied housing in the world. Generations of Australians have demanded the right to be given land and to proclaim their right to develop it for the highest possible economic return. Very few Australian political parties have ever been brave enough to question this notion at the heart of the national hobby of land speculation. At the time of European settlement, along with the guns, germs and grog, the white settlers brought ashore an idea fundamentally foreign to indigenous experience – the concept of land as a divisible and alienable commodity, to be owned by an individual rather than a community. The absence of any physical evidence of proprietary land ownership – fences, boundaries, allotments and "improvements" – led the newcomers to leap to the conclusion that the new land was theirs for the taking.

Through the prism of *terra nullius,* the indigenous populace was invisible as the settlers contemplated how the land could be acquired, used and resold. This "empty" territory beneath the Union Jack was vested in the Crown, with colonial governors empowered to disburse land by way of grant, to lay the foundations for a productive economy. Despite the colonial authorities original hope that granted land would be put to productive use, to the Rum Corps land was as much a commodity as alcohol. Unlike the dispossessed original inhabitants, for whom it was a source of shelter, sustenance and spirituality, the mercantile overlords of the officer caste were interested in land for one purpose – speculation; less than a 10^{th} of the land distributed by decree was cleared, about a 40^{th}, cultivated.

By the early 2000's, the Territory was in the throes of yet another boom. First flats and then, once the problem of how to freehold air space was solved with strata-title legislation, high-rise units mushroomed in inner-urban areas. In a frenzy of egalitarian speculation, engineers became builders, builders re-emerged as developers and developers were transformed into financiers, while teachers and public servants poured their superannuation and jam-tin savings into speculative off-the-plan developments. Investors large and small tripped over themselves to pour their cash into real estate: "everybody is an expert and lack of knowledge is not considered a handicap", as one contemporary pundit noted. When this bubble inevitably burst, office towers had reshaped city skylines, vacant estate wastelands fringed the metropolitan outskirts, unit blocks studded the inner suburbs and miscreants and insolvents filled the law courts. The thirst for profit from property during this period was unquenchable and nothing was an obstacle to those bent on extracting money from otherwise unusable land. And, as other states slipped down the negative slope, the white-shoe brigade and blue-sky dreamers began imagining ways in which to bend and, as necessary, break the land

development laws of the Territory, capturing the politicians and members of the omnipotent statutory authorities, hopeful of conjuring up profitable markets from rezoned mudflats.

Real estate prices remain a hot topic of conversation among most Territorians, including those who can't afford to buy. Politicians boast of the cranes towering over city centres erecting high-rise citadels. The current crop of matchboxes on the hillside provide investment vehicles for retiring baby boomers, suitable for letting to their children, the "knowledge workers" chasing an inner-city global lifestyle of lattes, laptops and smashed avocado. Culturally, the buying and selling of property has recently become the topic of prime-time television programs, mixing real estate hype with advice about renovation and presentation, especially for resale. The NT land development system is riddled with potential for corrupt behavior to occur with the 'capture' of the Territory and Local Governments and statutory bodies like the Development Consent Authority by developer interests making corrupt activity largely irrelevant and the entire process of development activity becomes directed towards the interests of developers. If corruption doesn't make a difference to empirical urban development outcomes then the legitimacy of the planning system would be placed in substantial doubt. Why bother with the pantomime of land-use regulation if it made no substantive difference? Conversely, if corrupt urban development behavior generates demonstrably worse outcomes for the community, then governments may need to increase their efforts to protect against corruption and to eradicate perversions of proper planning procedures.

There is also an enormous degree of mythology and self-delusion that accompanies resultant morally bereft practices. Many participants, including politicians, genuinely believe that there is no alternative, and that if developers do not get favorable rezoning and planning decisions, that no housing will be built. The smartest developers even avoid the risks of building homes themselves, simply reselling their land with valuable zoning to the less connected developers to build new homes on. The developers grand plan to supply housing is by dribbling it out at a rate that sustains high prices over thirty years. In their planning application, they crow about the urgent demand for the new housing they will build, while at the same time telling their investors in company reports that they won't be building most of the homes for at least two decades. Quite apart from giving away community wealth to private individuals, handing out rezoning favors without obligations to develop has the additional disadvantage of leading to land speculation. And, because the single print media is a mouthpiece for the developers, a dissenting view never makes it into the NT News. According to the NT Chamber of Commerce and the REINT, there's never a better time to buy. Bottom fallen out of the market and thousands of Mum and Dad investors paying mortgages on negative equity? Now's the time to get in quick before prices go up again. The NTG aids and abets this nonsense by refusing to release public documents that show the true state of the residential property market and so, when the valuer general reduces UCV's, it come as a shock to average home owners. Who gets the blame, the NTG of course.

The highest priority must be given to complete and continuing transparency of all transactions that involve rezoning rights rather than being decided behind closed doors as is the case at present. There is an argument for creation of a "betterment tax", briefly considered by the Henry tax review, that would see rezoning triggering a fee that amounts to the value gain, payable by the landowner when they develop or sell the land. The absolute refusal to address

the underlying factors that are crippling the economy, at a time of unassailable majority in Government is the biggest disappointment.

The land titles system in Canberra has worked remarkably well, even though it was never implemented as perfectly as it was planned. Land rents were not adjusted frequently enough to avoid speculation in the land market, and landholders made speculative gains by reselling their leases that had annual rental obligations far below the current market rate. A main way the ACT limits speculation in property is that when it allows a change of use of a land lease, such as from a single residential dwelling to a multi unit dwelling, the government charges the land leaseholder a betterment tax of 75% of the difference in land value that arises from being able to undertake the higher value use. This 'change of use charge' was introduced in 1971, and has been running for nearly half a century. In 2015, this charge raised about $20 million in revenue. In the NT these millions would have gone straight to the pockets of land developers who would take all the gains from rezoning. The same principle applies to converting rural to urban land, with the ACT running a government organization that converts land to urban uses and sells it at market prices, taking on the role of land developer, and reaping 100°/o of the value gains from that process.

The current problem, viz. the value of property rights being able to be gifted through planning and zoning decisions is bigger than ever. It is now so entrenched in the social and political structures of the NT that a reasonable observer might think another economic depression is the only chance at changing it! Is it a coincidence that the company that has leased the Darwin port for 99 years for the paltry sum of $550 million has been given the development rights to prime real estate along side the city.

Replacing conveyancing stamp duty with a broad based land tax cases a short-term hit to revenue. Stamp duty is collected infrequently. Land tax would be collected more frequently at a much lower rate, every year or every quarter. But if the rate was set to make no-one worse off, the government would to wait years after properties had been sold to get back in land tax what would have earned immediately in stamp duty. A proposal by Kevin Davis, research director of the Australian Centre of Financial Studies, is for state governments to sell their right to some of their future land tax collections in return for upfront payments. "In each year following the abolition of stamp duty, the government will no longer receive the large revenue amount which would arise from stamp duty on house sales in that year," his paper says. "Suppose that were $100 million; it would be fairly straightforward for the government to issue very safe securities which provide the holders with the entitlement to the corresponding future stream of property tax revenue for the next 20 years." Professor Davis says a byproduct would be the creation of a new low risk, long-term asset class suitable for superannuation funds of the kind they get now by buying shares in privately run toll-roads and airports. For funds that wanted it, the payments could be designed to give them exposure to the residential property market.

An immediate advantage would be to reward older homeowners who downsized. They would be tens of thousands of dollars better off, instead of no better off as they often are now after paying stamp duty. Australians would find it easier to move for work, and the land tax would impose a penalty on Australians who held onto land rather than using it. A additional benefit would be to offer senior Territorians a better investment than they are able to obtain in the

fixed interest market.

Potential reform – options.

An annual broad-based property tax with no tax-free thresholds and a low tax rate would be very similar to, and have the same incidence as, local government rates. Due to their similarities, it is possible that existing local government systems could be leveraged to allow an annual property tax to be implemented in the Territory to minimize administrative costs. In terms of possible revenue raised under such a model, the unimproved capital value of rateable land in the Darwin, Palmerston, Litchfield, Alice Springs and Katherine local government areas is about $21 billion. At a tax rate of 0.5 per cent, which is roughly equivalent to the level of rates imposed by local governments, this would raise $105 million, broadly equivalent to Territory stamp duty revenue in 2016-17.

NTG needs to take a serious look at local government rates and taxes, particularly if it contemplates property taxes. A lack of governance has already seen Palmerston council placed in 'administration; and the only reason that the City of Darwin is permitted continues to charge outrageously high rates is because it returns a surplus every year and is heading for $100 million in reserves. In addition, CoD has lost the plot when it comes to the services it offers. The degree of duplication and maladministration has now reached ridiculous proportions where the Council has ambitions to become an alternate supplier of the same services as the NTG. See https://rage2017.wordpress.com/2017/08/05/council-functions

Why aren't land taxes distortionary? If business is taxed, there is less business. If labour is taxed, there is a lower desire to work. However, if land is taxed it does not shrink, hide or move. There is no distortion in its productive utility. Economic theory predicts that a broad based land tax is shifted to landowners who receive lower after-tax rents that are in turn capitalised into lower land values. The average plot with a land value of $335,000 is predicted to decline by $24,000, or approximately 5 per cent. Under such a land tax, potential buyers will reduce how much they are willing to pay for a house by the expected land tax liabilities over a 20 year period, thereby reducing property prices.

Mining Royalties.

Should we consider a value-based scheme or a minimum royalty amount so that all producing mines pay royalties each year?
• Are the current features of mineral royalties appropriate and giving an appropriate return to Territorians?
• Does the current system of mineral royalties encourage miners to employ local workers rather than FIFO workers?
• Are there any other changes or improvements we should consider?

At its core, mining is about digging up things already in the ground and selling it. One peculiar aspect of mining is that it does not really matter much to the wealth of the population when the stuff is dug up or how difficult it is to dig up, as anything left in the ground can simply be dug up and sold a generation later. Barring price changes and inflation, it is not all that

important if mining is delayed. The fact that mining is a fixed resource industry makes the politics of mining exceptionally simple: do the mining companies manage to corner the wealth, or does the general population get most of the wealth? It is simply them or us, and in the beginning, all the rights belong to us. In turn, this also makes the Game very simple: can miners usurp the rights to what is in the ground with minimal taxation, or do they have to share with the owners? Miners of course understand these basics, and have been trying to muddy the waters ever since the Australian Agricultural Company [AACo] was granted the coal monopoly in the 19th century, so as to have some chance of persuading the general public that their interests are the same as theirs. In fact, they are diametrically opposed.

In the Territory, most mines pay profit-based mineral royalties. However, several mines are subject to legacy agreements that impose royalties based on the value of minerals extracted. Overall, the majority of royalties are paid by only a minority of Territory miners due to the framework of the Territory's profit-based royalty scheme. Some past mines paid little mineral royalties to the Territory, having opened for short periods but then closed before incurring royalty liabilities or are under 'care and maintenance'. This is arguably a drawback of the Territory's profit-based royalty scheme.

Clever accounting helps, such as smoothing his profits over time and keeping profits under the radar entirely. After all, it is hard to hide wagons full of minerals and, indeed, taxes on the actual stuff dug up from the ground are the most successful form of taxation in mining, usually hard to avoid. Profit taxes are easier to avoid though, particularly for large mining companies who can afford to hire the best tax experts in the country, experts who often know the tax system better than the tax authorities themselves. One particular trick is what is known as transfer pricing. This involves a multinational company, like major miners BHP, Rio Tinto, and Glencore [formerly Xstrata], all of whom operate big mines in the NT, borrowing money from other arms of their international conglomerate at high interest rates, and lending money it at low interest rates. This squeezes down the profits on the books of the Australian subsidiary, Which reduces their tax obligations in Australia. Of course, the profit does show up somewhere, so the companies direct the booked profits towards those countries with lowest tax, and increase them in other global jurisdictions with more favorable tax rates. This trick is played by most large multinationals, yet for Australia, the miners are some of the largest firms in the country.

If the tax arrangements for individuals and companies not engaged in mining can be altered, then why can't the legacy profit-based royalty schemes be changed? Surely an insurance levy could be applied to the whole mining industry to ensure that those mines that have paid little or no royalty under the profit based scheme are covered for rehab with the cost paid by the whole industry. Other jurisdictions impose royalties based on the value or quantity of minerals extracted. ad valorem royalty is levied on the value of the mineral produced without regard to the costs incurred by the miner. One of the main advantages offered by value-based royalties is they are simpler and more transparent for government and miners to administer, while also providing a more predictable source of revenue. NTG should consider moving to a hybrid scheme similar to Queensland that allow flexibility commensurate with the market fluctuations associated with the commodity.

Perhaps the worst form of trickery is that concerning mines that have stopped being productive and needed to closed. Closing mines officially is an expensive thing to do, as mines invariably leave chemical waste and environmental hazards behind, which cost billions to clean up. So companies simply refuse to ever close down mines, even if they had been unproductive for decades. They simply employ a guy to go to the abandoned mine every day, inspect the site, and then move to another abandoned mine, allowing him to claim that they are all still operational. As a result, hundreds of unused mines across the country have been officially open for decades, allowing mining companies to avoid responsibility for the chemical waste slowly creeping into the ground water, poisoning the population and the environment. A relatively new trick is to allow the sale of mine assets to anyone, together with the liabilities that those mines might represent; so called 'phoenix activity' where the obligated owner sells off the abandoned mines for token amounts, like $1, to empty shell companies that would hence own a derelict old mine as well as the obligation to clean up if the mine was closed clown or inspected. Those empty shell companies are simply allowed to go bankrupt, leaving the community with dirty abandoned mines costing hundreds of millions of dollars to clean up. This practice is already illegal, but difficult to enforce.

Redbank copper mine poisoned Hanrahan's Creek

The **Mount Todd mine site** is located approximately 290km south of Darwin, near Katherine . The Edith River runs along the southern boundary of the site. Exploration and mining for gold, including mineral processing, occurred from 1984 to 2000. Mining activities ceased in 2000 as the operator went into receivership. Because of the sudden nature of the closure, the site was not adequately remediated leaving significant environmental impacts primarily caused by acid rock drainage. In the absence of an authorised operator, the Northern Territory assumed responsibility for the environmental operations on the site in 2000, including substantial expenditure on site works and installation of critical infrastructure to manage the inventory of poor quality water on site. In 2006 the Northern Territory Government signed an agreement with Vista Gold which indemnifies Vista Gold against liability for environmental conditions until they have an approved mining operation. The Northern Territory Government retains liability until then. Under the agreement, Vista Gold became the authorised operator of the site under the Mining Management Act while it investigated the viability of re-opening the mine and has all of the responsibilities for the day to day operation of the site including managing environmental impacts.

The former **Rum Jungle mine site** is located approximately 105km south of Darwin, near Batchelor in the Northern Territory. The site was declared a Restricted Use Area in 1989 under the Northern Territory's Soil Conservation and Land Utilisation Act and is closed to public access. Mining and mineral processing occurred from 1954 to 1971 producing 3,530 tonnes of uranium oxide and 20,000 tonnes of copper concentrate. Activities at the site led to significant environmental impacts primarily caused by acid rock drainage, resulting in pollution of the East Branch of the Finniss River. An initial attempt to clean up Rum Jungle was made in 1977, which led to the setting up of a working group to examine more comprehensive rehabilitation. A $16.2 million Commonwealth-funded program got under way in 1983 to remove heavy metals and neutralise the tailings. The site underwent rehabilitation from 1983

to 1986 at a total cost of $18.6 million. Although at the time of the 1980s works the objectives were deemed to have been achieved, more recent studies have documented the gradual deterioration of the original rehabilitation works.

One of the principal problems associated with rehabilitating the Rum Jungle Creek South (RJCS) open cut was that the area was converted to a lake after mining ceased, and as the only water body in the Darwin region not subject to crocodile warnings, the site quickly became very popular with locals and Darwin residents as a recreation reserve including activities such as swimming, canoeing and scuba diving. After mining, the area suffered elevated gamma radiation, alpha-radioactive dust, and significant radon concentrations in air. Radiation protection standards were being revised, so that the levels of pollution would now be officially recognised as unsafe for human health. As a result, a supplementary $1.8 million program to improve Rum Jungle Creek South waste dumps was undertaken in 1990. In light of this and given advances in best practice standards in mine closure and rehabilitation, the Northern Territory and Commonwealth Governments recognise a need to develop an improved rehabilitation strategy for the site. In 2009 the Commonwealth and Northern Territory Governments entered into a $7 million agreement to undertake various studies to inform the development of an updated rehabilitation strategy, which may then lead to future rehabilitation works under new arrangements. Having regard to the estimated costs of projects specified in the overall project budget, the Territory will not be required to pay a refund to the Commonwealth if the actual cost of the project is less than the agreed estimated cost of the project. Similarly, the Territory bears all risk should the costs of a project exceed the estimated costs.

> **Sunday Territorian** *30 July 2017*
>
> *Christopher Walsh*
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> *A LEGAL ruling could finally reveal how much Glencore has paid in a security bond for its McArthur River Mine site, after a long court process. Traditional owners have questioned for some time if Glencore paid the NT Government enough in the security bond to cover remedial costs on contaminated land near the mine site. The original bond was valued at $111 million in 2015, when the company was pushed to increase the value by the previous CLP government. The government would not reveal then what the value they determined to be "significant" was. Some estimate the clean up could cost $1 billion. The new amount could be revealed in September if no objections over the NT civil and administrative tribunal's decision are raised. Glencore previously fought to keep the amount secret. They said yesterday they are considering the decision.*

The NT Government has consistently refused to reveal what royalties it has received from the mine, citing the confidentiality requirements of its Taxation Administration Act. In 2006, a document was leaked to the NT ABC showing not just that the mine paid no royalties, it was receiving a $5m pa subsidy from the Government. The Xstrata proposal to expand the mine, and its approval by Clare Martin's Government, infuriated traditional owners and environmentalists who took court action to overturn the NT Government's approval and the approval of the expansion by then-Federal Environment Minister Ian Campbell.

Action in the Territory Supreme Court to overturn the NT Government's approval was successful, prompting Clare Martin to rush through emergency legislation to restore the mine's approval. Since then the Federal minister has confirmed the mine's approval, and it has reopened. But after the fuss about MIM/Xstrata's failure to pay any royalties from the mine, it suddenly produced a royalty payment of $13m. It attributed the payment to improved profitability due to the conversion to open-cut mining, despite incurring a $110m cost to convert the mine and divert the McArthur River into a canal. Intriguing circumstances in which to make the mine's first profit in 12 years of operation.

Probably the best way to estimate the total costs of mining is to compare Australia's present situation with a country that has managed to capture the economic gains from natural resources for the general public. Norway is the standout example here. Through their joint government ownership of oil and gas companies, and their special taxation on super-profits from oil and gas companies, they have earned public revenues of $337 billion in the past two decades, out of total revenues from all taxes and charges to the government from the sector [including normal corporate taxes and royalties] of $872 billion." The Norwegian system applies a 78% marginal rate of taxation on profit to oil and gas companies, comprising a 25% corporate rate and a 53% special tax rate for the sector.

Royalty collections are also important for Aboriginal people in relation to mining on Aboriginal land. The Commonwealth makes payments to the Aboriginal Benefits Account equal to the amounts of any royalties received by the Territory in respect of a mining interest in Aboriginal land. These payments are then directed to the benefit of traditional owners and other Aboriginal Territorians, including through the land councils. But why are those royalties actually collected from mining on non aboriginal land employed for the benefit of the whole Territory population while those from Aboriginal land confined to the land councils? The governance of Land Councils and other recipients of these royalties and the mechanisms for distribution of monies from the ABT are opaque and at the whim of the executives. There is little or no oversight of the activities of many of the Corporation supposed to be regulated by ORIC, leading to many examples of malfeasance in the expenditure funds by a number of Aboriginal corporations.

An example was reported in the Australian.

> *In 2014 the non-indigenous chief executive of an Aboriginal corporation secretly doled out more than $1 million in benefits to a handful of directors and elders over a period of a few months, without seeking the approval of members. When the regulator responsible for the probity of indigenous corporations was informed, it was unmoved, even though authorization of benefits to "related parties" is meant to be punishable by hefty fines and jail terms when member approval is not obtained. The benefits included several hundred thousand dollars paid to the chairman's creditors and the purchase of at least six luxury four-wheel-drives, each worth about $100,000, for directors and elders. This was in fact the latest round of unauthorized distributions; there have been similar acts of generosity used by the chief executive to bolster his support base within the community. All of this is going on while the vast majority of the corporation's members remain mired in poverty and social dysfunction, despite having secured a*

lucrative mining agreement.

The Prime Minister's Indigenous Advisory Council's chairman Warren Mundine believes such abuses underline his concerns about the weak regulatory system that oversees Aboriginal corporations and has called for a complete review. He has even gone as far as questioning the "continuation" of the regulator. Aboriginal corporations are not regulated under the corporations law and do not report to the Australian Securities & Investments Commission. Since 2006, more than 2000 corporations have been regulated under the CATSI Act and are answerable to the Office of the Registrar of Indigenous Corporations. The Registrar is Anthony Beven, who has been in the job for almost seven years and has six investigators at his disposal.

When Beven was asked for comment on the actions of the executive, a spokeswoman responded: "ORIC does not comment on individual corporations that are not the subject of publicised regulatory action." Inquiries followed two anonymous complaints to ORIC by corporation members last year, and a third recently, which resulted in no action by the regulator. The members also sent an anonymous email to Indigenous Affairs Minister Nigel Scullion and Attorney-General George Brandis that detailed some of the "special consideration" benefits mentioned above. Karen Nicholson, ORIC's assistant director of the corporation complaints team, says the benefits transferred by the chief executive were lawful because she interpreted them as "hardship" payments that would be available to all members of the corporation, notwithstanding their size. As a result, the payments were exempt from the CATSI Act's strict rules governing related party benefits. To support this argument, Nicholson refers to a section of the CATSI Act, which states in part that member approval is not required if "the benefit does not discriminate unfairly against the other members of the corporation". However, the section does not specifically mention hardship as one justification for not obtaining member approval.

This is not the first time ORIC has taken a lenient approach with this organization. An earlier review identified significant payments to related parties. ORIC took no action - because it deemed they were "unintentional and inconsequential", a spokeswoman says. Mundine doesn't have great regard for ORIC's performance and says he has "never been convinced" of the need for separate regulation of Aboriginal corporations. He recommends to Aboriginal businesses they incorporate under the corporations law, which means reporting to ASIC rather than ORIC. "I have always recommended they go under the Corporations Act. People know I am very critical of the operations of ORIC, from personal experience as well," Mundine said. This refers to a dispute among the Dunghutti people in NSW after they won a native title claim in 1997. Mundine, who worked on the case, says ORIC had to be dragged "kicking and screaming" to look at the problems and by the time it did most of the money was gone. Asked whether it is appropriate to have corporate regulation based on race, Mundine says the focus should instead be on need. He points out no such arrangements apply to businesses run by other ethnic groups. He questions the merit of continuing with the existing regulatory model, and seeks a review. "I'm yet to be convinced about the continuation of ORIC. The minister (Scullion) has different views in this area. We need to see good, clear, transparent governance that's accountable. I've never been

convinced about it (ORIC)," he says.

Despite Mundine's concerns, Scullion reaffirms his support for ORIC and Beven, saying they are "doing an outstanding job in improving governance within Aboriginal corporations and have my full confidence". He confirms he received correspondence from the members and that he urged them to pass on any evidence they had to ORIC. An issue is that salaries and benefits paid to senior executives and other employees often exceed the value of benefits paid to members. From ORIC's viewpoint, this is a matter for the directors of the corporation and raises an emerging issue in the Aboriginal world: a growing number of wealthy Aboriginal corporations are being run, and sometimes hijacked, by non-indigenous executives. Executives regularly use a power called "CEO special consideration" that enables this office-holder to allocate money for whatever reason. This is what Nicholson refers to when she says the chief executive had "wide ranging financial delegations". As a result, chief executives and other senior officers can entrench themselves by distributing benefits to directors and elders, who can in turn support their position and their substantial salary and other benefits. In the case in question insiders say the chief executive takes total benefits of more than $500,000, including extensive business-class travel in Australia and overseas, study tours in Europe and the US, luxury cars, even accommodation and living expenses,well above the norm for chief executives of comparable not-for-profit enterprises.

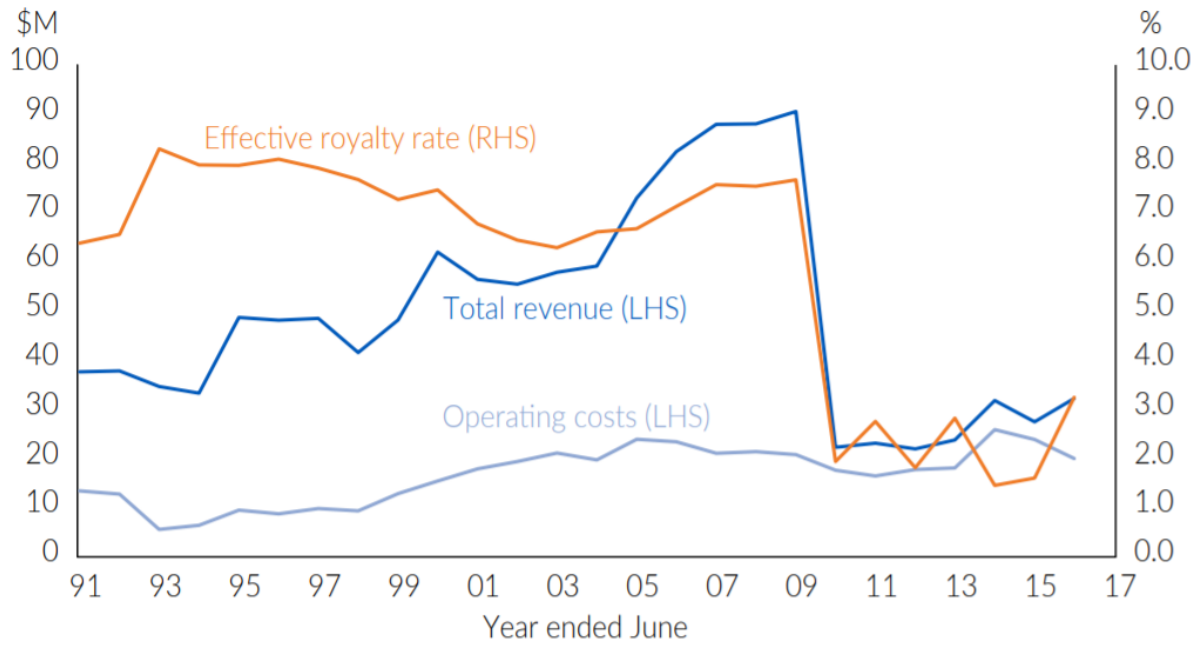
The ABC's Four Corners looked into alleged fraud by the boss of an Aboriginal corporation in Kakadu, among other cases highlighted in a supposedly detailed investigation. It followed the "money trail" into the deep north and shone light on on the executive's activities. The report, while reinforcing the cliched view that Aborigines aren't good with money, missed the point by ignoring the growing wealth in the Aboriginal world that is being accumulated — and often squandered — from mining agreements. More than $3 billion a year is now flowing into these corporations, according to the Minerals Council of Australia, thus creating honey pots that have attracted numerous opportunists. In what could be called an emerging fiefdom phenomenon, non-indigenous executives rise to the top of indigenous corporations and remain in their roles for lengthy periods, possibly a decade or more, sometimes entrenching themselves by illicit means. These corporations are often characterized by high staff turnover, especially among indigenous employees. The notion of capacity building, which is a central feature of development programs in the Third World, is completely missing.

Petroleum royalties

• Are the current features of petroleum royalties appropriate and giving an appropriate return to Territorians?
• Should we consider alternative methods for valuing petroleum production?
• Are there any other changes or improvements we should consider?

Although the Territory imposes a 10 per cent royalty, the actual petroleum royalty received by the Territory since 2010 is less than 4 per cent on the value of the petroleum at its first point of sale, and has averaged about 2 per cent (that is, the wellhead value is calculated to be significantly lower than the first sales value). In comparison, the historical average effective royalty rate is 6.5 per cent of the first sale value.

Chart 13.1 Total Northern Territory petroleum revenue and effective royalty rate



Source: Department of Treasury and Finance

So, it appears the net back method has been a dismal failure compounded by the limited administrative and compliance provisions to support the collection of petroleum royalties. For example, in comparison with the Territory's Taxation Administration Act or Mineral Royalty Act, the petroleum royalty legislation does not detail the requirements for making payment and lodgement of returns and has no administrative review provisions if disputes arise. There is also no guidance for determining post–wellhead deductible costs. This lack of legislative detail creates uncertainty for producers and the Territory Revenue Office as to how and when royalty liabilities are to be met. The current project-by-project approach to settling petroleum royalty arrangements has significant compliance limitations, may be less attractive to

investors due to the uncertainty for prospective producers and is less transparent than a more comprehensive, modern scheme.

It is therefore imperative to immediately introduce alternative methodologies for determining the value of the petroleum. Any such alternative would need to ensure the Territory receives a fair and relatively stable return, while providing industry with adequate profits. An alternative valuation method should not result in a negative value of petroleum. Principles of transparency, certainty and simplicity are also important. The value of petroleum products, in particular LPG, are available in real time online so there should be no impediment to calculating the down stream value of production. If NTG can squander $250,000 on a website that shows Territorians how much they are being ripped off at the petrol bowser, surely it can work out how much LPG is being sold to Japan.

Petroleum sourced from offshore, such as the Bayu-Undan field processed at the liquefied natural gas Darwin LNG plant at Wickham Point and the Ichthys field processed at the INPEX LNG project are subject to taxation by the Commonwealth and not subject to Territory royalties. Why? Their activities contribute to the generation of Greenhouse gases [GHG] in the atmosphere above Darwin and, of increasing concern, multiply the environmental costs of the traffic of massive LPG tankers through Darwin harbor with a corresponding increase in the risk of BLEVE and spills. Each of the EIS and license agreements negotiated with these processors contain provisions for an environmental levy based upon the amount of gas processed. It would be relatively simple to identify these fees, increase them to reasonable levels to cover the inevitable environmental catastrophe clean ups such as the Montara spill, without reference to production quantities and separate from Commonwealth taxation.

Other own-source revenue bases.

Pastoral lease rents

Pastoral leases are a title to land issued for the lease of an area of Crown land to use for the purposes of grazing stock and associated activities. Pastoral leases are issued for these pastoral purposes, including some supplementary or ancillary uses. Pastoral lease rents are currently set on the basis of the unimproved capital value of the pastoral lease land, and raise about $5 million pa. Government should move to a process of assessing pastoral leases based on the productivity of the land which would capture revenue derived from non-pastoral use diversification permits, allowing other activities on pastoral leases such as horticulture, aquaculture, tourism and forestry activities. Should the lessee choose not to use the land for production the lease rent would still be applied at the nominal rate dissuading lessees from “land banking”.

Participation in the carbon economy

Savanna fires are the greatest source of greenhouse gas emissions for the Northern Territory. Based on estimates for 2004, burning of savannas contributes 41% of the NT's accountable emissions. NTG needs to sponsor more agreements between Indigenous land managers and LPG processors to offset greenhouse gas emissions as well as provide meaningful jobs for

people on country and benefits to the communities involved. INPEX has not put in place any GHG offsets promised in it's EIS but will produce twice as much GHG as Darwin LNG, which in turn produces more GHG than the next biggest producer, PowerWater Corporation. An environmental levy should be applied [there is provision for this in the license] based upon the amount of GHG pollution not offset.

Land clearing permits.

The other source of savanna fires is burning off as a part of land clearing activities. And yet, land clearing permits are free. If the proponent is unable to clear land without generating GHG then they should have to pay a per hectare fee.

Resource exploitation bonds - toxic mine site rehab [legacy mines] and current mining [especially Mcarthur river mine]

Atmosphere pollution levy [LPG processing generates more GHG pollution than Power Water] and the transport of LNG through Darwin harbor will inevitably cause spills and other pollution [from toxic bilge etc.]. NTG needs to put in place a levy that will pay for insurance against the cost of these harmful events.

Affordable Housing

The residential property market must be uncoupled from the existing oligopoly of a few developers and profit driven financiers. By providing alternative finance options [e.g. Territory Seniors Bonds] and managed by not for profit Community Housing Providers [CHP], the cost of housing will gradually be reduced [leading to lower Local Government rates], and a planned development program will reduce the 'boom and bust' for the construction industry.

THE AFFORDABLE HOMES PROGRAM [Renewal SA model]

This program provides opportunities for eligible people to own a home without competing with higher income earners and investors largely achieved by offering properties for sale exclusively at affordable prices to buyers who meet the income and eligibility criteria before they are offered to the rest of the market. Work with industry, local and federal government on reducing the barriers to home ownership that many people experience, e.g. using innovative finance options such as Shared Value, which increase buying power without increasing the amount borrowed.

A planned development program can achieve the release of land across Darwin capable of yielding a substantial number of dwellings each year over the medium to long term, most of which are located within 15 km of the city. This development program could include a range of projects from small scale housing renewal, medium to large scale urban renewal infill sites mostly within the inner suburban area of the city. Much of the land designated will come from an audit of unused local, Territory and Federal Government land.

Aim to renew all currently uninhabited Housing Commission homes by 2020. This provides an opportunity for tradesmen and community housing providers to plan for the future, decreasing

the boom and bust trends in the market. The program of renewal will range from renovations to complete redevelopments and/or the transfer of tenant and property management to community housing providers.

The latest Rental Affordability Index shows housing stress is a common reality for people in the rental market, especially those on low incomes, who have little left to spend on essentials like food, electricity, fuel and education, after paying rent," said Andrew Cairns, CEO Community Sector Banking. "People in the lowest income households are being pushed out of the rental market, and into poverty and homelessness".

According to the UDIANT, other potential initiatives include:

- Allocating Department of Housing or other NTG-owned infill urban development sites to CHPs under a grant of freehold land with a statutory charge or under a deferred sale arrangement. This would allow the CHP to pay the government's book value of the property and have a mortgage secured on the land (thereby retaining the value on the relevant NTG Department's balance sheet). There would be a deferred payment arrangement until after the completion of the development, when rentals and sales commence, and a fixed long-term low interest rate.
- Amending the current Community Purpose Zoning regulations to provide for freehold grant of land for genuine social housing with the Minister's interest secured by a Statutory Charge. This would permit far greater financial leverage and attract philanthropy.
- Requiring all new land release developments to provide 15 percent of land for social housing purposes. This could be facilitated by:
    - The developer receiving a 15 percent price reduction to compensate;
    - The CHP paying the developer for its share of the infrastructure costs plus an administrative margin ; and
    - The Minister's interest being secured on the social purpose land with a Statutory Charge

To support the growth of Community Housing Providers in the NT, the Government needs to transfer good quality, freehold housing stock in sufficient numbers to enable the CHPs to leverage off their balance sheet, obtain GST credits and attract Commonwealth incentives and philanthropy. A social housing portfolio of approximately 300 houses would be sufficient to ensure each CHP can operate sustainably. Every transfer of 300 houses from Government stock to a Community Housing Provider would save the taxpayer $8.4million annually in maintenance costs. The economy would be stimulated through greater activity in development and construction and additional, quality social and affordable housing stock would be generated at no additional cost to the NT taxpayer.