

Alcoota Aboriginal Corporation & Anor v Gray & Ors [2001] NTSC 30

PARTIES: ALCOOTA ABORIGINAL
CORPORATION
AND
TURNER, Arthur
v
JUSTICE PRA GRAY IN HIS CAPACITY
AS ABORIGINAL LAND
COMMISSIONER
AND
CENTRAL LAND COUNCIL
AND
COPPOCK, Robert Alan; COPPOCK,
Suzanne Kay and COPPOCK, Craig Robert
AND
ROSS, Dave, TILMOUTH, Ken, DIXON,
Walter and BIRD, Lindsay

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN
TERRITORY EXERCISING TERRITORY
JURISDICTION

FILE NO: 101 of 1996 (9612165)

DELIVERED: 2 May 2001

HEARING DATES: 26 -28 April 2001

JUDGMENT OF: MARTIN CJ

CATCHWORDS:

PRACTICE

Discovery and inspection – claim of privilege by Crown – privilege of Cabinet documents and similar papers – public interest immunity – inspection by Court.

PRACTICE

Discovery and inspection – legal professional privilege – communications between government and salaried legal advisers – communications between solicitor and non-agent third party – copies of original documents.

REPRESENTATION:

Counsel:

Plaintiff:	J Reeves QC
2 nd Defendant:	I Barker QC
3 rd Defendant:	N Henwood
4 th Defendant:	T Robertson
Subpoenaed parties:	M Grant

Solicitors:

Plaintiff:	Noonans
2 nd Defendant:	Central Land Council
3 rd Defendant:	Cridlands
4 th Defendant:	Eileen Terrill & Assoc
Subpoenaed parties:	Solicitor for the Northern Territory

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Mar0111

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Alcoota Aboriginal Corporation & Anor v Gray & Ors [2001] NTSC 30
No. 101 of 1996 (9612165)

BETWEEN:

**ALCOOTA ABORIGINAL
CORPORATION**

AND

ARTHUR TURNER
Plaintiffs

AND:

**JUSTICE PRA GRAY IN HIS
CAPACITY AS ABORIGINAL LAND
COMMISSIONER**
First Defendant

AND

CENTRAL LAND COUNCIL
Second Defendant

**ROBERT ALAN COPPOCK, SUZANNE
KAY COPPOCK AND CRAIG ROBERT
COPPOCK**
Third Defendants

AND

**DAVE ROSS, KEN TILMOUTH,
WALTER DIXON AND LINDSAY BIRD**
Fourth Defendants

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 2 May 2001)

- [1] Ruling upon claims of public interest immunity and legal professional privilege.
- [2] Briefly, this action concerns a dispute in relation to an area of pastoral land in the Northern Territory known as Alcoota Station.
- [3] The first plaintiff alleges that it is the registered lessee of a pastoral lease under the provisions of the Crown Lands Act 1992 (NT) over the land and Mr Turner claims, amongst other things, that he is a traditional Aboriginal owner of the land. A claim has been made over the land pursuant to the provisions of the Aboriginal Land Rights (Northern Territory) Act (Cwth) 1976. The plaintiffs oppose that claim. In these proceedings, they raise a number of complaints about the actions of the second defendant and lawyers employed by it in regard to events leading up to and surrounding the making of the claim and matters to do with the constitution and administration of the Corporation.
- [4] They allege that they were in a position of vulnerability or inequality in relation to the second defendant, that they relied on it to protect their interest in the land and the management of the land, to care for them in relation to the conduct of the affairs of the Corporation, to properly advise and to assist them in all such matters and to generally act at all times in their best interests. They allege that the second defendant acted in breach of the responsibilities arising from the relationship between it and them, and

that a number of actions regarding the Corporation and the land were procured by the undue influence of the second defendant over them.

[5] The second defendant denies those allegations and says that at all material times the plaintiffs received, and had available, independent legal advice from Noonans Lawyers, a firm of solicitors, (“Noonans”) and advice and assistance, including financial and material assistance, from those solicitors and the Northern Territory Government and its agencies in respect of the matters for which the plaintiffs claim they relied upon the second defendant for protection, care and advice. By their Reply the plaintiffs admit that Mr Turner had received legal advice and related assistance at the expense of the Northern Territory Government in relation to some matters and that he and the Corporation had received legal advice and related assistance at the expense of the Northern Territory Government in relation to certain other matters, but otherwise deny the defence in that regard. The issues joined in this regard are the focus of this stage of the proceedings.

[6] The second defendant issued subpoenas directed to the Chief Minister of the Northern Territory, the Secretary of the Department of the Chief Minister, the Chief Executive Officer of the Northern Territory Attorney-General’s Department and the Solicitor for the Northern Territory requiring production of documents dealing in whole or in part with either of the plaintiffs in various capacities and in respect of various issues, including communications between Ministers of the Northern Territory and employees

of the Government of the Northern Territory and Noonans dealing in whole or in part with any of those subjects.

- [7] Bundles of documents have been brought into court in response to the subpoenas accompanied by affidavits in which claims are made for public interest immunity and legal professional privilege. Those claims are not accepted by the second defendant which seeks an order enabling inspection of all of the documents.
- [8] Differing views have emerged as the documents, the subject of the subpoenas, were inspected by officers of the Northern Territory. Sonia Lee Brownhill, a legal officer in the employ of the Solicitor for the Northern Territory swore an affidavit on 13 February 2001. On the same date Christopher John Bigg, acting secretary of the Northern Territory Department of the Chief Minister with responsibility for the operations of the Cabinet office, including the organisation, collation and circulation of Cabinet submissions, also swore an affidavit supplemented by another on 16 March 2001. On 15 March 2001 Garry Raymond Schneider, employed as a legal practitioner with the Northern Territory Attorney-General's Department, provided further information on oath in respect of the matters disclosed in the other affidavits, plus additional material.
- [9] Files or portions of files to which objection to inspection based upon either public interest immunity or legal professional privilege has been taken, have been isolated into sealed envelopes. (So as to preserve the integrity of the

files, many documents regarded as being “unresponsive to the subpoena” have been identified, but not removed. Inspection of the material is resisted, but I do not understand there to be any dispute about that).

A. *PUBLIC INTEREST IMMUNITY CLAIMS*

[10] In the affidavit of 13 February Mr Bigg sets out in some detail the basis advanced to support this claim saying that the disclosure would be injurious to the public interest in that it would adversely affect the processes and functioning of Cabinet. He refers to the convention of collective Cabinet responsibility and sets out the usual arguments well recognised by the law upon which protection is usually given to Cabinet submissions and Cabinet decisions. Amongst other things he refers to the routine assessment of the impact of the proposal or issue for discussion on Commonwealth, State and Local Government relations. Mr Bigg deposes that the content of a Cabinet decision is disseminated to those senior officials within government departments or agencies that have the responsibility of implementing the decision and/or on whose operation the decision will have some impact. He says that it is on the basis of the formal decision that the department or agency in question is able to determine what processes need to be put in place. There are no grounds expressly advanced by him for protection of documents which are brought into existence after a Cabinet decision has been made conveying the decision to departments or agencies.

[11] Reference to particular documents in respect of which this claim is made follows:

File 89/770 "Land Councils Aboriginal Policy and Coordination"

[12] Ms Brownhill makes no claim in respect of this file. The claim is made by Mr Bigg at par 3 and par 4 of his affidavit of 16 March 2001 in respect of documents which he identifies in Exhibit "CJB3" which, he adds, were "inadvertently produced for inspection". A copy of Annexure CJB3 is attached to these reasons. At Exhibit GRS1 of his affidavit Mr Schneider provides a list of the same documents, and adds that in so far as they had been inadvertently produced for inspection, the Territory sought the return of any copies. They had been produced to the second defendant and it handed up a copy of the documents in these proceedings without objection. It also tendered a copy of the Annual Report of the Office of Aboriginal Development to 30 June 1993 (Exhibit 2D1). At p 20 there is a heading "New Land Councils" under which appears:

"The Northern Territory Government will assist financially, up to \$50,000, groups of Aboriginal people who wish to lodge submissions with the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs to create new land councils pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976*. Expressions of interest have been received from four regions and two groups are being provided with financial assistance to engage professional assistance in the development of their submissions."

[13] In her affidavit by reference to “Department of Chief Minister material”, at par 2(e), Ms Brownhill claimed public interest immunity in respect of what she described as “a Cabinet submission and attachments”. At par 7 of his first affidavit Mr Bigg provides a list of the documents, “falling within the ambit of the subpoena directed to the Department of the Chief Minister” for which public interest immunity was claimed, saying that they fell into three categories:

- (i) Cabinet submissions and attachments thereto;
- (ii) Comments on Cabinet submission;
- (iii) Miscellaneous documents comprising memoranda, facsimile messages, reports, letters, status reports discussing Cabinet determinations.

[14] Inspection is sought in respect of the documents referred to in par (ii) and par (iii).

[15] By reference to Exhibit CJB1 it appears that the categorization of documents derives from:

- “1. Cabinet submission, Cabinet comments and attachments dated October 1992 from file 92/482;
- 2. Facsimile transmission dated 5 September 1996 enclosing correspondence and attachments discussing Cabinet determinations”.

There is no attempt to align the documents described in these two paragraphs with the three categories outlined in the body of the affidavit.

File 96/32 - Department of Law Cases

[16] At par 2(f) of her affidavit, Ms Brownhill claimed privilege in respect of “material including attachments which are in the nature of post Cabinet documents discussing and disclosing Cabinet decisions”. At par 7 of his affidavit, Mr Schneider says that that file contained certain documents in respect of which public interest immunity is claimed, being those identified as a group at item 2 in Annexure “CJB1” to the affidavit of Mr Bigg of 13 February 2001 (see above) and exhibits at “GRS2” (copy attached) an individual listing of each of those documents. Legal professional privilege is also claimed.

[17] Inspection of those documents is sought.

File ABL2000/51

[18] Ms Brownhill says at par 4(d) that that file includes “references to Cabinet Decisions and related documents”. Exhibit CJB2 annexed to Mr Bigg’s first affidavit does not appear to be cross referenced to any particular file, but he says it falls within the ambit of the subpoena directed to the Solicitor of the Northern Territory and for which public interest immunity is claimed.

[19] Annexure CJB2 describes the documents as:

1. letter dated 24 April 1996 discussing Cabinet determination;

2. minute of 18 April 1996 discussing Cabinet determination.

[20] At par 8 of his affidavit, Mr Bigg described the documents in CJB2 as falling in the category of “miscellaneous documents comprising memoranda, facsimile messages, reports, letters, status reports discussing Cabinet determinations”.

[21] Mr Schneider says the documents referred to by Ms Brownhill are in a file kept by the Solicitor for the Northern Territory number ABL2000/51. Mr Schneider then advances a claim for legal professional privilege in respect of those documents and details of them are given at par [59] and par [60] under that heading.

[22] A copy of the file cover for Part I tendered by the second defendant, Exhibit 2D2, bears the title “Northern Territory Attorney General Department. Alcoota – James Noonan Representation of Arthur Turner”.

[23] Inspection of those documents is sought.

File LS961262 Parts 1 to 3 Noonan – Alcoota Land Claim

[24] This file is said by Ms Brownhill, to be maintained by legal officers of the Solicitor for the Northern Territory for the purposes of advising their client the Attorney-General.

[25] There is a claim to legal professional privilege (see later). Additionally, at par 5 of his affidavit of 16 March, Mr Bigg says that he has been informed by Mr Schneider and verily believes that Part 1 of file LS961262 contains

copies of the documents listed at item 2 in Annexure CJB1 and item 2 in Annexure CJB2 to his affidavit of 13 February. Mr Bigg claims public interest immunity in respect of those documents. Inspection is sought.

PUBLIC INTEREST IMMUNITY – LEGAL ISSUES

- [26] Although unrecognised in the Northern Territory (Self Government) Act 1978 (Cwth) it is notorious that the policies of government of the Territory are formulated and controlled by the Ministers appointed under the Act meeting together as Cabinet. A person appointed to Ministerial office is required, before entering on the duties of the office, to make and subscribe an oath or affirmation that he or she will not divulge any information (including the contents of a document) of which he or she has become aware by reason of the holding of Ministerial office, except in the course of his or her duties or as may be required by law.
- [27] The confidentiality attaching to papers relating to the deliberations of Cabinet and Cabinet decisions derive in part from the fact that the Northern Territory is a body politic under the Crown (s 5 of the Act). It is imposed to enable the efficient conduct of the business of the Crown and is owed to the Crown (see the comments by Lord Widgery CJ in *Attorney-General v Jonathan Cape Limited* [1976] 1 QB 752 at p 770, speaking in the English context). The law may require disclosure and, subject to any statutory provision, it is the responsibility of the courts, established under the Crown,

to decide when and in what circumstances any restraint on disclosure of such papers lapse.

[28] Those circumstances most often arise when a party to litigation seeks to inspect such documents in connection with the litigation. There is then the public interest that harm should not be done to the body politic by disclosure and the public interest that the administration of justice should not be frustrated by the withholding of documents which must be produced if justice is to be done: per Gibbs ACJ in *Sankey v Whitlam* (1978) 142 CLR 1 at pp 39-40

“An objection may be made to the production of a document because it would be against the public interest to disclose its contents, or because it belongs to a class of documents which in the public interest ought not to be produced, whether or not it would be harmful to disclose the contents of the particular document. In the present case no suggestion has been made that the contents of any particular documents are such that their disclosure would harm the national interest. The claim is to withhold the documents because of the class to which they belong. Speaking generally, such a claim will be upheld only if it is really necessary for the proper functioning of the public service to withhold documents of that class from production. However it has been repeatedly asserted that there are certain documents which by their nature fall in a class which ought not to be disclosed no matter what the documents individually contain; in other words that the law recognizes that there is a class of documents which in the public interest should be immune from disclosure. The class includes cabinet minutes and minutes of discussions between heads of departments (*Conway v Rimmer* [1968] AC at pp 952, 973, 979, 987, 993, *Reg v Lewes Justices; Ex parte Home Secretary* [1973] AC at p 412; *Australian National Airlines Commission v The Commonwealth* (1975) 132 CLR 582, at p 591), papers brought into existence for the purpose of preparing a submission to cabinet (*Lanyon Pty Ltd v The Commonwealth* (1974) 129 CLR 650), and indeed any documents which relate to the framing of government policy at a high level (cf. *In re Grosvenor Hotel, London* [No 2] [1965] Ch 1210, at pp 1247, 1255). According to Lord Reid, the class would extend to “all documents concerned with policy making

within departments including, it may be, minutes and the like by quite junior officials and correspondence with outside bodies”: *Conway v Rimmer* [1968] AC at p 952.

[29] At p 41 his Honour draws attention to an exception said to exist where Cabinet minutes and the like can be disclosed when they have become only of historical interest or where there might be “very special circumstances” in which such documents might be examined. As to documents of historical interest, see also the observations of Mason J at p 96 and p 97 where his Honour expressed agreement with Lord Reid in *Conway v Rimmer*:

“... the efficiency of government would be seriously compromised if Cabinet decisions and papers were disclosed whilst they or the topics to which they related are still current or controversial. But I base this view, not so much on the probability of ill-formed criticism with its inconvenient consequences, as upon the inherent difficulty of decision making if the decision-making processes of cabinet and the materials on which they are based are at risk of premature publication.”

[30] A Full Court of the High Court reviewed the authorities in *The Commonwealth v Northern Land Council* (1992-1993) 176 CLR 604. As to the documents which may be protected at p 614:

“It should be observed at the outset that the documents for which the Commonwealth claims immunity from disclosure are documents which record the actual deliberations of Cabinet or a committee of Cabinet. They are not documents prepared outside Cabinet, such as reports or submissions, for the assistance of Cabinet. Documents of that kind are often referred to as Cabinet documents. When immunity is claimed for Cabinet documents as a class and not in reliance upon the particular contents, it is generally upon the basis that disclosure would discourage candour on the part of public officials in their communications with those responsible for making policy decisions and would for that reason be against the public interest. The discouragement of candour on the part of public

officials has been questioned as a sufficient, or even valid, basis upon which to claim immunity. On the other hand, Lord Wilberforce has expressed the view that, in recent years, this consideration has “received an excessive dose of cold water” *Burmah Oil Co Ltd v Bank of England* [1980] AC 1090, at p 1112; see eg *Sankey v Whitlam* (1978), 142 CLR 1, at pp 62-63; *Conway v Rimmer* [1968] AC 910, at pp 952, 957, 987-988, 993-994; *Rogers v Home Secretary* [1973] AC 388, at p 413; but contrast with *Sankey v Whitlam* (1978) 142 CLR at p40; *Conway v Rimmer* [1968] AC at p 972.

But it has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential in order that the members of Cabinet may exchange differing views and at the same time maintain the principle of collective responsibility for any decision which may be made.”

At p 616:

“Both upon principle and authority, it is hardly contestable that documents recording the deliberations of Cabinet fall within a class of documents in respect of which there are strong considerations of public policy militating against disclosure regardless of their contents (see *Lanyon Pty Ltd v The Commonwealth* (1974) 129 CLR 650; *Sankey v Whitlam* (1978) 142 CLR at pp 39, 57, 97, 102, 108; *Conway v Rimmer* [1968] AC at pp 952, 973, 987, 993; *Air Canada v Secretary of State for Trade* [1983] 2 AC 394 at p 432. But, whatever the position may have been in the past, the immunity from disclosure of documents falling within such a class is not absolute. The claim of public interest immunity must nonetheless be weighed against the competing public interest of the proper administration of justice, which may be impaired by the denial to a court of access to relevant and otherwise admissible evidence.”

[31] See also Spigelman CJ in *Egan v Chadwick* (1999) 46 NSWLR 563 at 573:

“In the determination of a claim of public interest immunity, a trial judge is called upon to weigh essentially incommensurable factors: the significance of the information to the issues in the trial, against the public harm from disclosure.”

The balance is between private and public interests. The Chief Justice affirmed that the revelation of the deliberations of Cabinet is inconsistent with the doctrine of collective responsibility, but noted that documents prepared outside Cabinet for submission to Cabinet may, or may not, depending upon their content, manifest a similar inconsistency.

[32] Counsel for the government agencies expressly asserted in the course of submissions (transcript p 44) that this was a claim for immunity of documents as a “class”, that is, Cabinet documents and documents discussing Cabinet determinations. It is, he said, not a claim in respect of a particular document because of its contents. I do not think that that submission is supported when the description of the documents in question is taken into account.

[33] The bare making of a claim for public interest immunity without sufficient reference to the document or documents and grounds upon which the claim is made is not sufficient. In *Sankey v Whitlam* at p 96 Mason J, having referred to the affidavit material relied upon, said:

“An affidavit claiming Crown privilege should state with precision the grounds on which it is contended that documents or information should not be disclosed so as to enable the court to evaluate the competing interests. The affidavits in this case fall far short of this standard and I must therefore look beyond them for the considerations which tend to support non-production”

[34] In contrast, Lord Wilberforce in *Burmah Oil Co Ltd v Bank of England* [1980] AC 1090 at 1108 said:

“The starting point in the discussion must be the certificate of the Chief Secretary. This is a lengthy and detailed document to which justice cannot be done without setting it out in full. It is perfectly clear that this document represents the result of careful and responsible consideration: that the minister has read and applied his mind to each of the documents: that, to adopt language used by the courts in other cases, the minister has not merely repeated a mechanical formula, that the certificate is not “amorphous” or of a blanket character, but is specific and motivated. Further, the minister has not contented himself with a general assertion that production would be injurious to the public interest, he has stated very fully the reasons why this would in his opinion be so: in summary that they concern discussions at a very high level, as to one category at ministerial level, and as to another the highest official level, as to the formulation of government policy. He has not even contented himself with a general reference to government policy.”

Reference is then made to the Minister’s specific concerns.

[35] I am invited by the second defendant to inspect the documents in respect of which the privilege is claimed and of which it seeks production. It is a vexed issue as to whether a Judge may go behind the formulated claim and “take a peek”.

[36] Lord Wilberforce reviewed various English authorities in *Burmah Oil Co Ltd v Bank of England* [1980] AC 1090 commencing at 1116 from which the following is extracted (citations omitted):

- The question is one for the discretion of the Judge who, it was said, should normally accept the affidavit claiming immunity.
- If the objection of the Minister is defective, then the documents could be inspected so the Court could form its own opinion as to the public interest.

- The power should be exercised “sparingly” and then only if there are reasons to doubt the accuracy of the certificate or the cogency of the Minister’s reasons.
- Inspection should be by way of final check.
- Inspection should be made if the Judge “feels any doubt about the reason for (the document’s) inclusion as class documents. It was inconsistent with the recognition of a general right or duty to inspect for the Crown’s consent to be sought to inspect.”
- Inspection arises only in rare cases where a strong positive case is made out, certainly not upon a bare unsupported assertion by the party seeking production that something to help him may be found.

[37] See also the example cited by Lord Edmund-Davies at p 1129:

- If on balance the Judge decided the documents probably ought to be produced, then it would generally be best that a Judge should see them before ordering production. “... but it is important that the Minister should have a right to appeal before the document is produced”.
- If there is any doubt about whether the document is part of a “class” then the Judge should not hesitate to inspect it.

[38] Lord Keith at p 1135 referred to situations where grave doubts arise from the terms of the Ministerial Certificate and the court feels it cannot properly

decide upon which side the balance falls without privately inspecting the documents.

[39] The matter was taken up by Lord Fraser in *Air Canada v The Secretary of State (No 2)* [1983] 1 All ER 910 at 917:

“... in order to persuade the court even to inspect documents for which public interest immunity is claimed, the party seeking disclosure ought at least to satisfy the court that the documents are very likely to contain material which would give substantial support to his contention on an issue which arises in the case, and that without them he might be deprived of the means of proper presentation of his case ...”

[40] In *Australian National Airlines Commission v The Commonwealth* (1975) 132 CLR 582 at p 592, Mason J expressed the view that in each case it is a matter of weighing the detriments supposed to flow from production against the prejudice to the administration of justice which may result from a refusal to order production:

“In making its decision the court may, when it considers it appropriate so to do, examine the document in which of which the claim is made.”

[41] In *The Commonwealth v Northern Land Council* (1992-1993) 176 CLR 604 at p 619 the court in speaking of the confidentiality of documents recording Cabinet deliberations said that only in exceptional circumstances would it be necessary or appropriate to order production of the documents, but:

“Where such exceptional circumstances do exist, the appropriate course to be followed will ordinarily be for the judge personally to inspect the documents for the purpose of deciding whether the relevance of the material to the proceedings in which disclosure is

sought is sufficient, even in those exceptional circumstances, to justify disclosure.”

[42] I considered it appropriate to inspect the documents. I was not satisfied as to the immunity claimed as the objections were defective and I was doubtful about the reasons for inclusion of some of the documents in a class. I am satisfied that the second defendant has made out in the pleadings and by reference to the evidence in these proceedings more than an unsupported assumption that the documents may aid its case.

PUBLIC INTEREST IMMUNITY RULING

[43] *File 89/770 – Land Council Aboriginal Policy and Coordination*

(i) GSR1 provides some details of the documents:

(a)(b)&(c) Letters dated 5 November 1992 from the Chief Executive Officer of the Chief Minister’s Department to other public service departmental heads in respect of a Cabinet decision. The date and subject matter of the decision are not disclosed in GRS1. None of the material shows any grounds to found the immunity. Looking at the copy of the documents, they go no further than to confirm a Cabinet decision already made known to the recipients, and suggest a method of implementation of the decision. They assert that the Cabinet decision would be publicised in due course. An example of that publication

is in the Annual Report, Exhibit 2D1. The decision itself is now public. Knowledge of the administrative arrangements to carry publicly known decisions into effect cannot be harmful to the public interest. The documents may be inspected.

[44] The document of 28 September 1992 is as described in par (d) in GRS1. It is a paper brought into existence relating to the framing of government policy at a high level.

[45] I do not consider that denying use of that document in the trial is against the public interest in the proper administration of justice. It may not be inspected. The copy held by the second defendant must be returned and no use made of its contents in the proceedings.

[46] *File 92/482 – Anmatjere Land Council*

(ii) The general description “Cabinet submission” and “Cabinet submissions and attachments” define a class of documents which, with certain exceptions, would normally attract immunity. There is no reason here why that protection should not be maintained. Those documents may not be inspected.

(iii) Documents called “Comments on Cabinet submissions” from departmental officers given in response to the circulation of a draft Cabinet submission for comment would normally be protected. There

is no reason why the protection should not be maintained. Those documents may not be inspected.

- (iv) I have not been able to identify the documents falling within the description of “Miscellaneous documents” etc as appearing in par 7(iii) of Mr Bigg’s affidavit, absent clear identification and the making out of proper grounds, such documents as they may be do not appear to attract protection. They may be inspected, unless identified elsewhere and a contrary ruling made.
- (v) The facsimile transmission and documents referred to in CJB1, item 2, without further description or specific grounds to found the immunity, are not shown to be protected. They may be inspected, unless identified elsewhere and a contrary ruling made.

[47] *File 96/32 - Department of Law Court Cases File*

- (vi) These documents refer to a Cabinet decision of 16 April 1996. They were prepared in the context of carrying that decision into effect. The pleadings bring that decision into the public arena. No grounds are put forward directed to showing that the contents of those documents would be damaging to the public interest. Even if the claim for immunity was well founded, they should be made available for inspection in the interests of the administration of justice. That is, however, subject to the claim for legal professional privilege which I deal with later.

[48] *File ABL2000/51*

(vii) The documents described in CJB2 attract the protection. They may not be inspected.

[49] *File LS961262 Part 1*

(viii) The copy of the document of 18 April 1996 is protected. The copies of the documents of September 1996 are not protected under this claim.

B. LEGAL PROFESSIONAL PRIVILEGE

[50] The documents for which privilege is claimed on this basis are identified in general terms by Ms Brownhill and more detailed descriptions are provided by Mr Schneider.

Chief Minister Denis Gabriel Burke

[51] At par 3 Ms Brownhill claims privilege in respect of the entirety of the material provided by the Chief Minister,

“Some material is in the nature of legal advice from officers of the Attorney-General’s Department to the Chief Minister. Other material is in the nature of legal advice and Ministerials from legal officers in the Attorney-General’s Department”.

[52] With reference to par 3 of the affidavit of Ms Brownhill, Mr Schneider provided an individual listing of the documents referred to by her at Exhibit GRS3, a copy of which is attached. Mr Schneider says that:

“Each of the documents in that list was prepared by an admitted legal practitioner in the employ of the Northern Territory Attorney-General’s Department for the purpose of providing advice to the Chief Minister and/or the Attorney-General.”

[53] Mr Schneider at par 8 also claims legal professional privilege in respect of documents listed in GRS2, a copy of which is attached which he describes as being

“a communication from the Department of the Chief Minister (document (a)) responding to a letter from the Solicitor for the Northern Territory providing certain advice (document (b)). Documents (c), (d) and (e) were attached to the letter from the Solicitor for the Northern Territory for the purpose of providing the said advice”.

Inspection is sought.

Solicitor for the Northern Territory and Attorney-General’s Department

[54] There are a number of files listed under this heading in Ms Brownhill’s affidavit.

Paragraph 4(a) File 2000/328 and 2000/263

[55] The above files were said by Ms Brownhill to be

“files maintained by legal officers of the Solicitor for the Northern Territory for its client the Department of Lands, Planning and Environment in order to advise its client in respect of matters arising out of the Alcoota (Supplementary) Land Claim No 222.”

Paragraph 4(b) File 2000/360

[56] Ms Brownhill says this is:

“a file maintained by legal officers of the Solicitor for the Northern Territory for its client the Department of Lands, Planning and Environment in order to advise its client in respect of matters arising out of the Alcoota Land Claim 146.”

Paragraph 4(c) File 2000/329

[57] This file is said by Ms Brownhill to be a file maintained by legal officers of the Solicitor for the Northern Territory to advise its client the Department of Museums and Art Galleries of the Northern Territory in respect of matters arising out of the Alcoota Land Claim 146.

Paragraph 4(d) File ABL 2000/51

[58] Ms Brownhill says that this is

“a file maintained by legal officers of the Solicitor for the Northern Territory for the purposes of providing legal advice to its client the Attorney-General for the Northern Territory. ... Included in the file are advices, litigation reports provided at the request of lawyers for the purposes of advising the client, accounts, file notes of meetings, briefings, discussions between lawyers and third parties for the purpose of providing advice to the client, copies of counsel advices.”

[59] Commencing at par 10, Mr Schneider says that file also contains certain documents in respect of which a claim for public interest immunity has been made and identified in CJB2. Mr Schneider then makes a claim of legal professional privilege in relation to the documents in CJB2. He says the letter of 24 April 1996 is a communication from a legal practitioner in the employ of the Attorney-General’s Department to a named barrister, and that the communication was made in the course of the retainer. The claim for inspection of that document is not pressed. Mr Schneider says that the

minute of 18 April 1996 is an internal minute from a clerk in the employ of the Attorney-General's Department to two legal practitioners in that employ in the context and for the purpose of a matter in which the recipient legal practitioners were providing advice to the Territory.

[60] With further reference to par 4(d) of the affidavit of Ms Brownhill, Mr Schneider, commencing at par 15, says that one category of documents are those passing between Noonans and the Solicitor for the Northern Territory for the period 31 December 1999 to 18 January 2001 over which no claim to privilege is made, but he says that may attract a claim for privilege by the plaintiffs.

[61] There is another category of documents comprising "various advices, reports provided by the firm Noonans, file notes of meetings, briefing notes and status reports," individual listings of which are contained in the Exhibit GRS4, a copy of which is attached. Mr Schneider goes on that "they have been either created, procured or used by the Solicitor for the Northern Territory for the purpose of providing advice to its client the Northern Territory of Australia and its Ministers". He also refers to document (rr) in GRS4 and says that that may attract a claim of privilege by the plaintiffs as well.

Inspection is sought.

File 9300560

[62] The file is said by Ms Brownhill to be “maintained by legal officers of the Solicitor for the Northern Territory for the purposes of advising their client the Department of Lands, Housing and Local Government.” No further information is available.

File LS961262 Parts 1 to 3 – Noonan – Alcoota Land Claim

[63] At par 4(f) Ms Brownhill says the file:

“is maintained by legal officers of the Solicitor for the Northern Territory for the purposes of advising their client the Attorney-General for the Northern Territory. The file contains documents falling within the following categories:

- i. Communications between lawyers and client and lawyers and third parties;
- ii. litigation reports to Solicitor for the Northern Territory and Northern Territory Attorney-General’s Department over which the corporate and/or personal plaintiff may also have a claim to privilege;
- iii. Accounts rendered to the Solicitor for the Northern Territory and Northern Territory Attorney-General’s Department;
- iv. Notes of meetings between officers of Noonans and officers of the Solicitor for the Northern Territory; and
- v. Correspondence between officers Noonans and officers of Northern Territory Attorney-General’s Department and Solicitor for the Northern Territory.”

[64] As to that Mr Schneider says, commencing at par 20, that in Part 1 of the file there are a number of documents in respect of which the claim for legal

professional privilege is withdrawn. They were placed in a sealed envelope upon the file. As to the balance of the documents, Mr Schneider says they fall into three categories. In Exhibit GRS5 (copy attached) he provides an individual listing of a number of documents in the first category in respect of which privilege is claimed on the basis that they “have been either created, procured or used by the Solicitor for the Northern Territory for the purpose of providing advice to its client the Northern Territory of Australia and its Ministers”.

[65] The next category comprises copies of a number of identified documents which Mr Schneider describes by reference to sundry exhibits, being documents in respect of which a claim to public interest immunity is made and legal professional privilege is also claimed. (They are dealt with elsewhere in these reasons).

[66] The third category comprises a document titled “Arthur Turner – Alcoota Aboriginal Corporation – Update” in respect of which no claim for privilege is made on the part of the Territory, but which he has separated upon the basis that they may be the subject of a possible claim for privilege by the plaintiffs.

[67] As to Part 2 of file LS961262, Mr Schneider identifies a number of documents in respect of which the claim for legal professional privilege is not pressed, but says that privilege is claimed in respect of the documents referred to in Exhibit GRS6, copy attached, which Mr Schneider says have

either been created, procured or used by the Solicitor for the Northern Territory for the purpose of providing advice to its client the Northern Territory and its Ministers. He also identifies documents on that part of the file over which the plaintiff may wish to claim privilege and they have been set aside.

[68] As to Part 3 of that file, Mr Schneider says that the Territory makes no claim for privilege in respect of the documents on that file.

Inspection is sought. A copy of the file cover for Part 3 and sundry documents is at Exhibit 2D3.

C. UNRESPONSIVE TO SUBPOENA CLAIM

File 89/770 – Land Councils Policy and Coordination

[69] At par 2(c) Ms Brownhill says that the file contains some material which is unresponsive to the subpoena and objects to inspection of it. There is no objection to inspection of the remainder and inspection is sought.

File 92/482 – Anmatjere Land Council and File 96/32 Department of Law Cases

[70] There is a claim for public interest immunity in respect of the documents referred to above. Ms Brownhill says at par 2(e) and (f) that there is some material which is unresponsive in the subpoena, and otherwise there is no objection to inspection. Inspection is sought of those documents.

Legal Professional Privilege – Legal Issues

[71] In *Attorney-General (NT) v Maurice* (1986) 161 CLR 475 at 490 Deane J said:

“It is a substantive general principle of the common law and not a mere rule of evidence that, subject to defined qualifications and exceptions, a person is entitled to preserve the confidentiality of confidential statements and other materials which have been made or brought into existence for the sole purpose of his or her seeking or being furnished with legal advice by a practising lawyer or for the sole purpose of preparing for existing or contemplated judicial or quasi-judicial proceedings”

And referred to *Baker v Campbell* (1983) 153 CLR 52. It is fundamental to the privilege that it is that of the client in a relationship of solicitor and client.

[72] As a consequence of the decision of the majority in *Esso v Federal Commissioner of Taxation* (1999) 168 ALR 123 a “dominant purpose” test has displaced the “sole purpose” test.

Esso v FCT (1999) 168 ALR 123 at 132, 133 per Gleeson CJ and Gaudron and Gummow JJ:

“Legal professional privilege (or client legal privilege) protects the confidentiality of certain communications made in connection with giving or obtaining legal advice or the provision of legal services, including representation in proceedings in a court. In the ordinary course of events, citizens engage in many confidential communications, including communications with professional advisers, which are not protected from compulsory disclosure. The rationale of the privilege has been explained in a number of cases, including *Baker v Campbell* (1983) 153 CLR 52; 49 ALR 385 and *Grant v Downs* itself. The privilege exists to serve the public interest in the administration of justice by encouraging full and frank

disclosure by clients to their lawyers. In *Waterford v Commonwealth* (1987) 163 CLR 54 at 64-5; 71 ALR 673, Mason and Wilson JJ explained that legal professional privilege is itself the product of a balancing exercise between competing public interests and that, given the application of the privilege, no further balancing exercise is required. As Deane J expressed it in *Baker v Campbell* (1983) 153 CLR 52 at 114; 49 ALR 385, a person should be entitled to seek and obtain legal advice in the conduct of his or her affairs, and legal assistance in and for the purposes of the conduct of actual or anticipated litigation, without the apprehension of being prejudiced by subsequent disclosure of the communication. The obvious tension between this policy and the desirability, in the interests of justice, of obtaining the fullest possible access to the facts relevant to the issues in a case lies at the heart of the problem of the scope of the privilege. Where the privilege applies, it inhibits or prevents access to potentially relevant information. The party denied access might be an opposing litigant, a prosecutor, an accused in a criminal trial, or an investigating authority.”

[73] In *Waterford v The Commonwealth* (1986-87) 163 CLR 54 at p 62 Mason and Wilson JJ held that it was clearly in the public interest that those in government who bear the responsibility of making decisions should have free and ready confidential access to their legal advisers and proceeded:

“Whether in any particular case the relationship is such as to give rise to the privilege will be a question of fact. It must be a professional relationship which secures to the advice an independent character notwithstanding the employment.”

See also per Deane J at pp 80-81 and p 82 where his Honour said:

“... it is not surprising that the weight of authority, both in this country and elsewhere, supports a conclusion that the principle of legal professional privilege applies in relation to the seeking and giving of professional legal advice within and between the various branches or departments of the Executive.”

[74] Referring to what was said by Kirby J in *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1996-97) 188 CLR 501 at 583,

Spigelman CJ in *Egan v Chadwick* (1999) 46 NSWLR 563 at 577 said that one feature which distinguishes a claim of legal professional privilege or a claim of public interest immunity is “that in the case of the former there is no process of balancing conflicting public interests. The law has already undertaken the process of balancing in determining the rule.” As Kirby J said:

“... the search, where the doctrine is invoked concerns solely whether, given its definition, it applies to the communications in question or not.”

See also per Brennan CJ at p 74.

[75] It was also affirmed in *Esso v FCT* at p 125 that the circumstances in which legal professional privilege may apply are not limited to the adducing of evidence:

“ ... the privilege may be invoked in other circumstances, such as discovery and inspection of documents. Documents may be discoverable, or the subject of a demand for inspection, even though they are not admissible in evidence”.

[76] In this case none of those required to produce documents nor the Northern Territory as such is a litigant or potential litigant. The allegation is that the Territory is supporting a litigant who is advised by private independent solicitors. The second defendant suggests that there can be communications oral or in documentary form passing between a solicitor and client which are not for the dominant purpose of obtaining legal advice and that that may well be so when the communication is between a Minister or head of a

department and a government employee in relation to the formulation or implementation of policy in which the legal advice forms but part of the communication and not a dominant part of it.

[77] It is for the party asserting or claiming legal professional privilege to establish the facts giving rise to it (per Lockhart J in *National Crime Authority v S* (1991) 29 FCR 203 at 211), merely asserting the claim is not good enough, his Honour cites what was said by Stephen, Mason and Murphy JJ in *Grant v Downs* at p 689:

“He may succeed in achieving this objective [successfully claiming legal professional privilege] by pointing to the nature of the documents or by evidence describing the circumstances in which they were brought into existence. But it should not be thought that the privilege is necessarily or conclusively established by resort to any verbal formula or ritual. The court has power to examine the documents for itself, a power which has perhaps been exercised too sparingly in the past, springing possibly from a misplaced reluctance to go behind the formal claim of privilege. It should not be forgotten that in many instances the character of the documents the subject of the claim will illuminate the purpose for which they were brought into existence.”

[78] In *Trade Practices Commission v Sterling* (1978) 36 FLR 244 at 246-247 Lockhart J said that it was well to bear in mind what was said by Jenkins LJ in *Westminster Airways Limited v Kuwait Oil Co Limited* [1951] 1 KB 134 at p 146:

“But there is nothing in the rule, or in the authorities, to constrain the court to hold that, in every case where a claim to privilege is made and disputed, the party seeking production is entitled to come to the court and (as it were) demand as of right that the court should go behind the oath of the opposite party and itself inspect the documents. The question whether the court should inspect the

documents is one which is a matter for the discretion of the court, and primarily for the judge of first instance. Each case must depend on its own circumstances; but if, looking at the affidavit, the court finds that the claim to privilege is formally correct, and that the documents in respect of which it is made are sufficiently identified and are such that, prima facie, the claim to privilege would appear to be properly made in respect of them, then, in my judgment, the court should, generally speaking, accept the affidavit as sufficiently justifying the claim without going further and inspecting the documents”.

[79] However, the position appears to be different when the legal adviser is an employee and may sometimes perform work for the employer in a different capacity. In *Waterford v The Commonwealth* at p 61, Mason and Wilson JJ cite with apparent approval Lord Denning who said that if “there is any doubt as to the propriety or validity of a claim for privilege, the master or the judge should without hesitation inspect the documents himself so as to see if the claim is well founded, or not” (*Alfred Crompton Amusement Machines Ltd v Customs & Excise Commissioners [No 2]* (1972) 2 QB 102 at p 129).

[80] The “primary relevant inquiry in determining whether a claim for privilege from production on the ground of legal professional privilege should be upheld, is to inquire as to the purpose for which the document came into existence” per Goldberg J in *ACCC v Safeways* (1998) 153 ALR 393 at 423.

As his Honour went on to say:

“... that purpose must be for the purpose of communicating information for the giving of legal advice, communicating the legal advice itself or communicating information to be used in existing or apprehended litigation.”

[81] The documents claimed to be subject to this privilege appear to fall into two main categories. First, those identified as being created for communication within government for government, that is, between lawyers employed by government and those lawyers and ministers in the conduct of their affairs as ministers. Second, are those identified as created for communication between lawyers employed by government and lawyers in private practice acting for the plaintiff.

[82] The first category might be related to the seeking and giving of advice, as claimed, and the second, in relation to the litigation. There is little in the evidence to clearly differentiate between all the documents, some may fall into one class or the other and others may be concerned with both.

[83] Assuming that some documents relate wholly or in part to the issue of the provision of financial and other assistance by the government to the plaintiffs, as the second defendant alleges, then it is by no means clear that they are privileged. They may be in the first category, concerned with the seeking and giving of legal advice, but given the high level of communication, departmental head to minister and between departmental heads, in some instances, there is a possibility that those documents may relate to matters other than the seeking and giving of legal advice.

[84] There is no suggestion that any of the communications were for the dominant purpose of providing legal advice to either of the plaintiffs.

[85] As to the second category of communications, it does not seem that they are the subject of the privilege. There is nothing to suggest that they sought or communicated information to be used in the litigation. For examples of privileged communications in this class see the documents referred to by Lockhart J in *Trade Practices Commission v Sterling* (1979) 36 FLR 244 at 245-246 especially par (e) and par (f) and the cases cited.

[86] If legal professional privilege is claimed over communications and documents passing between the solicitor and a non-agent third party, the claimant must satisfy a twofold test, per Barwick CJ in *Grant v Downs* (1976) 135 CLR 674 at 677:

- (1) that at the time of preparation of the communication, litigation was either contemplated or commenced; and
- (2) that the communication was brought into existence for the dominant purpose of that litigation.

[87] There is no privilege for documents which are the means of carrying out, or are evidence of, transactions which are not themselves the giving or receiving of advice or part of the conduct of actual or anticipated litigation. Where the third party is not an agent of the client, the documents are privileged only if they are delivered to the solicitor for the sole or dominant purpose of anticipated litigation (*Baker v Campbell* (1983) 153 CLR 52).

- [88] Bills of costs are not privileged per se, they will however be privileged to the extent that they contain or refer directly to confidential matters so as to disclose the subject of the communication (*Packer v Deputy Commissioner of Taxation* (1984) 55 ALR 242).
- [89] Communications from Noonans to the Solicitor for the Northern Territory relating to the provision of financial or other assistance to the plaintiffs are not for use in the litigation; they are for the purpose of supporting the plaintiffs as parties to the litigation in relation to the cost of the litigation. In *Baker v Campbell* (1983) 153 CLR 52 at p 166, Gibbs CJ excluded from the privilege the confidential communications made to a banker. In so far as they include legal advice they are not communications between solicitor and client.
- [90] Bearing all these considerations in mind I came to the view that I should inspect all of the documents in respect of which legal professional privilege was claimed.

RULINGS ON CLAIMS FOR LEGAL PROFESSIONAL PRIVILEGE

- [91] File 96/32. The documents from this file comprise copies of the letter from the Solicitor for the Northern Territory to the Secretary of the Department of the Chief Minister dated 3 September 1996 to which are attached copies of some bills of cost from Noonans. The dominant purpose of the letter is not the giving of legal advice, it is the seeking of instructions by the Solicitor for the Northern Territory in a capacity other than for the giving of legal

advice. The accounts from Noonans are not privileged. They are not addressed to either of the plaintiffs, they were not brought into existence for the purposes of seeking or giving legal advice, and the Solicitor for the Northern Territory was not the solicitor for Mr Noonan or the solicitor for the plaintiffs. There is no solicitor and client relationship. On their face the bills do not disclose any confidential communication as between the plaintiffs and Mr Noonan. The facsimile transmission from Mr Conran to Mr Anderson of 5 September with the handwritten note is not privileged. It does not seek legal advice. A five page document, "Alcoota Land Claim – Report by James Noonan, Solicitors, of the representation of Arthur Turner up to 29 May 1996", is unsigned, and there is no recipient marked on it. There is a stamp which says "Attachment 3 September 1996" and the evidence suggests that it was attached to the letter from the Solicitor for the Northern Territory to Mr Conran. The report was referred to by the Solicitor for the Northern Territory in his letter to Mr Conran in the context of his seeking instructions to which reference has been made above. There is no evidence from which to make a finding as to the purpose for which that report was prepared. It is not privileged. All the documents may be inspected. They are in an envelope marked "96/32".

[92] As to LS961262 Part 2, the following documents are not subject to the privilege:

- (a) Claims for payment being internal formal Northern Territory government forms containing particulars of monetary claims in

respect of “Alcoota Land Claim”. There are attached what appear to be financial records relating to the Alcoota Land Claim and they are not privileged either. There is a separate bundle of documents related to internal financial transactions, the first of which appears to be a receipt for \$100,000 numbered 151753. They are not privileged.

- (b) A copy of a memorandum of 27 March 1997 from the Acting Secretary Northern Territory Attorney-General’s Department to Jim O’Brien, a senior ministerial officer, providing financial information regarding costs is not privileged.
- (c) There are attached to some documents, which I consider to be privileged, copies of certain bills of costs from James Noonan to the Solicitor for the Northern Territory, those copies having been produced for attachment to the privileged communications and are thus part of those communications. There are, however, to be found on the file original accounts which are not privileged. (I have extracted them from a bundle held together with a bulldog clip, the top document on the bundle being a “Ministerial” from the Secretary of the Attorney-General’s Department through the Attorney-General to the Chief Minister and dated, and having three blue tabs indicating various parts of the bundles lettered “B”, “C” and “D”).

(c) A document headed “Approval to engage legal practitioner” is not privileged.

I have extracted those documents from the files and placed them in an envelope marked “No legal professional privilege”.

[93] In envelope LS961262 (Part 1) endorsed “Legal Professional Privilege and Public Interest Immunity” are copies of documents from file 96/32. They appear to have been copied and placed on the file as part of the solicitors’ records for the purpose of giving legal advice to the Ministers and are privileged.

[94] After inspection, I am satisfied that the privilege is made out in respect of all other documents for which the claim is made by Ms Brownhill or Mr Schneider.

Summary of rulings

[95] The claims to privilege in respect of the following documents are not upheld and they may be inspected.

[96] *Public Interest Immunity*

1. Those described at (a),(b) and (c) in GSR2.
2. Those described in par 7(iii) of Mr Bigg’s affidavit, unless otherwise protected.
3. Those referred to in CJB1, Item 2, unless otherwise protected.

4. Those from file 96/32 – Department of Law Court Case file – of April 1996.
5. Those described in CJB2.
6. Those copies from LS961262 Part 1 of September 1996.

[97] *Legal Professional Privilege*

7. Those from file 96/32 of 3 and 5 September 1996 and attachments.
8. Documents from file LS961262 Part 2 –
 - (a) Claims for payment and other internal financial records.
 - (b) Copy of memorandum of 27 March 1997.
 - (c) Original bills of costs from Noonans to the Solicitor for the Northern Territory.
 - (d) Approval to engage a legal practitioner.

[98] Documents in respect of which either privilege was claimed and upheld have been returned to the original envelopes in which they were contained and the envelopes have been resealed. Documents for which no claim for privilege has been upheld have been placed in separate envelopes and marked accordingly and sealed.

Annexure "GRS1"

- (a) Letter from the Chief Executive Officer, Department of the Chief Minister to Chief Executive Officer, Office of Local Government dated 5 November 1992 relating to Cabinet Decision.
- (b) Letter from the Chief Executive Officer, Department of the Chief Minister to Secretary, Department of Lands & Housing dated 5 November 1992 relating to Cabinet Decision.
- (c) Letter from the Chief Executive Officer, Department of the Chief Minister to Secretary, Department of Law dated 5 November 1992 relating to Cabinet Decision.
- (d) Memorandum dated 28 September 1992 from Senior Assistant Secretary, Policy and Co-Ordination to the Chief Minister of the Northern Territory recommending preparation of Cabinet Submission.

Annexure "GRS2"

- (a) Facsimile transmission from Secretary, Department of the Chief Minister to Solicitor for the Northern Territory dated 5 September 1996.
- (b) Letter from Solicitor for the Northern Territory to Secretary, Department of the Chief Minister dated 3 September 1996 with handwritten notation.
- (c) Memorandum from James Noonan, Barristers & Solicitors to Solicitor for the Northern Territory dated 16 July 1996.
- (d) Memorandum from James Noonan, Barristers & Solicitors to Solicitor for the Northern Territory dated 31 July 1996.
- (e) Report by James Noonan, Barristers & Solicitors dated 29 May 1996.

Annexure "GRS3"

- (a) Background briefing document prepared by the Solicitor for the Northern Territory.
- (b) Ministerial from Secretary, Northern Territory Attorney-General's Department to Chief Minister dated 20 February 1997 with attached briefing note.
- (c) Ministerial from Secretary, Northern Territory Attorney-General's Department to Chief Minister dated 7 March 1997.
- (d) Ministerial from Secretary, Northern Territory Attorney-General's Department to Chief Minister dated 14 October 1996.
- (e) Ministerial from Secretary, Northern Territory Attorney-General's Department to Chief Minister dated 20 February 1997.
- (f) Ministerial from Acting Secretary, Northern Territory Attorney-General's Department to Attorney-General dated 29 May 2000.

Annexure "GRS4"

- (a) File note in relation to meeting dated 5 April 2000 between Noonans and officers of the Solicitor for the Northern Territory.
- (b) Letter from Noonans to Northern Territory Attorney-General's Department dated 2 March 2000 with three copy attachments.
- (c) Letter from Solicitor for the Northern Territory to James Noonan dated 14 February 2000 with facsimile transmission report.
- (d) Letter from Solicitor for the Northern Territory to James Noonan dated 23 December 1999 with facsimile transmission report.
- (e) Internal SFNT memorandum undated in relation to conduct of Alcoota Land Claim.
- (f) Background briefing document dated 8 November 1999.
- (g) Letter from Noonans to Attorney-General's Department dated 31 May 1999 attaching Minutes of Order.
- (h) File note from Aboriginal Land Division within SFNT dated 11 June 1999.
- (i) File note from Aboriginal Land Division within SFNT dated 4 February 1999.
- (j) File note from Aboriginal Land Division within SFNT dated 25 May 1998.
- (k) Minute from Solicitor for the Northern Territory Legal Practice, Aboriginal Land Division to Chief Executive Officer, Northern Territory Attorney-General's Department dated 2 April 1998 with attached note on Federal Court decision.
- (l) File note from Solicitor for the Northern Territory dated 4 February 1998.
- (m) Attendance note from Aboriginal Land Division dated 6 November 1997.

- (n) File note from Aboriginal Land Division dated 6 November 1997.
- (o) Attendance note from Aboriginal Land Division dated 27 August 1997.
- (p) File note from Aboriginal Land Division dated 27 August 1997.
- (q) Attendance note from Aboriginal Land Division dated 14 July 1997.
- (r) File note from Aboriginal Land Division dated 14 July 1997.
- (s) File note from Aboriginal Land Division dated 14 July 1997.
- (t) Letter from Noonans to Solicitor for the Northern Territory dated 11 July 1997.
- (u) Attendance note from Solicitor for the Northern Territory dated 7 July 1997.
- (v) Handwritten notes of proceedings before Federal Court on 1 July 1997 taken by solicitor in employ of Solicitor for the Northern Territory.
- (w) Attendance note from Aboriginal Land Division dated 2 July 1997.
- (x) Attendance note from Aboriginal Land Division dated 30 June 1997.
- (y) Letter from Noonans to Solicitor for the Northern Territory dated 27 June 1997.
- (z) File note from Aboriginal Land Unit dated 7 May 1996.
- (aa) Facsimile transmission from Noonans to SFNT dated 8 May 1996 attaching correspondence to Aboriginal Land Commissioner.
- (bb) Facsimile transmission from SFNT to Vance Hughston dated 8 May 1996 with four attachments.
- (cc) Facsimile transmission report dated 7 May 1996.

- (dd) Letter from Solicitor for the Northern Territory to Noonans dated 30 April 1996.
- (ee) Internal SFNT e-mail dated 29 April 1996.
- (ff) Facsimile transmission report dated 26 April 1996.
- (gg) Letter from Noonans to Solicitor for the Northern Territory dated 22 April 1996 (2 copies).
- (hh) Northern Territory Attorney-General's Department Ministerial to Chief Minister dated 15 April 1996.
- (ii) Letter from Arthur Turner to Director, Central Land Council dated 16 April 1996.
- (jj) File note from Aboriginal Land Unit dated 18 April 1996.
- (kk) File note from Aboriginal Land Unit dated 18 April 1996.
- (ll) File note from Aboriginal Land Unit dated 15 April 1996.
- (mm) File note from Aboriginal Land Unit dated 12 April 1996.
- (nn) Letter from Solicitor for the Northern Territory to VB Hughston dated 3 April 1996.
- (oo) Letter from Office of Aboriginal Development to Northern Territory Attorney-General's Department dated 28 March 1996.
- (pp) File note from Aboriginal Land Division dated 8 May 2000.
- (qq) Internal SFNT minute from Aboriginal Land Division to Acting Secretary dated 8 May 2000 attaching documents (a) and (pp).
- (rr) Facsimile from Noonans to Northern Territory Attorney-General's Department dated 26 September 2000 attaching advice from Alex Leopold dated 22 September 2000.

(ss) Letter from Noonans to Northern Territory Attorney-General's Department dated 22 December 2000.

Annexure "GRS5"

- (a) Internal Solicitor for the Northern Territory Memorandum dated 20 November 1996 with attachment.
- (b) Ministerial Memorandum from the Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 14 October 1996.
- (c) File note from the Aboriginal Land Unit dated 7 November 1996.
- (d) Internal Solicitor for the Northern Territory Minute dated 1 November 1996.
- (e) Ministerial Memorandum from the Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 14 October 1996.
- (f) Ministerial Memorandum from the Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 14 October 1996.
- (g) Ministerial Memorandum from the Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 15 April 1996 attaching file notes from the Aboriginal Land Unit dated 15 April 1996 and 12 April 1996.
- (h) Ministerial Memorandum from the Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 4 June 1996.
- (i) Briefing notes to the Attorney-General in relation to Alcoota Land Claim dated 7, 9, 12 and 13 August 1996.
- (j) Ministerial Memorandum from the Secretary, Northern Territory Attorney-General's Department to the Chief Minister undated.
- (k) Memorandum of advice from VB Hughston to Northern Territory Attorney-General's Department dated 29 May 1996.
- (l) Attendance note from Aboriginal Land Division dated 24 May 1996.
- (m) Ministerial Memorandum from the Secretary, Northern Territory Attorney-General's Department to the Chief Minister undated.

- (n) Ministerial Memorandum from the Secretary, Northern Territory Attorney-General's Department to the Chief Minister undated.
- (o) Attendance note from Aboriginal Land Division dated 23 May 1996.
- (p) Internal Solicitor for the Northern Territory Minute dated 14 April 1996 with attachment.
- (q) Attendance note from Aboriginal Land Division dated 2 May 1996.
- (r) Attendance note from Aboriginal Land Division dated 1 May 1996.
- (s) Internal SFNT e-mail dated 29 April 1996.
- (t) Letter from Solicitor for the Northern Territory to Noonans dated 30 April 1996 discussing conference between respective Counsel.
- (u) Attendance note from Aboriginal Land Division dated 23 April 1996.
- (v) File note from Aboriginal Land Unit dated 15 April 1996.
- (w) Draft Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 15 April 1996.
- (x) File note from Aboriginal Land Unit dated 15 April 1996.
- (y) File note from Aboriginal Land Unit dated 12 April 1996.
- (z) File note from Aboriginal Land Unit dated 15 April 1996.
- (aa) File note from Aboriginal Land Unit dated 12 April 1996.
- (bb) Letter from Office of Aboriginal Development to Northern Territory Attorney-General's Department dated 28 March 1996.

Annexure "GRS6"

- (a) Briefing note prepared by Solicitor for the Northern Territory dated 10 November 2000.
- (b) Internal SFNT Memorandum undated in relation to conduct of Alcoota Land Claim.
- (c) Letter from Noonans to Solicitor for the Northern Territory dated 17 September 1997.
- (d) Letter from Noonans to Solicitor for the Northern Territory dated 9 May 1997.
- (e) Internal Solicitor for the Northern Territory Claim for Payment forms and related documents.
- (f) Solicitor for the Northern Territory Trust Account Requisition and related documents.
- (g) File note from Aboriginal Land Division dated 19 December 1996.
- (h) Internal Solicitor for the Northern Territory Minute dated 27 December 1996.
- (i) Internal Solicitor for the Northern Territory Minute dated 22 January 1997.
- (j) File note from Aboriginal Land Division dated 21 January 1997.
- (k) File note from Aboriginal Land Division dated 21 January 1997.
- (l) Internal Solicitor for the Northern Territory Minute dated 31 January 1997.
- (m) File note from Aboriginal Land Division dated 30 January 1997.
- (n) File note from Aboriginal Land Division dated 30 January 1997.
- (o) Internal SFNT e-mail dated 19 February 1997.

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- (p) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister undated.
- (q) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 14 October 1996.
- (r) Internal Solicitor for the Northern Territory e-mail dated 3 March 1997.
- (s) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 20 February 1997.
- (t) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister undated annexing two previous Ministerial Memoranda dated 14 October 1996 and 20 February 1997.
- (u) Attendance note from Aboriginal Land Unit dated 27 February 1997.
- (v) Minute from Acting Secretary, Northern Territory Attorney-General's Department to Chief Minister's Office dated 27 March 1997.
- (w) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 7 March 1997 annexing previous Ministerials dated 14 October 1996 and 20 February 1997.
- (x) Attendance note from Aboriginal Land Division dated 1 April 1997.
- (y) Letter from Noonans to Northern Territory Attorney-General's Department dated 14 March 1997 used for purpose of drafting Ministerial Memorandum to the Chief Minister.
- (z) Internal Solicitor for the Northern Territory e-mail dated 27 March 1997.
- (aa) Letter from Noonans to Deputy Secretary, Attorney-General's Department dated 9 May 1997.
- (bb) Bundle of attendance notes from Aboriginal Land Division - various dates.

- (cc) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 17 June 1997 with attachments.
- (dd) File note from Aboriginal Land Division dated 14 July 1997.
- (ee) File note from Aboriginal Land Division dated 14 July 1997.
- (ff) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Attorney-General undated with various attachments relating to progress of Supreme Court and Federal Court proceedings and Noonans accounts.
- (gg) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 17 June 1997.
- (hh) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Attorney-General undated.
- (ii) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister dated 17 June 1997.
- (jj) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Attorney-General undated.
- (kk) Internal Solicitor for the Northern Territory Minute dated 2 April 1998.
- (ll) Internal Solicitor for the Northern Territory Minute dated 2 April 1998.
- (mm) Request form for approval to engage legal practitioner and related documents.
- (nn) Letter from Noonans to Deputy Secretary, Attorney-General's Department dated 9 May 1997.
- (oo) Ministerial Memorandum from Secretary, Northern Territory Attorney-General's Department to the Chief Minister undated with various attachments providing advice in relation to progress of Supreme Court and Federal Court proceedings and Noonans accounts.