

# Policy Considerations Influencing Management of Nature Conservation Values in Australian Island Territories

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## Abstract

Given the diverse cultural heritage and environmental factors in each of the island Territories within the responsibility of the Department of Territories, any decision regarding nature conservation requires consideration of a wide range of different issues. In consultation with Territory authorities and conservation specialists, in particular the Australian National Parks and Wildlife Service, thought is given to determining the most appropriate measures to be taken to achieve the desired level of protection.

## INTRODUCTION

The Department of Territories is responsible for land management matters in Norfolk Island, the Cocos (Keeling) Islands, Christmas Island, the Coral Sea Islands Territory and the Ashmore and Cartier Islands. Maps of those Territories are included at Attachment 1. Australia's other island Territory - Heard Island and the McDonald Islands - is administered by the Department of Science.

To gain an appreciation of the factors which influence decisions relating to nature conservation, it is necessary to outline the legislative position, discuss the constitutional development and be aware of the current position with respect to reserved areas in each of those Territories.

## LEGISLATIVE POSITION

The various legislative and administrative arrangements in place in each of the Territories can be summarised as follows:

- Norfolk Island - Commonwealth Acts extend if expressed to do so. The Norfolk Island Act 1979 provides the Norfolk Island Government with executive and legislative authority over a wide range of matters.
- Coral Sea Islands - Commonwealth Acts extend if expressed to do so. Under the Coral Sea Islands Act 1969, the Governor-General may make Ordinances for the Territory. The Application of Laws Ordinance 1973 applies the laws of the Australian Capital Territory, so far as applicable, to the Territory.

- Cocos (Keeling) Islands and Christmas Island - the Cocos (Keeling) Islands Act 1955 and the Christmas Island Act 1958 provide that Commonwealth Acts extend to the Territories if expressed to do so and give the Governor-General power to make Ordinances for the Territories. All laws of the former Colony of Singapore in force before the acceptance of the Territories continue to apply in the Territories although some of these laws have been modified by local Ordinances.
- Ashmore and Cartier - all Commonwealth Acts extend and the laws in force in the Northern Territory as at 30 June 1978 apply. A Bill presently in the Senate will apply up-to-date laws in the Territory based on Northern Territory laws in force from time to time.

## CONSTITUTIONAL DEVELOPMENT OF THE TERRITORIES

The level of constitutional development attained in each Territory influences the way in which nature conservation decisions are implemented.

Norfolk Island for instance is different from the other external Territories in that it has attained a much higher level of local control. The Norfolk Island Government's responsibilities include recreation areas, forestry and timber, coastlines and foreshores and it can make laws in relation to each of those matters. The Commonwealth retains responsibility for environment protection and conservation but exercises this responsibility in close co-operation with the Norfolk Island Government.

The Norfolk Island Legislative Assembly is however able to introduce and pass its own legislation in the environmental sphere and has for instance introduced its own Migratory Birds Act to give effect to the Australia - Japan Migratory Birds Agreement. Laws such as these must however be reserved for assent by the Governor-General of Australia.

Although Christmas Island is proceeding towards a greater level of constitutional development with the recent election of an Assembly with limited powers, that Assembly has no law making powers and conservation remains the responsibility of the Australian Government.

The Cocos (Keeling) Islands Council is responsible for municipal matters on Home Island, where the indigenous Cocos Islanders reside, and can make "local government" type by-laws regulating activities in the kampong area on Home Island. Following the Act of Self-Determination of 6 April 1984, by which the Cocos Malays chose full integration with Australia, the Australian Government transferred approximately 6/7 of the land in the Territory to the ownership of the Cocos (Keeling) Islands Council. The Council acknowledged the special need to protect the environment of North Keeling Island, and the Government gave a commitment to respect the religious beliefs, traditions and culture of the Cocos Malay people. It is within this broad context that nature conservation operates in the Territory with the Commonwealth having overall responsibility for conservation matters.

As the Ashmore and Cartier Islands and the Coral Sea Islands are virtually uninhabited, the question of constitutional development is not relevant. Conservation matters are solely the responsibility of the Commonwealth.

Significant Commonwealth enactments which provide mechanisms for protection of Australian flora and fauna and extend to all the external Territories include the Wildlife Protection (Regulation of Exports and Imports) Act 1982, the National Parks and Wildlife Conservation Act 1975, the Environment Protection (Impact of Proposals) Act 1974 and the Continental Shelf (Living Natural Resources) Act 1968. In addition, some legislation has been promulgated in each of the Territories to afford protection to a range of flora and fauna. Those enactments are summarised at Attachment 2.

## **CURRENT POSITION WITH RESPECT OF RESERVED AREAS IN EACH TERRITORY**

Various degrees of protection have been afforded to areas in the external Territories.

Approximately one-quarter of Norfolk Island has been declared as reserves or commons under the Commons and Public Reserves Ordinance 1936. However most of these reserves have been proclaimed for purposes other than conservation and many have been used for pasturage (purposes include recreation, landing and shipping, forestry and quarantine). It is ironic that Philip Island, which was almost totally denuded by grazing animals and is now undergoing regeneration due to the exclusion of rabbits, was originally declared as a forestry reserve in 1937.

The most significant development of recent times has been the declaration of the former Mount Pitt Reserve under Norfolk Island legislation as the "Norfolk Island National Park" and the moves to declare that Park under the National Parks and Wildlife Conservation Act 1975. At the same time action is being taken to declare two small portions which have been declared under local legislation as the "Norfolk Island Botanic Garden" as a reserve under the National Parks and Wildlife Conservation Act 1975.

The importance of the Coral Sea Islands Territory as a seabird and turtle nesting area was recognised with the declaration of the Lihou Reef and Coringa-Herald National Nature Reserves on 3 August 1982 under the National Parks and Wildlife Conservation Act 1975. This action provides protection for a wide variety of terrestrial and marine wildlife such as the common noddy, red-footed, masked and brown boobies and the green turtle.

Christmas Island has a unique environment and is home to a variety of endemic species including the Abbotts Booby, a shrew, two bats and some twenty plant species. The Island as a whole is recognised as being of high conservation value. The Christmas Island National Park gives formal protection to 135 square kilometres of the south-western part of the Island. About 12% of the extant Island rainforest lies within its boundaries. Resident Australian National Parks and Wildlife Service officers manage the

National Park and are engaged in monitoring the numbers of the Abbotts Booby (*Sula abbotti*), which is found only on Christmas Island. There is currently a proposal to extend the National Park to include some of the Island's other sites of heritage importance.

There are currently no reserved areas in the Cocos (Keeling) Islands. Active consideration is being given to the appointment of a Conservator during 1986 to assist the Cocos Malay people with conservation matters. It is envisaged that a management plan for North Keeling Island will be prepared.

In 1983 Ashmore Reef and its three islets were proclaimed a National Nature Reserve under the National Parks and Wildlife Conservation Act 1975. This action was taken to protect marine and terrestrial environments and the wildlife dependent on them, such as common noddies, sooty terns, turtles and a variety of seasnakes. Regular visits are made to Ashmore Reef by officers of the Australian National Parks and Wildlife Service and the Service is preparing a management plan for the National Nature Reserve.

Co-operation between the Department of Territories and other Commonwealth Departments and authorities is important for the effective management of these reserved areas. The Australian National Parks and Wildlife Service in particular, provides a wide range of services from the preparation of management plans through to the provision of officers to manage the reserved areas. Officers of the Service residing on Christmas Island and Norfolk Island also provide advice on a range of conservation matters to the Island authorities.

## FACTORS INFLUENCING DECISION MAKING

Conservation policies in respect of the external Territories are often influenced by Australia's obligations under international conventions, treaties or agreements. Where Australia becomes a party to an international convention for instance, any obligation incurred under such a convention will bind all of Australia including the external Territories unless they are expressly excluded by the Australian Government when acceding to that convention. By entering into such conventions, Australia undertakes to take whatever measures are necessary, including legislative action, to meet its obligations.

Nature conservation conventions which therefore apply to the external Territories include the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Agreement between the Government of Australia and the

Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment.

The Department is also involved in Commonwealth/State forums eg CONCOM and AEC and involvement with such organisations influences our policy development for the island Territories. The development by CONCOM of a Memorandum of Understanding between State and Territory Governments for the control of possession and movement of protected fauna could, for instance, have ramifications for the Territories. While the intent of that Memorandum of Understanding is to provide an effective means of achieving national control over possession of and interstate trade in live protected fauna, there is a need to determine whether measures need to be developed to regulate trade between island Territories and the mainland and possession in those Territories of protected fauna. The need for uniformity on such matters is recognised and, if it is deemed necessary and feasible, complementary action will be taken in the Territories.

The Department and its Minister are obviously affected by the conservation policies of the Commonwealth Government. In regard to the phosphate mining operation on Christmas Island, less rainforest has been cleared than otherwise may have been the case in a less sensitive locality. Indeed, reserves of high grade phosphate rock will never be mined as they form the basis for the habitat of endangered avian species like Abbotts Booby.

A major consideration in our conservation policy development is the need to balance the Government's responsibility to protect and promote the interests of the inhabitants of each of the Territories. For example, the Government's commitment to preserve the traditional culture of the Cocos Malay residents of Home Island has ramifications for conservation policy in the Territory. Traditionally the Cocos Malays have made periodic visits to North Keeling Island, which is about 24 kilometres north of the main group, to harvest seabirds for food. The Department of Territories and the Australian National Parks and Wildlife Service have begun a conservation education program at Cocos, complemented by a visit made by the Cocos leaders to Norfolk Island where they gained knowledge of the conservation regimes practiced there. The leaders themselves have undertaken an education program within the community.

The Coral Sea Islands Territory and the Territory of Ashmore and Cartier Islands are virtually uninhabited but each has its own peculiar pressures on the environment. Reports were received for

instance in 1981 that foreign fishing vessels were suspected of taking sedentary organisms from reefs in the Coral Sea Islands Territory. This led to the declaration under the Continental Shelf (Living Natural Resources) Act 1968 of an area in the Coral Sea in which the taking of certain sedentary organisms is strictly controlled.

Ashmore Reef has been degraded by traditional Indonesian fishermen who visit the area every year to collect trochus and beche-de-mer. Although the 1974 Memorandum of Understanding with Indonesia specifically limits the activities of those fishermen, there have been numerous breaches of the agreement over the years. For example, fishermen have landed on the Islands for purposes other than to obtain freshwater, have killed birds, taken turtles, smashed or eaten eggs.

Action is proceeding towards the negotiation of a new Memorandum of Understanding. In the meantime, the Department of Territories has established a presence on the Ashmore Islands during the fishing season (March to November) mainly for the purpose of advising Indonesian fishermen of their obligations under the present Memorandum of Understanding. The Department's presence was only established in October this year and indications are that the "warning off" program is achieving results.

Economic factors also impinge on conservation policies. Christmas Island for example, has been mined for phosphate since the late 1890's - long before the importance of the Island's flora and fauna was recognised. Despite the significance of the unique Island ecosystem, the closure of a \$450 m per annum mining operation employing 800 people was

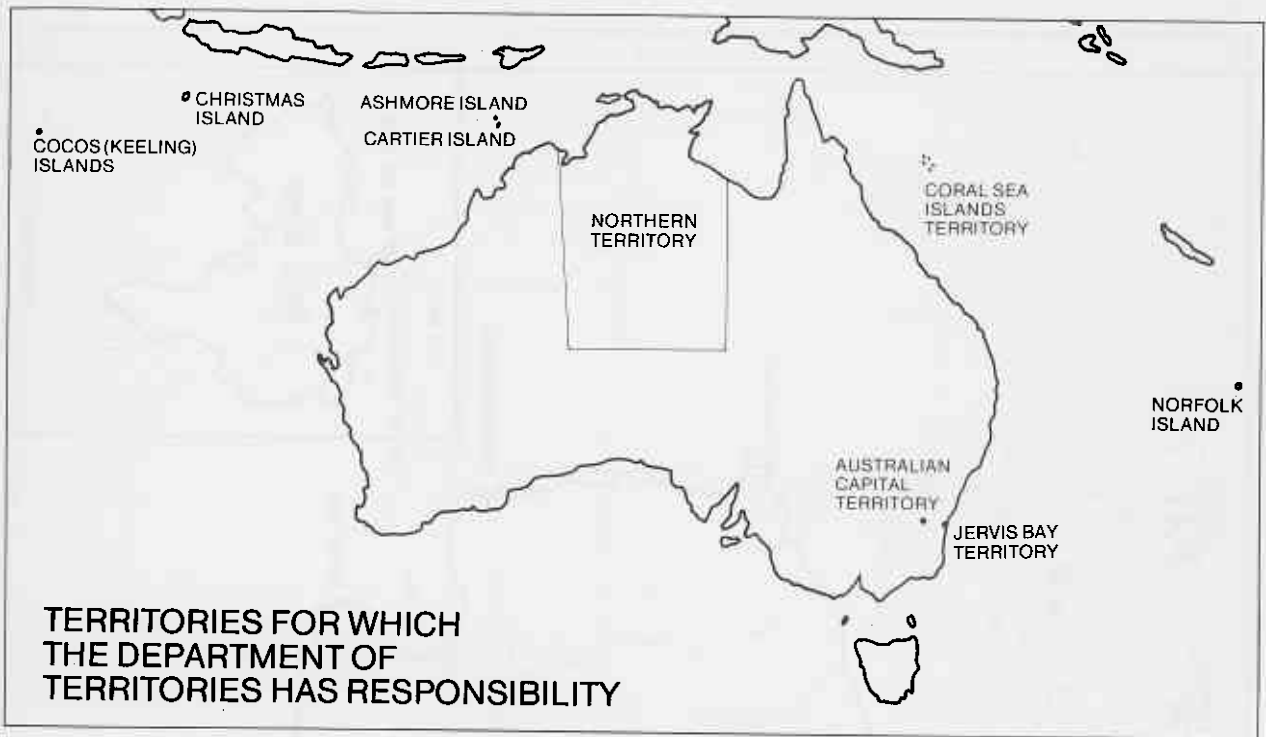
not practical. A set of Rainforest Clearing Guidelines has been negotiated between the Director of the Australian National Parks and Wildlife Service and the General Manager of the Phosphate Mining Company of Christmas Island. These guidelines protect conservation interests yet permit some mining. In this way long term conservation objectives can be achieved side by side with other land uses.

In relation to the long term future of Christmas Island, the Australian Government has recognised that the present phosphate operation has a limited life. The feasibility of continuing commercial enterprises on the Island is being examined.

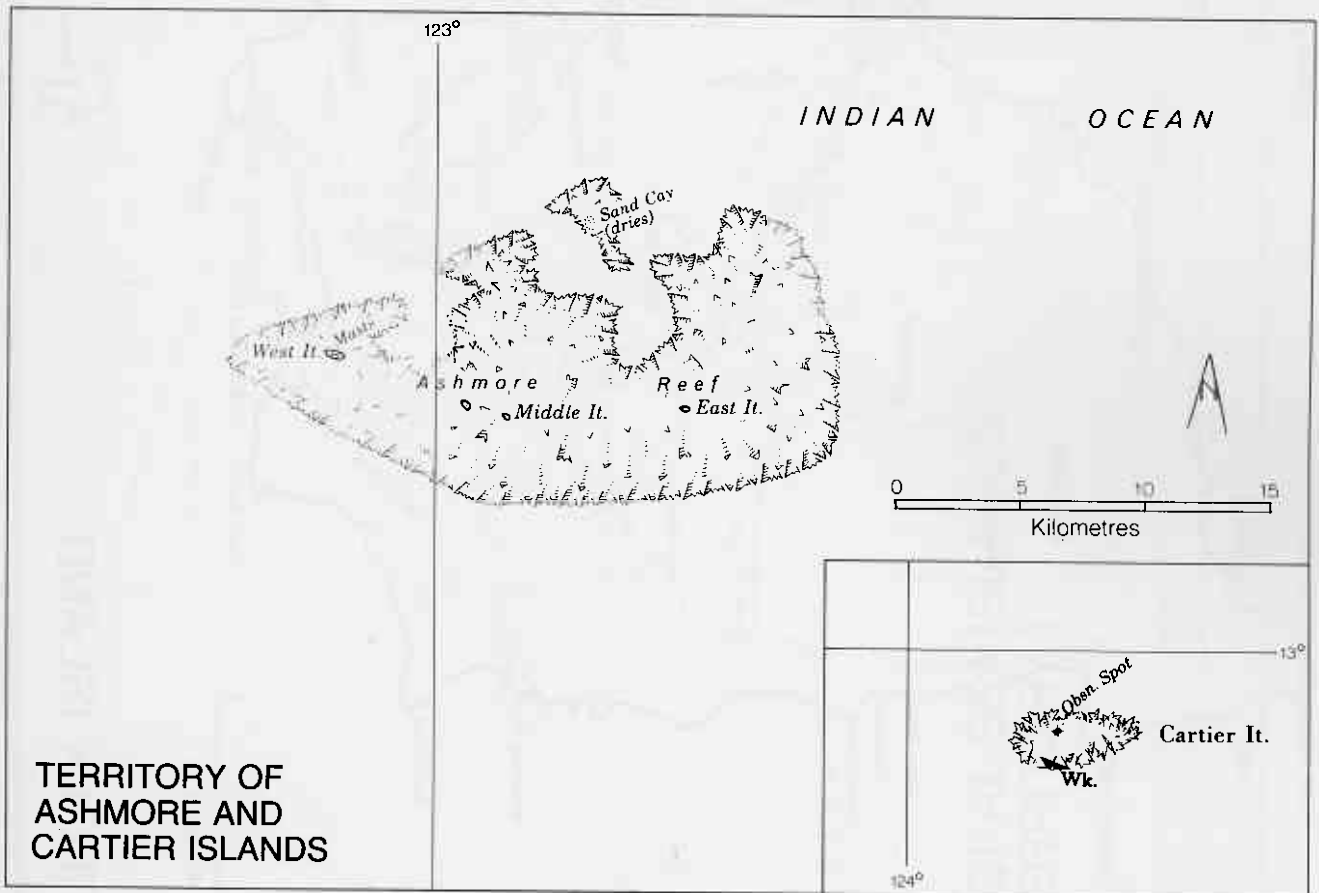
The discovery of hydro-carbons in the offshore Adjacent Area to the Territory of Ashmore and Cartier Islands has meant that the Islands have attained greater importance. These discoveries have resulted in approximately 200 people at any one time residing in the Territory during the drilling season and this has an obvious impact on the reef ecosystem. New legal and administrative arrangements are being put in place. As mentioned earlier, action is currently in hand to extend to the Territory selected laws in force in the Northern Territory from time to time.

## ACKNOWLEDGEMENTS

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**Figure 1**  
Locale map of Territories for which the Department of Territories has responsibility.



**Figure 2**  
Territory of Ashmore and Cartier Islands.

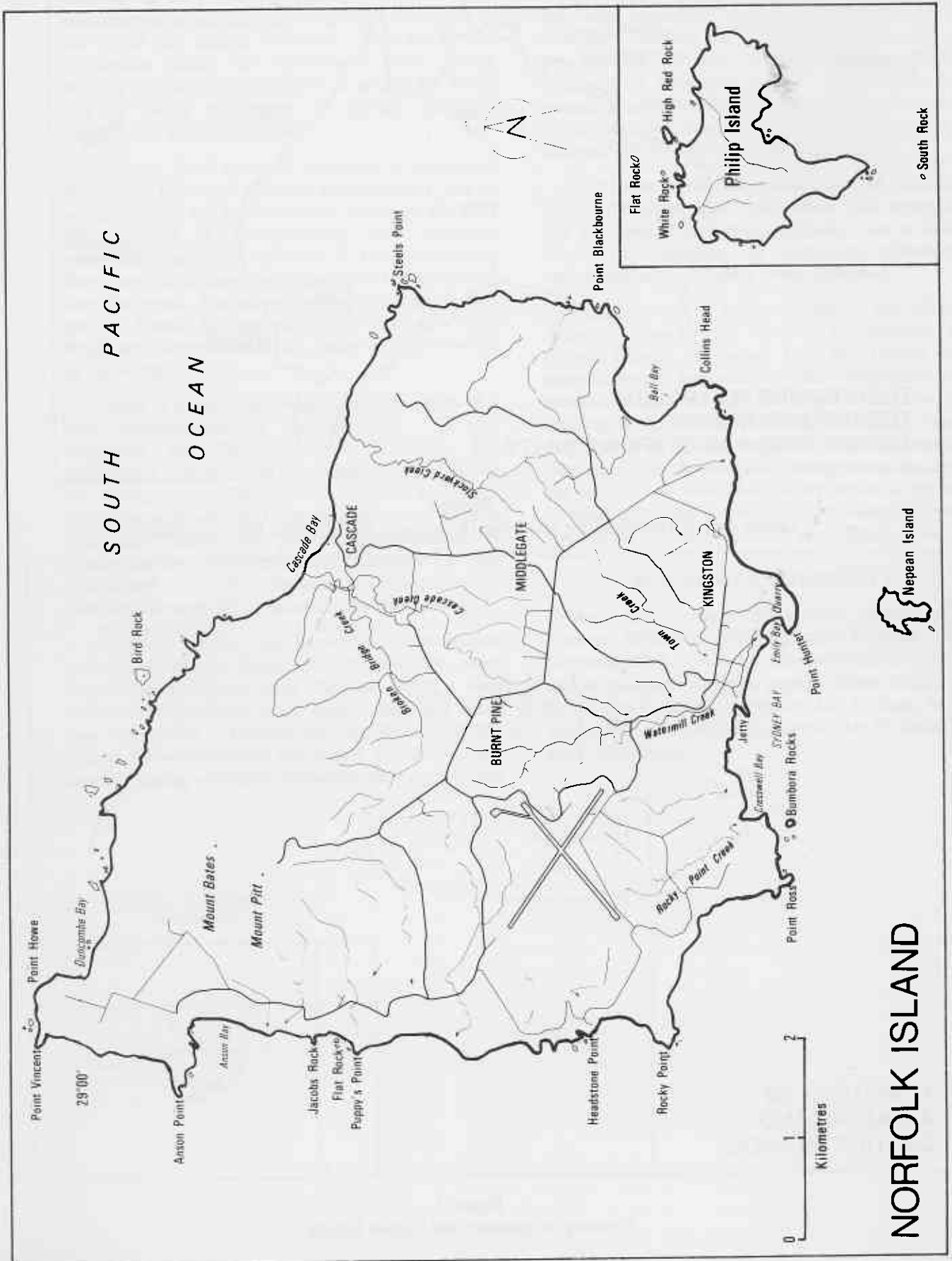
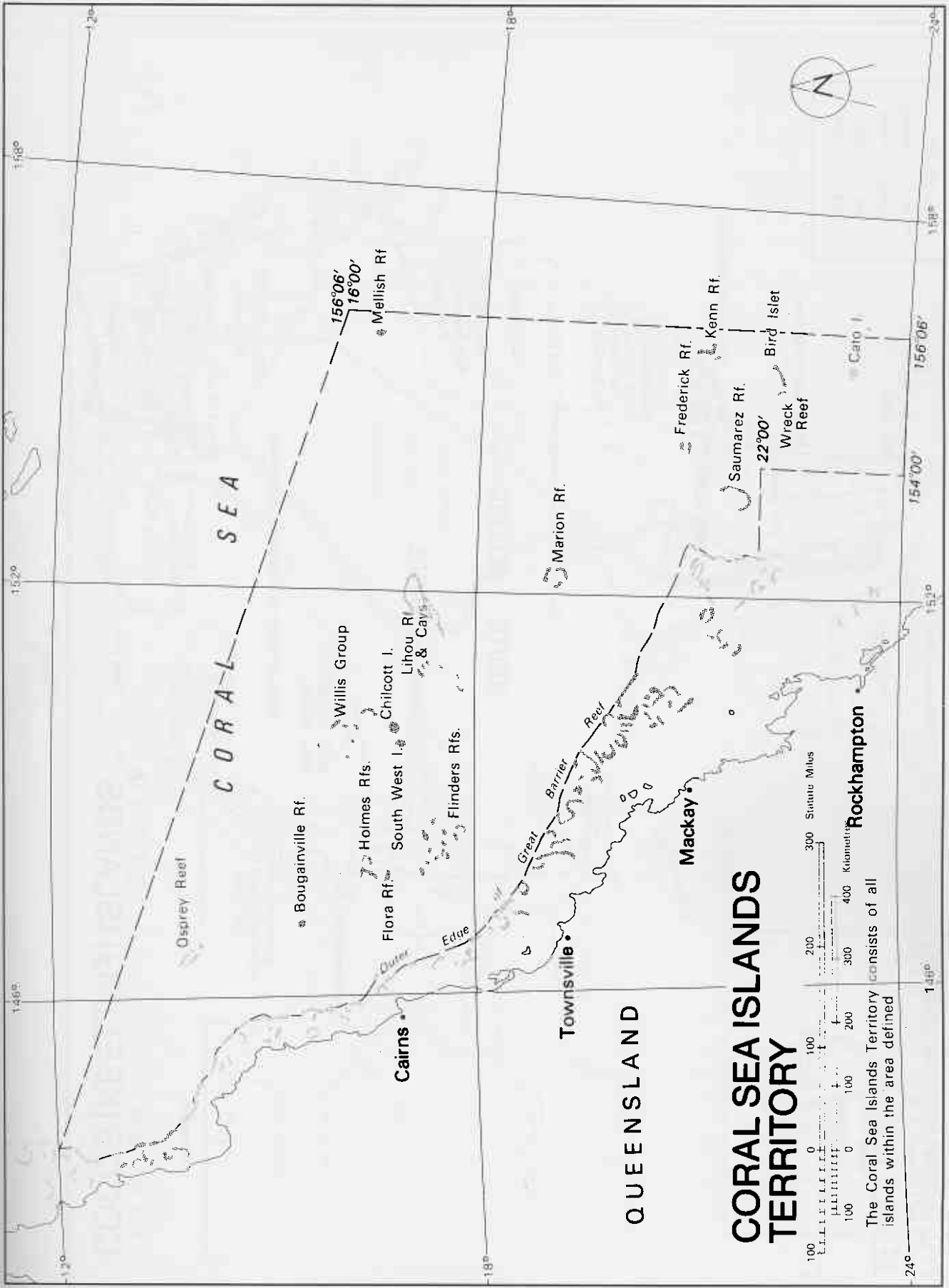
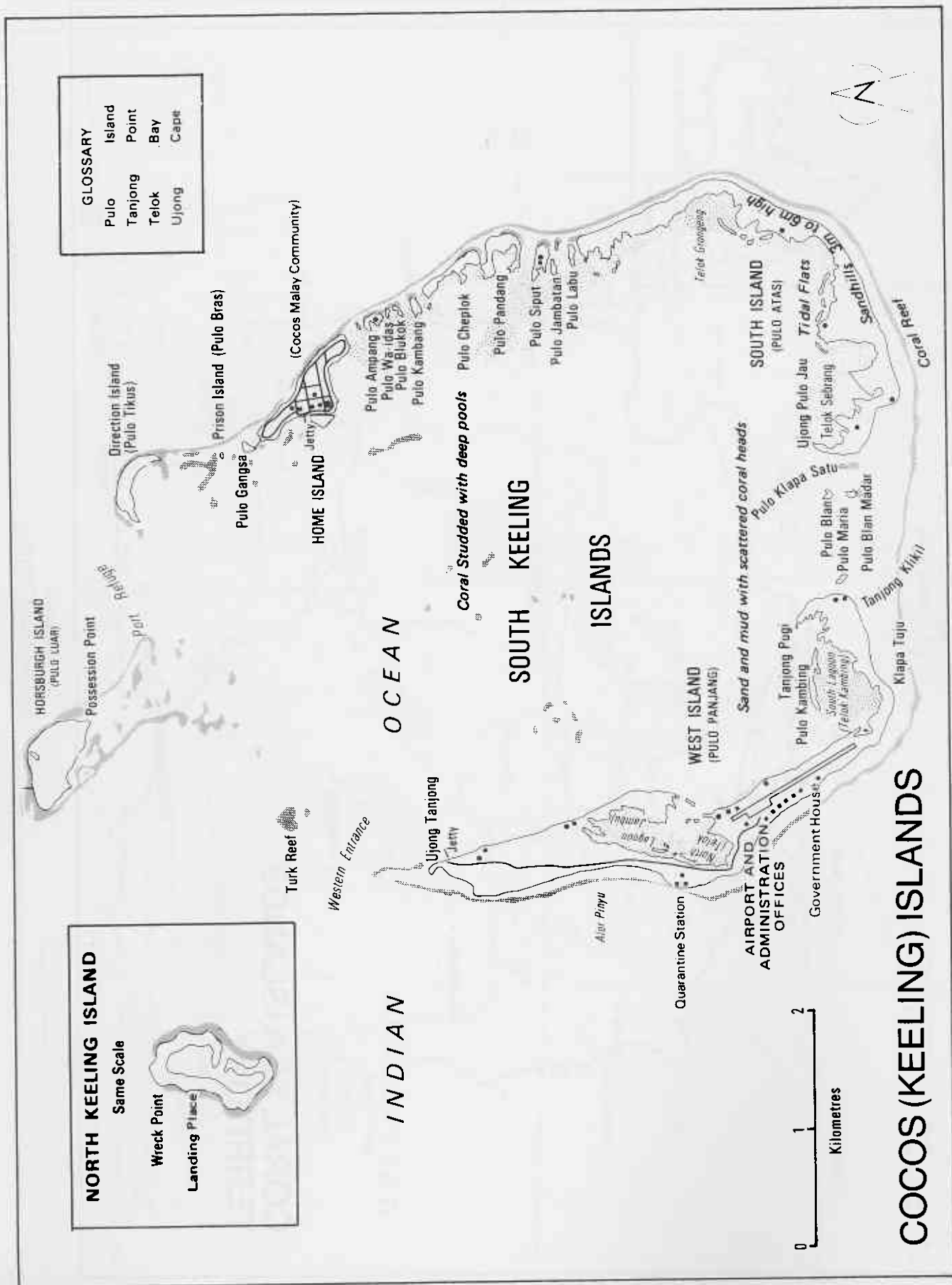


Figure 3  
 Territory of Norfolk Island.



**Figure 4**  
 Coral Sea Island Territory.



**Figure 5**  
Territory of Cocos (Keeling) Islands.



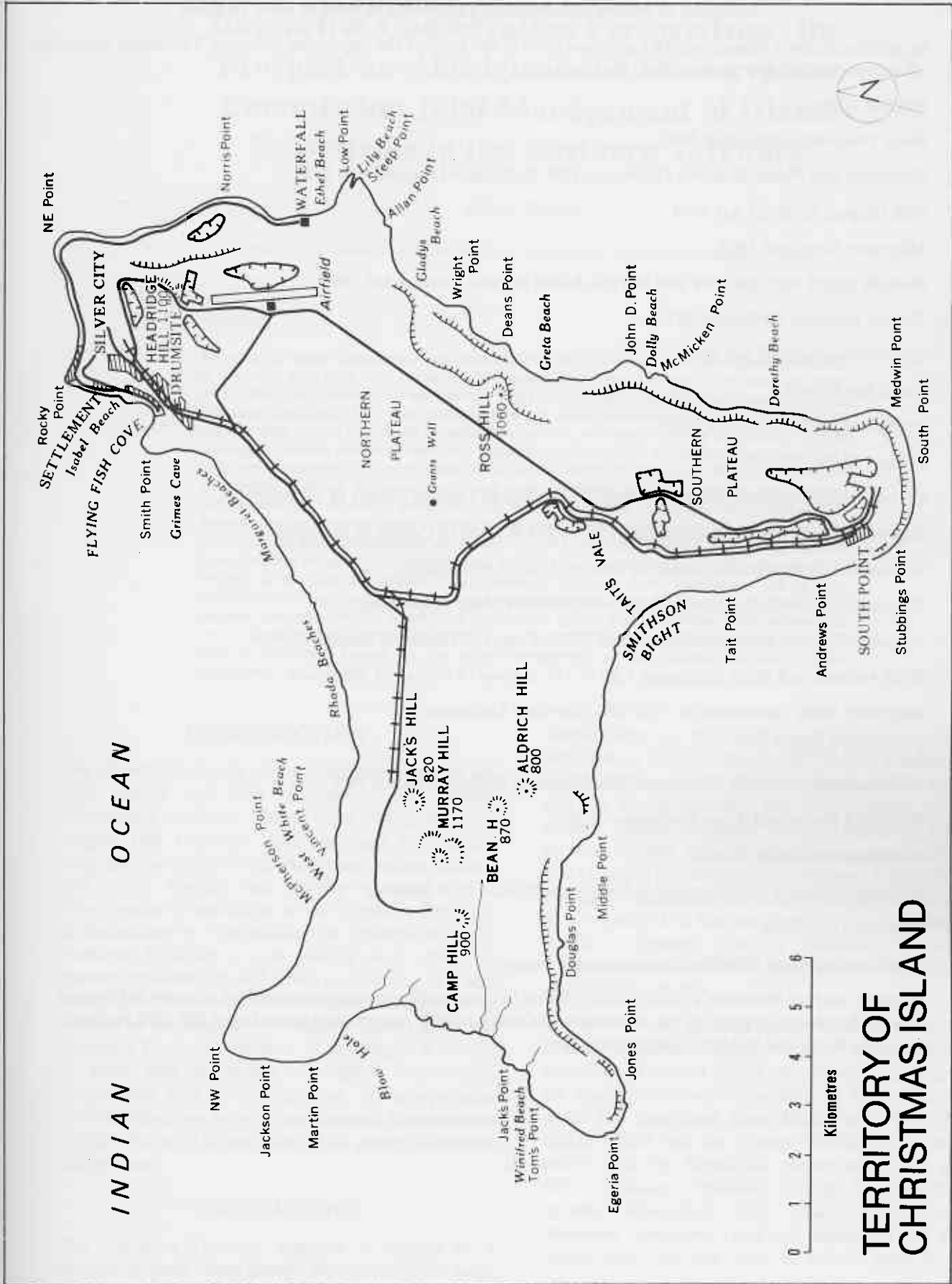


Figure 6  
Territory of Christmas Island.

## **Attachment 2**

### **Summary of Nature Conservation Legislation in force in each Territory**

In addition to the Commonwealth legislation cited in the body of the paper, the following Territorial legislation affords protection to a range of flora and fauna.

#### **Norfolk Island**

**Birds Protection Ordinance 1913**

**Commons and Public Reserves Ordinance 1936 Endangered Species Act 1980**

**Fish (Export Control) Act 1984**

**Migratory Birds Act 1980**

**Norfolk Island National Park and Norfolk Island Botanic Garden Act 1984**

**Timber Licences Ordinance 1913**

**Trees (Preservation) Act 1985**

#### **Coral Sea Islands**

**Migratory Birds Ordinance 1980**

#### **Cocos (Keeling) Islands**

**Crown Lands Encroachments Ordinance Ch No 245 of Laws of Colony of Singapore**

**Export of Plants (Control) Ordinance Ch No 233 of Laws of Colony of Singapore**

**Foreshores Ordinance Ch No 246 of Laws of Colony of Singapore**

**Nature Reserves Ordinance Ch No 235 of Laws of Colony of Singapore**

**Protected Places Ordinance Ch No 30 of 1955 of Laws of Colony of Singapore**

**Wild Animals and Birds Ordinance Ch No 238 of Laws of Colony of Singapore**

**Migratory Birds Ordinance No 1 of 1980 (Territory Ordinance)**

#### **Christmas Island**

**Wild Animals and Birds Ordinance 1958 Migratory Birds Ordinance 1980**

**Protected Places and Areas Ordinance 1955**

#### **Ashmore and Cartier Islands**

**Relevant Northern Territory laws in force as at 30 June 1978 include:**

**Fisheries Ordinance**

**Territory Parks and Wildlife Conservation Ordinance.**

However current Northern Territory laws relating to conservation matters are expected to apply in the near future when assent is given to the Ashmore and Cartier Islands Acceptance Amendment Bill 1985 eg the Territory Parks and Wildlife Conservation Act.