



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON ECONOMICS

Reference: Uranium Royalty (Northern Territory) Bill 2008

TUESDAY, 31 MARCH 2009

DARWIN

BY AUTHORITY OF THE SENATE

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**SENATE STANDING COMMITTEE ON
ECONOMICS**

Tuesday, 31 March 2009

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Bushby, Cameron, Furner, Joyce, Pratt and Xenophon

Substitute members: Senator Crossin to replace Senator Furner on 31 March, 1 April and 8 April 2009

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Crossin, Eggleston, Hurley, Joyce and Pratt

Terms of reference for the inquiry:

To inquire into and report on:

Uranium Royalty (Northern Territory) Bill 2008

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Committee met at 2.57 pm

CHAIR (Senator Hurley)—I declare open this first hearing of the Senate Standing Committee on Economics inquiry into the Uranium Royalty (Northern Territory) Bill 2008. On 4 December 2008, the Senate referred the provisions of the bill to the committee for inquiry and report by 30 April 2009. The bill seeks to apply a uniform royalty regime to all new mining projects in the Northern Territory, including those containing uranium and other designated substances such as thorium. This would be achieved by centrally mirroring the existing profit based mineral royalty regime under the Northern Territory's Mineral Royalty Act and applying it as Commonwealth law.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

[2.59 pm]

O'BRIEN, Mr Justin Jon Quentin, Executive Officer, Gundjeihmi Aboriginal Corporation

CHAIR—I welcome Mr O'Brien. Do you wish to make an opening statement?

Mr O'Brien—Yes, I do. Thank you, Senator. I am the executive officer of the Gundjeihmi Aboriginal Corporation, which is the royalty-receiving entity for the Ranger uranium mine. The Ranger uranium mine has been excluded from the provisions of this bill. That is an important thing to note upfront.

Our reasons for making a submission and giving evidence today are, basically, that we have a total of some 30 years experience with the ad valorem royalty regime that applies at Ranger and, frankly, we would like to share some of that experience with the Senate. I need to say at the outset, as our submission says, that this in no way means that the current position of the traditional owners in relation to the prospective Jabiluka uranium mine has changed. What I would like to do, rather than make a separate statement, is talk you through our submission and, brevity being the soul of wit, I will keep it as quick as possible.

Essentially, we are arguing that we would like to retain the existing arrangements, given that we have certainty over uncertainty in a range of areas. From our position, Aboriginal interests have a certain income stream from ad valorem arrangements—more certain than a profit based regime. The determination of profit is more transparent and certain under the ad valorem arrangements than tying our income to profit based royalty. We are also interested in the certainty of having companies with a strong balance sheet and a good environmental and community record mining such a strategic mineral as uranium. Something else that is not in the profit based royalty regime proposed is a recognition of the compensatory component, which is of great interest to traditional owners and currently met under a production based or ad valorem based royalty.

We make three brief recommendations at page 8 of our submission. They are: that the bill in its present form should not proceed; that an economic impact study should be conducted as to what effect this proposal would have on Aboriginal interests; and that there should be some evidence that the profit based regime would indeed lead to the expansion of uranium mining in the Territory. I do not think that that has been established; in fact, there may be some measures in the legislation that are prohibitive. Also, we recommend that the bill be amended to allow greater flexibility. One of the key things we have seen over time is the need for flexibility in these financial arrangements. You have that under an ad valorem regime compared to a profit based regime. I am open to any questions.

CHAIR—Thank you, Mr O'Brien. Does the corporation have any experience with non-uranium mines as well as the Ranger uranium mine?

Mr O'Brien—No, we have none—only for the mining of uranium.

CHAIR—You have concerns about the profit based royalty. Are you aware of any other problems there might be around the rest of the Territory with non-uranium mines of the nature that you are describing if uranium moves to profit based royalties?

Mr O'Brien—No, I have not dealt into those. It is in the context of the Ranger mine that we have addressed this submission.

CHAIR—Do you expect that other uranium mines will open up in lands where the corporation is involved?

Mr O'Brien—I can say that there is an aspiration on the part of Energy Resources of Australia to mine the Jabiluka deposit to the north of Ranger. It is similarly on Mirarr country and, therefore, within the ambit of the corporation. If this legislation were to proceed, that mine would fall under this legislation.

CHAIR—You are saying that the profit based regime would create uncertainty and not allow revenues to be received for some time after the start-up of the mine, until the mine was profit based. Would that not give more certainty in that you would know the mine is profitable at a certain level and much more likely to continue on that basis, rather than having a start-up and then not being profitable?

Mr O'Brien—No. There are a number of uncertainties that we concerned about. A key one is that there is no guarantee that there would be receipt of any revenue. There could be periods where a mine may experience difficulty due to a whole host of things to do with the running of its business—the price of its commodity or the expansion of its operations—which would alter the profit arrangements. That may lead to a period where the mine is not in profit. It may need to go through a major remediation exercise or replenishment of its equipment or capital items. All these would impact. We have the potential to have years of operational activity and no revenue coming in.

CHAIR—Are you aware of any non-uranium mines in the Territory where that has occurred?

Mr O'Brien—No, I am not. As I said, our submission has been in the context of Ranger only.

Senator JOYCE—In your opening address you talked about the miner having a good community record as one of the things you look at when you bring a mine in. On the issue of sovereign wealth funds that are fully owned by an overseas government, does that mean you look at the conduct of the government?

Mr O'Brien—I think not, to be honest. I think Aboriginal interests would be a lot more parochial. It would look at how they have worked with communities and the environment at mining sites.

Senator JOYCE—Throughout the world or just where you are?

Mr O'Brien—It would be throughout the world, yes. I think you would have to take that into account.

Senator JOYCE—You would take into account if it were a sovereign wealth fund because they are having a far greater influence now so that, as a fully owned entity of the government, you would have to actually look at the whole role of that government.

Mr O'Brien—That is right, but I think, also, there are parts of the government that would provide an appropriate check and balance on that as well.

Senator JOYCE—Which ones are they?

Mr O'Brien—I imagine the Foreign Investment Review Board and other parts of the government, broadly speaking, would take that on.

Senator JOYCE—You believe the Foreign Investment Review Board should look at the conduct of the government in its home country?

Mr O'Brien—What I am saying is that, when a company seeks to mine on Aboriginal land, the Aboriginal interests would look at whether or not they have a good environmental record and whether they have a good track record in communities. We would seek to look anywhere we could overseas to their other operations and any advice that is provided to people would be based on that research. That is the limit of the involvement that we could really have.

Senator JOYCE—But your check and balance on that—you have just stated it—would be the Foreign Investment Review Board.

Mr O'Brien—I am not sure. It is up to wiser heads than mine within government to determine whether or not sovereign wealth should be allowed in to mine something like uranium.

Senator JOYCE—Do you think they should? That is the question.

Mr O'Brien—It is not of interest to me. I have not come here to speak about that, Senator. It is a far more parochial interest that I have, to be honest.

Senator JOYCE—The Aboriginals Benefit Account is where a fair section of the royalty revenue goes. Is that correct?

Mr O'Brien—Some of those arrangements have changed, but it is still a fair portion. That is right. We receive 30 per cent.

Senator JOYCE—Who?

Mr O'Brien—The Gundjeihmi Aboriginal Corporation, as a local Aboriginal interest.

Senator JOYCE—How much goes to the Aboriginals Benefit Account?

Mr O'Brien—Per annum, I am not sure of the figure. The proportion is now in the order of the remainder of the funds. The legislation changed in 2006. Up until then I think 30 per cent

went to the ABTA, 40 per cent went to land councils and 30 per cent went to the local Indigenous interests.

Senator JOYCE—So 30 per cent goes to the Aboriginals Benefit Account?

Mr O'Brien—It used to. We need to check that figure, but 30 per cent definitely goes to the local Aboriginal interests. That is still the case.

Senator JOYCE—Do those local Aboriginal interests or the Aboriginals Benefit Account deal with issues such as homelessness in a place like Darwin?

Mr O'Brien—It could. I need to distinguish it from the local Aboriginal interest. The local Aboriginal interest is what it says—local Aboriginal people. An association representing them receives the funds. What the ABTA does with its money is its business.

Senator JOYCE—If people from that section of the community have made their way into town here, are they in any way, shape or form covered by the royalties?

Mr O'Brien—There has been a rejig of the whole regime since 2006. Our whole language around it has changed. We no longer refer to the income we provide to Aboriginal people as royalties but as financial assistance. People need to establish that they are in need of financial assistance and then we can provide that financial assistance. That meets the constitutional requirements of our corporation.

Senator JOYCE—Will that assistance find a person on the street in Darwin?

Mr O'Brien—Invariably not. It is more a local interest.

Senator JOYCE—Who has authority over where that money is spent?

Mr O'Brien—The board of directors of the corporation.

Senator JOYCE—Have they ever gone outside and found other members of the community who are living in town?

CHAIR—Senator Joyce, the terms of reference are this legislation and we seem to be—

Senator JOYCE—It is to do with royalties. I just want to know the benefit of royalties and where they are going.

Mr O'Brien—From time to time, yes. This is a royalty revenue that has been coming in for 30 years. For a long time, the former royalty-receiving entity, the Gagudju Association, did exactly what you were asking about. They funded the doctors, the clinic, the ambulance, a housing program and a nutrition program. They built schools et cetera. The Gagudju Association experienced some great financial difficulty. One of the reasons, in part, was the volatility of the royalty income. They did not manage that very well. We are currently renegotiating the Ranger agreement, and I imagine there would be some different arrangements around how royalties would be managed.

Senator JOYCE—The main interest of the Gagudju is the Ranger uranium mine; is that correct?

Mr O'Brien—That is correct. It was the Gagudju Association for many years. Now it is us.

Senator JOYCE—And the Ranger uranium mine is currently on an ad valorem of about 5.5 per cent; is that correct?

Mr O'Brien—Correct.

Senator JOYCE—Is there any discussion about going to a profit based royalty issue?

Mr O'Brien—No. In fact, Ranger is exempt from this proposed legislation.

Senator JOYCE—That royalty is 5.5 per cent on the—

Mr O'Brien—Revenue of the company.

Senator JOYCE—How do you ascertain the revenue of the company?

Mr O'Brien—It reports its revenue and its production, and the ad valorem rate is determined by Treasury or someone.

Senator JOYCE—How do you determine the authenticity of its revenue figure?

Mr O'Brien—It is pretty transparent because you can see the volume of its sales, the rate of its production and the quantity of its sales. So you just work out 5½ per cent.

Senator JOYCE—I grant you that, but how do you work out the authenticity?

Mr O'Brien—We should receive 30 per cent of 4¼ per cent of revenue.

Senator JOYCE—Let us say there is an arrangement in the future where they are actually selling it to another juncture of their own company. How would you be able to determine if there was a query over the authenticity of the revenue number that they were trying to avoid by reason of transfer pricing or issues such as that?

Mr O'Brien—I think it is fairly clear at the moment what their revenue is. The question is not what profit they made but what their revenue is. It is easier to determine revenue than to determine profit.

Senator JOYCE—Let us say we sold the uranium for \$10 a tonne. How would you query it and say, 'We should have got more than that'?

Mr O'Brien—I would have to speak to the Australian government, the Northern Land Council, or hire an economist to do an assessment of it.

Senator JOYCE—Would you expect them to then take that company to court?

Mr O'Brien—Depending on what they found. I do not see why there would be a court involved.

Senator JOYCE—This is all about ad valorem or profit based. If they say, 'We are transferring the money out. We are digging up the ore. We are only getting \$20 a tonne for it'—I do not know what it is worth, but if you say, 'On the market it is worth \$300 a tonne,' and they say, 'Well, we are only getting \$30 for ours,' how are you going to find a dispute resolution process for that?

Mr O'Brien—They would be in breach of the Ranger uranium mine agreement. The Australian government would have to—

Senator JOYCE—What section of the Ranger uranium mine agreement would they be in breach of?

Mr O'Brien—The finance section, whatever that is.

Senator JOYCE—So you are in a bit of a tangle if they actually have the capacity to sell—

Mr O'Brien—Under an ad valorem system, it is not so much a question when it is revenue based.

Senator JOYCE—It is if they determine the price at which they are buying it off themselves.

Mr O'Brien—It is a far greater concern if it is a profit based royalty regime for us, because the determination of profit can be so easily manipulated.

Senator JOYCE—If they are selling it to another juncture of their own company, they can just tell you, 'This is the money we're getting.' They can show you the books to prove it, but because they have corrupted the price there is nothing you can do about.

Mr O'Brien—There are other things that go into the ad valorem royalty regime. They have to report on how many tonnes they have moved, how much they have sold, and based on the total revenue of the company we can then make that determination.

Senator JOYCE—They have extracted 1,000 tonnes; they have sold it to another company of their own name; they have said, 'This is the revenue we've got. There it is.' What are you going to do about it?

Mr O'Brien—Short of investigation, we might not know that that is happening.

Senator JOYCE—What portion of the reasonably assured resources is in your district? Australia has about 36 per cent of the reasonably assured resource of uranium. What portion of that is associated with Ranger and associated with sites proximate to Ranger?

Mr O'Brien—I could not tell you, Senator.

Senator JOYCE—What year value—years in life—are in front of that?

Mr O'Brien—The current proposal is that the mining activity at Ranger ends in 2021.

Senator JOYCE—And the community is on side with uranium mining?

Mr O'Brien—It is not a matter of being on side or not. It is a reality of the region, and there you have it.

Senator JOYCE—Is it a reality they can stop if they wish to?

Mr O'Brien—There is a thing called the Jabiluka Long-Term Care and Maintenance Agreement. You should know that the Ranger uranium mine was facilitated via the removal of the Aboriginal veto from the Aboriginal land rights bill in 1976. A last-minute amendment removed the veto of the traditional owners, so there was never any stopping it. This is a mine that received export contracts during the caretaker period of the McMahon government. At no point were Aboriginal people given any say over it. What we have done is to establish that, if mining is to proceed, it will proceed with serious Aboriginal involvement.

Senator JOYCE—But can you stop it if it does not?

Mr O'Brien—So what we did was enter into a long-term care and maintenance agreement which says there will be no mining at Jabiluka until there is written consent from the Northern Land Council and from the Mirarr traditional owners. The mining company has signed that. The Australian government have sanctioned it and so has the Northern Territory government. They have all done the right thing. They have put the traditional owners in the driving seat so that their future—

Senator JOYCE—Can they stop it?

Mr O'Brien—It is a veto over development, Senator, yes.

Senator EGGLESTON—Mr O'Brien, there is a lot of mining done in the Northern Territory, I gather. Would you agree with that?

Mr O'Brien—There is, but not a whole lot really, compared to other places. But I am here to talk about Ranger, I need to say.

Senator EGGLESTON—But there is a lot of mining done for a lot of other minerals in the Northern Territory and, as I understand it, they are going to be paying royalties under a profit basis. Is that not the case?

Mr O'Brien—'They'?

Senator EGGLESTON—The other minerals.

Mr O'Brien—I think that is already the case.

Senator EGGLESTON—It is already the case?

Mr O'Brien—Yes, for non-uranium mines.

Senator EGGLESTON—I see this as sort of a rational step forward, to bring all the mining under the same regime in the Northern Territory. I wonder why you would argue that uranium has to be treated differently to other minerals in this area.

Mr O'Brien—Because it is an important strategic mineral. Our interests are parochial. The ad valorem royalty regime at Ranger, notwithstanding the great volatility of receipts in Kakadu that we have experienced over 30 years, has provided some buffer against the vicissitudes of profit of the business over the years. Also, it is important to know that it is a major decision for Aboriginal people to allow mining on their country, and they normally will do that in exchange for a benefit.

Senator EGGLESTON—I know about that in the Pilbara.

Mr O'Brien—If that benefit is delayed then it can act as a disincentive.

Senator EGGLESTON—Are there other minerals for which you are receiving mining royalties?

Mr O'Brien—No.

Senator EGGLESTON—Are there other Aboriginal groups in the Northern Territory who are receiving royalties from mineral operations other than uranium?

Mr O'Brien—I imagine some may be. It depends whether they are operating on Aboriginal land or whether they are pre-Aboriginal land rights. I am only here to talk about Ranger.

Senator EGGLESTON—By implication, there could well be other Aboriginal land groups who do have mines on their territory and are receiving royalties, I would think. That is not an unreasonable point of view, I would imagine.

Mr O'Brien—There might be. The majority of royalties derived from mining on Aboriginal land would come from mines like Ranger and Gove.

Senator EGGLESTON—Gove is not a uranium mine, as I understand it.

Mr O'Brien—No, it is a non-uranium mine.

Senator EGGLESTON—On what basis are the royalties paid at Groote Eylandt and Gove?

Mr O'Brien—I imagine it would be under the Northern Territory's profit based royalty regime of an 18 per cent profit. So in lean years there may be no receipt of income to the Aboriginal interests.

Senator EGGLESTON—That is a system which is being applied to all minerals. As I said before, it is hard to understand why uranium should be treated differently. I agree with what has been said in your submission and other submissions about the possibility for clever accounting disguising profits. But you can isolate an operating profit, I would have thought, from a particular mine which might be subsumed in the overall accounts of a larger company, could you not?

Mr O'Brien—I do not follow, Senator.

Senator EGGLESTON—If you had one mine that was owned—we will call it mine A—by international mining company R and the accounts of mine A could be included in the overall financial statement of the overarching international mining operation, that money might be traded off against other operations so that the net profit of the holding company might not mean that you receive royalties but nevertheless you could still identify an operating profit for mine A.

Mr O'Brien—I imagine you could do that, yes.

Senator EGGLESTON—Yes. So I would have thought it would be possible to get around clever accounting and identify profits in a local mining operation.

Mr O'Brien—I do not think it is just the involvement of what you have described as company R that would lead to such clever accounting, as you call it. Determination of profit at the particular business is a concern as well.

Senator EGGLESTON—That is what I mean. Surely you can identify that profit from the local accounts.

Mr O'Brien—Yes, and sometimes that profit will be impacted by changes over the mine life. There are a host of activities that could impact upon the profitability of the mine. That would in turn reduce the net income to Aboriginal people.

Senator EGGLESTON—What you seem to be opposing is the system which will apply across the board. You want to retain the system which you have, I gather, because you are exempt from this new legislation anyway.

Mr O'Brien—That is right.

Senator EGGLESTON—I do not quite understand your concern on that basis, because you are not affected by this legislation.

Mr O'Brien—I think it is important to know that the ad valorem royalty regime provides guarantees that the profit based system does not. The profit based system, you may find, does not facilitate or remove the impediments that are ostensibly there. It may be counterproductive. It is really with no political imperative in mind that I am here today. I really do not need to be here. We did not have to give this submission. But I genuinely think that you need to rethink it and put it under a bit more scrutiny than you have to date.

Senator EGGLESTON—So you are opposing the total policy even though it is now in place for other minerals?

Mr O'Brien—In relation to uranium mining, our recommendation is that you conduct a proper impact study on what effect this will have on Aboriginal interests and, if it is adverse, how you might seek to ameliorate those impacts.

Senator EGGLESTON—But surely other mineral royalties could, by your argument, adversely impact on Aboriginal interests just as much.

Mr O'Brien—They may have. I can only speak for uranium in that region.

Senator EGGLESTON—But other minerals are accepting this kind of new regime.

Mr O'Brien—They are not accepting this new regime. It has been in place a while and I do not know whether anyone was given a choice, to be honest.

Senator CROSSIN—Good afternoon, Mr O'Brien. Can I just get you to expand on whether you have looked at the ad valorem regime versus the profit based regime and what regime you believe provides the best overall financial return to Indigenous people.

Mr O'Brien—We have not done a detailed assessment, which is one of the reasons we are recommending that be done by government. I can say that in relation to what best serves Indigenous interests we assume that a guaranteed income stream and payments early, rather than when a mine turns to profit, would be advantageous to Aboriginal interests. That is the base from which we are operating, as well as the general certainty that you have less marginal mining and more robust companies in this sector.

Senator CROSSIN—So you would put to us that under an ad valorem scheme you would get a guaranteed payment each year, as opposed to a profit based regime, which would fluctuate depending on how well the mine is doing?

Mr O'Brien—Correct, but I need to say that in our submission, at page 3 or so, we provide a figure—the value is removed because of the public nature of this—that shows the volatility of the current regime. It is extremely volatile at the moment. Our contention, though—and we have some work beginning on this—is that it would be exacerbated significantly if the Aboriginal interest were tied to profits and only profits.

Senator CROSSIN—You are putting to us that, while it might be administratively easier to sign up to this regime—because, as Senator Eggleston said, it is a regime that applies to all metals in the Territory other than uranium and the Northern Territory Treasury already does it, so they would not have to learn a new system—at the end of the day, you would want the government to convince you and other Aboriginal groups that we are actually moving to a system that would benefit Indigenous people and their returns rather than perhaps disadvantage them?

Mr O'Brien—That is correct. Also, just to clarify, it would not be administratively easier for us. It would place a significant administrative burden on us to determine whether the profit that

has been reported by a company and therefore its 18 per cent to the Aboriginal interest is in fact accurate. The larger the business, the more complex that is.

Senator CROSSIN—I will just go to that in a minute. If, at some stage, Jabiluka were ever mined, I am assuming it would be under this new regime. So you might have a situation where you have two mines out at Jabiru getting royalties by two different means.

Mr O'Brien—Correct.

Senator CROSSIN—All right. You make a statement that determination of profit is easily manipulated.

Mr O'Brien—I do not want to sound particularly like I think people would have malice aforethought, but the scope to manipulate is so much greater.

Senator CROSSIN—We see that with management investment schemes a la Tiwi Islands, where cost is basically deducted and the cost of the operation is never well controlled or regulated. Are you saying that if we went to this scheme there are not enough safeguards in this to make sure that the profits are not manipulated either? Is that right?

Mr O'Brien—That, and the fact that an ad valorem royalty regime is much more transparent.

Senator CROSSIN—Okay. Thank you.

CHAIR—Can I just clarify. It is not that it is uranium mining that is the problem, as such, as compared to any other minerals; it is just that you would prefer to see the whole mineral industry go on an ad valorem basis. Is that what you are saying?

Mr O'Brien—That is correct. However, I think it is important to note that uranium has a strategic quality about it that other minerals do not, and that, I think, lends itself to greater caution in the selection of companies that are mining it.

Senator JOYCE—Mr O'Brien, in your duty of stewardship, when do you believe a uranium mine is no longer a uranium mine but some other type of mine?

Mr O'Brien—I do not follow your question. Sorry, Senator.

Senator JOYCE—What portion of uranium do you have to be getting out a mine for it to be a uranium mine?

Mr O'Brien—I guess the majority portion.

Senator JOYCE—Majority in quantity or majority in price?

Mr O'Brien—Our interest is in the volume of dirt moved, really.

Senator JOYCE—The volume of dirt.

Mr O'Brien—Yes.

Senator JOYCE—So, if I have some sort of polymetallic uranium mine, when does this mine become not a uranium mine but some other type of mine? Do I get to a point where I measure the value of the other minerals or the quantity of the other minerals?

Mr O'Brien—I do not know what bearing this has on our submission here.

Senator JOYCE—Huge, because we are talking about uranium mines, which want to be maintained with an ad valorem principle, while other mines are under the profit based principle. I just want to know when a mine is no longer a uranium mine.

Mr O'Brien—Are you talking about the Jabiluka mine and the fact that there are other metals to be gained there?

Senator JOYCE—I am interested in your own view.

Mr O'Brien—I am not sure exactly where you are driving, but I would think that the majority mineral derived from an operation.

Senator JOYCE—The majority mineral—thank you.

CHAIR—Thank you, Mr O'Brien, for coming in and talking to your submission. It is much appreciated.

Mr O'Brien—I hope it was helpful.

Senator JOYCE—It was.

Proceedings suspended from 3.32 pm to 3.47 pm

JACKSON, Miss Donna, Co-Chair, Australian Nuclear Free Alliance

SWEENEY, Mr Dave, Nuclear Campaigner, Australian Conservation Foundation

CHAIR—Welcome. Do you have an opening statement that you would like to make?

Miss Jackson—Yes. I just wanted, firstly, to thank the senators for inviting ANFA to speak today. You will probably notice that in the ANFA submission there is quite a bit of discussion about the whole uranium mining process—it is not just highlighting the royalties issues. Given that today's hearing is specifically about the royalties regime, you could probably just read that as background. Essentially, our main point is that we feel that the royalties regime should be profit based, as we say in our submission. That means that companies cannot be encouraged or tempted to put profits into shelf companies and therefore pay little to no royalties to the traditional owners or the government. Also, we are seeking a percentage to be put away for independent monitoring. Specifically on the independent monitoring, we are seeking a human health check on people who live around mines before they actually begin, and then continued monitoring independently of the government and the mining companies so that we and people on the ground who may be affected by the uranium mines can access independent information about the actual health effects from uranium mining.

CHAIR—You are saying that companies could arrange business so that they pay little or no royalties through various measures. Do you have any indication that that is happening with non-uranium royalties at the moment?

Miss Jackson—Yes. The example I have been made aware of is the Xstrata mine in McArthur River. During the publications of information in the newspapers et cetera about what was going on at McArthur River and the question about the expansion, it got leaked to the press from a public servant that, in fact, the Northern Territory government was not receiving the full amount of money from the mine because the largest percentage of it was actually going off to a shelf company, so the mine could legally say they were not gaining any profits and therefore not have to pay the royalties.

CHAIR—Sorry, I omitted to ask Mr Sweeney if he has an opening statement as well.

Mr Sweeney—ACF welcome the opportunity to be here, because we very much note that the committee has made a real attempt to engage with Northern Territory based environmental organisations. We welcome and appreciate that. We also think that, although this is a Territory specific piece of legislation, there is a range of questions here that have national implications and it is appropriate that there is a national perspective brought from an environmental organisation. We do not believe the rationale for the bill has been proven. We are not aware of, or have not seen, cases where a uranium mine has fallen over in the Northern Territory because of uncertainty over royalty streams. We believe there are industry issues that are far more pressing for review by the Senate and the Australian parliament than this one—regulatory compliance, the implementation of existing recommendations and the broader question of Indigenous outcomes from involvement with the uranium and wider mining sector, for example.

We believe the legislation overemphasises industry views and imperatives. It has been driven by the uranium industry framework, which is an unrepresentative organisation or body. It prioritises industry access and industry certainty over a wider range of environmental, social, Indigenous and economic outcomes. We believe the preferred model that is presented—that is, the profit model that is presented in the draft legislation—is administratively complex. It is open to wide variation and potential avoidance.

We believe that there is a case whereby uranium is a unique mineral. There is a unique strategic dimension. There is a unique regulatory and administrative dimension. There is a unique jurisdictional dimension. We also believe that no other mineral is linked to proliferation in security issues or responsible for waste generation issues to the extent that the uranium industry is, and there is a community expectation. We believe there is an urgent need for a comprehensive review and enhancement of the regulations that apply to the uranium sector nationally as well as in the NT. We believe that that is evidenced by the situation happening now with the uncontrolled leakage of 100,000 litres of uranium tailings each and every day at Energy Resources of Australia's operating mine at Ranger in Kakadu. And we believe that there are problems elsewhere. We believe there is an urgent need for the implementation of the 2003 ECITA Senate inquiry recommendations into this sector.

In relation to the big picture of this legislation, we believe that mining agreements across the board, not just uranium agreements, have failed to address Indigenous disadvantage and address systematic, systemic and unacceptable Indigenous rates of poverty in this country. ACF points the committee to the recommendations in the report of the Native Title Payments Working Group, which found that of the hundreds of mining agreements in Australia at present only 12 have delivered substantial benefit to Indigenous communities. That working group has said that there should be, after 15 years of native title legislation, a dedicated inquiry into the failure of the mining industry to engage in a way that meaningfully leaves long-term economic and social benefit for Aboriginal Australia. ACF strongly supports that view.

We believe that mining operations, profits, companies—even the long ones, even the big ones—are short lived, yet the social and environmental impacts of uranium mining are very long lived. There is a legal obligation, under Commonwealth regulation in the operating licence that governs operations at Ranger, for the company to maintain and isolate its tailings from the wider Kakadu environment for 10,000 years. Now, it is an extraordinarily long period of time. It is an indication of the severity of the problem. We do not believe the company has either the capacity or the ability. We do not believe we have the political or social institutions to guarantee that. How do you monitor compliance in 4,500 years time? But it shows the length of time, at least, and we welcome that fact—short-term results; long-term problems and consequences.

In conclusion, in the second reading speech that was given and in the speeches in the federal House it was very clear that this legislation is to facilitate an expansion of this sector in the Northern Territory. Proponents of the uranium industry maintain that it is done in an environmentally responsible fashion with limited adverse impact. They say that it brings considerable benefit to the poorest sector of Australian society. Well, ACF and many other organisations strongly contest this. Many people in the Australian community strongly contest this. We believe this is a high-risk, high-cost industry. It is a contested, controversial and contaminating industry.

We believe this legislation is deficient in rationale, and its intent is highly selective. It could, but fails to, address the real issues and the long-term important issues that should be covered in any consideration of the expansion of this industry—long-term questions of protection and benefit for Indigenous communities; stakeholder confidence in regulatory effectiveness and corporate responsibility, accountability, capacity and credibility; and long-term protection and environmental assurance. These are the key issues that directly impede on the growth of this sector, and we believe they are not dealt with at all—or at best in a most limited fashion—in this draft legislation.

CHAIR—Miss Jackson, if we could go back to what you were talking about with the arrangement of business. The Environment Centre Northern Territory included an article from the *Northern Territory News* of 24 October 2007 that said:

McArthur River zinc miner Xstrata this year paid royalties to the NT for the first time since opening in 1995 as part of a deal to allow a \$110 million mine expansion.

The economist—

who apparently did not wish to be named—

said foreign-owned companies can minimise royalties and taxes by selling minerals at a discount to an offshore parent company—reducing their profit base.

Is that the same thing you are referring to?

Miss Jackson—That is precisely it.

CHAIR—Has there been any action taken about Xstrata's claimed hiding of their profit?

Miss Jackson—My understanding is that it is a legal arrangement. If they are able to put the profits into a shelf company and not show profits in the main company, then they have to pay less than what they would have if the royalties were profit based rather than volume based.

CHAIR—To which shelf company are they paying their profits?

Miss Jackson—I am not sure of those details.

CHAIR—Is this report the basis of what you are saying or do you have other information about that?

Miss Jackson—No. That was something I personally was not aware of in the past. I assumed that all mining companies were paying royalties out of whatever profits they made. I was not aware that they were able to actually shelf those profits and then pay little to no royalties.

CHAIR—Were you relying on this report for your information or do you have other information?

Miss Jackson—I just understand that that is the regime that exists now. Mr Ferguson, in his second reading speech in parliament, said that he would like this bill to do this by mirroring the existing profit based mineral royalties regime under the Northern Territory Mineral Royalty Act. When I read that I was concerned that the set-up would be similar to what happened with Xstrata—the money going off to a shelf company and the profits not actually being on the books. Therefore, they would not have to pay out to the government or to the traditional owners.

Senator EGGLESTON—This issue of being able to hide profits is a little bit blurred. I would have thought that any subsidiary company would still have to pay tax in Australia. Would you agree with that?

Miss Jackson—I would hope so.

Senator EGGLESTON—Yes, indeed. Part of the tax return of the overall umbrella company would include reporting on the financial status of the subsidiary, would it not?

Miss Jackson—I am not aware of that. I do not have that information.

Senator EGGLESTON—I am sure it does in fact, because that is how the tax man works. He likes to see what every little business is making within an overall company. In fact, it would be fairly easy to determine the profitability of an individual uranium mine, even if it was owned by an umbrella company. I would not have thought that there is any real reason to be concerned that profits could be hidden. If there were profits there, and the law required that royalties be paid on the profits of the individual mining operation, then that law, I would have thought, would have to be complied with.

Miss Jackson—I agree, Senator. I would have thought that as well. But when I became aware that Xstrata was able to operate in this manner, and when I read that Mr Ferguson wants this draft legislation to mirror those existing royalty based payments, I was concerned to make sure that it is volume based, not profit based.

Senator EGGLESTON—We have gone through those questions and you agreeing that the mining company would have to present its figures and a profit would have to be identified. That surely could be the basis of the impost of royalties. I do not see that there is a problem there. I think the Xstrata example you are quoting is a clouding of that basic issue—that the subsidiary company would have to declare its financial status and its profits would be obvious and the government could levy royalties accordingly. I think this is a bit of a red herring, in fact.

Mr Sweeney—I do not necessarily think it is a red herring. We have a situation where a significant company has not paid royalties to the Northern Territory government for a period of over a decade. I am not here as a financial expert—that is not my position today—but it strikes me that there are two areas where this could happen. One is on the sales side, and it strikes me that the check and balance that you are putting forward is a reasonable one, but it is a reasonable one so long as the company that one is selling to is based in Australia and subject to Australian law and taxation principles. If the company is based offshore, that could be a different matter. It could confuse things and complicate things. In an increasingly globalised world that is how it happens, I would imagine. So there is that sales dimension.

The other dimension is the cost dimension of profitability. It is very complex to measure the full suite of costs in any extensive mining operation, as you would be aware. There is considerable room for movement—hedging, fudging and avoidance—in that process. I suppose one of the complexities there is the capacity of an Indigenous organisation, a representative body, to do that tracking. And what sort of capacity and what sort of political will, as well as regulatory capacity, does the Northern Territory Treasury have to do those things? These are complicating factors. We are not saying it will always be the case, but we are saying that there is a higher potential likelihood of it happening in a profit based system than in an ad valorem system.

Senator EGGLESTON—But, with respect, the government is also getting royalties. I assure you governments would make sure they knew how much profit these companies were making, because royalties are important as an income stream to government. I understand that there are other mineral developments in the Northern Territory. There is a bauxite mine; there is a manganese mine here, of course; there is McArthur River, which is zinc; there are gold mines. All of these minerals, as I understand it, are taxed or pay royalties on a profits basis. I really do not see why that principle, if that is the principle this government has adopted, should not be applied to all minerals, including uranium. I do not follow the argument for an exemption when it comes to a simple matter of royalties on mineral extraction.

Mr Sweeney—The issue comes to a wider issue of Indigenous benefit, and that is the point from the ACF. ACF is not coming from a perspective of wanting to engage in a base line rally over the pros and cons of ad valorem versus profit based royalty regimes. Our perspective is a broader one, as I outlined in my initial comments, in relation to this legislation, because this legislation is being put forward as a way to address Indigenous disadvantage.

Senator EGGLESTON—Yes.

Mr Sweeney—And that is something that I am sure everyone in this room agrees needs to happen. It is something that everyone in this room would say we should have done a long time ago, and it is something that certainly ACF is organisationally deeply committed to achieving. We do not believe, though, that this is the way that happens—not from some ideological ground that we are hostile to the mining sector. We do not believe it because the reality is that the most detailed recent independent cross-sectoral look in the last decade has come up with a very strong, cogent and compelling case that it is not working. Mining agreements are not delivering long-term social or economic benefit to Indigenous people. Rather than mirroring what is not working now, this legislation is an opportunity for a circuit-breaker to look, in a bipartisan way, at why this major sector is not delivering and how we can assist it and assist, more importantly, in the development of regional economies that are sustainable and equitable.

Senator EGGLESTON—I have just had a look at the Northern Land Council submission and they support the bill, saying that both systems will provide similar quantities of royalties to Aboriginal communities over a long time period. So I find your argument—which appears to be that there is no benefit to Indigenous communities from gold, bauxite, manganese, iron or other mining which is paying royalties on a profit basis and that there is only a benefit from ad valorem—is just not a valid argument.

Mr Sweeney—I need to clarify. Perhaps it was my lack of clarity. That is not my argument. My argument in relation to—

Senator EGGLESTON—But that is the implication of your argument.

Mr Sweeney—No. Let me be explicit. I do not want to imply; I want to be explicit. I want to address this. I want to see the mining industry deliver positive benefits. If we are going to expand an industry which is deeply contested and has a very significant environmental and security footprint here and overseas, I want to see that we do that. The rationale for doing that is a genuine, robust, fair-dinkum debate. I want to see that rather than as a set of assumptions that are moving forward.

The view of the ACF is that the Northern Land Council's submission is in relation to this draft legislation that has been put up through the uranium industry framework. It would be interesting, when the Northern Land Council present tomorrow, to ask them their view on the *Native title payments working group report*. It would be interesting to ask them a broader question as to whether mining agreements are delivering and how they could be improved and whether the NLC would support, like other Indigenous representative bodies, a dedicated inquiry into the current status of and the options for improving outcomes from mining agreements. It would be interesting to ask the Northern Land Council what they think of the work of Ciaran O'Faircheallaigh quoted extensively in the ACF report. These are the issues, not profit versus ad valorem. It is not like ad valorem is some holy grail to the environment movement. It is not at all. We believe it is more transparent, more reliable, easier to gauge and measure and quantify than a profit based system. Ultimately, if the system is not delivering now, we need to address it. Rather than mirroring what is not working, this is an opportunity to address it. That is our argument—not a defence of the ad valorem system.

Senator EGGLESTON—One could only conclude from the fact that they have introduced this new system that the Northern Territory government obviously does not agree with you. Thank you.

Senator JOYCE—Mr Sweeney, the price for uranium, U308, is around about \$95 a pound. How are we going to deal with the issue when a company says, 'We're company A in Australia and we're company B somewhere else,' say, in China. 'We're both 100 per cent owned by the same entity,' which is the People's Republic of China, 'and they're more inclined to look at our price of transfer being around the 2001 level,' which was about \$15 a pound? What would be the dispute resolution process that people would have to pursue to fix that up, either through the ad valorem process or through the profit based process?

Mr Sweeney—That is an interesting question. You asked a comparable sort of question of the representative from Gundjeihmi, and you asked, 'Would you look at the performance of that country?'

Senator JOYCE—Yes. The quote was 'good community record'. So would you look at the good community record?

Mr Sweeney—Senators might be aware that there is another inquiry being conducted at the moment by the Joint Standing Committee on Treaties, which is looking at the non-proliferation dimensions of Australia's nuclear agreements. It is a diversion, but I will get there, Senator.

Senator JOYCE—Yes.

Mr Sweeney—What ACF is arguing there is that, when it comes to selling uranium, yes we should look at the track record of who we are selling to. We should not be selling to Russia; we should not be selling to China. We should be checking the conduct and the global citizen record of the countries we sell this material to, because it is a pretty special, unique material.

It would be a similar issue in relation to ownership, and it would be a similar issue across a range of corporations. We tracked Rio Tinto across a range of global operations when they moved to take over the majority shareholding in ERA early this decade. So we believe that, yes, there needs to be important compliance, transparency and scrutiny of these things.

What are the mechanisms? I am not sure. If the companies are not fully owned, if they are a structure like ERA and Rio Tinto, there could be a mechanism whereby there is some recourse gained by the junior shareholders saying that the company is not reflecting its fiduciary duty in maximising shareholder value and it is in fact favouring the parent company. There could be some recourse like that. There might be some more administrative or institutional recourse. I really am not sure, but I think they are important questions.

Senator JOYCE—If you were dealing with a sovereign wealth fund do you think this position of recourse could have diplomatic issues?

Mr Sweeney—It could have diplomatic issues. When we raised the issue of 'let's not sell uranium to Russia because of Russia's track record,' because Russia threatened earlier this year to use nuclear weapons on Poland—not really civil behaviour—people jumped up and said, 'Well, what about the diplomatic fallout?' We are more concerned about the radioactive fallout than the diplomatic one.

Senator JOYCE—And there was diplomatic fallout on that, actually, with regard to the sale of kangaroo meat to Russia. You were talking about the royalties. What benefits have you seen? You state on page 48 of your report:

Aboriginal communities have extremely limited ability to say no to mining developments on their country.

Are you saying that their capacity to stop a project is basically, by reason, not there?

Mr Sweeney—Yes. It exists in relation to land that is under the Northern Territory land rights act. There is a veto provision, and that veto provision was severely weakened subsequent to amendments in 1987. There used to be a twofold process. Traditional owners would be asked whether they agreed to what was called 'look around' or exploration. If they did, a company would explore. If that company later found something and wanted to exploit it, they would have to go back to the traditional owners for another set of consultations and ask, 'Do you agree to mining?' Traditional owners could say no to mining.

That was changed, unfortunately, in 1987—a very retrograde step—again to facilitate industry certainty. What it means now is that if traditional owners under the land rights act say yes to exploration, they can no longer at a later date say no to mining. We think it is absurd. We think it is improper to put that sort of weighting at the front end of a process. It is against the principles of natural justice. That is on the land rights act, and that is as good as it gets. The land rights act is as good as it gets for Aboriginal consent in Australia. It is the high water mark, and it is pretty low. If you take it a step further and you look at most Australian land which is under native title, there is no veto mechanism for traditional owners. You are either in or you are out.

Senator JOYCE—You referred in your submission to section 38 of the Native Title Act, and you are saying that in discussions with the tribunal you cannot go to anything that is quantified by recourse under payment, for money. Is that correct?

Mr Sweeney—It was not my comment, actually. We were quoting comments by Noel Pearson in relation to that. Noel Pearson was looking at the standing of section 38 and what it means in effect. It finishes up by saying that, as long as member mining companies are winning hands down through the so-called agreement-making process, they have no interest in conflict. The decision making of the legislative and regulatory framework is extraordinarily weighted against Aboriginal people being able to say no.

Senator JOYCE—I want to go to the Aboriginal Benefit Account and the royalties. The Aboriginal Benefit Account is put up as some form of quid pro quo mechanism, royalties that give benefit to the community. We have not been able to determine any form of those benefits going to Indigenous members of the community living in town, such as in places like Darwin. Do you have any knowledge of how the Aboriginal Benefit Account is helping any person on the street?

CHAIR—Senator Joyce, the bill does not canvass these issues.

Senator JOYCE—Yes, it does. It is about royalties and where royalties go.

Senator CROSSIN—The Northern Land Council will be able to explain that to you tomorrow morning.

Senator JOYCE—I am just asking Mr Sweeney. I am allowed to ask the question.

Mr Sweeney—I am not sure what the new system is. The old system used to be 30/30/40. I think it was 40 per cent to the Land Council, 30 per cent to traditional owners as the most affected people and 30 per cent for the benefit of other Aboriginal people in the Northern Territory. I am aware that, under that system, there were a range of different health services and outreach programs, even things like exposure and training opportunities that happened under ABTA. I am not sure what the new situation is. I think the important thing, though, is that what that approach did was to recognise that Aboriginal disadvantage is not simply restricted to areas that happen to have an economically viable uranium deposit next to them.

Senator JOYCE—Is any of that money driving around the streets here at the moment, picking up people off the street?

Mr Sweeney—I am not aware of the current situation. I am not squibbing the question. I am honestly not aware, so I do not want to answer. Again, NLC might have a better position on that.

Senator JOYCE—I will certainly be asking them. We have this issue of some uranium mines being not just uranium mines. They are uranium mines and other mines as well. When does a mine not become a uranium mine?

Mr Sweeney—Probably about 120,000 years after mining operations cease.

Senator JOYCE—When does the value of gold mean that it is a gold mine, not a uranium mine?

Mr Sweeney—We do not have some sliding scale whereby at some point, be it 48 per cent or 51 per cent of profit or 51 per cent of tonnage, it tips over and it now triggers a uranium status. The way that we look at it is that, if there is uranium involved in a polymetallic deposit, that then triggers a whole range of particular circumstances, scrutinies, regulations and codes of practice. We do not have a, 'This is the minimum level.' I suppose a case in point where there is hope at the moment is Arafura Resources with the tea-tree deposit, where there is a rare earth deposit which they initially thought was about eight per cent uranium as an associated by-product and they are increasingly cranking it up. I think they are talking around 14 or 15 per cent now. We would look at that and say, 'You are mining uranium there,' and that is subject then to a whole series of acts and regulations.

Senator JOYCE—I come to my final questions. Mr Sweeney, and you will probably be disappointed by this, I do believe in uranium mining. I actually believe in using uranium for power. I will probably find that you are pure in your thought and you reject both uranium mining and the use of uranium, so we are in the situation where we either both agree or both totally disagree. Do you think there is a justification in mining uranium but not using it yourself or, alternatively, in believing that it is wrong for us to use it but it is somehow justifiable for somebody else to use it?

Mr Sweeney—I think that there are far better ways to create our power than to create a material that lasts, effectively, in perpetuity as a high-level waste here and overseas.

Senator JOYCE—Do you find it a paradox that people can say it is immoral for us to use it in Australia but it is quite moral for somebody to use it overseas?

Senator CROSSIN—And the relevance of that question to this inquiry would be?

Senator JOYCE—I am asking Mr Sweeney.

Mr Sweeney—I think it reflects actually a large part of the driver of this inquiry to date. With respect, it is a question that is loaded. Is the federal Labor Party position hypocritical, inconsistent and stupid? That is effectively what you are asking. When the second reading bill and speeches on this piece of legislation happened in the House, the backwards and forwards moves and the interjections and the overwhelming weight of talk was partisan point scoring on the current, past and potential future positions of the two major political parties in relation to uranium mining. Now I look at that as a person who works closely on this issue and has for quite

a few years, as a person who travels around and meets with a lot of people affected by and concerned as to this issue. I look at that and think it is missing the point of the real issues here—environmental concern, regulatory compliance, company capacity, long-term security and environmental implications et cetera. It is: ‘Well, now you’ve woken up but you haven’t fully woken up because look at Western Australia and look at Queensland. You should get up there and tell Anna Bligh.’ There is that and all this stuff. I understand it is an important part of our parliamentary discourse, but it is not germane to the guts of this and where it really needs to go on a policy level.

Senator JOYCE—Where does it really need to go on a policy level?

Mr Sweeney—Where it really needs to go on a policy level is that we need to realise that we can be the world’s loser in nuclear and become a toxic quarry or we can lead the world in smart, sustainable, real jobs, real dollars and real energy solutions. I am not a live in the dark in the cave person. I have confidence in the technical, political and creative abilities of Australians, Australian institutions and Australian companies. What I do not believe we need to do is just shovel it on and then turn our backs from responsibility. I do not believe that we add to the world’s security by adding to the stream of fissile material in the world.

CHAIR—We will go to Senator Crossin.

Senator CROSSIN—Mr Sweeney, I do not think it is appropriate that we ask your personal view about the issue at hand. Rather, it is about the views of the ACF, which you represent. From my point of view, the issue that we have before us is whether or not the changes this legislation proposes (a) will increase mining, as is purported in the explanatory memorandum, and (b) will benefit Indigenous people. I think that Miss Jackson has rightly pointed out concerns with Xstrata. Perhaps if you know a bit more about that you might elaborate for us. My understanding is that you are correct: Xstrata has shied away from identifying its profits to the point where it has not paid the Northern Territory government any royalties. So we do actually have a case in the Northern Territory where we have a mining company that has not actually stepped up to the plate in respect of the current royalty distribution under the NT regime. So what kinds of concerns or feedback in relation to that do you bring to your knowledge of whether or not this bill ought to be adopted?

Mr Sweeney—I just want to clarify this. Those views, although they might have been passionately put by me in an exchange with the senator, represent the formal position of the Australian Conservation Foundation.

Senator JOYCE—Thank you very much, Mr Sweeney.

Mr Sweeney—Thanks very much, Senator Joyce. In relation to whether this will expand the industry, I am really not sure. I note that there has not been a flurry of uranium companies—juniors, wannabes or existing producers—putting their hand up to talk about this. I note that there was a submission by the Australian Uranium Association which was rather cursory and that there was one that was a little bit more detailed from the Northern Territory Resource Council with the interesting observation that the NT Resource Council believes that the immediate effect of the bill will be to reduce administrative costs rather than effect broad economic advancement.

It does not sound like a ringing endorsement of a booming bonanza of the uranium sector in the Northern Territory to me.

As for the benefit for Indigenous people, I come not to an ACF position but to the position of considered researchers like Ciaran O'Faircheallaigh and of people who are close to it and have a strongly articulated position, indeed like the position that was articulated by Noel Pearson. Most importantly, more recently there was the report from the native title claimants working group, which reported in December 2008. So it is contemporary. This is not just uranium obviously; it is across the wider mining sector. But I think it has a real applicability if we are trying to make uranium mirror the wider sector. It said that:

While hundreds of agreements exist between traditional owners and industry, there are only around one dozen agreements that provide substantial benefits to Aboriginal people and Torres Strait Islanders and exhibit principles embodying best practice ...

After almost 15 years of the operation of the Native Title Act, this is of itself deserving of an inquiry. It strikes me that if we have a situation where the people who have looked at it the longest have come back and said, 'It is not working,' then it makes no sense to embrace another layer of deficient or non-working legislation based on the same principle and say that this will address Indigenous disadvantage. There are a couple of other concerns here. I think that one is potentially a more philosophical concern but I think it also has a real practicality. If the best that we can do to address systemic and shameful Indigenous disadvantage in this country is to say to the first nation peoples, 'Well, you have to dig out more of your country people,' I think we have failed on every level practically and in the heart of this country.

The other one is—I do not think I made this clear in my response to Senator Joyce earlier—about the ABTA arrangement. That recognised at least that not all Aboriginal people will have access to mineral resources to exploit in an attempt to get out of poverty, if indeed it addresses that. I think that is one of the concerns in a lot of the rhetoric around this issue at the moment. There is a lot of Indigenous people in serious difficulty who do not have access to these resources. Put aside the question as to whether exploiting that resource brings a delivery. I think that the current case is, unfortunately, overwhelmingly no. Put that aside and ask what happens to those who do not have access to a resource. Do we just say, because of geology and the capriciousness of the gods, that they do not have a chance to climb out of this? Do we abandon them? I think there are citizenship rights. There is a citizenship entitlement question here. When you have the kangaroo and the emu on your passport, that means you should have health care, education and the opportunities afforded to the south-east coast of Australia.

Senator CROSSIN—I just want to ask you one other question which is I think probably about what we are being asked to look at: a volume royalty based on the capacity of the mine, the amount of mineral in the mine, paid year in and year out, or a profit royalty, which in the first couple of years would mean there would be minimal or no payments made to Indigenous people because obviously there would be no profits coming in the start-up period. But we might have a situation where there are then enormous profits, so the swings and roundabouts might actually be more beneficial than ad valorem. I guess what you are saying to us is do not change and stick with what you have got, but there may be times when what we are being presented with might actually produce greater windfalls for Indigenous people.

Mr Sweeney—In straight dollar terms, absolutely. There will be times when there is a windfall, when it is a boom time and prices are up and that is how it goes. I am not saying stick with what you have got. My take-home message of what ACF is saying today is that what we have got is not working. It is demonstrably not working. Rather than replicate it, let us look at what we have got and address why it is not working. I could quite happily see this industry stop. That is what I want to see. That is what I work to do. But for those who want to expand it, I would be wanting to address community confidence. I would be wanting to address Indigenous concerns. I would be wanting to address our environmental performance, and I would be fair dinkum about that, not just being clever and having a bit of sophistry in using numbers. I would address that, and then I would take the wind out of ACF's sails, so to speak. I would love to be redundant, but unfortunately there are jobs for all in saying no to this sector because there are so many errors, so much noncompliance, so many problems and so much lack of delivery. The gap between the promise and the performance, between the rhetoric and the reality, is extraordinary.

Senator CROSSIN—So are you putting to us, Mr Sweeney, that neither royalty scheme actually delivers for Indigenous people?

Mr Sweeney—That is what I am saying. I am saying that the ad valorem system offers greater certainty over the longer term, which means that Aboriginal corporations, representative bodies and communities can plan. They can plan and manage. So there is a greater certainty and that provides a platform for a high level of security. The profit system is like you said: it swings in roundabouts. We just need to look at the uranium price in recent years to see that. The spot price of uranium—

Senator JOYCE—is US\$95 per pound.

Mr Sweeney—It was US\$10 a pound in December 1999. It was US\$20 a pound in December 2004. It was US\$140 a pound in June 2007. It is US\$45 a pound today. That is a fairly big swing and roundabout. That June 2007 time would have been windfall time. But there are a lot of lean times there as well. So there are other issues, like you have mentioned, such as the slow return with start-up. The fact that a lot of traditional owners who might be older might not see a return in their lifetime is a very real issue. There is the administrative complexity. And there are other issues too. The ability of Indigenous people and Indigenous representative bodies to track the nuances of a profit based system can be an issue. ACF would be concerned about the transparency aspect, the marginal aspect and the corporate capacity aspect. We would be concerned that this might send a signal to minor players that they can get into uranium and if it is not working they can get out with limited cost. They can run it only at peak times when it works. We are concerned about the transparency dimension, because the Northern Territory government does not allow access to individual mine royalty streams. That access is not given. When the *Northern Territory News* made an FOI application in 2008, the NT Treasury refused to go into the full return of individual mining royalty streams in the Northern Territory. So there are a range of complexities here. But, again, at the risk of being a little bit stuck on it, the message is that we need to address Indigenous disadvantage and the so-called rationale, or at least one part of the rationale of this. Let us look at what is happening across the sector. Rather than just say, 'Well, we will bring it up to 18 per cent profit because that is happening everywhere else and why should uranium be any different,' let us look at why the existing royalty regime is not delivering for Aboriginal people. That would be a good outcome from this process. Passing this legislation as is would not be.

CHAIR—Thank you, Miss Jackson and Mr Sweeney, for coming in.

[4.31 pm]

PATERSON, Mr David, General Manager Business Development, Energy Resources of Australia Ltd

PERKINS, Mr John Scott, Chief Executive Officer, Northern Territory Resources Council

CHAIR—Welcome. Do you have an opening statement you would like to make?

Mr Perkins—Yes, Madam Chair. I would probably start by reiterating what we put into our very brief paper. We support the bill. We believe that it provides a good synergy with the rest of the royalty regime in the Northern Territory. Despite the fact that there might be some argument about the way royalties are provided for, we note that the bill provides that if there is a change in royalties in the Northern Territory those changes do flow through to your bill. We have nothing much other than that to say.

CHAIR—Thank you, Mr Perkins. Mr Perkins, are you aware that there are companies in the non-uranium-mining area that are manipulating their profits in any way to minimise royalty payments?

Mr Perkins—I am aware of the rumours but, in my experience, treasuries and other arms of government are very clever in tracking those people down and extracting the relevant money from them. I am not aware of any substantial attempts to ‘offshore profits’ or otherwise avoid this that have not been found out and dealt with.

CHAIR—In fact, we have had named Xstrata over their McArthur River mine. I think it was in the context of them not yet having paid any royalties. Are you aware of anything about the circumstances of that arrangement?

Mr Perkins—Nothing other than the rumours. I have heard those allegations this afternoon, and I have heard them outside this room. I just repeat what I said before. We have had experience of the Northern Territory government actually tracking down attempts to avoid or to evade payment of statutory fees, and this case is no different to any other. As I said before, I believe that there has been no substantial effect there. I might add, though, that, in terms of the way the royalty system is set out, there are naturally periods of low or no profits where low or no royalties are paid. That is the way it works.

Senator CROSSIN—Mr Perkins, has Xstrata ever paid royalty payments to the Northern Territory government?

Mr Perkins—I cannot answer that. I did not come prepared with those figures. My understanding, though—and it is second-hand general information—is that Xstrata have paid very low or no royalties.

Senator CROSSIN—The Northern Territory government will be with us tomorrow.

CHAIR—In terms of the different regimes, being a profit basis as opposed to ad valorem, it has been pointed out in several submissions that particularly in the start-up period royalties might not be forthcoming early. I think most of the submissions point to the fact that Aboriginal communities may have difficulty in setting up their processes and dealing with the beginning of mining without some sort of income coming in. Can you comment on that kind of situation?

Mr Perkins—That issue is well known among mining companies, and it does concern them. I should say firstly that what you have said is true. There is concern that benefits do not flow directly and immediately once a mine opens. That concern is particularly so in the case where, for instance, traditional owners are elderly and perhaps in their lifetime will not see direct benefits flowing. There have been a number of various methods of ameliorating that, including community benefit funds and advance payments and so forth. They tend to be designed to suit the circumstance from mine site to mine site with varying effect.

CHAIR—And when is that negotiated? So it is not as part of native title and not as part of this kind of arrangement? Is that just a negotiation between the parties, on an informal basis, or is it part of any legislated—

Mr Perkins—It tends to be on an informal basis, on an occasional basis. It does tend to be complicated by the various land tenure forms. For instance, under the Aboriginal Land Rights Act, there were difficulties in making direct payments to land owners, but my experience is that by and large those issues have been eased or bypassed or agreed in some other form.

Senator JOYCE—Take the assessment in a profit-based system. Who would be closer to the assessment process—the internal cost accountant of the organisation, the taxation department, or the local Aboriginal community?

Mr Perkins—I am not sure I am equipped to answer that question, but I make the observation that all of the royalty formats have been well and truly examined. I would suggest there is probably a small library somewhere that could be referred to containing all of them in it. However, it has been clear to the parties, the Northern Territory government, industry and others that the profit based system offers the least distortion and offers the clearest of all the alternatives available at the moment.

Senator JOYCE—I am actually an accountant. I think I am the only one in the coalition and probably the only one in the parliament. I was involved with a multinational called ConAgra at one stage. This is a loaded question because I know the answer. Are you aware of any company that manipulates its profits through transfer pricing?

Mr Perkins—Directly, no, but I repeat what I said before. I have heard the rumours, and to my knowledge they are only rumours.

Senator JOYCE—I can assure you that they are more than rumours, if you want to move profits off seas. Who is a seller of uranium in Australia at the current moment, to your knowledge?

Mr Perkins—In terms of the companies involved?

Senator JOYCE—Yes, the companies.

Mr Perkins—All of them, no, but I refer to my colleague, Mr David Paterson, who works for ERA, who could probably answer that.

Senator JOYCE—Who is ERA owned by?

Mr Paterson—Our largest shareholder is Rio Tinto.

Senator JOYCE—I have heard of them! They are a seller of uranium, are they not?

Mr Paterson—ERA is a seller of uranium, yes.

Senator JOYCE—Do they sell uranium to China?

Mr Paterson—Yes, we do. We had our first sale and shipment last year.

Senator JOYCE—Who was the buyer of the uranium in China?

Mr Paterson—I could not tell you the name of the actual entity that purchased the uranium.

Senator JOYCE—Was it an arm of the Chinese government?

Mr Paterson—It may well have been.

Senator JOYCE—It may well have been. Do you want to take that one on notice?

Mr Paterson—Yes, I am happy to take that on notice.

Senator JOYCE—If, for instance, Rio Tinto was owned more by the Chinese government, it would be both the buyer and seller of uranium to itself?

Mr Paterson—Energy Resources of Australia is an independent company. One of its shareholders is Rio Tinto. The management of ERA acts in the interests of all shareholders of ERA.

Senator JOYCE—Sensitive stuff.

CHAIR—Senator Joyce, Mr Paterson is here in his capacity—

Senator JOYCE—No, this has definitely got something to do with royalties.

CHAIR—Senator Joyce, can I finish, please. Mr Paterson is here as a representative of the Northern Territory Resources Council and I do not think that he is here to answer detailed questions about the operation of ERA.

Senator JOYCE—I can understand perfectly the sensitivity of this issue.

Mr Perkins—I could probably throw some light. The entity in China that deals in uranium goes under the headline banner of CNNC, which is the China National Nuclear Corporation.

Senator JOYCE—And is it owned by the Chinese government?

Mr Perkins—It is owned by the Chinese government and it has several—

Senator JOYCE—A hundred per cent?

Mr Perkins—A hundred per cent is my understanding. It has several arms through which it has nuclear power construction and various other arms that it deals with.

Senator JOYCE—What I am showing here is obviously the issue of the purchaser and the seller being as one. How do you determine whether or not a mine is a gold mine or a uranium mine? We see that both elements are usually in situ proximate to one another.

Mr Perkins—It is an interesting question. I do not think it matters in the sense that the mining techniques for almost every metal recovery are similar until you get to the processing stage. Suffice to say that there are those companies that specialise in various metals. Uranium is one of those. And we probably see that with Arafura at Nolans Bore, who would treat the uranium that might come out of the ground as somewhat of a contaminant. Now, those companies would seek a specialist uranium company to take that contaminant off their hands.

Senator JOYCE—So, if I am a cost accountant, it all depends what I am trying to do. If I am talking to my corporate structure, I want them to think that we are making lots of money. If I am talking to the taxation man, I want to make him think we are making none at all. That is the one we are going to determine the royalties out of. In my sell, how am I going to determine what is attributable to the uranium sell and what is attributable to the gold sell if they are both coming out of the same pit?

Mr Perkins—You describe exactly the difficulties you would have if there were different royalty regimes for different metals out of the same site. I think we made that point in our paper in the sense that the proposed bill adequately covers that difficulty and provides a very easy way of applying the royalties to a range of metals in the Northern Territory.

Senator JOYCE—How does the local Aboriginal community get some sense of connection to the veracity of the books of the organisation if it goes to a profit-based assessment?

Mr Perkins—There are a number of agencies that do that on behalf of the Australian people in general. In terms of the Aboriginal communities, I would guess the various land councils would have a watching brief. There are several very well operated local Aboriginal corporations that have the same role, and you move on upwards into government treasuries and other branches of government.

Senator JOYCE—Just correct me if I am wrong. CNNC is the organisation in China that is the purchaser of uranium from ERA.

Mr Perkins—They are the headline organisation. I have met with them. They have multiple arms. Whether or not directly that corporation is the nominal purchaser I do not know, but it would be in their area.

Senator JOYCE—Would it be in their interest to pay as much as possible for uranium or as little as possible for uranium?

Mr Perkins—I would venture to suggest, Senator, they are in the marketplace and they will make arrangements as they can within those market parameters.

Senator JOYCE—This is completely logical. I would do it myself. Your job, if you were working for CNNC, would be to drive the price down, not drive the price up.

Mr Perkins—As would any purchaser, but there is always no obligation on a seller to sell either.

Senator JOYCE—Unless the person who is selling it to you is in the same company. Then he might have an obligation if he wants a job.

Mr Perkins—I guess so.

Senator JOYCE—Thank you very much.

CHAIR—Senator Eggleston?

Senator EGGLESTON—Thank you very much, Madam Chair. I am quite interested in this issue of polymetallic mines. You have quite a few mines of different sorts in the Northern Territory—gold, bauxite, magnesium, iron and zinc, among others. How does knowing the royalty arrangements upfront assist mining companies in making exploration and investment decisions? Does it make a difference to you?

Mr Perkins—I will speak very broadly, Senator. Assuming there is a stable royalty regime, it provides some certainty to a company when it assesses an ore body and decides whether or not to mine it. The alternative is an unstable regime which provides a degree of sovereign risk and companies would build that risk into their decision making process and perhaps not go ahead with a mining operation if they saw that risk as being too large.

Mr Paterson—I think it is also fair to add that exploration companies look around the world and make judgments in terms of both mineral prospectivity and fiscal regimes when they make decisions about where to put their exploration dollars.

Senator EGGLESTON—So a consistent royalty regime would add a factor of stability and certainty in terms of making decisions about investment?

Mr Perkins—Absolutely, and it would become a national competitive advantage.

CHAIR—Can I just ask a question in there, Senator?

Senator EGGLESTON—Yes, of course.

CHAIR—Is that stability one reason why you would not support a case-by-case type approach to uranium mines? You were talking earlier about companies negotiating with Indigenous peoples on a case-by-case basis about support, so why not extend that whole regime to a case-by-case basis whether it is ad valorem or for profit depending on the type of mine and the likelihood of profits?

Mr Perkins—I think you are talking about two separate things, Senator. One of them is a jurisdictional approach to setting taxation, if you like, through a royalties regime—and, to the outside world, the more stable, the less risk. The negotiations about flow of benefits to landowners can be done, I believe, in isolation of the first, bearing in mind the vastly differing circumstances that can exist from site to site.

CHAIR—Thank you, Senator.

Senator EGGLESTON—I was going to come to that broader issue. About four years ago I was at a Minerals Council of Australia annual seminar in Canberra where the minerals industry committed itself to increasing Indigenous employment and providing training to Indigenous people to work in the mining industry. There are other avenues, are there not, through which the mining industry contributes to the development and wellbeing of Aboriginal communities and society?

Mr Perkins—Yes, there are, and there is enthusiasm in companies to make sure they engage communities in that way to the extent that there is an extraordinary amount of money and effort going into ensuring that Indigenous people can have jobs on a particular mine site.

Mr Paterson—I think that the basis of your question is accurate in that in the mining industry we would recognise that one of the greatest ways to convey a transfer of wealth to the local community actually comes through things like employment and training. At Energy Resources of Australia, in line with what you have said from the Minerals Council, we have increased Indigenous employment at the Ranger mine. We have doubled that over the last two years. We now have more than 100 Indigenous employees, and that is a very substantial way of transferring wealth to the Indigenous community.

Mr Perkins—I might add that that is echoed across the major mine sites in the Northern Territory.

Senator EGGLESTON—Do you provide grants outside the royalty system for things like education, housing and health services? Do you assist with those sorts of things?

Mr Perkins—Grants might not be the proper term. There is certainly an extremely large range of programs, from pre-employment training to traineeships, with both financial and physical support to education and so forth that goes across almost every site.

Senator EGGLESTON—Are negotiated royalties deductible from statutory royalties under the current profit based royalty scheme for non-uranium mines in the Northern Territory? Under

what circumstances, if any, would negotiated royalties be deductible from statutory royalties under the proposed royalty regime for uranium mines?

Mr Perkins—No, they are not. But the question probably has a more complicated answer than might be apparent in how those payments are treated in terms of tax deductibility for the company.

Senator JOYCE—On the Indigenous issue, are you aware of the Aboriginals Benefit Account?

Mr Perkins—Yes.

Senator JOYCE—Are you happy with how it is operating?

Mr Perkins—You could criticise it. I do not think that it deserves criticism. We as an industry recognise a responsibility to make sure that benefits go in the right direction and are applied wisely. Any criticism probably reflects the complexity of actually achieving that ideal. If there is a better system, we have not worked it out yet.

Senator JOYCE—You would be aware, as most other people walking around the streets of Darwin are, that there is a higher propensity than most cities for people to be living on the streets. Do you feel that the benefits from the royalties are percolating out to all members of the Indigenous community or to certain sections of the Indigenous community?

Mr Perkins—My observation would be that these things tend to find the people that deserve them. I would make the further observation that it is very difficult to separate the royalty effect from other effects, such as education and health spending, the delivery of government services and, indeed, the delivery of other intended commercial services in remote communities.

Senator JOYCE—Because the Northern Territory government also gets a substantial part of the royalties, does it not?

Mr Perkins—Of course.

Senator JOYCE—Do you think that that royalty, whether it has gone to the Territory or to the Indigenous community, is effectively utilised in dealing with the issue of Indigenous homelessness in places like Darwin?

Mr Perkins—Senator, because of the observations that you make, you can say that there has been educational and social policy failure from governments at all levels leading to the disadvantage and capacity constraints you see in remote communities now. I think it would be a challenge for your government, should you get out of opposition, and a challenge for the current government to address those issues in a different fashion to the way they are being done now.

CHAIR—Senator Eggleston just has a follow-up to the taxation question.

Senator EGGLESTON—You said there was a slightly complicated issue tax-wise of negotiated royalties being deductible from statutory royalties under the current profit based

royalty system for the uranium mines. Can you just expand a little on that for the *Hansard* record?

Mr Perkins—It is very difficult to do so specifically because we do not have visibility of a company's commercially confidential records. I just make the general observation that the flow of royalties, particularly in the early stages of a mine, will not be great. There have been various attempts at providing benefits to traditional owners and others in remote communities in lieu of that. They have taken various forms. Now, some of those forms have been treated, for instance, as tax-deductible expenditure or they have gone on and off balance sheets of companies, both mining companies and Aboriginal corporations. So it tends to become a very complicated affair to try and describe that.

Senator EGGLESTON—Thank you very much. I understand that.

Senator CROSSIN—Mr Perkins, is the Northern Territory Resources Council involved in the uranium industry framework or are you represented by your peak organisation at that?

Mr Perkins—No, we are involved.

Senator CROSSIN—Directly involved?

Mr Perkins—Yes. I attend.

Senator CROSSIN—And so you would have been directly involved then in the royalties subcommittee.

Mr Perkins—Bear in mind that I have only ever been to one uranium framework meeting. I have limited personal experience. But, yes, I believe that in the past we have had representatives there.

Senator CROSSIN—But you are also represented on the royalty subcommittee of that framework body—is that correct?

Mr Perkins—Not as the Northern Territory Resources Council, I do not think.

Senator CROSSIN—So what is the composition of the royalty subcommittee?

Mr Perkins—To be honest with you—

Mr Paterson—I participated in the royalty subcommittee.

Senator CROSSIN—Because I cannot find it. I am just wondering if you can enlighten us as to who actually sits on the royalty subcommittee.

Mr Paterson—There was a royalty subcommittee pulled together to get views of industry, land councils and other interested organisations.

Senator CROSSIN—Which completed the work when?

Mr Paterson—I could not tell you.

Senator CROSSIN—Back in 2006, was it?

Mr Paterson—That sounds about right. It has been some time since that committee has met.

Senator CROSSIN—So it has not been reformed in recent months or years then?

Mr Paterson—Certainly not in recent months.

Senator CROSSIN—Can you remember then, Mr Paterson, whether all parties on that subcommittee endorsed moving to the regime we are talking about now or whether it was just a majority of that subcommittee?

Mr Paterson—I think there were a range of views within it and I think we have heard from Gundjeihmi that a number of Aboriginal interests were concerned about a move away from revenue based royalties to profit based royalties.

Senator CROSSIN—So we are not dealing with legislation here that has come out of a unanimous recommendation from that subcommittee, for example?

Mr Paterson—I think that is a fair comment.

Senator JOYCE—Do you ever have any legislation that has a unanimous outcome?

Mr Paterson—That would be outside my area of expertise.

Mr Perkins—I might add a comment there. Senator Joyce, no. Senator Crossin, the way in which that issue was dealt with was such that there were, indeed, a range of views. They were put through the Uranium Association. The Uranium Association then effectively drew up the royalties policy which has resulted in both their submission and our following submission, which agreed with the bill.

Senator CROSSIN—I am just trying to get a handle on to what extent Indigenous groups and land councils have had their views fairly represented or considered here in terms of whether or not this is, as ACF put to us, a fairly industry biased sort of view of where royalties should go or whether it is balanced or whether there is complete support across the board for this move.

Senator JOYCE—It sounds like a question for the land council.

Senator CROSSIN—It might well be, Senator Joyce. You had a chance to put your questions; I will put mine now—except I will not ask you, Mr Perkins, whether you think in the use of the ABA it was suitable for a previous federal Indigenous Affairs minister to take a cultural group down to his own electorate somewhere near Brisbane for an arts and cultural entertainment.

Senator JOYCE—Madam Chair, what has that got to do with this inquiry?

Senator CROSSIN—If you want to go to the use of the ABA, we can get down and get dirty about it.

Senator JOYCE—Madam Chair, I wish to make a point of order. I want you to make a ruling on whether that question is relevant.

CHAIR—I am listening, as I did for you, to the question at the end of it.

Senator JOYCE—And then you will tell us whether it is relevant or not?

Senator CROSSIN—I think this goes to the use of ABA moneys, does it not? You asked some questions. I have got some questions I would like to ask about it.

Senator JOYCE—Madam Chair, is it your view that it is relevant?

CHAIR—I think Senator Crossin has made her question as relevant as your question was to royalties.

Senator JOYCE—Can you explain to me where the relevance to royalties goes?

CHAIR—Please get along with the question.

Senator CROSSIN—Mr Perkins, your organisation does not sit on the ABA advisory body, does it?

Mr Perkins—No, Senator.

Senator CROSSIN—So are there times when applications for the use of ABA moneys might come past your desk for comment or endorsement or otherwise?

Mr Perkins—Only for comment, and not in my time.

Senator CROSSIN—I see. One of the things I want to put to you, as I just put to the previous witness, is that it seems to me that we are being asked to look at legislation that might provide some very good benefits to Indigenous people in peak times, when perhaps there are benefits flowing through the industry, but at the start-up of a mine, when there is very little profit or no profit for a number of years, there would be very little revenue. Is there any consideration being given to perhaps having, if not an ad valorem system, maybe a profit based system supplemented with a minimum payment for the first years after start-up? Has any consideration ever been given to not so much a compromise between the two but a royalties based system based on profit, except for the first few years where there might be a defined payment to compensate Indigenous people?

Mr Perkins—I think that is what we have found when we have some form of advanced payment. Whether that comes through a community benefits trust or another vehicle like that has differed from site to site. I am not aware of any formal attempt to change the royalties regime per

se to cater for what you are saying. I would make the observation that there are a number of financial instruments that could affect that, and we would be open to talk about any suggestions in that regard.

Senator CROSSIN—What do you mean there? Do you think that, if we went to the royalties based system, nothing would preclude a mining company from negotiating a yearly payment to Indigenous people or a trust for the first number of years?

Mr Perkins—Provided it was offset against future payments, I would say there would be very little objection to that.

Senator CROSSIN—And that is the basis you think your members would want it to be on—offset against future payments as opposed to some kind of goodwill payment up front?

Mr Perkins—You are talking about a business transaction. What we would want to see is that there was not a royalties creep, if you like. If it is royalties it is royalties, and they are set in accordance with the provisions of the state. If there is a financial instrument that can smooth out the peaks and troughs, we would be only too happy to look at it.

CHAIR—Thank you, Mr Paterson and Mr Perkins, for coming in.

Mr Perkins—Thank you, Madam Chair.

CHAIR—The committee will adjourn until 8 am tomorrow.

Committee adjourned at 5.02 pm