



GUNDJEIHMI
ABORIGINAL CORPORATION



28 September 2022

Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee

Gundjehmi Aboriginal Corporation and Northern Land Council joint submission regarding the Inquiry into Atomic Energy Amendment (Mine Rehabilitation and Closure) Bill 2022

The bill was referred in order to hear from stakeholders including from the Traditional Owners. On behalf of the Mirarr Traditional Owners, the Northern Land Council (NLC) and Gundjehmi Aboriginal Corporation submit that the Mirarr Traditional Owners have been calling for an amendment since 2019. Amendment of the *Atomic Energy Act 1953* (Cth) to allow the Commonwealth to confer a further authority on Energy Resources of Australia Ltd (ERA) should proceed as a matter of urgency. The bill should be regarded as non-controversial as it corrects an anomalous situation where the current authority will terminate solely due to the effluxion of time prior to the completion of rehabilitation and not on the basis of satisfaction of the rehabilitation requirements.

The Mirarr Traditional Owners request an expedited procedure so that the legislation can pass before the end of this calendar year.

Context

The Ranger Uranium Mine is located on land vested in the Kakadu Aboriginal Land Trust pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). This is traditional land of the Mirarr people (Mirarr Traditional Owners) who are represented by the NLC under ALRA and represented by their corporation Gundjehmi Aboriginal Corporation.

The Ranger Uranium Mine was approved by the Commonwealth on 25 August 1977 (prior to the grant of the land to the Kakadu Aboriginal Land Trust under ALRA on 30 August 1978) in controversial circumstances and under broad public scrutiny. Operations at Ranger Uranium Mine commenced in 1979 and are conducted pursuant to three interconnected foundational documents which together establish the regulatory conditions (the Ranger arrangements) comprising the following:

1. An authority to conduct operations on behalf of the Commonwealth under the *Atomic Energy Act 1953* which includes specific “Environmental Requirements” (ERs)
2. An agreement between the Commonwealth and the NLC on behalf of the Kakadu Aboriginal Land Trust which permits access to the land on specific conditions and to which the authority at 1. is attached and thereby agreed



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3. An agreement between the Commonwealth and the holder of the authority (Energy Resources of Australia Ltd (ERA)) under which ERA agrees to meet the obligations of the Commonwealth under 2. above and under which other matters are agreed such as a financial security for the costs of rehabilitation.

At present, the instrument at 1. above inclusive of the ERs and the agreement at 2. will terminate on 8 January 2026 regardless of whether ERA has completed proposed rehabilitation works or not. On that date, responsibility and liability for the completion of rehabilitation will rest solely with the Commonwealth as the original proponent of the project and pursuant to the surviving clauses of the agreement between the Commonwealth and the NLC.

Traditional Owner Support

The need for a review of the decades-old Ranger arrangements was raised with former Minister Canavan by correspondence from the Gundjeihmi Aboriginal Corporation dated 20 September 2016. Further detailed correspondence from the NLC and Gundjeihmi Aboriginal Corporation to former Minister Canavan dated 10 July 2019 expressed the urgent need for the extension of the Ranger arrangements including the need to amend the *Atomic Energy Act 1953* as the preliminary step. The Minister responded on 22 October 2019 confirming the Government was considering amendments to extend the Ranger arrangements beyond 8 January 2026. (See **attached** copies of correspondence for reference).

Urgency

It is necessary for the agreements at 2. and 3. above to be negotiated and concluded in order for a further authority to be granted. In other words, once an application has been made by ERA under the amended legislation, it is then necessary for the parties to negotiate the other interconnected regulatory agreements including the revised ERs *before* the authority can be conferred with effect.

At the time the need for an amendment was raised with the former Minister in 2019, the parties anticipated that these negotiations would take a period of five years, noting that this needed to be completed by 2025 at the latest. The delay in introducing the bill means that this period has been reduced to three years.

Further delay presents a risk that the Ranger arrangements may not be extended prior to their expiry on 8 January 2026. Accordingly, the Mirarr Traditional Owners are keen to ensure that the bill is not further delayed and is passed by the end of 2022.

Details of the Proposed Amendment

ERA has confirmed its intention to apply for a further authority once the bill is passed.

The Mirarr Traditional Owners make no detailed comments about the specific provisions of the proposed amendment save for two particular issues set out below.



The broad perspective of the Mirarr Traditional Owners is that the final terms of any further authority are yet to be determined. The terms will be negotiated in detail at the time the agreement described at 2. above is negotiated (and will also form part of the agreement at 3. above).

At present, it is unclear how the agreement to be negotiated with NLC on behalf of the Mirarr Traditional Owners will interact with any Ministerial power to vary an authority once it has been issued. This uncertainty however should not prevent the amendment proceeding.

Particular Issues – requirement for NLC agreement to revocation declaration

Under the current Ranger arrangements, any proposed revocation (referred to as close-out) requires the Supervising Scientist (a statutory officer under the *Environment Protection (Alligator Rivers Region) Act 1978*) and the NLC agreeing that the specific rehabilitation requirements have been met. Current ER clause 9.3 provides:

9.3 The company's obligations under clause 9 [Rehabilitation Plan] will cease in respect of any part of the Ranger Project Area over which a close-out certificate is issued by the Supervising Authority subject to the Supervising Scientist and the NLC agreeing that the specific part of the Ranger Project Area has met the requirements of clause 2.

The bill, however, provides in proposed section 41CI that the Minister may declare that an authority no longer applies where rehabilitation requirements have been met and where the holder of the authority agrees. At proposed section 41CI(2)(c), the Minister is only required to consult the NLC prior to making the declaration. This has the effect of diminishing the role of the NLC on behalf of the Mirarr Traditional Owners and should be changed.

The Mirarr Traditional Owners request that the requirement in the current clause 9.3 ERs be maintained in the text of the amendment to read as follows:

41CI(2) However, the Minister may only make a declaration under subsection (1) if:

(a) the rehabilitation requirements imposed by the Part III authority in relation to the whole or that part (as applicable) of the land in the Ranger Project Area have been satisfied or are taken to have been satisfied; and

(b) before the Minister makes the declaration, the person or persons on whom the authority has been conferred agree in writing to the Minister making the declaration; and

(c) before the Minister makes the declaration, ~~the Minister consults on the proposed declaration with the Land Council for each area of land to which the declaration relates~~ the Land Council for each area of land to which the declaration relates agrees in writing to the Minister making the declaration.



Particular Issues – application of *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

The position of the Mirarr Traditional Owners is that proposed section 41CW and clause 25 (7) are not required. We are not aware of any issue having arisen that would require a specific exemption provision. We also note that the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) is currently under review, and it would be premature to provide an explicit exemption at this time.

Yours sincerely



**Joe Martin-Jard
Chief Executive
Officer, NLC**



**Justin O'Brien
Chief Executive
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