Northern Land Council

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Supplementary Submission 78-1

12 December 2005

Our Ref: LO1:

Committee Secretary
Standing Committee on Industry and Resources
House of Representatives
Parliament House
Canberra ACT 2600

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Dear Sir

INQUIRY INTO DEVELOPING AUSTRALIA'S NON-FOSSIL FUEL INDUSTRY - CASE STUDY: URANIUM

Please find attached the Northern Land Council's response to questions taken on notice during the hearing before the Standing Committee on Industry and Resources in Darwin on 24 October 2005.

Yours sincerely

Norman Fry
CHIEF EXECUTIVE OFFICER

ATTACHMENT

NORTHERN LAND COUNCIL RESPONSE TO QUESTIONS TAKEN ON NOTICE ON 24 OCTOBER 2005

1. Mr Alan Cadman MP, p 25

Mr Cadman requested advice as to the relationship between the Northern Land Council (NLC) and traditional owners regarding mining royalties:

> "Mr CADMAN — The first thing is that ERA, in their submission, say that last year they paid $8.1 million in royalties that were distributed, they say, to Northern Territory based Aboriginal groups, including the traditional owners. How is that money split up?
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> ...
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> Mr CADMAN — I would appreciate it if you could point me in the right direction, towards the specifics of who benefits from the mining process. I am attracted to your comments about wanting to engage, but I want to know how that works and whether it works against the best interest of the traditional owners, because there seems to be a difference of opinion between you and them in some areas. I want to know what those differences are and who gets the money."

Section 63 of the *Aboriginal Land Rights (Northern Territory) Act 1976* provides that amounts equal to mining royalties received by the Commonwealth or the Northern Territory from mining on Aboriginal land must be paid into the Aboriginal Benefits Account (ABA).

This account was established in 1952, and was originally known as the Aborigines (Benefits from Mining) Trust Fund in relation to mining on Aboriginal reserves (the first such mining being the manganese mine on Groote Eylandt).

Section 64 provides that amounts received by the ABA shall be distributed as follows:

- 40% to meet the administrative costs of land councils (in such proportions as the Minister determines) (s 64(1));
- 30% to the relevant land council to forward within six months to Aboriginal associations the members of which live in, or are the traditional Aboriginal owners of, the area affected by mining operations (or to Aboriginal Councils established in the area affected by mining operations - although in practice payments to such councils do not occur) (ss 35(2) and 64(3));
- 30%, as directed by the Minister, paid to or for the benefit of Aboriginals living in the Northern Territory (s 64(4)).

In relation to the Ranger uranium mine, the NLC forwards the 30% of mining royalties to the Gundjeihmi Aboriginal Corporation, being an Aboriginal association whose members are comprised by traditional Aboriginal owners of the land on which the mine is located.

It is noted that the legislative scheme regarding the distribution of mining royalties generated from Aboriginal land differs markedly, in two respects, from the scheme applicable regarding the distribution of other non-mining economic benefits generated from Aboriginal land (eg leases for the Alice Springs to Darwin railway, wharves, defence, housing, utilities, stores, pastoralism, safari hunting, tourism, horticulture, pearling, fishing, aquaculture, and crabbing).

First, non-mining economic benefits must be paid "to or for the benefit of the traditional Aboriginal owners" of land on which the development occurred (s 35(4)). The traditional Aboriginal owners are the group which, under Aboriginal tradition, are responsible for looking after and making decisions about country. The High Court has recognised, in a native title context, that it is this group which under Aboriginal tradition possesses rights to exclusive possession.[1] Native title mining agreements predominantly benefit this group, albeit that indirectly benefits inevitably flow to the larger Aboriginal community (given the close relationship between Aboriginal persons or groups).

By contrast mining royalty equivalents may be paid to a broader group, being an Aboriginal association whose members:

- are traditional Aboriginal owners of "the area affected" by mining - a concept ordinarily regarded as capable of concerning land outside a mining lease area, and therefore Aboriginal persons who are not the traditional owners of the mining lease area;
- "live in" the area affected by mining - again, a concept which may be significantly broader than the group which, under Aboriginal tradition, is responsible for country (ie the traditional owners).

Secondly, traditional owners of mining areas are aware that they are only entitled to some of the economic benefits generated in the form of royalties from their country, and that this is the case notwithstanding that under Aboriginal tradition they own and have exclusive rights to minerals (as part of their traditional land).

The legal rationale for this differential approach is that Aboriginal land (which is freehold) expressly does not include minerals. Consequently the legislative scheme does not strictly deal with mining royalties on the basis of redressing an historic dispossession of a traditional entitlement. Rather, at least in part, it is contemplated that mining royalties equivalents are Commonwealth funds to be distributed on the basis of broader policy considerations and imperatives.

The legal recognition of native title by the High Court in 1992 in *Mabo No 2* and under the *Native Title Act 1993*, whereby the group responsible for country (including minerals) is accorded negotiating rights and is entitled to economic benefits, may raise policy considerations in relation to the broader drafting currently in the *Land Rights Act*.

For present purposes, in the context of this inquiry which is directed at the development of uranium mining, it is noted that the provision of economic benefits in accordance with Aboriginal tradition maximises the prospect that traditional owners (whether of Aboriginal

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[1] *Western Australia v Ward* 2002 191 ALR 1 para 88.

land or native title) will consent to mining. Such provision also minimises the prospect of disputes (whether during negotiations or when benefits are distributed), because they may be resolved in a principled fashion which can be identified in accordance with Aboriginal tradition (as to ownership of land).

2. Mr Alan Cadman MP, p 28

As requested, a copy of the joint submission made by the Northern Territory Government and the four land councils established under the *Land Rights Act* is attached.[2]

These amendments are directed at improving the workability of the Act, particularly in relation to part IV which concerns exploration and mining.

The Minister for Indigenous Affairs, Amanda Vanstone, has recently announced reforms to the *Land Rights Act* which have adopted many of these workability amendments regarding part IV.

3. Mr Martin Ferguson MP, pp 20 and 28

Mr Ferguson requested advice as to the NLC's position regarding part IV of the *Land Rights Act*, bearing in mind the oral submission of Norman Fry, NLC CEO, that it is important that mining agreements "be commercially defined and be of a commercial nature."

The above advice is also provided in response to Mr Ferguson's request.

In particular the Committee's attention is drawn to the joint submission made by the Northern Territory Government and the four land councils which, consistent with the recommendations in three inquiries,[3] recommended that the *Land Rights Act* be amended to remove restrictions on the content of agreements (so that they are governed by general commercial law).

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[2] The submission is also available on the NT Government website at: http://www.dcm.nt.gov.au/dcm/indigenous_policy/pdf/Reforms_Aboriginal_Land_Rights_Act_NT_Submission.pdf

[3] Report by John Reeves QC 1998; report by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs August 1999; report by the National Institute of Economic and Industry Research 1999.