

EXECUTIVE SUMMARY

Kakadu National Park is a place of national and international cultural and environmental significance. Kakadu is on the Register of the National Estate and is on the World Heritage List for both its cultural and natural values. Those values are now under threat from the proposed Jabiluka uranium mine, already under construction.

The Alligator Rivers Region has sustained human occupation continuously for at least 50,000 years, and Aboriginal people continue to live there and use the land for practical, cultural and spiritual purposes. The Mirrar-Gundjehmi people are the Traditional Owners of the Jabiluka mine site, the Ranger uranium mine site and the land covered by the town of Jabiru. It is their living culture and deep spiritual interconnection with the land which is endangered by the mine's development.

The *Aboriginal Land Rights (Northern Territory) Act 1976* provides for grants of unalienated land to Aboriginal people in the Northern Territory and for Aboriginal Land Councils to represent the interests of Traditional Owners. It gives Traditional Owners a veto over development on their land, although this can be overridden by 'national interest' provisions. The Jabiluka mine was first approved under a 1982 agreement between Pancontinental Mining and the Northern Land Council (NLC). Serious doubts have been raised about the means by which this agreement was reached.

The beauty and ecological diversity of Kakadu National Park are threatened by contaminated water from the mine site and by the leaching of radioactive mine tailings into the surrounding environment. The visual integrity of the Park is threatened by the mine itself. The assessment of these threats was hasty and inadequate.

A UNESCO World Heritage Committee (WHC) mission visited Australia in October 1998 and presented its report at the 22nd Session of the World Heritage Committee in Kyoto on 29 November 1998. The report stated that the World Heritage values of Kakadu National Park were threatened and made sixteen recommendations to overcome these threats. The World Heritage Committee will decide whether to place Kakadu National Park on the List of World Heritage in Danger at the 3rd Extraordinary Session of the World Heritage Committee in Paris on 12 July 1999.

Environmental Impact Assessment

A primary aim of this inquiry has been to assess the process of environmental impact assessment (EIA) and government decision-making applied to the Jabiluka project. The EIA process should result in the highest level of scrutiny of development proposals and the establishment of failsafe environmental protection measures, and should also yield important data about the affected ecosystem and social structure in order to allow for continuing assessment and monitoring.

Major concerns raised in relation to the project, and which the assessment process was to address include:

- Potential damage to the ecology of the Park from contaminated water from the mine site;
- The disposal of tailings and the leaching of uranium from the tailings into the water system of the Park;
- Threats to the health of workers and the local population from radiation;
- Threats to the cultural heritage of the Aboriginal population, including possible damage to significant art, archaeological and sacred sites; and
- The potential for damaging social impacts on Aboriginal people and culture.

The Committee found serious flaws in the EIA process applied to the Jabiluka project. These related to the quality of the environmental impact statements prepared by Energy Resources of Australia (ERA), their assessment by government agencies, and the level of assessment applied to the consideration of continuing scientific and project uncertainties. The Committee also found serious flaws in the consideration of the social and cultural impacts of the project on Aboriginal communities, and in the protection of the World Heritage values of Kakadu National Park. Most disturbing to the Committee was a consistent pattern of rushed and premature ministerial approvals given to the construction of the mine while outstanding concerns about tailings disposal, radiological protection, project design and cultural heritage protection remained unresolved.

ERA's original proposal was to mine ore at Jabiluka and truck it to Ranger for milling at its existing plant (the Ranger Mill Alternative, or RMA). This proposal was subject to an Environmental Impact Statement. When the Traditional Owners refused to give consent for the construction of a haulage road the company proposed the Jabiluka Mill Alternative (JMA), involving the construction of a mill and associated facilities, and the disposal of mine tailings, at Jabiluka. This was subject to a Public Environment Report.

The Committee believes that the Jabiluka Mill Alternative should have been subject to a full Environmental Impact Statement as a result of its far greater impact on the mine site than the Ranger Mill Alternative, and that the grounds on which a lower level of assessment, a Public Environment Report, was justified were spurious. When inadequacies in that assessment were revealed, the further examination of the relevant issues was subject to an even less rigorous and less public scrutiny, until the report of the World Heritage Committee mission compelled the Government to undertake further studies.

The Committee acknowledges that some aspects of the process have been covered in detail, but significant concerns remain in relation to the totality of the assessment that occurred. The Committee believes that the process has not met the highest standards at every level and at every stage.

While there are advantages in having the proponent prepare the original environmental impact statement, such as demonstrating the environmental competence and intentions of the company, the fact that government has imposed 94 conditions on the project suggests that the environmental impact statements prepared by ERA were inadequate in many crucial areas.

The Committee is particularly concerned that Aboriginal people were given little opportunity to make effective comment on the environmental impact statements prepared by ERA. A plain English version of the EIS was only made available to Aboriginal people a month prior to the close of comments, and no oral or Gundjehmi version was made available. Recent ministerial decisions ensure that there will be no public or Aboriginal input to the assessment of outstanding tailings disposal and radiological protection measures at Jabiluka.

Scientific Concerns About the Jabiluka Project

Scientific concerns about the project have principally arisen in three areas:

- The management and containment of contaminated run-off;
- The management and disposal of radioactive and acidic tailings; and
- The provisions for radiological protection of mine workers and Aboriginal communities.

A group of scientists from the Australian National University (ANU) made a submission to the World Heritage Committee in 1998 questioning the scientific assumptions and containment measures proposed for managing run-off. They argued that inappropriate modelling, which took insufficient account of possible variations in weather patterns, evaporation rates or climate change, meant that the design of water retention ponds was inadequate.

The World Heritage Committee considered these issues of such importance that it asked the Supervising Scientist to prepare a report responding to these concerns. The Supervising Scientist's report supported the analysis of the ANU scientists in the area of evaporation and rainfall, and recommended a number of changes to the site's design in order to improve its safety over the very long term. It is disturbing that these matters were only addressed in response to the international pressures of the UNESCO mission.

The Committee believes that it was inappropriate for the Northern Territory Government to approve construction of the mine before the Commonwealth Minister for the Environment had advised the Minister for Resources and Energy on the outcome of the Public Environment Report, and when a tailings disposal option for Jabiluka had yet to be finalised. The proposed design and technology of tailings disposal at Jabiluka continues to be the subject of considerable scientific uncertainty. Assessment reports and scientific consultants have expressed serious concern about ERA's preferred option of putting half the tailings in the mined-out voids underground, and the remaining half in two purpose-built pits on the surface. While

ERA can resubmit this proposal to the Government for approval, it will not be subject to any higher level assessment or public examination.

It is of particular concern to the Committee that the Commonwealth Government approved the mine on the basis that 100 per cent of the tailings would be placed underground, despite the company having released no details or scientific examination of this option, and despite its clear preference for the less costly and technologically simpler option. It remains uncertain whether ERA will proceed with the Minister's recommended option or continue to press for the 50-50 option.

Serious uncertainties remain about the level of radiological protection at the mine. Possible levels of radiation both within the mine workings and outside the mine area remain unclear, and could be close to international limits. This could pose serious dangers to mine workers and prevent Aboriginal people from using parts of their land in the mine vicinity. This will exacerbate the already negative cultural impacts of the mine proposal.

Social and Cultural Impacts

The Committee believes that the EIA process has been inadequate in addressing the potentially grave social and cultural impacts of the Jabiluka project on the Aboriginal community in the region. In fact, company and government actions have exacerbated these problems.

The company has continued mine construction and blasting in the face of the very serious concerns of the Mirrar people about the impact of these works on the Boiwek-Almudj sacred site complex, and thus on the survival of their living culture. In its attempts to discredit the Mirrar's concerns about the site the Australian Government has shown a disrespect for Aboriginal culture and a reluctance to take seriously the deeply held beliefs of the Traditional Owners of the area. Evidence provided to the Committee of serious anthropological work, undertaken over a period of twenty years by pre-eminent experts in the field, conclusively refutes government claims, and yet despite a condition of the mine's operation being the completion of a cultural heritage management plan *before* project construction began, the Government has taken no action against the company.

The Committee found that the mine could have serious social impacts on Aboriginal people and culture, arising from their marginalisation amidst a larger non-Aboriginal population, the pressure of meetings and administration, and adverse effects on food gathering and the transmission of culture. Most profound was the demoralisation caused by the refusal to acknowledge the rights of traditional Aboriginal people over land, which has been unfairly alienated in the cases of the Ranger and Jabiluka mines and the town of Jabiru.

There has been no dedicated social impact study of the Jabiluka project. The Kakadu Region Social Impact Study was specifically prevented from examining the impacts of mining, and its recommendations are still to be implemented, nearly two years after its findings were made public.

Government Decision-Making, Regulation and Enforcement

Of most concern to the Committee has been the pattern of rushed and premature ministerial approvals given to the construction of the mine before outstanding scientific, social and cultural concerns about the mine were resolved. The Committee is also concerned about the inappropriate levels of assessment given to those outstanding issues.

In particular, the Committee believes that the approval for mine construction issued in June 1998 was premature, given that the assessment of the Jabiluka Mill Alternative had not been completed. The level of assessment applied to the JMA was also inappropriate, given that it would have a far greater impact on the site and on the surrounding World Heritage area and Aboriginal population than the Ranger Mill alternative. The approval of the Jabiluka Mill Alternative in August 1998, immediately prior to the calling of the Federal Election, was also premature given that no assessment had been made of the approved tailings option.

This incremental pattern of approvals has placed further pressure on Traditional Owners to support the project, and created an appearance that the EIA process has become politicised. The Committee also believes that departmental assessments of both the EIS and the PER indicated strong grounds for caution in issuing approvals before outstanding concerns had been dealt with.

The Committee is also concerned that the enforcement and regulatory regime which will apply to the mine is inadequate. Day-to-day regulation of the mine rests with the Northern Territory Department of Mines and Energy, which has a demonstrably poor record of environmental regulation. Commonwealth powers are limited to ministerial discretion in the issuance of export licences well after mine construction and operation has begun. The Commonwealth has avoided creating stronger regulatory mechanisms, such as the incorporation of environmental requirements into a Deed with ERA.

The Committee is concerned that in lobbying for Government policy positions before the World Heritage Committee and in other forums, the independence of the Office of the Supervising Scientist may have been compromised. It is also concerned that the complete withdrawal of its presence from Jabiru will further limit its effectiveness in monitoring uranium mining in the Alligator Rivers Region. The Committee believes that its statutory independence from Government, and its role in environmental enforcement, should be clarified and strengthened.

The Need for a Public Inquiry

The Committee believes that the manifest flaws in the process of environmental impact assessment of the Jabiluka project, and the sensitivity of its location in the midst of Aboriginal land and a World Heritage area, require further examination by a public inquiry established under Section 11 of the *Environmental Protection (Impact of Proposals Act) 1974* (or under the equivalent provision of the Environment Protection and Biodiversity Conservation Bill, when proclaimed).

The Rights of Traditional Owners

Considerable dispute and bitterness has arisen over the rights of the Traditional Owners in relation to the Jabiluka project. The Traditional Owners of the Jabiluka area, the Mirrar-Gundjehmi clan, are vehemently opposed to mining on their land and have undertaken extensive lobbying, legal and protest action in an effort to stop the Jabiluka project.

Energy Resources of Australia and the Australian Government contend that the Traditional Owners have legally consented to the project, under the terms of an agreement negotiated between the Northern Land Council and Pancontinental Mining in 1982. One of the signatories to that agreement was a Mirrar elder and former Senior Traditional Owner.

The Committee believes that the 1982 Jabiluka Agreement was negotiated under questionable circumstances. The Traditional Owners presented the Committee with extensive and persuasive evidence, taken from relevant documents and the records and minutes of meetings, which suggests that the circumstances surrounding the Agreement were deeply unfair and that the Northern Land Council failed in its duty under Section 23 of the *Aboriginal Land Rights (Northern Territory) Act 1976* to fully inform, consult and act on the instructions of Traditional Owners.

In defence of the Agreement, the Australian Government asserts that it has never been legally challenged, and the Northern Land Council also maintains that the 1982 negotiations were fair. The Committee was told, however, that even if it were proven that the NLC *had* failed in its duty to Traditional Owners, discriminatory provisions in the Land Rights Act would mean that the Agreement would still stand. Similarly, the laws of equity would protect ERA from legal action. For these reasons the Mirrar have never undertaken legal action against the Agreement.

The Committee believes that there is a *prima facie* case for a review of the 1982 Jabiluka Agreement. It also supports the views of many witnesses, including the Northern Land Council, that a new agreement should have been sought with Traditional Owners in 1996 because of the lapse in time and the dramatic changes to the nature and scope of the project proposal. The Committee points to an inconsistency between the requirement that a new environmental impact assessment be undertaken without a corresponding consultation of Traditional Owners.

These issues were brought into stark relief by the recommendation of the 1998 World Heritage Committee mission to Australia that the 1982 Agreement be reviewed. In response, ERA and the Australian Government have argued that to review the agreement would bring uncertainty into contracts negotiated with Aboriginal people, jeopardise the credibility of land rights law, unjustly privilege one set of acquired property rights over another, and bring the very foundations of contract law into question.

While acknowledging the principles of contract law and the need for certainty in dealings with Aboriginal people, the Committee rejects these arguments. It points out

that the 'acquired rights' of Aboriginal people derive from an ancient and irrefutable interconnection with the land, a fact which is only imperfectly recognised in Australian law. The provisions of the Land Rights Act, in which Traditional Owners are not parties to contracts negotiated on their behalf, already create scope for those rights to be unfairly alienated within contracts which may otherwise be technically legal.

Further, the Committee is of the view that it is other discriminatory provisions of the Land Rights Act, such as the 'national interest' clause, not demands to review the 1982 Agreement, which undermine both the credibility of the Act and of agreements reached with Aboriginal people under that Act. The Committee believes that it is the very framework under which those agreements are reached which undermines the principles the Australian Government claims would be damaged by a review of the 1982 Agreement. Certainty cannot be guaranteed without fairness.

The Committee believes that the Land Rights Act should be reformed to ensure that traditional Owners are fully consulted and informed about developments on their land, that their views are allowed to prevail, and that their agreement to significant changes in scope is also required. The 'national interest' provisions of the Act should be removed, and consideration should also be given to deeper reform which makes contracts accord more closely with traditional law and authority.

The Committee believes that it is crucial that the linkages between the continuing dispossession of Aboriginal people, as represented by the 1982 Agreement and its aftermath, and their deep social distress and demoralisation, be understood. Aboriginal people see their basic rights in relation to land, the protection of sacred cultural heritage, and the survival of their living culture, as parts of a seamless continuum. By disregarding these rights, and this interconnection, the Jabiluka process has placed the survival of the Mirrar's culture and tradition, and perhaps of the Mirrar themselves, in grave danger. The Committee believes that until the fundamental human and cultural rights of Aboriginal people are recognised, in law, in administrative structures and in the Jabiluka process, there will not be any fundamental change.

The Committee believes that the Government has demonstrated a fundamental reluctance to address complex and difficult issues in relation to the rights of Traditional Owners. It is precisely because they are complex and difficult that these issues must be addressed if there is to be any hope of a long-term solution to the problems of the region, which are closely related to, but extend well beyond, the issue of a particular mine.

World Heritage Issues

The issues associated with the Jabiluka uranium mine project were brought into sharp focus by the World Heritage Committee mission in October 1998. The mission's report included sixteen recommendations to the Commonwealth Government, the most important of which stated that the proposal to mine and mill uranium at Jabiluka should not proceed. Although the World Heritage Committee cannot enforce its

recommendations, it may choose to draw international attention to the issue by placing Kakadu National Park on the List of World Heritage in Danger. An extraordinary meeting of the WHC, to be held in Paris on 12 July 1999, will determine whether that is necessary.

The Committee agrees with the WHC that the Jabiluka uranium mine poses a serious threat to the natural and cultural World Heritage values of Kakadu National Park and urges the WHC to place the Park on the List of World Heritage in Danger at its extraordinary meeting. Such a listing, the Committee believes, would send a powerful message to the Commonwealth Government that its current support for the Jabiluka uranium mine is harming the natural and cultural values of Kakadu National Park, and that only a decision to halt the mine would ensure that the World Heritage values of the Park can be safeguarded.

The measure of Kakadu National Park's World Heritage standing is immediately apparent from the five criteria that it currently satisfies for World Heritage listing. In addition, the Committee believes that there is a very strong case for renominating Kakadu National Park to reflect more properly recent modifications to World Heritage criteria. The World Heritage Committee's cultural criteria have changed to reflect the importance of 'living tradition', and the concept of 'cultural landscape' has also been included. The Committee believes that Kakadu National Park satisfies these revised criteria. It believes that renomination of the Park is appropriate and that the Jabiluka mine represents a proven danger to the World Heritage values that the Park embodies.

In its response to the WHC mission's report, the Commonwealth Government argued that it had stringently met its World Heritage obligations in relation to Kakadu National Park and that the processes it had established in relation to the Jabiluka mineral lease ensure that the values and attributes of the Park have been protected. The Committee does not share that view. On the contrary, it found that the majority of submissions and evidence presented to it supported the opposite view: that because of its continuing support for uranium mining at Jabiluka the Government had failed to meet Australia's World Heritage obligations in relation to the protection of Kakadu National Park.

The Government has failed to meet these obligations in relation to the natural values of Kakadu National Park by continuing to assert that mining in the midst of a World Heritage area was acceptable. The Committee rejects that view and believes that questionable standards of assessment and protection were applied to a mine in a very sensitive World Heritage area, failing to take into account the high value placed by the international community on a World Heritage property of such significance. The effects of the mine on areas downstream of the Jabiluka project have yet to be properly assessed in a Kakadu-wide context.

The Government has also failed to meet its obligations in relation to the cultural values of the Park by unduly neglecting these values in the Jabiluka mineral lease area. The Committee accepts the evidence of relevant experts that Jabiluka is set in a major and intermeshed cultural landscape which is continuous with the areas outside

its arbitrary base boundaries and is adjacent to several dreaming places. The Committee notes that there is a strong possibility that there are indigenous sites of significance in the Jabiluka mineral lease areas which have not yet been recorded or detected.

The Committee believes that the Commonwealth Government has repeatedly dismissed the views of the Traditional Owners in relation to the significance of the cultural values of the Jabiluka mineral lease, and diminished the rights and interests which are an integral part of Mirrar law and custom. The Committee also believes that the Commonwealth Government has failed to meet its World Heritage obligations by failing to understand and dismissing the nature of living tradition associated with World Heritage cultural values. Both the EIS and PER approvals processes for the Jabiluka uranium mine failed to address adequately the issues related to living tradition. Of particular concern to the Committee was the Commonwealth Government's failure to consult the Traditional Owners or to make a genuine attempt to understand their concerns in relation to cultural values.

It is clear from evidence provided to the Committee that the three mining leases inside the boundaries of Kakadu National Park - Ranger, Jabiluka and Koongarra – despite being legally excised enclaves, are an integral part of the natural and cultural heritage of the Park. Such boundaries, the Committee believes, are artificially imposed on a landscape, or 'country', with links that cannot be separated and which are socially, culturally and ecologically integrated.

The Committee examined the responses of the Commonwealth Government to the WHC mission's recommendations and found many of these to be at best inadequate and at worst misleading and deceptive. The Committee believes that these responses will fail to satisfy the mission's concerns.

The Committee disputes the Commonwealth Government's response to the WHC's recommendations dealing with the visual encroachment of the integrity of Kakadu National Park through both uranium mining and the expansion of the town of Jabiru. In relation to the former, the excision of the Jabiluka and Ranger areas from the Park to facilitate mining at those areas is a highly artificial action and has a deep visual impact on the Park. In relation to the latter, the Committee took note of documentary evidence presented by the Mirrar people that the Northern Territory Government and ERA plan to expand considerably the size and type of development in Jabiru.

In relation to the Commonwealth Government's response to several WHC recommendations dealing with threats to cultural values, the Committee once again believes that the Government has failed to satisfy the mission's concerns. The Committee is highly critical of the continuing absence of a cultural heritage management plan, and places the blame for this squarely at the feet of the Government. The Government and ERA have also failed to conduct the necessary exhaustive cultural mapping of the Jabiluka mineral lease and the Boiwek site and its boundaries. The current audit of cultural mapping on the Jabiluka lease area is shallow and has led to simplistic and misleading conclusions.

Despite the WHC mission's call for the immediate and effective implementation of the Kakadu Regional Social Impact Study (KRSIS) recommendations, the Committee noted from witnesses that as yet no proposal detailing how and when the KRSIS recommendations might be implemented has yet been submitted by the Government to the Northern Land Council. Finally, despite its clear statement that there has not been a general breakdown in communication and trust between Aboriginal people and the Government in relation to the Jabiluka project, the Committee heard that a very severe breakdown has indeed occurred. This breakdown is so severe that the Traditional Owners of the Jabiluka area, the Mirrar people, have claimed that the Australian Government is presiding over the potential destruction of an entire clan.

Contrary to the Commonwealth Government's view that Kakadu National Park should not be placed on the WHC's List of World Heritage in Danger, the Committee believes that such a listing may be the only way of changing the Government's present support for mining at Jabiluka. It therefore strongly supports such a listing.

CONCLUSION

The Committee believes that the Jabiluka uranium mine poses a grave threat to the natural and cultural heritage values of Kakadu National Park. The Traditional Aboriginal Owners see the land, their sacred heritage and their living culture as one. The continued development of the mine is dangerous, threatening the very survival of a culture that has existed in Kakadu for 50,000 years. The mine should not be allowed to proceed.

The Jabiluka Uranium Mine Project - Chronology

	1970	Uranium discovered at Ranger
	1971	Pancontinental discovered Jabiluka uranium deposit and made an application to mine
	1975	Ranger Uranium Environmental Inquiry (Fox Inquiry) established
	1976	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth)
	1978	Ranger Agreement between mining consortium and the Northern Land Council (on behalf of traditional owners)
	1979	Stage I of Kakadu National Park proclaimed
	1979	Construction at Ranger begun
	1979	EIS submitted for development of Jabiluka mine by Pancontinental
	1981	World Heritage listing of Stage I of Kakadu National Park
	1981	Operations began at Ranger
July	1982	Agreement on mining at Jabiluka between Pancontinental and the Northern Land Council (on behalf of traditional owners)
August	1982	Jabiluka mineral lease granted by the NT Government
	1983	Election of ALP Government – ‘three mines policy’ halted further development
	1984	Stage II of Kakadu National Park proclaimed
	1987	World Heritage listing of Stage II; Stage III (Phase 1) proclaimed
	1989	Stage III (Phase 2) proclaimed
	1991	Stage III (Phase 3) proclaimed
	1991	Jabiluka Lease transferred to ERA with the agreement of the Northern Land Council, on condition that the milling of Jabiluka ore at Ranger would require further consent from the traditional owners
	1992	World Heritage listing of renominated Kakadu National Park
March	1996	Election of Coalition Government
	1996	ERA proposal for underground mine at Jabiluka and milling at Ranger
October	1996	IUCN resolution opposing the development of Jabiluka if World Heritage values were shown to be threatened
June	1997	EIS for the Ranger Mill Alternative (RMA) forwarded to NT and Commonwealth Environment Ministers
August	1997	Cth Environment Minister forwarded the RMA EIS to the Minister for Resources and Energy, recommending 77 environmental conditions
October	1997	Minister for Resources and Energy approved the RMA subject to requirements based on the Environment Minister’s recommendations
June	1998	Public Environment Report on Jabiluka Mill Alternative (JMA) with 50-50 option for disposal of tailings underground and in surface pits
June	1998	NT Government authorised construction of common elements of the RMA and JMA proposals; construction work began
August	1998	Minister for the Environment reported to the Minister for Resources and Energy on the JMA Public Environment Report
August	1998	Minister for Resources and Energy gave ERA conditional approval for the JMA, with 100 per cent underground disposal of tailings
September	1998	Blasting and excavation of the decline (tunnel) began
October	1998	Federal Election; World Heritage Committee mission to Australia
December	1998	Report of the World Heritage Committee mission
April	1999	Australian Government’s response to the World Heritage Committee