

**Government Response to the Report of the Senate Environment,  
Communications, Information Technology and Arts Reference Committee:**

**‘Jabiluka: The Undermining of Process: Inquiry into the Jabiluka  
Mine Uranium Project’**

October 2000

**Recommendation 1**

**The Committee recommends that the environmental assessment process be reformed to ensure that consideration is given, both in impact statements and subsequently, to whether a project should proceed.**

The current processes under the *Environmental Protection (Impact of Proposals) Act 1974* (EPIP Act) and the new processes to be established under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) ensure that consideration is given to both impact and subsequently whether a project should proceed.

The current legislation governing Commonwealth environment impact assessment, the EPIP Act, seeks to ensure that matters affecting the environment to a significant extent are fully examined and taken into account in Commonwealth Government actions. The consideration of whether an action should proceed is provided for in the Administrative Procedures to the EPIP Act which requires that the consequences of the proposal not proceeding should be described in the impact statement.

Should an action be found to be harmful to the environment, it is open for the Department in its assessment report, or the Minister in his advice to the Action Minister, to advise that the project should not proceed.

Australia’s World Heritage properties and other specified matters of national environmental significance are protected from 16 July 2000 under the *Environment Protection and Biodiversity Conservation Act, 1999* (EPBC Act). The Act provides that any action that has, will have or is likely to have, a significant impact on the World Heritage values of a declared World Heritage property is subject to an assessment and approval process. In deciding whether or not to approve an action, the Minister must take into account the principles of ecologically sustainable development. The Act applies to any action that has a significant impact on the World Heritage values, whether that action is taken inside or outside the boundaries of the World Heritage property. The EPBC Act provides for substantial civil and criminal penalties for unlawful acts which damage World Heritage Values.

**Recommendation 2**

**The Committee recommends that all relevant MOUs between State and Commonwealth Government Agencies regarding environmental impact assessment be made public.**

Under the current EPIP Act MOU’s are made available when requested. Under the *Environment Protection and Biodiversity Conservation Act 1999*, there is a requirement for the publication of: a notice of intention to enter into a bilateral

agreement; a draft of the bilateral agreement with an invitation for comment by the public; and, after entering into a bilateral agreement, the final bilateral agreement. In addition, with bilaterally accredited management plans, the Minister must publish the instrument accrediting the Management plan and must table before each house of Parliament the plan he is considering accrediting. There is provision for either house to disallow such a plan.

### **Recommendation 3**

**The Committee recommends that all further construction of the Jabiluka mine be suspended until cultural mapping of the site area can be conducted in cooperation with the Traditional Owners and recognised custodians of the Jabiluka area.**

In order to encourage participation of Traditional Owners in developing measures to protect the cultural values of the Jabiluka lease, the Government made a range of commitments relating to Jabiluka at the July 1999 meeting of the World Heritage Committee. These commitments included that, following the completion of further geological proving through core sampling, the Jabiluka mine would be placed on a 'standby and environmental management' basis.

This core sampling was completed in early September 1999 and the mine has since then been placed on a 'standby and environmental management basis'. In October 1999, the NLC on behalf of the Gundjehmi Aboriginal Corporation (GAC), advised that the GAC had placed a moratorium on consideration of the Ranger Mill Alternative (RMA) for 5 years. Following this decision, ERA publicly announced that it would be undertaking a strategic review and evaluation of the Jabiluka mine focusing on progressing the Jabiluka Mill Alternative (JMA).

In order to progress the JMA in stages and have a mill operating at commercial levels by 2009, ERA advises it will need to conduct further site assessment work. This will allow ERA to develop specifications and tender for supply of mill equipment. Construction of the mill will then progress in stages in accord with the Australian Governments' regulations, and with the commitments given to the World Heritage Committee. It could take up to 3-4 years to build and commission the new mill, and will involve planning and associated above and below ground works.

In a parallel process in July and September 1999, the Minister for the Environment and Heritage travelled to the Northern Territory and met with the Gundjehmi Aboriginal Corporation to discuss a number of matters, including the Cultural Heritage Management Plan. In October 1999, the Government invited stakeholders, including the Gundjehmi Aboriginal Corporation, to discuss advancing the Cultural Heritage Management Plan. In December 1999, the Department of the Environment and Heritage provided for discussion a draft set of Cultural Heritage Management Plan objectives and principles and Draft Terms of Reference for a Reference Group to advance the development of the Plan. In February 2000, the Minister for the Environment and Heritage proposed a senior Aboriginal facilitator to the Gundjehmi Corporation for their consideration as a facilitator to the Reference Group. The Traditional Owners however have advised that they will not participate in a process which involves ERA or contributes to the development of Jabiluka.

#### **Recommendation 4**

**The Committee recommends that the issues of Aboriginal people's access to, and perception of, country as a result of development projects, be addressed in a holistic process which links environmental impact assessment with questions of Aboriginal land rights, sovereignty and cultural survival.**

The EPIP Act, at the time of its drafting in 1974, did not make direct provision for the consideration of the concerns of Aboriginal people. However, in practice its administration has seen the routine inclusion of Aboriginal land rights and cultural issues in the guidelines for impact statements, and the Jabiluka EIS Guidelines make broad provision for the consideration of all these important issues. As well as consideration of all sites of Aboriginal significance, the EIS guide-lines also provide for consideration of "adverse impacts of the proposal upon the social and cultural lifestyle of traditional owners and the broader Aboriginal community, including customary practices, resource sharing and food gathering" (Jabiluka EIS Guidelines, Appendix A, p. A-13). Post mining impacts are also considered.

The *Environment Protection and Biodiversity Conservation Act, 1999*, has included the consideration of indigenous concerns as an integral part of the legislation. For example, the objects of the Act include the following:

"1(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples;

1 (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and,

1(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge."

The Act expressly requires that indigenous interests are addressed in developing bilateral agreements, management plans, recovery plans, wildlife conservation plans and threat abatement plans.

#### **Recommendation 5**

**The Committee recommends that a new inquiry be conducted to assess the specific social and cultural impacts of the Jabiluka project on the Aboriginal communities of the Alligator Rivers Region. The Committee also recommends that the social and cultural impacts of mining be given greater attention in ministerial decision making.**

The Australian Government believes that these issues have been regularly and thoroughly investigated and that no new inquiry is warranted. These investigations date from 1975 when the Government established the Ranger Uranium Environmental Inquiry (also known as the "Fox Inquiry") under the EPIP Act. In August 1977 the Government accepted almost all of the recommendations of the Inquiry including those relating to granting Aboriginal title, establishing a major national park in stages, and to uranium mining.

The proposals to mill uranium ore mined from Jabiluka at the Ranger site or the Jabiluka site (the Ranger Mill Alternative (RMA) and the Jabiluka Mill Alternative (JMA) respectively) have been subject to a transparent and comprehensive environmental impact assessment process carried out over a three year period with wide public and expert input.

Additionally, the Kakadu Regional Social Impact Study (KRSIS) was commissioned in 1996 in response to a request by Aboriginal Associations through the NLC, to examine the impacts of developments in the Kakadu region over the previous 20 years. The purpose of KRSIS was to provide a clear statement of Aboriginal experiences, values and aspirations regarding development of the region and to initiate a community development program to enhance or mitigate impacts associated with developments in the region. A KRSIS Community Action Plan was completed in 1997. In November 1998, the Commonwealth and NT governments appointed Mr Bob Collins to lead a team to implement government endorsed recommendations of the KRSIS Community Action Plan.

As noted in *Australia's Kakadu, Protecting World Heritage*, the response by the Australian Government to the UNESCO World Heritage Committee mission report on Kakadu National Park, "Every effort has been made to ensure thorough participation, negotiation and communication with traditional owners, custodians and managers to ensure the compilation of an accurate cultural inventory for the conservation of the cultural sites located within the Jabiluka Mineral Lease".

The issues of potential dust and vibration impact have been rigorously and independently assessed and a world class expert nominated by the Australian Academy of the Humanities has undertaken a review of the Interim Cultural Heritage Management Plan.

## **Recommendation 6**

**The Committee recommends that powers of day-to-day regulation of uranium mining in the Alligator Rivers Region be removed from the Northern Territory Department of Mining and Energy and restored to the Office of the Supervising Scientist.**

Day to day regulation of uranium mining activities has never been the responsibility of the Supervising Scientist.

The day-to-day regulation of uranium mining at Jabiluka is undertaken through interlocking arrangements between the Commonwealth Government and the Northern Territory Government. These regulatory arrangements are imposed both by Northern Territory legislation and by Environment Requirements set by the Commonwealth. In consultation with Aboriginal representatives, ERA and the Northern Territory Government.

The Commonwealth and Northern Territory Governments are currently developing revised regulatory arrangements covering the environmental aspects of uranium mining in the Northern Territory to reflect the Commonwealth's final accountability for uranium mining in the Alligator Rivers Region. The arrangements will provide greater flexibility and transparency in the use of existing reserve powers of the

Commonwealth by allowing the Commonwealth Minister administering the *Atomic Energy Act 1953*, acting on the advice of the Supervising Scientist, to direct the Northern Territory on issues relating to Ranger and Jabiluka in the event he considers it necessary. The Northern Territory Government will maintain responsibility for day-to-day regulation.

### **Recommendation 7**

**The Committee recommends that the Office of the Supervising Scientist be removed from the corporate structure of the Department of Environment and Heritage and reconstituted as an independent regulatory authority of uranium mining in the Alligator Rivers Region. It should retain a carefully defined capacity to receive references from, and provide advice to, the Environment Minister and make recommendations. The funding of the Office of the Supervising Scientist should be increased so that it is able to conduct its own monitoring and research.**

The Government notes that the Supervising Scientist is an independent statutory position. The independence of the Supervising Scientist is enshrined in the *Environment Protection (Alligator Rivers Region) Act 1978*. The Supervising Scientist reports to the Minister for the Environment and Heritage and is subject to the direction of the Minister. Any directions by the Minister must be reported by the Supervising Scientist in his annual report, which is tabled in Parliament. Any report prepared by the Supervising Scientist as a result of such a direction must also be tabled in the Parliament. This requirement makes the Minister for the Environment and Heritage directly accountable to the Parliament for any directions given to the Supervising Scientist.

Throughout the entire Jabiluka assessment process and the provision of advice to the World Heritage Committee, the Supervising Scientist has been meticulous in restricting his advice to scientific and technical issues.

The Environmental Research Institute of the Supervising Scientist (ERISS) undertakes a comprehensive research program into the environment of the Alligator Rivers Region and the effects of uranium mining upon it. The current level of funding is adequate for the Office of the Supervising Scientist to carry out his functions under the *Environment Protection (Alligator Rivers Region) Act, 1978*. The recent relocation of OSS Canberra staff to Darwin has further enhanced the level of coordination between ERISS and OSS with respect to research activities.

### **Recommendation 8**

**The Committee recommends that should the project proceed, further assessment of Jabiluka tailings management, waste rock disposal, run-off containment and radiological protection measures be subject to a public process at the level at least of a Public Environment Report, and that such revised proposals be subject to peer review by scientists.**

The Government considers that further assessment of the Jabiluka project under Commonwealth law is not required. An assessment of Jabiluka tailings management, waste rock disposal, run-off containment and radiological protection measures has

already been completed under the environmental impact assessment process and in an assessment by the Supervising Scientist to the World Heritage Committee. The Supervising Scientist's assessment was subject to peer review by the International Council of Scientific Unions (ICSU) on behalf of the World Heritage Committee. The Government is addressing and responding to all of the recommendations of ICSU.

The Jabiluka uranium mine has been subject to a rigorous assessment over a lengthy period, and at every stage it has been demonstrated that the mine will have no adverse impact on the environment. Furthermore, at each stage of the mine (for example, prior to disposal of tailings) detailed designs are required of the company that will be assessed by members of the Mine Site Technical Committee before any approval is given. Where required, independent experts will be contracted to review those detailed designs. In addition, the operation of the mine will continue to be subject to public review through the operations of the Alligator Rivers Region Advisory and Technical Committees. These are statutory Committees under the Environment Protection (Alligator Rivers Region) Act and their proceedings are in the public domain.

### **Recommendation 9**

**The Committee recommends that in the event that the Jabiluka project proceeds, the enforcement regime should be strengthened by the implementation of a deed between ERA and the Commonwealth incorporating all the conditions put forward by the Commonwealth to this date, along with those recommended by the Supervising Scientist following further assessments. These conditions should also be made the explicit conditions of the issue of export licences by the Commonwealth.**

The Government does not consider that a deed between ERA and the Commonwealth incorporating all the Commonwealth requirements is necessary, or appropriate, where a company needs to seek a permit against an action prohibited by law. In this case ERA is required to obtain a permit to export uranium ore concentrate under the Regulation 11 of the Customs (Prohibited Ex-ports) Regulations.

Existing arrangements already implement the intent of this recommendation. These arrangements require ERA to satisfy Commonwealth requirements arising from the Environmental Impact Statement and the Public Environment Report prior to the Minister considering the issue of export permits. The Government believes that the Jabiluka uranium mine has been subject to the most rigorous level of assessment over a considerable period, and that at every stage it has been demonstrated that the mine will have no adverse impact on the environment of Kakadu National Park and its World Heritage values.

The Government is committed to continually ensuring that the regulatory framework fully supports the rigorous requirements in place to protect the environment. The Government is considering making a number of changes to the framework supporting the controls over uranium mining. It is in the process of finalising an agreement with the Northern Territory that will strengthen the NT legislative framework that has been in existence since the Ranger Mine first commenced production in 1982 and more clearly define the Commonwealth's role.

In recognition of the increasingly complex way in which environmental conditions are being applied to uranium mining, the Government intends to introduce an amending regulation under the Customs Act to move the conditionality of export approvals where the primary penalty is non issue of a permit, to one where explicit performance conditions are made an ongoing part of the licence and subject to penalties under the Customs Act.

The initiatives with the NT Government and the Customs Regulations are complementary.

### **Recommendation 10**

**The Committee recommends that in view of the inadequate level of assessment applied to the Jabiluka proposals and the premature decision-making of the Action Minister, the Minister for Environment and Heritage establish a Commission of Inquiry into the Jabiluka project under Section 11 of the EPIP Act or under the equivalent provision of the EPBC Bill when proclaimed.**

The Australian Government rejects the Committee's view that an inadequate level of assessment was applied to the Jabiluka proposal, or that the decision making of the Minister for Resources and Energy was premature. The development of the Jabiluka Mine site was not permitted until the full environmental impact assessment (EIA) process was complete. The proposal to mine uranium ore at Jabiluka has been subject to a comprehensive environmental impact assessment process under the *Environment Protection (Impact of Proposals) Act 1974* lasting nearly three years. An Environmental Impact Statement and a Public Environmental Report were prepared under Commonwealth legislation. In addition, an independent review of the Public Environmental Report was conducted. This was an extra step in the assessment process, not required under the legislation, which ensured that the statutory timeframe for the assessment process was extended.

The Government believes that these issues have been thoroughly investigated at adequate levels of assessment and that no new inquiry is warranted.

### **Recommendation 11**

**The Committee believes that the circumstances surrounding the negotiation of the 1982 Jabiluka Agreement, the changes made to the proposal following its original negotiation, and the clear opposition of the Traditional Owners to the project were extraordinary and unfair. The Committee therefore recommends that ERA seek a new mining agreement from the Northern Land Council and the Mirrar – Gundjehmi under Section 46 of the *Aboriginal Land Rights (Northern Territory) Act 1976* before further construction or operation of the Jabiluka mine occurs.**

The *Aboriginal Land Rights (Northern Territory) Act 1976* gives Traditional Owners a right of veto over mining. In 1982 the Traditional Owners consented to the development of Jabiluka. The development and finalisation of the 1982 Jabiluka Agreement involved approximately seventeen months of negotiations with Traditional Owners and included forty-six of meetings with them and the other Aboriginal custodians in the Kakadu region who had an interest in the Jabiluka mine. In 1991 the

NLC, with Traditional Owner endorsement, agreed to the transfer of the mineral lease and 1982 agreement, from Pancontinental Mining and Texaco Oil to ERA. None of the principals associated with the Agreement have disowned the Agreement or the process which led to its finalisation. Australian law recognises the special relationship the Mirrar have with their land and has enabled the Mirrar to participate in all decisions affecting them in statutory environmental assessment processes.

The Government notes that following completion of the 1982 Agreement the NLC stated it was proud of the way the negotiations had been conducted. The process included forty-six meetings with Traditional Owners and Aboriginal people affected by the development and ongoing negotiations over seventeen months with key Traditional Owners. The NLC continues to support the legitimacy of the 1982 Agreement.

“Australia’s Kakadu – Protecting World Heritage – Response by the Government of Australia to the UNESCO World Heritage Committee Regarding Kakadu National Park April 1999” provides further detail on the development and finalisation of the 1982 Agreement.

The 1982 mining proposal for Jabiluka, proposed by then project owners Pancontinental, would have occupied a substantially larger footprint than ERA’s current proposals. The Pancontinental proposal would have occupied 819ha compared with ERA’s proposals of 80ha for the Ranger Milling Alternative and 130ha for the Jabiluka Milling Alternative.

The 1982 Jabiluka Agreement specifically provided for changes to the original concept, and details a process for making these changes. Processes included in the 1982 Jabiluka Agreement for consideration of milling options were followed, and both milling options have been approved under the terms of the Agreement.

Furthermore, the Government and ERA gave a commitment at the July 1999 World Heritage Committee meeting that there would not be parallel full-scale commercial mining at Ranger and Jabiluka. Full-scale operations at Jabiluka would only commence after the scaling down of production at Ranger. There will be a transition from Ranger to Jabiluka, replacing the previous plan to operate the two mines together until 2014.

## **Recommendation 12**

### **The Committee recommends that consideration be given to repealing Section 48D(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976***

The provision referred to in this recommendation only applies to agreements made on Aboriginal land for mining authorised under Commonwealth Acts. Similar provisions that applied to Jabiluka were repealed in the 1987 amendments to Part IV of *Aboriginal Land Rights (Northern Territory) Act 1976*.

The Government will consider the recommendation in the context of its response to the HORSCATSIA August 1999 report “Unlocking the Future: the Report of the Inquiry into the Reeves Review of the *Aboriginal Land Rights (Northern Territory) Act 1976*”.



### **Recommendation 13**

**The Committee recommends that Section 40(b) of the *Aboriginal Land Rights (Northern Territory) Act 1976* be repealed**

The government believes that, although the National Interest provision has never been exercised under the *Aboriginal Land Rights (Northern Territory) Act 1976*, it should be retained for sound public policy reasons. The Government will, however, consider the recommendation in the context of its response to the HORSCATSIA August 1999 report “Unlocking the Future: the Report of the Inquiry into the Reeves Review of the *Aboriginal Land Rights (Northern Territory) Act 1976*”.

### **Recommendation 14**

**The Committee recommends that consideration should be given to further reform of the *Aboriginal Land Rights (Northern Territory) Act 1976* in order to ensure that the rights of traditional owners are protected during negotiations, and to ensure that their agreement to substantial changes in scope be required.**

The Government believes that the *Aboriginal Land Rights (Northern Territory) Act 1976* provides significant protection to the rights of traditional owners during mining negotiations. Agreements struck under the ALRA can, and usually do, provide for further negotiation in the event that there are substantial changes in scope.

The Government will consider the recommendation in the context of its response to the HORSCATSIA August 1999 report “Unlocking the Future: the Report of the Inquiry into the Reeves Review of the *Aboriginal Land Rights (Northern Territory) Act 1976*”.

### **Recommendation 15**

**The Committee recommends that in view of the inadequate recognition of Aboriginal rights in Australian law, the Australian Government recognise the fundamental human and cultural rights of Aboriginal people in all laws applying to their lands and cultures.**

The Government considers that there is adequate recognition of Aboriginal rights in Australian law. There is a wide range of mechanisms in Australian law, including the *Aboriginal Land Rights (Northern Territory) Act 1976*, to ensure that Aboriginal people have maximum input into decisions that affect them.

### **Recommendation 16**

**The Committee recommends that the Government seek a new inscription for Kakadu National Park to enable the listing to reflect the living traditions and cultural landscape of the Park more accurately.**

The Government notes this recommendation.

Parks Australia North (PAN) and the Northern Territory Government are working cooperatively to identify and consider all the implications and requirements for such a nomination for Kakadu. The NT Government will undertake a broader consultation

process outside the park boundaries, while PAN will facilitate consideration of the proposed nomination within the Park itself. A briefing paper has been prepared by PAN for consideration by the Kakadu Board of Management at its upcoming meeting.

### **Recommendation 17**

**The Committee recommends that the Government ensure that the future expansion of Jabiru takes place in accordance with the Kakadu Plan of Management and the full endorsement of the Kakadu Board of Management.**

The Government has supported the intent of the recommendation through a number of actions.

The Minister for the Environment and Heritage, Senator Hill, approved the fourth Kakadu National Park Plan of Management on 30 June 1998. In doing so, Senator Hill approved Section 48 of the Plan of Management which outlines in detail that Jabiru should develop in an orderly way consistent with the wishes of *Bininj/Mungguy* and the protection of the park environment. It should be noted that the Kakadu Board of Management and Parks Australia jointly prepared the fourth Kakadu National Park Plan of Management. The actions prescribed in the Plan have the full endorsement of the Kakadu Board of Management.

The Kakadu Plan of Management outlines the role of the Director and Parks Australia in relation to the development of Jabiru Township, and in particular notes the need to consult widely with *Bininj/Mungguy*. The Plan also outlines the requirements in relation to: the need for Aboriginal agreement prior to changing the status quo; further development of Jabiru; the time frame for change; land tenure and leases; and the impact of the town.

The Australian Government has made the Commitment to the World Heritage Committee that; *“The Government will impose a cap of 1700 [people] on the size of Jabiru [township] over the next 10 years in consultation with the Park Board and traditional owners”*. A consultation paper has been drafted for consideration by the Kakadu National Park Board of Management at its next meeting.

### **Recommendation 18**

**The Committee recommends that the Government develop a broader, more appropriate and more effective participatory approach to the development of a Cultural Heritage Management Plan with Aboriginal stakeholders.**

The Government and Energy Resources of Australia (ERA) remains committed to the development of a Cultural Heritage Management Plan (CHMP) based on World’s Best Practice, after full consultation with the Mirrar Gundjehmi, and other relevant stakeholders as appropriate.

A condition of the Environment Assessment Process is that ERA is required to develop a CHMP for the Jabiluka Mineral Lease. The Government’s role is to ensure the satisfactory completion and implementation of the CHMP. The Government has assisted ERA in the development of the CHMP and taken steps to ensure a broad, appropriate and participatory process. These include:

- An independent review of the Interim Cultural Heritage Management Plan.
- The nomination of an eminent and independent Aboriginal Facilitator to work with the Mirrar people and ERA on the development of the CHMP; and
- An invitation to key stakeholders, including traditional owners, ERA, the Aboriginal Areas Protection Authority (AAPA), the Northern Land Council (NLC) and the Department of the Environment and Heritage, to participate in a Reference Group to provide advise to ERA on the preparation of the CHMP. ICCROM and ICOMOS have been invited to provide technical advice.

### **Recommendation 19**

**The Committee recommends that the Government take appropriate steps immediately to implement the recommendations of the UNESCO World Heritage Committee’s report on Kakadu National Park. The Committee does not believe that the Commonwealth Government has adequately addressed the major findings and recommendations in that report.**

The Australian Government has more than adequately addressed the major findings and recommendations of the UNESCO Mission report.

The Government has demonstrated, and the World Heritage Committee has acknowledged by its decision to not place Kakadu National Park on the list of World Heritage in Danger, that the values of Kakadu National Park are protected, not endangered. This decision is attached for the Senate Committee’s information (Attachment A). The World Heritage Committee requested that the Australian Government report by 15 April 2000 progress on a number of Jabiluka issues. The Government has reported on these issues as requested (this report can be found at the following webaddress:  
<http://www.environment.gov.au/heritage/awhg/whu/sites/kakaduapril.pdf>).

### **Recommendation 20**

**The Committee recommends that the UNESCO World Heritage Committee place Kakadu National Park on its List of World Heritage in Danger.**

Events have overtaken this recommendation. The Government has demonstrated, and the World Heritage Committee has acknowledged by its decision to not place Kakadu National Park on the list of World Heritage in Danger, that the values of Kakadu National Park are protected, not endangered. This decision is attached for the Senate Committees information (Attachment A).

### **Recommendation 21**

**The Committee recommends that the UNESCO World Heritage Committee proceed to place Kakadu National Park on its List of World Heritage in Danger without State Party consent.**

Events have also overtaken this recommendation. The Government reiterates its position detailed in 'Australia's Kakadu' regarding placement of Kakadu on the List of World Heritage in Danger without State Party consent:

The inscription of Kakadu National Park on the List of World Heritage in Danger without the request and the consent of the State Party, and against the express wishes of the State Party, could place at risk some of the fundamental principles that underpin the Convention - that is the respect of the sovereignty of the State Party, the safeguarding of the property rights provided for its national legislation, and the primacy of the role of the State Party in the protection of natural and cultural heritage. Such action also could be at odds with the terms of both the Convention, those relevant parts of the Operational Guidelines which are consistent with the Convention, and the benchmarks of Committee practice. It would represent a significant change to the basis upon which states took the serious step of becoming a party to the Convention and may deter other states from taking that step in the future. (Australia's Kakadu, 1999, p.XIV.)

### **Recommendation 22**

**The Committee recommends that the Government note the damage to Australia's reputation in relation to the human rights of indigenous peoples as a result of its lack of respect for the legitimate participation of indigenous people in issues affecting their daily lives and living culture.**

The Government does not accept that there is any such lack of participation by indigenous people in matters affecting them. There is a range of processes for such participation that are being actively used.

### **Recommendation 23**

**The Committee recommends that the Government examine the possible impact on the Australian tourism industry of an In Danger listing of Kakadu National Park.**

The World Heritage Committee has determined that the World Heritage values of Kakadu are not in danger. The Government has provided voluminous evidence that Kakadu National Park is well protected. Under these circumstances, an examination of the possible impact on the Australian tourism industry of an In Danger listing is not necessary, and the cost of such an activity would divert resources from activities to further protect the outstanding values of the Park.

### **Recommendation 24**

**The Committee recommends that the Jabiluka uranium mine should not proceed because it is irreconcilable with the outstanding natural and cultural values of Kakadu National Park. Every effort must be made to ensure that these values are protected.**

The Jabiluka mine proposal has been subject to a rigorous and transparent EIA process under the EPIP Act and it has been demonstrated that it does not pose a threat to the natural or cultural values of Kakadu National Park. The EIA was thorough and

exhaustive, carried out over a three-year period, with wide public and expert input. The assessment was conducted jointly with the Northern Territory Government which separately evaluated the outcomes. As a result measures have been imposed by the Government to prevent any adverse impacts on World Heritage values, including natural and cultural values. The Government will monitor and assess the effectiveness of these measures and, where necessary, take additional steps to ensure the protection of World Heritage values.

A uranium mine has operated on the Ranger lease, only twenty kilometres from the Jabiluka mine, for nearly 20 years. The Supervising Scientist (an independent Commonwealth statutory office) is responsible for monitoring the Ranger mine and advising on the implementation of a regulatory regime that is acknowledged as the most rigorous regime in the world. Based on nearly 20 years of experience and scientific evidence and the expertise of world class scientists, the Supervising Scientist has advised that the Ranger uranium mine has had no adverse impact on Kakadu National Park. The Supervising Scientist will play a similar role in relation to the regulation of the Jabiluka mine.

The World Heritage Committee listed Kakadu as a World Heritage site in 1981 (and again in 1987 and 1992) with full knowledge that mining was occurring at Ranger and that mining was proposed at Jabiluka. In doing so, the Committee accepted that the integrity of Kakadu National Park would not be damaged by mining on the Ranger and Jabiluka leases.

Australia provided to the World Heritage Committee an independent scientific report, prepared with the assistance of experts from the Bureau of Meteorology, CSIRO, the University of Melbourne and the University of NSW, which concluded that ‘the natural values of Kakadu National Park are not threatened by the development of the Jabiluka uranium mine and the degree of scientific certainty that applies to this assessment is very high’.

All recognised cultural values, and in particular sacred and significant sites on the Jabiluka Mineral Lease and in Kakadu National Park, are fully protected under a range of protection measures, including both Commonwealth and Northern Territory legislation, through which traditional owners can apply for sites to be protected.

Australia has in place an extensive framework of legislation for the protection of cultural values including: the *Australian Heritage Commission Act 1975*, the *Aboriginal Land Rights (Northern Territory) Act 1976*, *Northern Territory Aboriginal Sacred Sites Act 1989*, *Aboriginal Land Act (Northern Territory)*, *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, and the *Native Title Act 1993*. The Australian Government has met all requirements under legislation and considers that the cultural values and beliefs of the traditional owners have been, and will continue to be, protected.

**DECISION OF THE THIRD EXTRA-ORDINARY SESSION OF THE WORLD  
HERITAGE COMMITTEE, 12 JULY 1999**

**Kakadu National Park (Australia)**

1. The Committee,

- a. **Emphasizes** the importance of Articles 4, 5, 6, 7 and 11 of the 1972 UNESCO World Heritage Convention. In particular the Committee emphasizes Article 6 (1) which states that:

*Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage (...) is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.*

- b. **Recalls** that the twenty-second session of the World Heritage Committee in Kyoto (1998) expressed “grave concern” over the ascertained and potential dangers to the World Heritage cultural and natural values of Kakadu National Park posed by the proposal for uranium mining and milling at Jabiluka;
- c. **Notes** that the deliberations of the twenty-third session of the Bureau and of the third extraordinary session of the Committee demand the continuous serious consideration of the conditions at Kakadu National Park by the Committee with reference to Section III, in particular Paragraph 86 of the Operational Guidelines for the Implementation of the World Heritage;
- d. **Expresses its deep regret** that the voluntary suspension of construction of the mine decline at Jabiluka until the twenty-third session of the Committee (requested by the twenty-second session of the Committee) has not taken place;
- e. **Is gravely concerned** about the serious impacts to the living cultural values of Kakadu National Park posed by the proposal to mine and mill uranium at Jabiluka. The Committee is of the opinion that confidence and trust building through dialogue are crucial for there to be any resolution of issues relating to the proposal to mine and mill uranium at Jabiluka. In particular, a more substantial and continuous dialogue needs to be established between the Australian Government and the traditional owners of the Jabiluka Mineral Lease, the Mirrar Aboriginal people;
- f. **Is concerned** about the lack of progress with the preparation of a cultural heritage management plan for Jabiluka;
- g. **Continues to have significant reservations** concerning the scientific uncertainties relating to mining and milling at Jabiluka.

2. The Committee,

- a. Recognizes, with appreciation, that the Australian Government, Australian Supervising Scientist, advisory bodies (IUCN, ICOMOS and ICCROM) and independent scientific panel (ISP) established by the International Council of Science (ICSU) have provided the reports requested by the twenty-second session of the Committee (Kyoto, 1998);

- b. Acknowledges that there are indications that a new dialogue between the Mirrar Aboriginal people and the Australian Government has begun in relation to issues concerning the Jabiluka uranium mine and mill. The Committee considers this to be an essential step in finding a constructive solution to the issues raised by the UNESCO mission to Kakadu National Park and encourages the Australian Government to intensify their efforts in this regard and pursue with vigor the deepening of its dialogue with the Mirrar Aboriginal people;
  - c. Notes that the Australian Government has stated (in document WHC-99/CONF.205/INF.3G entitled "Protecting Kakadu National Park" submitted by the Australian Government) that "full scale commercial mining at Jabiluka would only be reached about 2009 following the scaling down of production at the Ranger mine so that two mines would not be in full production simultaneously". The Committee further notes that the Minister for Environment and Heritage has stated that there shall be no parallel commercial scale operation of the Ranger and Jabiluka uranium mines located in enclaves surrounded by, but not included, in Kakadu National Park. The Committee considers that it is the clear responsibility of the Australian Government to regulate the activities of a private company, such as Energy Resources of Australia, Inc, in relation to the proposed mining and milling activities at Jabiluka to ensure the protection of the World Heritage values of Kakadu National Park;
  - d. Notes that the Australian Supervising Scientist (ASS) has assessed the report of the independent scientific panel (ISP) established by the International Council of Science (ICSU) and seeks a dialogue with the ISP to resolve outstanding questions relating to scientific issues concerning mining and milling at Jabiluka.
3. With consideration of 1 and 2 above, the Committee will remain vigilant in reviewing and assessing the progress made by the Australian Government. To this end the Committee requests that the Australian Government submit a progress report on the following issues by **15 April 2000** for examination by the twenty-fourth session of the Bureau of the World Heritage Committee:
- a. progress made with cultural mapping of the Jabiluka Mineral Lease and the Boyweg- Aludj site and its boundaries and the completion of the cultural heritage management plan with the necessary co-operation of the Mirrar, and appropriate involvement of other stakeholders and ICOMOS and ICCROM;
  - b. progress in the implementation, in response to the Kakadu Region Social Impact Study (KRSIS), of a comprehensive package of social and welfare benefits, together with the Northern Territory Government, for the benefit of the Aboriginal communities of Kakadu (including the Mirrar);
  - c. more precise details of the output and scale of any parallel activities at the Ranger and Jabiluka uranium mines as well as on any legal provisions taken in that respect.
4. To resolve the remaining scientific issues, such as those raised in the ISP report, the Committee asks ICSU to continue the work of the ISP (with the addition of any additional members) to assess, in co-operation with the Supervising Scientist and IUCN, the Supervising Scientist's response to the ISP report. The report of the ISP's assessment should be submitted to the World Heritage Centre by **15 April 2000** for examination by the twenty-fourth session of the Bureau of the World Heritage Committee in 2000.