

Appendix 4

Institutional Arrangements

Commonwealth

Department of Industry, Tourism and Resources (DITR)

The Department of Industry, Tourism and Resources (DITR), which develops policy and administers legislation relating to Australia's resources and energy industries, plays an important role in formulating the national response to climate change issues. The Resources area is responsible for providing policy and legislative advice and administrative support to the Government on the resources sector of the economy, including upstream and downstream petroleum, as well as the uranium, coal and minerals industries.

The Department's responsibility for domestic and international energy policy encompasses climate change, renewable energy and energy efficiency policies. It also provides advice on the implications of sustainable development policies for industry and the economy, and plays a significant role in energy market reform. The DITR contributes to the development of domestic and international climate change policy; analyzes existing and proposed environmental policies; and gives advice on the implications of these policies for industry. By taking an active role in environment policy formulation in areas such as climate change and sustainable development, the Department ensures that the issues relevant to portfolio industries are addressed.

The DITR monitors and supports industry applications for environmental approval under the *Environment Protection Biodiversity Act 1999*. The Act legislates the need for environmental approval for new projects and/or extensions of existing projects that affect matters of national environmental significance. The Act requires that relevant Commonwealth Ministers are consulted when approval is sought for proposed projects within their area of responsibility. In addition, the DITR is required under the Act to report annually on Australia's environmental performance and contribution to ecologically sustainable development (ESD). Environmental legislation and other issues within the purview of the portfolio include the *National Environment Protection Council Act 1994*, National Environment Protection Measures, trade and the environment, socially responsible investment, natural resource management, greening government procurement, cleaner production, eco-efficiency, the precautionary principle and other international environmental developments.

Environment Australia (EA)

Environment Australia (EA) advises the Commonwealth Government on policies and programs for the protection and conservation of the environment, including both natural and cultural heritage places. EA administers environmental laws, including the

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act 1999), and is responsible for Australia's participation in a number of international environmental agreements. With regard to the uranium mining industry in South Australia, EA's role as an environmental regulator is evidenced in the approvals process and in its power to set strict conditions governing the operating procedures of the mines. In the Northern Territory, the Office of the Supervising Scientist (OSS) was established to supervise the management of the uranium mining industry and to conduct research into the impact the industry has on the Alligator Rivers Region environment. For a more detailed analysis, see the section on the OSS below.¹

Supervising Scientist Division (SSD)

The Supervising Scientist Division (SSD), which is a component of Environment Australia, is responsible for environmental oversight of uranium mining activities in the Alligator Rivers Region of the Northern Territory. The primary role of the SSD is to ensure through research, assessment and the provision of technical advice, that the environment of the Alligator Rivers Region is protected from the effects of uranium mining to the very high standard required by the Commonwealth Government. The supervisory functions are carried out by the OSS, and the research functions of the SSD are performed by the Environmental Research Institute of the Supervising Scientist (ERISS).

The position of the Supervising Scientist and the Office's functions and powers were established by the *Environment Protection (Alligator Rivers Region) Act 1978*. These functions and powers, as described in Section 5, are:

5. Functions of the Supervising Scientist in relation to uranium mining in the Region:

(a) to devise and develop programs for research into, and programs for the collection and assessment of information relating to, the effects on the environment in the Alligator Rivers Region of uranium mining operations in the Region;

(b) to co-ordinate, and supervise, the carrying out of programs referred to in paragraph (a);

(c) to devise and develop, and to promote and assist in the devising and development of:

(i) standards, practices and procedures in relation to uranium mining operations in the Region for the protection of, or in so far as those standards, practices and procedures affect, the environment in the Region; and

1 Environment Australia, *Submission 86*, p 5.

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- (ii) measures for the protection and restoration of the environment in the Region from the effects of uranium mining operations in the Region;
 - (d) to co-ordinate, and supervise, the implementation, in relation to uranium mining operations in the Region, of requirements of or having effect under prescribed instruments in so far as those requirements relate to any matter affecting the environment in the Region;
 - (e) to advise the Minister with respect to:
 - (i) the effects on the environment in the Alligator Rivers Region of uranium mining operations in the Region;
 - (ii) standards, practices and procedures in relation to uranium mining operations in the Region for the protection of, or in so far as those standards, practices and procedures affect, the environment in the Region;
 - (iii) measures for the protection and restoration of the environment in the Region from the effects of uranium mining operations in the Region; and
 - (iv) requirements of or having effect under prescribed instruments in relation to uranium mining operations in the Region in so far as those requirements relate to any matter affecting the environment in the Region and the implementation of those requirements;
 - (f) to perform such other functions, in relation to uranium mining operations in the Region, as are conferred on him by or under a prescribed instrument (including this Act); and
 - (g) to do anything incidental or conducive to the performance of any of the foregoing functions.

In 1993-94, the *Environment Protection (Alligator Rivers Region) Act 1978* was amended to provide for the establishment of the Alligator Rivers Region Technical Committee; the Alligator Rivers Region Advisory Committee; and Minesite Technical Committees. The functions of these bodies are discussed below. The OSS was also incorporated within the then Department of Environment, Sport and Territories. Following the leaks of tailings water at the Ranger mine during the 1999-2000 wet season, the role of the SSD was expanded to focus on environmental monitoring, on the basis that the OSS should collect its own data rather than rely on that gathered by the mining operator, Energy Resources of Australia Ltd (ERA) and the Northern Territory Department of Business, Industry and Resource Development (DBIRD). Its environmental monitoring program consists of biological, chemical water quality, and atmospheric monitoring, which enables it to better assess the impact of uranium mining on the Alligator Rivers Region.

Alligator Rivers Region Technical Committee (ARRTC)

The Alligator Rivers Region Technical Committee (ARRTC) is constituted under section 22A of the *Environment Protection (Alligator Rivers Region) Act 1978*. The ARRTC sees its chief role as ensuring that best scientific knowledge underpins the operation and management of uranium mining within the Alligator Rivers Region so that the risks of adverse impacts are minimized.² Thirteen members appointed by the Commonwealth Minister for the Environment and Heritage comprise the ARRTC. The membership component and functions of the ARRTC were revised in 2001 in order to implement a recommendation of the Independent Science Panel (ISP) that a scientific advisory panel be established to review the research activities in the Alligator Rivers Region:

The Committee now includes seven independent scientists nominated by the Federation of Australian Scientists and Technological Societies (FASTS) on the basis of their expertise in specific fields. They are appointed on the grounds of skill, experience and expertise in one of the following five fields:

- Radiation and Public Health;
- Water Quality and Management;
- Earth Sciences;
- Biological Systems; or
- Minesite Rehabilitation.

The other six members represent the following key stakeholder organizations:

- Office of the Supervising Scientist;
- Department of Business, Industry and Resource Development;
- Energy Resources Australia Ltd;
- Northern Land Council;
- Parks Australia; and
- Hanson Australia Pty Ltd.

The membership ratio of seven to six ensures that the scientific panel members provide independence and are free from industry and government pressure when assessing and reporting on issues relating to their brief.

Alligator Rivers Region Advisory Committee (ARRAC)

The Alligator Rivers Region Advisory Committee (ARRAC) is also established under the *Environment Protection (Alligator Rivers Region) Act 1978*. Its role is to facilitate communication between community, government and industry stakeholders.

2 Alligator Rivers Region Technical Committee, *Draft Operational Plan 2002-2005*, para. 1.2.

Essentially, it is a forum for information exchange and policy consultation on the effects of uranium mining in the Alligator Rivers Region.³ The ARRAC meets twice yearly, immediately following the Environmental Performance Reviews of the mining operations. These meetings facilitate discussion, chiefly of performance issues and environmental protection.

Members of the ARRAC (which has an independent Chair) represent a wide range of stakeholders:

- mine operators (ERA Ltd);
- regulators;
- Commonwealth Departments;
- Northern Territory Departments;
- environmental organizations;
- Aboriginal organizations;
- employees; and
- local government bodies.

Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)⁴

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is the Federal Government body charged with responsibility under the *Australian Radiation Protection and Nuclear Safety Act 1998* (ARPANS Act) of protecting people, wildlife and the environment from the harmful effects of radiation (ionizing and non-ionizing). Prior to the ARPANSA's establishment, the Australian Radiation Laboratory (ARL) was responsible for providing advice to the Government and the community on the health effects of radiation. It undertook research and provided services in this area while the Nuclear Safety Bureau (NSB) was responsible for regulating the HIFAR and Moata research reactors at Lucas Heights in Sydney.

In 1997, the Federal Government announced that it would combine these two organizations and established ARPANSA, as a new regulatory body with underpinning legislation. The ARPANS Act was assented to on 24 December 1998. The Act introduced regulatory controls in respect of all Commonwealth radiation and nuclear activities, including mining, by prohibiting these entities from dealing with radioactive materials or apparatus, or any aspect of a nuclear facility, unless licensed to do so. It established a system of licensing and exemptions and provided for

3 www.ea.gov.au/ssd/communication/committees/arrac/index.html

4 Australian Radiation Protection and Nuclear Safety Agency:
<http://www.arpansa.gov.au/org.htm>

enforcement of the legislation through the appointment of inspectors with enforcement powers. A (statutory) Chief Executive Officer (CEO) was appointed to administer the ARPANSA's operations.

The Radiation Health and Safety Advisory Council (RHSAC) was also established. It provides expert advice to the CEO on a range of issues including emerging radiation protection and nuclear safety issues, matters of concern to the community, and the adoption of codes of practice and standards. There are two supporting committees to the RHSAC—the Nuclear Safety Committee and the Radiation Health Committee.

The ARPANSA is understood to be currently preparing a draft *Code of Practice and Safety Guide—Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing*. This Code is intended to replace two Codes of Practice applicable to the mining industry: the *Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores* (1987) and the *Code of Practice on the Management of Radioactive Wastes from the Mining and Milling of Radioactive Ores* 1982.

Northern Land Council (NLC)

The Northern Land Council (NLC) is a statutory authority created by the *Aboriginal Land Rights (Northern Territory) Act 1976* to represent the Aboriginal people in the Northern Territory. There were four land councils established in the Northern Territory under the Land Rights Act: the NLC covers the area in which the Ranger and Jabiluka uranium mines are situated. The Land Council has 78 members elected from communities throughout the region, and five co-opted women's positions. The members are elected and nominated by Aboriginal people and organizations. Elections are held every three years.

Section 23(1) of the Land Rights Act sets out the functions and responsibilities of the Northern Land Council as follows:

- to ascertain and express the wishes of Aboriginal people about the management of their land and legislation concerning their land;
- to protect the interests of the traditional owners of, and other Aborigines interested in, Aboriginal land;
- to assist Aboriginal people to protect sacred sites, whether or not they are on Aboriginal land;
- to consult traditional owners and other Aborigines with an interest in Aboriginal land and land under claim;
- to negotiate on behalf of traditional owners with people interested in using Aboriginal land and land under claim;
- to assist Aboriginal people claiming land and, in particular, arrange and pay for legal assistance for them;

- to maintain a register of Land Council members and members of Aboriginal land trusts and descriptions of Aboriginal land;
- to supervise and assist Aboriginal land trusts;
- to attempt to conciliate disputes between Aborigines regarding land matters;
- to hold in trust, and distribute to Aboriginal associations, statutory payments from the Aboriginal Benefits Account (ABA) to communities affected by mining operations and income received on behalf of landowners under negotiated agreements; and
- to process applications for permits to enter Aboriginal land.

The NLC is primarily funded through the ABA. Under the Land Rights Act, the Commonwealth Government pays into the ABA an amount of money equal to the royalties paid to it and the Northern Territory Government from mining on Aboriginal land. These “statutory royalty equivalents” are allocated by the ABA as follows:

- 40% is distributed among the four Northern Territory land councils to fund operations necessary in carrying out their statutory responsibilities to look after the land interests of all Aboriginal people in the Northern Territory;
- 30% is allocated through the land councils to Aboriginal groups and to people in areas affected by mining on Aboriginal land via their royalty receiving organizations; and
- 30% is used for ABA expenses, grants to Aboriginal organizations and to supplement the operational funding to land councils.

The NLC’s budgets are approved by the Commonwealth Minister for Aboriginal Affairs and accounted for in audited financial statements within Annual Reports, which are tabled each year in the Parliament. The NLC may also receive grants from bodies such as the Aboriginal and Torres Strait Islander Commission (ATSIC), the Indigenous Land Corporation (ILC) and the Natural Heritage Trust (NHT).

Kakadu Board of Management (KBM)

The Kakadu Board of Management was established on 26 July 1989. The Board has fifteen members, ten of whom are appointed by the Commonwealth Minister for the Environment and Heritage to represent the traditional owners of the park area. The remaining members consist of the Director of National Parks; the Assistant Secretary of Parks Australia North; an individual prominent in nature conservation; a person employed in the tourism industry in the Northern Territory; and a representative of the Northern Territory Government.

Its functions as set out in the National Parks and Wildlife Conservation Act 1975 are:

- to prepare, along with the Director, plans of management for the park;
- to make decisions, consistent with the Plan of Management, about the management of the park;

- to monitor, with the Director, the management of the park; and
- to give advice, along with the Director, to the Minister for the Environment on all aspects of how the park develops in the future.

The Board seeks to make decisions which balance the interests of the park, the Bininj/Mungguy (Aboriginal) people and the wider community. It operates in accordance with the requirements of the *National Parks and Wildlife Conservation Act 1975*, the *Aboriginal Land Rights (Northern Territory) Act 1976* and the provisions of the lease agreements for Aboriginal land in the park. In making decisions about the management of the park, the Board is also responsible for determining the overall allocation of resources in the park and for setting priorities to meet the actions in the Plan of Management.⁵

Northern Territory

Department of Business, Industry and Resource Development (DBIRD)

The Department of Business, Industry and Resource Development (DBIRD) was established on 13 November 2001. It incorporates the major business, industry and resource development functions of the former Departments of:⁶

- Mines and Energy;
- Primary Industry and Fisheries;
- Industries and Business; and
- Asian Relations and Trade.

Minerals and Energy Section

The role of the Minerals and Energy Section is to facilitate the development of mineral, petroleum, major agribusiness and allied industries, and to regulate the operations of mining and petroleum enterprises in the Northern Territory. The monitoring and reporting arrangements undertaken by the DBIRD in relation to uranium mining in the Territory are as follows:

- monitor and analyse the weekly, monthly, quarterly and annual reports provided by the operator as specified in the Authorisations;
- undertake compliance sampling and analysis according to a specific schedule;

5 The Plan of Management—<http://www.energyres.com.au/kakadu.shtml#plan>—was developed in 1999.

6 Department of Business, Industry and Resource Development, Mines Division: <http://www.dme.nt.gov.au/>

- undertake specific technical audits and inspections;
- participate in monthly site visits and biannual environmental management system audits;
- investigate incidents and accidents as deemed necessary;
- participate in the MTC, ARRTC and ARRAC meetings; and
- report six-monthly on the outcome of monitoring and other regulatory activity.⁷

Community Services Branch (CSB)

DBIRD's Community Services Branch serves as a conduit for communication between the Department and its clients. Its twofold mission is to ensure that:⁸

- indigenous people and communities are provided with sufficient information to enable them to make informed decisions about mining issues; and
- through proper consultation, Aboriginal land will be accessible for geological investigation, and that identified mineral potential will be developed in a sustainable manner. Any development needs to consider environmental, social and economic issues for the overall long-term benefit of the indigenous land owners, custodians and the Northern Territory.

The CSB is actively involved in supplying information and providing assistance to indigenous people, communities and representative bodies to improve the understanding of the mining and petroleum industry.

Minesite Technical Committees (MTC)

The Minesite Technical Committees (MTCs) for Ranger and Jabiluka are the key forums for discussion of environmental matters relating to the mines. They were established under a set of working arrangements agreed between the Commonwealth Government and the Northern Territory Government.⁹ Both committees are chaired by the Northern Territory Government (specifically, the DBIRD) and include representatives from ERA, the NLC, and the OSS.

The role of the MTCs is to provide advice to the DBIRD in defining, establishing and maintaining best mining practice in relation to site-specific technological, scientific and environmental factors and constraints.¹⁰ The Ranger and Jabiluka MTCs meet

7 David Lea, *Review of Environmental Regulation at Jabiluka and Ranger Uranium Mines*, September 2002, p 26.

8 Department of Business, Industry and Resource Development: <http://www.dme.nt.gov.au/>

9 The current MTCs originated in a Memorandum of Understanding (MOU) between the Commonwealth and Northern Territory Governments dating from September 1995. The MOU does not create any legal obligation between the parties but adopts a set of working arrangements which clarifies the respective roles of the Commonwealth: i.e. of the OSS and the DBIRD.

10 Information obtained from ERA: <http://www.energyres.com.au/environment/regulators.shtml>

every six to eight weeks to take action in response to the outcomes and recommendations of environmental performance reviews, audits and reports, and to routinely address the following issues:¹¹

- practices, procedures and measures for the management, storage and disposal of water and tailings and waste material;
- performance of the approved water and tailings management systems and structures;
- radiological exposures to workers and members of the public;
- environmental monitoring programs and reports, and the environmental impact of mining operations;
- applications for Authorisation alterations or approvals, where practicable within the required time frame for action; and
- minesite rehabilitation planning and works.

South Australia

Department of Primary Industries and Resources (PIRSA)¹²

PIRSA employs approximately 1400 personnel in the agricultural, fisheries, mining, petroleum, natural resources and energy management sectors. The Department undertakes a wide range of activities throughout the State including research and development, scientific field programs, drilling, sampling, analysis, advisory services and industry regulation. PIRSA is committed to ecologically sustainable development:

It is our aim to ensure that all activities we undertake are managed in terms of their environmental impacts and are carried out in an environmentally sustainable manner.¹³

Its goal is to achieve environmental sustainability through the ongoing development and operation of environmental management processes—principally project planning and risk-assessment—which are integral components of the Department’s overall management operations.

Office of Minerals and Energy Resources

PIRSA’s Office of Minerals and Energy Resources manages South Australia’s mineral and petroleum resources on behalf of the people of the State. It is the “lead agency”

11 David Lea, *Report of Environmental Regulation at Jabiluka and Ranger Uranium Mines*, September 2002, pp 14-15.

12 Department of Primary Industries and Resources: <http://www.pir.sa.gov.au>

13 Department of Primary Industries and Resources: <http://www.pir.sa.gov.au>

facilitating ecologically sustainable mineral and petroleum exploration and development in South Australia. Its functions include:

- the promotion of South Australia as an investment destination through the provision of pre-competitive geoscientific data and information;
- the regulation of the resources industry through policy and legislation; and
- the optimization of royalty income streams to the State.

Mineral Resources Group

The Mineral Resources Group manages South Australia's minerals by undertaking the following activities:

- Mineral promotion;
 - promote responsible exploration and development of South Australia's mineral resources.
 - promote the mineral prospectivity and potential of the State nationally and internationally.
- Geoscientific information;
 - define mineral resources and their potential to support industry development throughout South Australia.
 - generate and manage geoscientific information to provide geoscientific advice and data to industry, Government and the community.
- Mining regulation; and
 - regulate exploration and mining industries to ensure responsible and environmentally sound resource development.
 - determine and collect statutory royalties.
- Strategic policy and support.
 - facilitate and operate as a "lead agency" in developing various mining projects.
 - provide advice and statistics to the Government and the community.
 - maintain a legislative framework that supports efficient and appropriate development of the State's mineral resources.

Environment Protection Authority (EPA)

In July 2002, responsibility for monitoring South Australia's radioactive waste and uranium mining industry was transferred from the Department of Human Services to the newly independent Environment Protection Authority (EPA), which is part of the South Australian Department of Environment and Heritage. The Environment Protection Authority is a statutory body established under the *Environment Protection Act 1993* to protect South Australia's environment. The Act governs environment protection where the effects on land, air and water are considered simultaneously. The

EPA also fulfils formal and informal responsibilities under the *Development Act 1993*. In November 2002, the South Australian Parliament approved amendments to the *Environment Protection Act* giving the EPA greater powers to prosecute individuals or businesses that harm the environment.¹⁴ Penalties have been increased and fines of up to \$2 million can now be imposed.

Radiation Protection Branch (RPB)

The Radiation Protection Branch of the EPA is responsible for regulating the use of ionizing radiation in medical, research, industrial and mining organisations, including the use of X-rays, and the safe transport, storage and disposal of radioactive substances. The branch also advises on radiation safety of non-ionizing radiation sources, including lasers, microwaves, powerlines, mobile phones and communication towers.¹⁵

Legislation administered by the Radiation Protection Branch includes:

- *Radiation Protection and Control Act 1982.*
- *Radiation Protection and Control (Transport of Radioactive Substances) Regulations 1991.*
- *Regulations under the Radiation Protection and Control Act 1982.*

The RPB also has responsibility for a wide range of radiation related issues. Relevant to this inquiry are the:

- Radiation Health Group.
- Mining and Environment Group.

ISL Radiation Review Committee

The ISL Review Committee was formed in August 1998 after the commencement of the Beverley and Honeymoon field leach trials. The Radiation Protection Branch of the South Australian Health Commission (now the EPA) wanted to have regular meetings similar to those conducted at Olympic Dam in order to keep abreast of operations and the radiation monitoring being conducted. At the time it was decided to have a single meeting incorporating both operators. In August 2001, the committee was split when Heathgate Resources Pty Ltd and Southern Cross Resources Australia Pty Ltd decided to hold separate meetings.

Although the committee has no formal terms of reference or membership, its role is to discuss occupational and environmental radiation monitoring. The original membership comprised representatives of the Radiation Protection Branch, PIRSA, Heathgate Resources and Southern Cross Resources. The Mines Inspector from

14 Press Release, Hon John Hill, Minister for Environment and Conservation, 27 November 2002.

15 <http://www.environment.sa.gov.au/epa/radiation.html>

Workplace Services¹⁶ began attending meetings some twelve months after the meetings commenced. In June 2002 (following a change of government) an EPA representative was also invited to attend.

The original spill-reporting criteria were developed by this Committee. Oral reporting criteria were devised to ensure the reporting of all relevant spill incidents between meetings. Issues discussed by the Committee include:

- the status of operations;
- approvals sought or granted;
- incidents; and
- occupational and environmental monitoring results.

The ISL Radiation Review Committee serves as a vehicle for interchange between the key South Australian uranium industry participants. Its functions differ from the BECC and the Olympic Dam Environmental Consultative Committee (ODECC) (discussed below), which are communication forums for the mine operators, and South Australian and Commonwealth government agencies.

Beverley Environmental Consultative Committee (BECC)

The inaugural meeting of BECC was held on 6 March 2001. Its formation was a requirement of the approval process for the mine's commencement by the then Minister for Industry, Science and Resources, Senator the Hon Nick Minchin in response to a recommendation by the Commonwealth Minister for the Environment at that time, Senator the Hon Robert Hill, in the following terms:

Heathgate Resources must participate in an environmental monitoring committee for the Beverley mine to be established by the South Australian government and provide information as agreed that would be necessary to support the functions of that committee. The committee will review the environmental performance of the mine and provide information to stakeholders.¹⁷

The BECC comprises the following members:

- South Australian Department of Primary Industries and Resources (Chair);
- South Australian Department of Human Resources (1 representative);

16 Workplace Services is part of the Department of Administrative and Information Services (DAIS).

17 Environment Australia, *Beverley Uranium Mine, South Australia, Environment Assessment Report: Proposal to Extract, Process and Export Uranium Oxide from the Beverley Uranium Mine*, South Australia, December 1999;
<http://www.erin.gov.au/assessments/epip/notifications/beverley/assessmentreport.html>

- South Australian Department of the Environment and Heritage (1 representative);
- Environment Australia (Cth) (1 representative);
- Department of Industry, Tourism and Resources (Cth) (1 representative); and
- Heathgate Resources (2 representatives).

Honeymoon Environmental Consultative Committee (HECC)

An environmental consultative committee will be established for the Honeymoon project when and if it commences for full-scale mining. The Committee's functions and membership will resemble those of the BECC.