The Senate

Standing Committee on Economics

Uranium Royalty (Northern Territory) Bill 2008 [Provisions]

April 2009

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Senate Standing Committee on Economics

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Abbreviations

ABA	Aboriginals Benefit Account
ACF	Australian Conservation Foundation
ALRA	*Aboriginal Land Rights (Northern Territory) Act 1976*
ANFA	Australian Nuclear Free Alliance
AUA	Australian Uranium Association
ECNT	Environment Centre NT
ERA	Energy Resources of Australia Ltd
NLC	Northern Land Council
NT	Northern Territory
NTRC	Northern Territory Resources Council
PRRT	Petroleum Resource Rent Tax
RET	Department of Resources, Energy and Tourism

Chapter 1
Introduction

Background

1.1 The Uranium Royalty (Northern Territory) Bill 2008 was introduced and read a first time in the House of Representatives on 3 December 2008.[1]

1.2 On 4 December 2008, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the bill to the Standing Committee on Economics for inquiry and report by 30 April 2009.[2]

1.3 The bill seeks to apply a uniform royalty regime to all new mining projects in the Northern Territory, including those containing uranium and other designated substances, such as thorium. This would be achieved by essentially mirroring the existing profit-based mineral royalty regime under the *Mineral Royalty Act 1982* (NT) and applying it as a Commonwealth law.[3]

Conduct of the inquiry

1.4 The committee advertised the inquiry in *The Australian* on 17 December 2008 and invited written submissions by 13 February 2009. Details of the inquiry were placed on the committee's website. The committee also wrote to a number of organisations and stakeholder groups inviting them to make submissions.

1.5 The committee received 11 submissions to the inquiry. These are listed at Appendix 1, and are available at the committee's website http://www.aph.gov.au/senate_economics/.

1.6 Three public hearings were held, two in Darwin (31 March and 1 April) and one in Canberra (8 April). Witnesses who appeared at these hearings are listed in Appendix 2.

1.7 The committee thanks all those who participated in the inquiry.

Outline of the report

1.8 Chapter 1 provides information about the referral of the bill to the committee and the conduct of the inquiry.

1.9 Chapter 2 provides an outline of the bill, its financial impact and the Government's objectives in relation to the bill.

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1 *Votes and Proceedings*, No. 68, Wednesday 3 December 2008, pp 776–777.

2 *Journals of the Senate*, No. 52, Thursday, 4 December 2008, pp 1445–1446; Selection of Bills Committee, *Report No. 17 of 2008*, dated 4 December 2008.

3 The Hon Martin Ferguson MP, Minister for Resources and Energy, *House of Representatives Hansard*, 3 December 2008, p. 12302.

1.10 Chapter 3 examines current royalty regimes for uranium and other minerals in the Northern Territory and other jurisdictions, such as South Australia and Saskatchewan.

1.11 Chapter 4 discusses issues raised in relation to the bill including the aspiration for a consistent and stable royalty regime for all minerals in the Northern Territory and the impact on payments to traditional owners and revenue to government.

Chapter 2
The bill

Outline of the bill

2.1 The Uranium Royalty (Northern Territory) Bill 2008 seeks to apply the existing profit-based mineral royalty regime under the *Mineral Royalty Act 1982* (NT) to new projects containing designated substances on Aboriginal land, as defined by the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA), and non-Aboriginal land.

2.2 The definition of designated substances includes uranium and other prescribed substances as defined by the *Atomic Energy Act 1953*, for which the Commonwealth retains ownership in the Northern Territory.

2.3 According to the Explanatory Memorandum, if passed the bill would exclude the application of certain Commonwealth laws, make certain modifications to the application of the *Mineral Royalty Act 1982* (NT) as a Commonwealth law and apply other relevant Northern Territory laws in order to:

(a) keep the administration of the bill as consistent as possible with the administration of the *Mineral Royalty Act 1982* (NT);

(b) restrict the amount of additional burden on Northern Territory officials to administer the two pieces of legislation; and

(c) limit any increase in regulatory burden on industry in complying with two sets of regulation for separate projects and/or for polymetallic projects containing designated substances.

2.4 The bill provides for the Northern Territory to administer the royalty regime on behalf of the Commonwealth, to retain the royalties collected, and to repay any overpayment of royalties on behalf of the Commonwealth.

2.5 Where mining occurs on Aboriginal land, the Commonwealth is obliged, under section 63(1) of the ALRA, to make payments of amounts equivalent to royalties from the Consolidated Revenue Fund to the Aboriginals Benefit Account (ABA). This payment would be in addition to the payment to the Northern Territory of amounts equivalent to the royalties collected under the bill.

2.6 The bill requires the Commonwealth Minister for Resources and Energy and the Northern Territory Treasurer to agree on administrative arrangements prior to enabling the operation of the bill. The administrative arrangements would be made publicly available via the Gazette.

2.7 The bill recognises and permits the use of the Northern Territory judicial system and other relevant authorities, procedures and laws to ensure consistency of process between action arising from offences under the bill and action arising from offences under the *Mineral Royalty Act 1982* (NT).

2.8 The bill provides for the Governor General to make regulations as necessary to ensure the intended operation of the bill, including making necessary and rapid modifications resulting from unintended consequences arising from the amendment or repeal of the *Mineral Royalty Act 1982* (NT).[1]

Financial impact

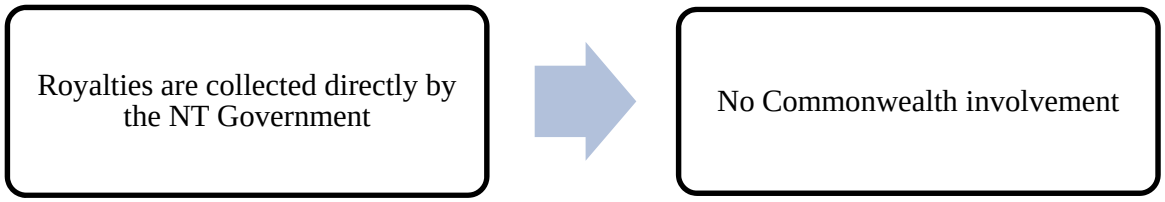
2.9 According to the Explanatory Memorandum, the Commonwealth would be in a revenue neutral position for new projects containing designated substances on non-ALRA land as the Commonwealth would be required to make payments to the Northern Territory Government of amounts equivalent to the royalties collected.

2.10 The Commonwealth would be in a revenue negative position for new projects containing designated substances on ALRA land as the Commonwealth would be required to make two payments of amounts equivalent to the royalties collected – one payment to the ABA and one payment to the Northern Territory Government.

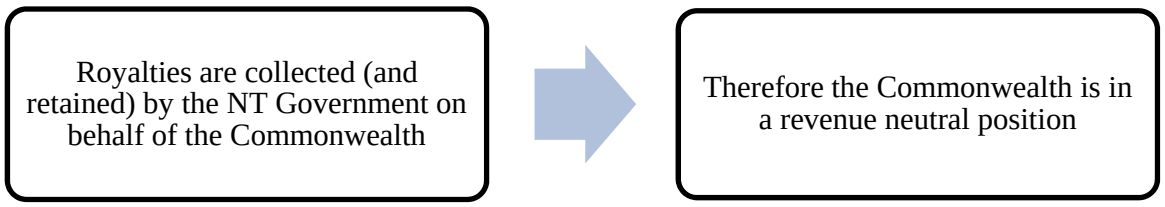
2.11 However, this would make uranium royalties consistent with the existing Northern Territory royalty regime for other minerals. That is, for non-uranium mines in the Northern Territory, the Northern Territory Government collects and retains the royalty and in addition the Commonwealth Government pays an equivalent amount to the ABA.[2]

Chart 1 – Distribution of mineral royalties in the Northern Territory under the bill

Distribution of royalties for non-uranium mining on non-ALRA land in the NT



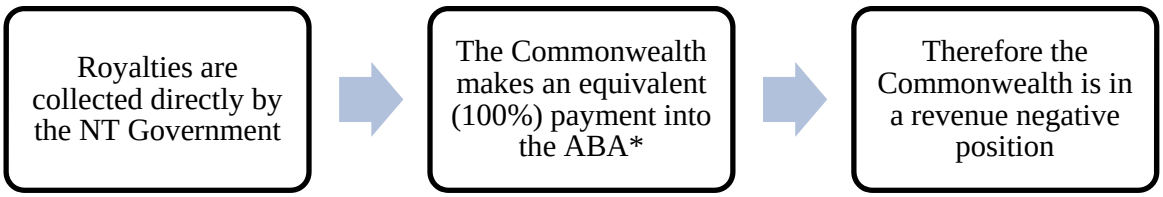
Distribution of royalties for uranium mining on non-ALRA land in the NT



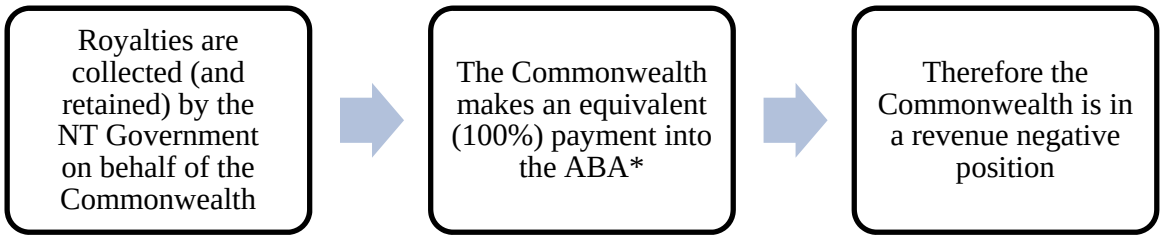
1 *Explanatory Memorandum*, p. 3.

2 *Explanatory Memorandum*, pp 2 and 20.

Distribution of royalties for non-uranium mining on ALRA land in the NT



Distribution of royalties for uranium mining on ALRA land in the NT



* The Aboriginals Benefits Account (ABA) is established and maintained under section 62 of the *Aboriginal Land Rights (Northern Territory) Act 1976* to receive royalty equivalent payments in respect of mining on Aboriginal land in the Northern Territory and to make payments to Aboriginal communities affected by mining operations on their land (30%), to land councils for their administration costs and for general Aboriginal developments in the Northern Territory. In 2007–08 the three major items of ABA cash flow expenditure were:

- $25.084 million to Land Councils for administrative purposes

- $24.977 million (30% of the royalty equivalent payments) to communities directly affected by mining operations; and

- $20.311 million in discretionary grants for the benefit of Aboriginal people living in the Northern Territory.

Sources: *Explanatory Memorandum*, pp 2 and 25–26; Department of Families, Housing, Community Services and Indigenous Affairs, *Aboriginals Benefit Account (NT only)*, http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-aba.htm [accessed 17 April 2009]; *Aboriginals Benefit Account Annual Report 2007–08*.

The Government's objectives

2.12 The Explanatory Memorandum outlined the Government's objectives in relation to the bill as follows:

> The Commonwealth, State and Territory Governments own the petroleum and mineral resources within their jurisdictions on behalf of the community. The Governments impose resource taxes or royalties on petroleum and mineral production to ensure that the community receives a fair share of the value generated from the development of community-owned resources. As noted above, the Commonwealth retained ownership of uranium minerals in the NT when it granted self-government to the NT in 1978.

> The objectives of the exercise are to establish an efficient royalty regime to apply to new uranium projects developed in the NT so that regulatory certainty for potential investors in new uranium exploration and mining projects in the NT will be improved by them knowing the applicable royalty arrangements upfront, and to ensure that the community receives a fair share of the value from the development of uranium resources.[3]

3 *Explanatory Memorandum*, p. 14.

Chapter 3
Current royalty regimes

Uranium mines in the Northern Territory

3.1 Currently uranium royalties in the Northern Territory are worked out on a case-by-case basis, as with the Ranger Mine – currently the only operating uranium mine in the Northern Territory. To date royalty arrangements have been determined for three Northern Territory uranium projects (Ranger, Narbalek and Jabiluka) by the relevant Australian Government Minister on a project-by-project basis taking into account a range of factors, including the world market for uranium, any non-statutory payments to Aboriginal communities, the loss or damage likely to be suffered by Aboriginal communities affected by the proposed mining interest and the royalty rate set for other mines.[1]

Ranger

3.2 As noted above, the Ranger mine is the only uranium mine currently operating in the Northern Territory. On 3 November 1978 the Northern Land Council (NLC) and the Commonwealth Government executed an agreement under the *Aboriginal Land Rights (Northern Territory) Act 1976* in relation to mining for uranium on the Ranger Project Area. The Ranger mine is subject to a 5.5% ad valorem royalty composed of three components – 2.5% is the royalty applicable on Aboriginal reserves under the then Northern Territory Mining Ordinance, 1.75% is the notional negotiated payment for traditional owners (the Commonwealth Government pays the sum of these first two components (4.25%) into the Aboriginals Benefits Account (ABA)), and 1.25% which the Commonwealth Government pays to the Northern Territory Government as a grant in lieu of royalty under the terms of a 1978 Memorandum of Understanding between the Commonwealth and Northern Territory Governments. The 1.25% paid to the Northern Territory Government equates to the royalty rate for minerals under the Northern Territory Mining Ordinance at the time of self-government in 1978. Other financial arrangements under the agreement included up-front payments and an annual rental. Up-front payments from the Commonwealth to the NLC totalled $1.3 million payable in stages up to the mine's first production. The Commonwealth also paid $150,000 per annum for four years to the NLC for it to meet administrative costs associated with the Ranger project. The Commonwealth also agreed to pay the NLC $200,000 in annual payments, termed rentals.[2]

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1 *Explanatory Memorandum*, p. 13.

2 *Explanatory Memorandum*, pp 13–14 and Gundjeihmi Aboriginal Corporation, *Submission 9*, pp 2–3.

3.3 In their submission the Gundjeihmi Aboriginal Corporation, which has been the royalty receiving entity for the Ranger mine since 1995, argues that:

> There are a number of noteworthy matters regarding the November 1978 agreement. Firstly, as noted in Altman 1983, 'the [mining] company has taken over the total Commonwealth liability in respect of royalties'. This significant point has been frequently overlooked in discussion of the financial arrangements which apply at Ranger. Also, the annual payment of a 'rental' was not linked to inflation and has therefore declined significantly in agreement year (1978) values. Perhaps most important to Aboriginal interests was the fact that the negotiated royalty of 1.75% was treated as a statutory royalty (i.e. it was combined with the statutory royalty) and therefore subject to the distribution provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976*. This meant that only 30% of the negotiated royalty flowed to the affected region. In other mining agreements 100% of negotiated royalties flow to the affected regions. As a result of this arrangement, local Aboriginal interests have netted 1.275% of the total Ranger revenue per annum.
>
> Whilst the negotiated financial arrangements referred to above have provided a regular inflow of funds to the relevant organisations, the level of annual receipts has varied dramatically, despite the financial strength of the mine operator.[3]

Narbalek

3.4 The Narbalek deposit was relatively small and mining was completed in 1988. An ad valorem royalty of 3.75% applied to the Narbalek operation.[4]

Jabiluka

3.5 The Jabiluka mineral lease, which is yet to be activated, specifies an ad valorem royalty of 5.25%. The Jabiluka royalty comprised two components of 4% payable into the ABA and 1.25% payable to the Northern Territory Government. However, this royalty arrangement applied only until 30 June 1990 and the project has not proceeded.[5]

Non-uranium mines in the Northern Territory

3.6 In the Northern Territory, non-uranium minerals are subject to the *Mineral Royalty Act 1982* (NT). The royalty regime in this Act involves a profit-based royalty applied at 18% of net receipts (revenue minus specified costs including operating costs, exploration costs and an allowance for capital costs including plant and equipment).[6]

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3 Gundjeihmi Aboriginal Corporation, *Submission 9*, pp 2–3.

4 *Explanatory Memorandum*, p. 13.

5 *Explanatory Memorandum*, p. 13.

6 *Explanatory Memorandum*, p. 14.

Other jurisdictions

South Australia

3.7 Royalty regimes differ throughout various jurisdictions. In South Australia, the only other Australian jurisdiction in which uranium is presently mined, the royalty applicable to all minerals, including uranium, is 3.5% ad valorem (i.e. 3.5% of revenue). However, new mines can apply to the Minister for 'new mine status'. If granted, then for a period of 5 years commencing on the date of paying the first royalty payment, the royalty payable in relation to minerals recovered will be equivalent to 1.5% ad valorem.[7]

Saskatchewan

3.8 In Saskatchewan (currently the largest uranium producing region in the world accounting for about 30% of annual world uranium production) there is a basic 5% ad valorem royalty on uranium mines. This basic rate may be modified by a 1% Saskatchewan Resource Credit (a 1% reduction in the basic rate) and an additional tiered royalty of up to 15% depending on the average price per kilogram of uranium. The additional tiered royalties can be reduced by a 'capital recovery bank' which consists of standard allowances for certain types of mine development activities. The bank is based on the level of mineral development investment made by a royalty payer. Following recovery of the capital investment, the revenues of the royalty payer are subject to the tiered royalties that increase as the price per kilogram increases.[8]

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7 Primary Industries and Resources SA, *Mineral Royalties*, http://outernode.pir.sa.gov.au/minerals/licensing_and_regulation/fees_rents_and_royalties/mineral_royalties [accessed 17 April 2009]

8 Energy and Resources, Government of Saskatchewan, *Uranium Information Circulars*, http://www.ir.gov.sk.ca/Default.aspx?DN=892618b1-2ba2-444d-b33e-97c1b5dcb6a0 [accessed 17 April 2009]

Chapter 4

Issues raised in relation to the bill

The aspiration for a consistent and stable royalty regime for all minerals in the Northern Territory

4.1 As noted above, currently royalties for designated substances (principally uranium) in the Northern Territory are worked out on a case-by-case basis, while royalties for all other mines are subject to the Northern Territory's profit-based royalty applied at 18% of net receipts. Industry, and both the Commonwealth and Northern Territory Governments, support a uranium royalty regime that is the same as the royalty regime for other minerals in the Northern Territory.

4.2 Several issues relating to the aspiration for a consistent and stable royalty regime for all minerals in the Northern Territory were raised during the inquiry including:

- administrative consistency and polymetallic mines;
- position of the Northern Territory relative to the states;
- the potential for increased mining activity under a consistent and stable royalty regime; and
- 'marginal mining' of uranium.

Administrative consistency and polymetallic mines

4.3 The Explanatory Memorandum suggests that there are administrative efficiencies to be gained by applying a consistent royalty regime to all minerals in the Northern Territory:

> Bringing uranium under the existing NT mineral royalty regime would make uranium royalties consistent with the regime applying to non-uranium minerals and obviate additional compliance costs in relation to poly-metallic uranium mines. Because of the nature of uranium, uranium mining has been subject to more stringent regulatory and environmental requirements. However, there is no reason why uranium should be treated differently from non-uranium minerals for royalty purposes.[1]

4.4 The Department of Resources, Energy and Tourism reiterated that having a consistent royalty regime for all minerals in the Northern Territory would reduce administrative complexity for all stakeholders, including industry, traditional owners and administrators, particularly in circumstances where mines produce more than one mineral.[2] The Department also noted in its submission that profit-based royalties had

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1 *Explanatory Memorandum*, p. 18.

2 Mrs Marie Taylor, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 8 April 2009, p. 14.

been levied in the Northern Territory since 1982 and that all stakeholders (industry, indigenous and government) have considerable experience with the operation of the regime and managing volatility of income streams. The Department informed the committee that 'over the period 2002-2006, some 64% of the royalty equivalents paid into the Aboriginals Benefit Account were derived from mines in the NT which are already exposed to the existing profits based regime.'[3] The Northern Territory Government also argued that general administrative efficiencies would be gained from the proposed royalty regime being as consistent as possible with the regime under the *Mineral Royalty Act 1982* (NT).[4]

4.5 Similarly, the Northern Territory Resources Council (NTRC) believes that the bill provides for a welcome alignment of uranium royalties to that imposed on other metals and that:

- This alignment solves the complex issue of assessing royalties on poly-metallic ores and provides a level of simplicity and certainty to royalty calculations that reduces compliance costs.
- There is no identifiable economic disadvantage, the suggested profit based format provides less distortion than alternatives, and there are considerable compliance cost savings with an aligned royalty system.
- By applying the bill equally to Aboriginal and non-Aboriginal land potential complexity and cost are further reduced. [5]

4.6 In its submission, the NTRC states that much ore mined in the Northern Territory is polymetallic with levels of uranium below regulatory reporting thresholds. Other ore has higher recoverable levels of uranium but contained as an unwanted contaminant in the desired production metal. It argues that a royalty regime that treats the uranium differently would add considerable complexity to the assessment process for these ores.[6]

4.7 The Northern Territory Department of Regional Development, Primary Industry, Fisheries and Resources informed the committee that there are several advanced prospects for new uranium mines in the Northern Territory, including a polymetallic uranium/phosphate/rare earths mine called Nolan's Bore.[7] Under current arrangements, prospective polymetallic mines such as this would be subject to the Northern Territory's profit-based royalty regime for the phosphate/rare earth mined, while at the same time being subject to a separate royalty regime determined by the Commonwealth Government for the uranium mined.

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3 Department of Resources, Energy and Tourism, *Submission 11*, p. 3.

4 Mr Craig Vukman, Northern Territory Treasury, *Proof Committee Hansard*, 1 April 2009, p. 32.

5 Northern Territory Resources Council, *Submission 7*, p 1.

6 Northern Territory Resources Council, *Submission 7*, p 2.

7 Mr Richard Sellers, Northern Territory Department of Regional Development, Primary Industry, Fisheries and Resources, *Proof Committee Hansard*, 1 April 2009, p. 39.

4.8 The NTRC contends that a common royalty regime is necessary in order to avoid case-by-case arguments that might arise in the absence of common provisions. [8] The Northern Land Council (NLC) also noted that establishing a common royalty regime for all minerals in the Northern Territory was one of the main arguments for the bill and that it would be easier and involve less paperwork for businesses.[9]

4.9 By contrast, in its submission the Gundjeihmi Aboriginal Corporation argues for flexible royalty arrangements:

> It is important for both Aboriginal and industry interests that royalty regimes incorporate a high degree of flexibility and adaptability over time. Community priorities change over time, with knowledge of the mining operation and its social and environmental impacts maturing in accord with the experience of mining. There should be provision, indeed flexibility, in financial arrangements to cater for such shifting priorities.
>
> It should be noted that no one royalty scheme is appropriate to all mining operations. In particular, a profit-based royalty is not appropriate for a short-lived mine with high capital expenditure costs. The establishment of a single statutory royalty scheme for all operations in unnecessarily restrictive.[10]

Committee view

4.10 The committee believes that the benefits of establishing a consistent royalty regime, including reduced administrative complexity for industry, traditional owners and government administrators, particularly in relation to polymetallic mines, outweighs the benefits to retaining the current case-by-case approach. The committee notes that the ability of traditional owners to negotiate more flexible payments in addition to the statutory royalty would provide some flexibility to the payments made to traditional owners. Negotiated royalties are discussed in further detail later in this chapter.

Position of the Northern Territory relative to the states

4.11 In its submission to the inquiry, the Northern Territory Government was supportive of the bill. The Northern Territory Government considers that the current case-by-case approach of negotiating royalty arrangements lacks consistency and does not provide prospective miners with certainty in determining the royalty arrangements if a new uranium mine were to open. The Northern Territory Government is therefore supportive of:

(a) the establishment of a defined profit-based royalty scheme for uranium under the Mineral Royalty Act as this would address a range of administrative and royalty apportionment issues that might arise if

8 Northern Territory Resources Council, *Submission 7*, p 2.

9 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, p. 22.

10 Gundjeihmi Aboriginal Corporation, *Submission 9*, pp 7–8.

different royalty schemes applied where a future uranium ore body were found to coexist with another mineral body;

(b) the provisions in the bill allowing the NT Government to administer the royalty scheme; and

(c) the extension of the policy in relation to payments to the Aboriginals Benefit Account to uranium royalties on Aboriginal Land Rights Act land.[11]

4.12 The Northern Territory Government also considers that Commonwealth ownership of uranium in the Northern Territory and its ability to derive royalties is inconsistent with other mineral deposits in the Territory, whereby the Northern Territory Government is able to derive mineral royalties. The Northern Territory Government notes that all Australian state governments have ownership of, and can derive royalty revenue from, uranium deposits in their jurisdiction. Mr Craig Vukman, from the Northern Territory Treasury, told the committee that the consistency of fiscal arrangements with the states is 'important to the extent that the Territory should be on the same fiscal grounds as the other states, therefore its royalty regime should apply, as it does to other minerals, to uranium.'[12] Mr Vukman also informed the committee that the Northern Territory Government made the decision to move to a profit-based royalty regime in 1982 and that the Northern Territory Government believes that there are benefits to this approach. He notes that a number of studies, including one by the Australian Bureau of Agricultural and Resource Economics (ABARE), support the Northern Territory Government's approach.[13]

Committee view

4.13 The committee agrees that the Northern Territory Government should be on the same fiscal ground as the states and that therefore its profit-based royalty regime, which has been in place in the Northern Territory since 1982, should apply to all minerals in the Northern Territory, including uranium.

The potential for increased mining activity under a consistent and stable royalty regime

4.14 Government and industry submissions to the inquiry suggested that there would be the potential for increased mining activity in the Northern Territory under a consistent and stable royalty regime. For example, the Department of Resources, Energy and Tourism noted in its submission that:

> A profit based royalty regime is more economically efficient and will maximise investment in mining projects including encouraging the development of more marginally economic mining projects and avoiding

11 Northern Territory Government, *Submission 1*, pp 2–3.

12 Mr Craig Vukman, Northern Territory Treasury, *Proof Committee Hansard*, 1 April 2009, pp 32–33.

13 Mr Craig Vukman, Northern Territory Treasury, *Proof Committee Hansard*, 1 April 2009, p. 41.

> the premature closure of mines. Hence in some instances, the comparison may be a stark choice between one of no mining development occurring at all under an economically less efficient ad valorem regime, and hence no royalty flows, compared with one where the efficient level of investment is made and royalty income is received but is more volatile. RET further notes that mining developments bring with them a broader range of economic and social benefits to the community by way of employment, infrastructure, taxation and services, and that a profits based regime provides greater scope for the community to access higher royalty returns when profitability is high.[14]

4.15 The NTRC also suggested that a stable royalty regime provides some certainty to a company when it assesses an ore body and decides whether or not to mine it. They note that the alternative 'is an unstable regime which provides a degree of sovereign risk and companies would build that risk into their decision making process and perhaps not go ahead with a mining operation if they saw that risk as being too large.'[15]

4.16 Similar arguments were put to the committee by the Australian Uranium Association (AUA):

> The absence of a generalised royalty arrangement would mean the arrangements for uranium would have to be decided on an ad hoc basis each time a mining proposal emerges, and a piece of financial information vital to project development economics would be missing. That would inhibit the growth of the uranium industry in the Territory. Broadly, that is the case for a legislated royalty arrangement for uranium…In particular, we submit that a revenue based arrangement for uranium, when the generalised royalty arrangement for the Territory is profit based, would distort investment and development decisions against uranium. If the royalty arrangement for uranium did not take extraction costs into account while the royalty arrangements for other minerals did, there would certainly be a distortion that would cause otherwise economic material to be left behind. We seek a framework that is neither advantageous to the uranium industry nor disadvantageous to it compared to other minerals.[16]

4.17 Energy Resources of Australia Ltd (ERA) told the committee that 'exploration companies look around the world and make judgments in terms of both mineral prospectivity and fiscal regimes when they make decisions about where to put their exploration dollars.'[17]

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14 Department of Resources, Energy and Tourism, *Submission 11*, p. 2.

15 Mr Scott Perkins, Northern Territory Resources Council, *Proof Committee Hansard*, 31 March 2009, p. 31.

16 Mr Michael Angwin, Australian Uranium Association, *Proof Committee Hansard*, 8 April 2009, p. 3.

17 Mr David Paterson, Energy Resources of Australia, *Proof Committee Hansard*, 31 March 2009, p. 31.

4.18 The NLC also informed the committee that under a consistent and stable profit-based royalty regime 'over time there is an expectation it will significantly increase mining.'[18]

4.19 Both the NTRC and the AUA highlighted the potential economic impact of an expansion of uranium mining in the Northern Territory. In 2008 Deloitte-Insight Economics published a report for the AUA which showed that the expansion of uranium mining in the Northern Territory would have the following economic impact on the Northern Territory to 2030, compared to a base case (a business-as-usual scenario under which the level of uranium mining in Australia remains as it is today):

(a) Gross Territory Product would be $2.3 billion higher;

(b) Consumption in the Territory would be $844 million higher;

(c) Investment would be $405 million higher; and

(d) Government revenue would be $330 million higher.[19]

4.20 The AUA suggested that an additional 260 jobs per year from about 2020 (with a smaller annual average number of additional jobs before 2020) would be created, compared to the base case.[20] The Department of Resources, Energy and Tourism also informed the committee of a range of potential benefits, including employment in local areas, community infrastructure, and taxation revenue.[21]

4.21 By contrast, the Gundjeihmi Aboriginal Corporation suggested that the current royalty regime may not actually be a disincentive to uranium mining:

> No evidence has been provided to support the contention that more extensive uranium mining would have taken place had the historic royalty arrangements been profit-based. A commercial decision to risk exploration and development capital is based on more significant considerations than a 1.25% ad valorem royalty - not the least being traditional owners' consent. Such investment decisions are more likely to hinge on other considerations like commodity price/volatility, resource grade and cost of extraction.[22]

4.22 The Environment Centre NT (ECNT) put a similar argument:

> I doubt it will encourage greater mining. I point to Scott Perkins' comments in the submission from the Resource Council and to the comments in the Northern Land Council's submission that there are minimal additional benefits for the mining sector in this. Certainly the creative accountants in the large international mining companies who see benefits in the profit

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18 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, p. 22.

19 Australian Uranium Association, *Submission 3*, p. 1.

20 Mr Michael Angwin, Australian Uranium Association, *Proof Committee Hansard*, 8 April 2009, p. 2.

21 Mrs Marie Taylor, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 8 April 2009, p. 16.

22 Gundjeihmi Aboriginal Corporation, *Submission 9*, p. 4.

> based system may see this as a real benefit. But I am not reading anything in the news about this. I am not getting miners ringing up and saying, 'You have the bull by the horns.' Businesses like administrative efficiency and consistency—at a high level they see that as meritorious. But I am not seeing reports that say this is going to bring billions of dollars more of uranium mining and exploration into the Territory. In terms of the list of matters that might expedite uranium exploration and mining, it is not in the top 10, in my view.[23]

Committee view

4.23 The committee agrees that investment decisions by mining and exploration companies are based on a variety of considerations including commodity price, resource grade and cost of extraction. However, evidence provided to the committee by industry and government shows that the absence of a consistent and stable royalty regime does provide a degree of sovereign risk that companies also build into their decision making processes and that such a risk may lead to companies deciding not to go ahead with a proposed mining operation. Given this the committee believes that implementing a consistent and stable royalty regime for all minerals in the Northern Territory would remove one barrier to further mining development in the Northern Territory.

'Marginal mining' of uranium

4.24 Some submissions to the inquiry expressed concern about the potential for 'marginal mining' of uranium under the royalty regime proposed by the bill. The Gundjeihmi Aboriginal Corporation argued that:

> …marginally viable mining ventures which decide to mine under the royalty arrangements proposed in the Bill are more likely to fail given the marginal nature of the investment decision.
>
> The Australian Government should only entrust the mining of uranium to companies that can clearly demonstrate the capacity to safely manage this responsibility. Indeed, given the mineral's strategic value and the substantial social and environmental impacts associated with its development, surely the government should only encourage companies with a strong balance sheet, good record in mining uranium and a clear ability to assess the viability of a mining venture. This will avoid marginally viable investments. We are not aware of any legislation that will ensure these needs are met. There is a significant risk that a profit-based royalty regime would encourage the development of marginally profitable mines, risking inadequate environmental and social protection from mining impacts.[24]

4.25 Similar concerns were raised at the hearings by the Arid Lands Environment Centre:

> ...we are facing the situation in Central Australia where there is heaps of exploration going on—of the order of hundreds of different exploration

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23 Dr Stuart Blanch, Environment Centre NT, *Proof Committee Hansard*, 1 April 2009, p. 19.

24 Gundjeihmi Aboriginal Corporation, *Submission 9*, p. 4.

> projects looking for uranium—however, you have a situation where the economic decline and credit crunch has forced a lot of these companies to pull out of the projects while they cannot get capital. So, if we allow marginal companies to come in, do the exploration, start mining and then fold, they are not going to have to pay for it. Therefore, the burden and clean up will be left with the traditional owners and the government.[25]

4.26 Some submitters to the inquiry, such as the Australian Conservation Foundation, argued for a dedicated royalty stream to provide for environmental rehabilitation and post closure monitoring of former uranium mining sites:

> ACF advocates a dedicated royalty stream – separate to any remuneration to traditional landowners – to provide for environmental rehabilitation and post closure monitoring and mitigation. The rehabilitation of mine sites is a serious problem associated with uranium mining and any examination of the status of former uranium operations in Australia shows that it remains unfinished business long after closure. The federal government has an opportunity to act clearly with this legislation to address a long standing and continuing industry deficiency and take decisive steps to improve capacity for rehabilitation in line with community expectation.[26]

4.27 Similarly, the Australian Nuclear Free Alliance (ANFA) suggested the creation of a 'quarantined pool' of uranium and other mining royalty monies, perhaps 5% of the 18% proposed, for environmental rehabilitation and independent monitoring.[27] The ECNT also made a similar suggestion:

> Irrespective of whether a profit based or ad valorem based methodology is used, I encourage the committee to examine what sort of other financial arrangements could be used to store money for long-term environmental management because, as others have said, uranium is radioactive. It has long-term management and rehabilitation costs associated with it, which are different to other polymetallic mines in the Territory. I think that would go some way to helping people feel that there is a greater protection for communities and ecosystems that might be disadvantaged by a uranium mine after mine closure.[28]

4.28 In its submission, the Department of Resources, Energy and Tourism informed the committee that:

> …the NT Government has established a comprehensive mine security policy under its Mining Management Act. Miners are required to set aside a security which is calculated as per schedules for works under the mining lease in order to protect the community interest should a mining project fail

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25 Mr Jimmy Cocking, Arid Lands Environment Centre, *Proof Committee Hansard*, 1 April 2009, p. 5.

26 Australian Conservation Foundation, *Submission 2*, pp 8–9.

27 Australian Nuclear Free Alliance, *Submission 4*, p. 2, and Miss Donna Jackson, Australian Nuclear Free Alliance, *Proof Committee Hansard*, 31 March 2009, p. 14.

28 Dr Stuart Blanch, Environment Centre NT, *Proof Committee Hansard*, 1 April 2009, pp 12–13, and Environment Centre NT, *Submission 6*, p. 2.

> to fulfil its obligations including to rehabilitate the land. Calculation of securities is based on the estimated actual cost of rehabilitation commensurate with the size, environmental risk and expected project life and is reviewed regularly. This ensures that 100% of the amount calculated for rehabilitation is paid by the company and held by the Northern Territory Government as a security bond. Separate arrangements have been established with the Commonwealth Government holding a rehabilitation bond for the costs of rehabilitating Ranger. These estimated costs are reviewed and subject to independent assessment annually.[29]

4.29 The AUA told the committee that, under current arrangements for mines in Australia, the three uranium mines are making provision for closure and rehabilitation of their mines. The committee was told that at Ranger, the current balance sheet provision is $182 million to implement ERA's commitment to physically isolate tailings from the environment and ensure contaminants arising from the tailings will not result in any detrimental impact for at least 10 000 years. At Olympic Dam the figure is $87.6 million, and at Beverley it is $7.63 million. The AUA understands that companies add to this figure each year.[30]

Committee view

4.30 The committee agrees that environmental and post-closure monitoring and rehabilitation of uranium mines is a very important issue, but considers that it is a separate matter to the royalty regime that is proposed by the bill. The committee notes that the Northern Territory Government has a comprehensive mine security policy designed to ensure that 100% of the amount required for rehabilitation of mine sites is paid by the company and held as a security bond in order to protect the community interest should a mining project fail to fulfil its obligations. Furthermore, companies are making provision in their balance sheets for the closure and rehabilitation of their mines.

The impact on payments to traditional owners and revenue to government

4.31 Several issues relating to the potential impact of the royalty regime proposed by the bill on payments to traditional owners and revenue to government were raised during the inquiry, including:

- the administrative complexity and potential for manipulation of a profit-based royalty; and
- the potential for less predictable payments to traditional owners and government revenue under a profit-based royalty regime.

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29 Department of Resources, Energy and Tourism, *Submission 11*, p. 3. See also http://www.nt.gov.au/d/Minerals_Energy/Content/File/Forms_Guidelines/AA7-003_200605_SECURITY_POLICY_FINAL_CAB_ENDORSED.pdf.

30 Mr Michael Angwin, Australian Uranium Association, *Proof Committee Hansard*, 8 April 2009, pp 4 and 6–7, and Australian Uranium Association, *Supplementary Submission 3a*, p. 1.

The administrative complexity and potential for manipulation of a profit-based royalty

4.32 Concerns about the administrative complexity of profit-based royalty regimes and the potential for manipulation were raised in evidence to the committee. The Gundjeihmi Aboriginal Corporation argued that:

> By its very nature a profit-based royalty scheme is administratively complex, particularly for Aboriginal communities that are often without specialist administrative resources. The effective monitoring of mining company operating and capital costs and a reliable assessment of issues such as depreciation are well beyond the means of most, if not all, Aboriginal communities.
>
> The calculation of production-based royalties is, by contrast, significantly simpler and in a very real sense more transparent than a profit-based royalty scheme. Such transparency is entirely in keeping with the spirit of partnership between Aboriginal communities and mining companies that is a requirement of sustainable development.
>
> A new layer of complexity is added to the determination of profit in instances where mining companies may seek to purposefully conceal profit for taxation and other benefits. While the practice of 'transfer pricing' is sometimes considered something of the past in the mining industry (with an infamous example of it taking place arising from bauxite mining at Gove in the Northern Territory), it remains a regular focus of Australian Taxation Office campaigns.'[31]

4.33 The ACF also expressed concerns about the administrative complexity of a profit-based royalty regime and noted that:

> In many instances Indigenous communities have insufficient specialised administrative, information gathering or enforcement functions. They are likely to encounter serious difficulties in managing profit-based regimes. Land Councils have limited financial and commercial capacities and their lawyers lack the power of multinational corporation's legal representatives. Many developing countries find it exceptionally difficult to administer and enforce profit-based royalty regimes, let alone individual indigenous groups.[32]

4.34 Other submissions also suggested that a profit-based regime has the potential to allow for manipulation by mining companies that could negatively affect payments to indigenous people (and government revenue). For example, the Sydney Centre for International Law argued that:

> …profit-based royalties bring a potential for "creative book-keeping" by mining companies which may conceal the real level of profit. Whereas revenue-based royalties can be simply calculated on the basis of mining income and contracts, profit-based royalties are calculated following a

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31 Gundjeihmi Aboriginal Corporation, *Submission 9*, p. 6.

32 Australian Conservation Foundation, *Submission 2*, p. 8.

> series of possible expenses and deductions which may expand over time. These may include not only purchase of capital equipment, but also items such as bad debt provisions and depreciation – both of which are estimates (for example, the estimation of useful life of assets). Such estimations have given rise to serious difficulties in the finance industry regarding debt management, since as estimates they can be manipulated.
>
> In contrast, revenues are typically evidence-based (such as a contract) and are therefore less malleable. Although the Northern Territory Treasury, as royalty administrator, would meet the relevant company to "agree" on the composition of deductible, the process of negotiation itself may be susceptible to favourable manipulation by well-advised corporations, in a process which would not appear to involve indigenous peoples (who may not enjoy the expertise or advice to meaningfully engage in highly technical discussions).[33]

4.35 While industry and government representatives agreed that profit-based royalties are more complex than ad valorem royalties, they argued that the increased administrative burden (particularly given the offsetting efficiencies in having one territory-wide royalty regime described above) and the potential for manipulation would be minimal.

4.36 For example, the NLC informed the committee that while 'ad valorem is simple: simple to understand and simple to check…we know from our experience that we can work with either regime…we are confident that we can work with a profit based regime in relation to uranium, as we have since 1982 in relation to other minerals.'[34] The NLC also told the committee that under their contractual agreements with mining companies they are able to examine company records:

> We put conditions in our agreement that allow, under strict commercial confidence, for the books to be checked by experts that we engage from time to time, should that be necessary. We have in some cases done that. Without mentioning any names, we did that in the last few years in relation to a mine and ascertained that there were inadvertent discrepancies. That allowed an increased flow to that particular Aboriginal group.[35]

4.37 Mr Scott Perkins, Chief Executive Officer of the NTRC, told the committee that in his experience 'treasuries and other arms of government are very clever in tracking those people down and extracting the relevant money from them.'[36] The AUA told the committee that:

> We favour maximum transparency in any legislative or other arrangements affecting our industry. We believe a profit based royalty would be and should be as much evidence based as a revenue based scheme. By the way,

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33 Sydney Centre for International Law, *Submission 10*, p. 2.

34 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, pp 20 and 30.

35 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, p. 23.

36 Mr Scott Perkins, Northern Territory Resources Council, *Proof Committee Hansard*, 31 March 2009, p. 37.

> I think you could raise similar concerns as have been raised about those kinds of issues under both of those royalty arrangements. I can understand why that issue has been raised…
>
> Could I just add that I have had a look at the Mineral Royalty Act. It contains, amongst other things, a formula by which the rate of royalty has to be calculated. It provides for what is called a royalty return to be made every year. That requires, amongst other things, the royalty payer to state:
>
> (c) the quantity of a mineral commodity sold or removed ...
>
> (d) the name and address of the smelter, refinery or mill to which a mineral commodity recovered was sent;
>
> (e) the name and address of, and relationship between, any person with an interest in the production unit and the operator of the smelter, refinery or mill—
>
> and I think that goes directly to the question you raise—and the valuation of the mineral commodity et cetera. It also contains provisions for powers of inspection, requirement to answer questions, produce documents—all the usual things that you would expect.[37]

4.38 The Northern Territory Government elaborated on the process used to ascertain whether royalties are correctly paid:

> … the Mineral Royalty Act has a process whereby royalty payers pay two estimated payments at six monthly breaks and at the end of the year they file an annual return and every one of those annual returns is audited by our office—that is, we have compliance officers who attend and satisfy themselves that the royalty payment is correct.[38]
>
> Every year we look at every royalty return and assess whether the royalty return is correct. In addition to that, I note that the Mineral Royalty Act, as it currently stands, requires all miners to get an independent auditor to revise their royalty return before they submit it.[39]
>
> We would know the quantity. In that sense, there are documents that the mine keeps as to how much ore it removes and I think in the case of uranium it is incredibly well regulated by the federal government in relation to the volume of uranium that is moved. I am not sure that there is much capacity for a mine to alter the amount of uranium that they might move from Australia.[40]

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37 Mr Michael Angwin, Australian Uranium Association, *Proof Committee Hansard*, 8 April 2009, p. 12.

38 Mr Craig Vukman, Northern Territory Treasury, *Proof Committee Hansard*, 1 April 2009, p. 33.

39 Mr Craig Vukman, Northern Territory Treasury, *Proof Committee Hansard*, 1 April 2009, p. 34.

40 Mr Craig Vukman, Northern Territory Treasury, *Proof Committee Hansard*, 1 April 2009, p. 38.

4.39 The Department of Resources, Energy and Tourism also provided information to the committee about how the Commonwealth and Northern Territory Governments are able to identify and resolve any issues relating to manipulation or transfer pricing:

> The issue of transfer pricing is a serious one which governments have incentive to ensure does not occur and is a potential issue for both the ad valorem and profits based royalty regimes. As the NT Treasury said in its evidence, where there is any query about the price being paid for the uranium in the royalty return, the onus is on the company and not the government to prove the price is valid...
>
> All uranium producers in Australia are required to hold a uranium export permission issued by the Minister for Resources, Energy and Tourism. A condition of all export permissions is that copies of all uranium contracts must be submitted to the Department of Resources, Energy and Tourism (RET) and companies are required to provide details of all exports and prices obtained for material. RET publishes an annual uranium price achieved for all Australian exports...
>
> On this basis, RET has a very good understanding of the actual prices that Australian uranium is sold for and, as part of the administrative arrangements being established to support the Bill, will liaise closely with the NT Treasury on what are appropriate benchmark prices for uranium with which to compare royalty returns. Thus in the case of uranium, governments are in a much stronger position to identify and resolve any issues of transfer pricing or circumstance where a company seeks to keep the price artificially low for royalty purposes, than is the case for most other commodities. RET further notes that were the NT Government to be concerned that transfer pricing was occurring, the Minerals Royalty Act incorporates the power for the NT Government to issue a default or amended assessment of the royalty payable.[41]

Committee view

4.40 The committee agrees that profit-based royalties are more complex than ad valorem royalties. However, the committee notes that the Northern Territory's profit-based royalty regime for non-uranium mines has been in place since 1982 and that, as noted above, there are administrative efficiencies to be gained by having one consistent and stable royalty regime in the Northern Territory (particularly in relation to polymetallic mines).

4.41 With regard to the issue of potential manipulation of profit-based royalty regimes, the committee notes that Northern Land Council and the Northern Territory and Commonwealth Governments have rigorous assessment processes for determining the correct level of royalties to be paid. This is particularly the case for uranium as it is subject to higher levels of government regulation than other minerals. Furthermore, where there is a query about the price being paid for uranium in a royalty return, the onus is on the company, not the government to prove the price is valid.

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41 Department of Resources, Energy and Tourism, *Submission 11*, p. 4.

The potential for less predictable payments to traditional owners and government revenue under a profit-based royalty regime

4.42 Submissions from ANFA and the ECNT expressed concern that revenues to government would be less predictable under a profit-based royalty arrangement.[42] However, the major area of concern was the perceived volatility of profit-based royalty schemes and therefore less predictable payments to traditional owners. Related concerns were also expressed about the delayed benefit to traditional owners under a profit-based royalty regime. The Gundjeihmi Aboriginal Corporation, the royalty receiving entity for the Ranger uranium mine, argued that:

> Royalty income in Kakadu has varied considerably over the years since Ranger commenced production. From relatively large payments in the early 1980s, to a drop in the mid-80s, to record highs in the late 80s and a steady and then dramatic decline to the mid-1990s, this income has been especially volatile. Such volatility poses a serious financial, managerial, infrastructural and service delivery risk to Aboriginal communities reliant on that income.
>
> Importantly, this volatility was experienced under an ad valorem royalty regime, under which at least some of the volatility of markets and the business are counterbalanced by the royalty being determined by the volume of sales. Such volatility would be significantly amplified under a profit-based royalty regime because profit volatility is greater than sales volatility. Profit-based royalties would expose Aboriginal interests to even greater instability.[43]
>
> Under a profit-based royalty scheme, royalties are not payable until a profit has been realised by the mining operation. Given the customarily high capital expenditure costs associated with exploration, development and extraction at uranium mines, profit is not realised until the later part of the venture's life. Such delay increases the risk associated with the venture, with a high prospect of traditional owners waiting years for any financial benefit. Such benefit may in fact never eventuate, whereas the impacts of exploration and development are inevitable. Given that it is invariably senior Aboriginal people who ultimately make the decision as to whether or not mining occurs, it may well be the case that these very people will not live to see any profit-based royalty from the mine. The profit-based royalty proposed in the bill would, therefore, itself act as an impediment to uranium development.[44]

4.43 Similarly, the ACF argued that linking royalties to profitability, as opposed to revenue, poses challenges for indigenous landowners:

> If such an approach is adopted Aboriginal communities become exposed to the fluctuations of a highly volatile market because although "profit based royalties may offer the prospect of high returns in some cases, they also

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42 Australian Nuclear Free Alliance, *Submission 4*, p. 2, and Environment Centre NT, *Submission 6*, p. 2.

43 Gundjeihmi Aboriginal Corporation, *Submission 9*, pp 4–5.

44 Gundjeihmi Aboriginal Corporation, *Submission 9*, pp 5–6.

> carry the risk that Indigenous people will receive no income for periods during the life of a project, that income may be highly unstable and, where projects fail to become profitable at all (as can occur), that resource development will not generate any financial benefit for indigenous landowners".[45]
>
> I am saying that the ad valorem system offers greater certainty over the longer term, which means that Aboriginal corporations, representative bodies and communities can plan. They can plan and manage. So there is a greater certainty and that provides a platform for a high level of security.[46]

4.44 The Arid Lands Environment Centre expressed similar concerns in its submission:

> The proposed Uranium Royalty (Northern Territory) Bill 2008 is fundamentally flawed due to the recommendation of a profit-based royalty system. This exposes some of Australia's most vulnerable people to the volatility of the uranium market which has seen major price fluctuations in the past 10 years.
>
> A profit-based system provides certainty and flexibility for industry but fails to provide any meaningful security for Indigenous communities. Where projects are initiated, the risks of local soil and water contamination exist while there is no certainty that Aboriginal communities will gain any monetary benefit unless the project is profitable. It is unacceptable to shift the health, social and environmental risks to vulnerable Indigenous communities while granting certainty to multinational mining companies. The proposed Uranium Royalty (Northern Territory) Bill 2008 is unacceptable in these times of economic uncertainty.[47]

4.45 In its submission the NLC also suggests that caution is required to ensure that the bill does not operate as a disincentive to traditional owners granting consent to uranium mining on Aboriginal land. They note that:

> …the Land Rights Act provides that a Land Council cannot consent to the grant of a minerals exploration licence on Aboriginal land unless the traditional Aboriginal owners (as a group) consent. The position of traditional owning groups is ascertained on the basis of anthropological advice by reference to the traditional or otherwise applicable decision making process of the group. In practice this will ordinarily involve emphasis or deference to the position of senior and authoritative Aboriginal persons within the group. Naturally, where consent is given, senior persons will wish to benefit from the mine.
>
> The effect of a profit based regime for significant mines is that royalties may not be paid for some years given that debt in relation to start up capital costs must be repaid, and also that royalties will not be paid at other times if

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45 Australian Conservation Foundation, *Submission 2*, pp 6–8.

46 Mr Dave Sweeney, Australian Conservation Foundation, *Proof Committee Hansard*, 31 March 2009, p. 25.

47 Arid Lands Environment Centre, *Submission 5*, p. 1.

> an operating mine becomes marginal due to falling prices or other factors. This means, in relation to Aboriginal land, that royalty equivalents will not be paid by the Commonwealth into the Aboriginal Benefits Account under the Land Rights Act during that period, and thus traditional owners and other affected Aboriginal persons will not benefit from payments of those royalty equivalents. Senior persons within a traditional owning group are often elderly, and thus may not personally benefit from royalty equivalents if they pass away before a mine delivers a profit.
>
> This is a significant issue for traditional owners. One means of ameliorating this potential disincentive may be to ensure that negotiated payments in mining agreements meet any shortfall to traditional owners during periods when royalty equivalents are not paid. Minerals exploration agreements in the NLC's region include mining principles which are intended to facilitate that outcome, however at the time mining negotiations occur traditional owners will have already consented to mining and issues may arise as to the efficacy of the principles (since 1987 traditional owners' consent is given only at the exploration stage, and is known as a conjunctive agreement; prior to 1987 consent was required at both the exploration and the mining stage).[48]

4.46 The Gundjeihmi Aboriginal Corporation also expressed concern about the standing of traditional owners as ‘equity participants’ under profit-based royalty regimes:

> A fundamental problem with the profit-based royalty regime is that it suggests that the stake traditional Aboriginal owners have in a mining operation on their land is that of an equity participant. While the risk of making no money (i.e. a royalty) is higher than with other royalty regimes, the prospect of making more money when profits are high is held out in the proposed regime. It is not accurate, however, to think of Aboriginal landowners as equity participants - for while they would be exposed to all and every risk associated with the market and with the business, they would not enjoy many of the other benefits associated with equity participation. For example, should a mine or the legal entity who owns the entitlements under its lease, be sold at a considerable profit, no royalty is payable. So profit-based royalties that bear equity risk do not generate equity returns and are therefore inequitable to the royalty recipient.
>
> It is noteworthy that under a profit-based royalty scheme, changes in mining (such as the currently proposed expansion of the Ranger mine) would, as costs increase, lead to lower profits and therefore lower royalties. This reduction is given. Advocates of a profit-based royalty scheme suggest that this would be counterbalanced by larger royalty payments when the mine returns to profit. This, however, is a hope and not a given. The first scenario is certain - as costs increase profits reduce. The second scenario is uncertain - market conditions and other factors associated with the business will determine if, when and to what extent the company moves into profit.

48 Northern Land Council, *Submission 8*, pp 2–3.

> The forward projection of such factors is often highly speculative, making planning extremely difficult for Aboriginal communities.[49]

4.47 In its submission, the Sydney Centre for International Law notes that 'over time international law has increasingly recognised certain protected interests and rights of indigenous peoples. In particular, "the principle or right of self-determination applies in one way or another to indigenous peoples" and has been recognised by, for instance, the United Nations Human Rights Committee and the United Nations General Assembly.'[50]

4.48 They argue that the bill may have certain potentially negative impacts on indigenous self-determination rights:

> A profit-based royalty scheme may have adverse impacts on indigenous communities. First, a shift to profit-based royalties privileges certainty for investors over certainty for indigenous communities, in circumstances where relative certainty is essential for indigenous peoples in planning recurrent funding for services essential to human dignity in remote communities. This is particularly the case in marginal years where no profits would be payable.
>
> If profit-based royalties are to be introduced, we agree that it would be essential to ensure that traditional owner negotiated ad valorem royalties would not be deductible in calculating statutory royalties. In practical terms, this is particularly important to protect funding to indigenous communities during marginal years in which no profits would be payable.
>
> Importantly, negotiated royalties also recognise that indigenous interests in traditional lands are not reducible to the economic value of the resource mined there. Given the special relationship between indigenous peoples and their traditional lands, recognised as an aspect of their international legal right to self-determination as noted above, negotiated royalties are also important to recognise the interference in their relationship with their land which comes about through intrusive mining practices. Negotiated royalties are a payment which recognise such non-commercial interests and ought therefore to be paid separately and additionally to profit-based royalties.
>
> In addition, preservation of negotiated royalties ensures that meaningful indigenous participation in decision-making about use of their land is retained and not overridden by exclusive regulation by an automatic, prospective statutory formula. Such participation is an important in ensuring the continuation of the indigenous right of self-determination in future mining decisions, in accordance with articles 18 and 19 of the UN Declaration on the Rights of Indigenous Peoples.[51]

4.49 Evidence provided to the committee by government and industry representatives directly addressed many of these concerns. Both the AUA and the

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49 Gundjeihmi Aboriginal Corporation, *Submission 9*, p. 7.

50 Sydney Centre for International Law, *Submission 10*, p. 1.

51 Sydney Centre for International Law, *Submission 10*, pp 1–3.

NLC highlighted the modelling undertaken by the government as part of the consultation process which indicated that a roughly equivalent amount of royalties would be payable under either an ad valorem or profit-based royalty regime over the life of a mine:

> Table 2 in the summary of economic modelling outcomes suggests that the nominal royalty cost under an ad valorem royalty arrangement would be $289 million in the base case, $347 million in the high case. On the profit royalty arrangement, it is $213 million on the base case and $490 million on a high price case. Again, subject to modelling—and there can always be debate over modelling—they seem to be in about the same ballpark.[52]
>
> We sought economic advice about this issue. Our advice, I think is probably pretty similar to the government's. Our advice was that over the lifetime of a mine, the royalties which flow under either an ad valorem or a profit based regime are roughly equivalent...[53]

4.50 The Department of Resources, Energy and Tourism also suggested to the committee that there were advantages to profit-based royalty regimes (in addition to the advantages relating to consistency discussed earlier in this chapter):

> On the matter of profit versus ad valorem, we consider that a profits based royalty charge is more economically efficient in that it does not of itself act to distort investment decisions. Ad valorem royalties are more likely to discourage higher risk projects and impede the efficient development of otherwise marginally profitable projects and can result in the premature closure of mines, whereas a profit based regime will facilitate development of longer life mines which of itself brings a broad range of economic and social benefits to the community, including in the form of taxation, employment, infrastructure and services.
>
> A profits based regime can also result in greater returns to the community, particularly during periods of higher profits. The Henry tax review in its consultation paper noted that one reason for the relatively slow growth in government revenues during the recent period of extended profitability in the mining sector has been the prevalence of ad valorem royalty regimes. This means that we may not be maximising returns to the community as a whole for the use of Australia's resources, and in particular Indigenous owners may be missing out on some of this return.[54]

4.51 The Department's submission further elaborated on these points and provided references to several reports which they contend 'indicates that profit royalties are more efficient than ad valorem or volume based arrangements.'[55]

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52 Mr Michael Angwin, Australian Uranium Association, *Proof Committee Hansard*, 8 April 2009, p. 9, and *Explanatory Memorandum*, p. 28.

53 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, p. 20.

54 Mrs Marie Taylor, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 8 April 2009, pp 14–15.

55 Department of Resources, Energy and Tourism, *Submission 11*, pp 4–5.

The recent cycle in resource prices, sustained increases followed by sharp decreases, serves to highlight the relative efficiency of the various revenue arrangements. The extended period of profitability in the mining sector resulted in an increase in revenues from company income tax and specific resource taxes, royalties and excises levied on mining, oil and gas resources (accounting for the major part of resource related revenues). However, the rate of increase does not appear to have been proportional to the growth in the operating profits of the mining sector.

The relatively slow growth in government revenues is partially explained by the prevalence of ad valorem royalties. Ad valorem royalty revenues do not vary in proportion with profits. A corollary is that, in a period of lower operating profits for the mining sector, total government revenues fall by less than operating profits. Indeed, a particular project may be in a loss making position but still be required to pay royalties. Royalty arrangements can therefore discourage higher risk projects. They can also impede the efficient development of otherwise marginally profitable reserves. Resource rent taxes such as Australia's PRRT [Petroleum Resource Rent Tax] are designed to overcome these issues.[56]

Provided there exists a range of low profit and high profit resource projects, output based royalties (ie ad valorem) tend to overtax low profit projects and to undertax high profit projects. The government tax take will be too high for low profit projects with some becoming uneconomic as a consequence (and the government tax take reduced to zero for these projects), and too low for high profit projects.[57]

Where a nation has a strong desire to attract investors, consideration should be given to either forgoing a royalty and relying on the general tax system, or recognizing the investors' strong preference for being taxed on their ability to pay. A nation seeking to differentiate itself from other nations that it competes with for mineral sector investment may find a royalty based on income or profits to be an investment incentive. Although profit-based royalty schemes are inherently more difficult to implement than other royalty schemes, governments that are capable of effectively administering an income tax are positioned to manage a profit or income based royalty.[58]

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56 The Treasury, *Australia's Future Tax System: Consultation Paper*, December 2008, http://taxreview.treasury.gov.au/content/downloads/consultation_paper/Consultation_Paper.pdf p. 256 [accessed 21 April 2009], quoted in Department of Resources, Energy and Tourism, *Submission 11*, p. 4.

57 Australian Bureau of Agricultural and Resource Economics (ABARE), *Mineral Resource Taxation in Australia: An Economic Assessment of Policy Options*, ABARE Research Report 07.1, Lindsay Hogan, January 2007, http://www.abare.gov.au/publications_html/energy/energy_07/Resource_taxation.pdf, p. 83 [accessed 21 April 2009], quoted in Department of Resources, Energy and Tourism, *Submission 11*, p. 5.

58 J. Otto , C.B. Andrews, F. Cawood , M. Doggett, P. Guj, F. Stermole, J. Stermole and J. Tilton, *Mining Royalties: A Global Study of their Impact on Investors, Government, and Civil Society*, World Bank, Washington DC, 2006, quoted in Department of Resources, Energy and Tourism, *Submission 11*, p. 5.

4.52 However, most evidence to the committee which sought to allay concerns relating to the impact on payments to traditional owners focussed on the issue of negotiated payments (or royalties). The Northern Territory Government informed the committee that, under the *Aboriginal Land Rights (Northern Territory) Act 1987*, there is an ability for traditional owners to negotiate royalties directly with the mine as part of the access arrangements. This is a completely separate process to what is mandated in the *Mineral Royalty Act 1982* (NT), i.e. the statutory 18% profit-based royalty.[59]

4.53 During the consultation process that led to the drafting of this bill, there was discussion of whether royalties negotiated by traditional owners for mining on Aboriginal land should be an allowable deduction for industry in calculating a statutory profit-based royalty. Some stakeholders, and the government, disagreed with this because:

(a) negotiated royalties in respect of other minerals produced on Aboriginal land in the Northern Territory are additional to the statutory royalty and not deductible in its calculation;

(b) privately negotiated royalties with other landowners or tenement holders are not deductible in calculating the statutory royalty;

(c) it would result in uranium being treated differently for royalty purposes from other minerals on Aboriginal land in the Northern Territory;

(d) it would add a complexity to administration of the Northern Territory's profit-based royalty regime in respect of new uranium mines, and particularly poly-metallic mines which include uranium; and

(e) of concerns that it would diminish the statutory royalty which would accrue to the Australian Government and thus to the Northern Territory Government and the ABA.[60]

4.54 As a result, negotiated payments will not be deductible from statutory royalties under the bill and therefore any negotiated payments must be in addition to the 18% statutory profit-based royalty. The NLC indicated that this was the main outcome that they sought through the consultation process:

> ...the bill does not adopt a suggestion which was made by some stakeholders that negotiated payments with Aboriginal groups would deduct from the statutory royalty flow to governments. So that was the primary thing which we—and I can speak, I think, for the Central Land Council also—wished to achieve in the Uranium Industry Framework process, and that was achieved.[61]

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59 Mr Craig Vukman, Northern Territory Treasury, *Proof Committee Hansard*, 1 April 2009, p. 34.

60 *Explanatory Memorandum*, pp 17–18.

61 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, p. 28.

4.55 The NLC discussed why they see the provision of these negotiated payments as so important:

> ...we have to make sure that the separate negotiated payments will be identified in such a manner to deal with those periods where there is no statutory payment. That is important because the people who make decisions within an Aboriginal group are usually senior people. Senior people, because they are old, will usually be thinking of benefits to their children and grandchildren, but at the same time, there will need to be some benefit which they see in their lifetime to encourage them to consent, if that is what they want to do.[62]

4.56 The NLC also provided the committee with some detail about the payments it had negotiated on behalf of traditional owners in its region:

> …there are negotiated payments. Some of them are ad valorem payments. Some are a hybrid approach where there is a profit based regime with a floor on it. We have negotiated some of that nature, and we directed ourselves to this issue.[63]

> Most major developments, whether it is a mine, a pipeline or whatever, have a number of up-front payments: one when the agreement is signed, another one when construction commenced, another one when production commences. That is a standard mechanism for dealing with this lapse which comes from a profit based regime.[64]

4.57 The NTRC informed the committee that the issue of a slow start to royalty payments under a profit-based regime:

> …is well known among mining companies, and it does concern them…There is concern that benefits do not flow directly and immediately once a mine opens. That concern is particularly so in the case where, for instance, traditional owners are elderly and perhaps in their lifetime will not see direct benefits flowing. There have been a number of various methods of ameliorating that, including community benefit funds and advance payments and so forth. They tend to be designed to suit the circumstance from mine site to mine site with varying effect.[65]

4.58 The Department of Resources, Energy and Tourism also gave evidence to the committee to address some of the concerns raised in relation to the potential for less predictable revenue under a profit-based regime:

> ...we note that many of the issues raised by those representing Indigenous interests are either already being managed or can be managed through alternative mechanisms. For example, some 64 per cent of the royalty equivalents paid to the Aboriginal Benefits Account during the period 2002

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62 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, p. 20.

63 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, p. 20.

64 Mr Ron Levy, Northern Land Council, *Proof Committee Hansard*, 1 April 2009, p. 21.

65 Mr Scott Perkins, Northern Territory Resources Council, *Proof Committee Hansard*, 31 March 2009, p. 28.

> to 2006 were already derived from mines in the Territory exposed to the profit based regime; and ad valorem royalties fluctuate by nature themselves, albeit not as significantly as under a profit regime. So these stakeholders are already managing volatility of payment issues.[66]
>
> …section 46 of the *Aboriginal Land Rights (Northern Territory) Act 1967* (ALRA) provides for Traditional Owner groups to negotiate private payments directly with a mining company. The form and timing of private payments is not mandated so Traditional Owners can, for example, negotiate ad valorem payments for the purpose of offsetting lower profit based royalty payments during the early years of a mine's life or to smooth out royalty payments. The Uranium Royalty (Northern Territory) Bill 2008 deals only with the statutory royalty regime and therefore does not affect this right for Traditional Owners to negotiate private payments and any private payments would be made in addition to the statutory royalty (i.e. they are not deductible from the statutory royalty). I note that the Northern Land Council stated in its evidence that its practice is to insist on these types of arrangements in the agreements for which it is responsible.
>
> RET notes that, as the Traditional Owners have a veto over exploration and mining on their land, they are in a very strong position to negotiate the terms and conditions that they wish. Anecdotal evidence suggests that mining companies are prepared to negotiate private royalties with traditional owners and in the past these have covered ad valorem, profit based or hybrid systems.[67]

Committee view

4.59 The committee understands that a predictable revenue flow to traditional owners and their representative organisations is essential. The committee also believes that it is important for elderly traditional owners to be able to see benefits from mining on their land during their lifetime. However, the committee does not believe that the reforms proposed in this bill will present unmanageable issues for traditional owners. In this regard, the committee notes that:

- the status quo in terms of royalty arrangements for uranium mines in the Northern Territory is for royalties to be determined on a case-by-case basis (there is no guarantee that future uranium mines would be subject to ad valorem royalties under current arrangements and any amendment to the bill to mandate ad valorem royalties would be inconsistent with the objectives of the bill);
- the Northern Territory's profit-based royalty arrangement (which applies to all non-uranium mines) has been in place since 1982;

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66 Mrs Marie Taylor, Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 8 April 2009, p. 15.

67 Department of Resources, Energy and Tourism, *Submission 11*, p. 2.

- between 2002 and 2006, 64% of the royalty equivalents paid into the Aboriginals Benefit Account were derived from mines under the profit-based regime;
- ad valorem royalties are also subject to fluctuations (although not to the same extent as those under a profit-based regime);
- for most indigenous communities royalty payments make up a small part of total revenue and therefore it could be possible to overestimate the impact royalties may have in eliminating indigenous economic disadvantage; and
- modelling has shown that over the life of a mine the total amount of royalties payable under either an ad valorem or profit-based royalty regime is roughly equivalent, although it is important to note that a profit-based royalty regime can generate greater returns during periods of higher profit and one reason for the relatively slow growth in government revenues during the recent mining boom was the prevalence of ad valorem royalties.

4.60 Most importantly, however, it is essential to note that the bill does not affect the ability of traditional owners to negotiate separate payments, in addition to the statutory royalty, as part of negotiations to grant permission to access their land. Evidence provided to the committee suggests that these payments are already used to provide income to traditional owners during the start-up phase of new mines and to provide more stable income during the life of a mine.

4.61 The committee notes evidence provided by the Northern Land Council and Australian Nuclear Free Alliance that since 1987 traditional owners' consent to mining is given only at the exploration stage (whereas prior to 1987 consent was requested at both the exploration and mining stage) and the problems it is suggested this may cause in relation to negotiating payments for traditional owners as part of mining agreements. This is a matter beyond the direct scope of this inquiry and the committee expects that mining companies and land councils will be flexible in negotiating appropriate payments that may arise from this delay in the period between agreement to explore and the decision to mine.

General committee conclusions and recommendation

4.62 The committee acknowledges that some important concerns have been raised during the inquiry in relation to the bill. However, on balance it appears that these concerns can be alleviated through existing processes. The committee believes that there are important benefits to establishing a consistent royalty regime for all minerals in the Northern Territory, including:

- reduced administrative complexity, particularly in relation to polymetallic mines;
- the Northern Territory Government will be on the same fiscal ground as the states in relation to mineral royalties; and
- a barrier to further mining development in the Northern Territory will be removed.

Recommendation 1

4.63 The committee recommends that the Senate pass the bill.

Senator Annette Hurley
Chair

Coalition Senators' Additional Comments

1.1 Coalition Senators support the proposed legislation to convert to a profit based royalty system for all future uranium mines in the Northern Territory.

1.2 Coalition Senators are aware that, apart from uranium, a wide variety of minerals are mined in the Northern Territory including gold, bauxite, manganese, iron ore, lead, and zinc. It is further noted that the royalties system applied to mines other than the Ranger Uranium Mine is on a profit basis. Accordingly Coalition Senators support the position of the Northern Territory Government that it would be more consistent to apply a profits based royalty system to any future uranium mines which may be established.

1.3 During the hearings, quite a lot of discussion centred around the possibility that Indigenous communities might receive both less money in gross terms and a less consistent payment of those monies under a profit based system rather than a volumetric or turnover system of paying royalties. However Coalition Senators were persuaded by the evidence given in the Northern Land Council submission that overall there was no real difference in the sum of royalties which would be paid to Indigenous communities if a profit based system were to be adopted.

> Under existing NT laws compensatory payments negotiated between traditional owners and miners do not affect the calculation of royalties, and thus do not affect the quantum of royalty equivalents paid into the Aboriginal Benefits Account under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth).
>
> While both an ad valorem regime and a profit based regime may deliver a similar quantum of royalties over the lifetime of a mine, the latter is advantageous to mining because the cost of paying royalties does not arise during non-profitable periods…[1]

1.4 Coalition Senators believe it is important to understand that the majority of ongoing funding received by Indigenous communities is derived from the Commonwealth and Territory Governments under various programs provided by those governments including provision of services such as various forms of social security, unemployment benefits, training programs and for education and health programs.

> Senator EGGLESTON — "…the funding to Indigenous people in general and communities is not dependent on royalties from mining. It generally comes from government in various forms—from social security to payment for health services, art centres and many other things—doesn't it"
>
> Mr Vukman — "Yes, I presume it does"

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1 Northern Land Council Submission, page 1

1.5 In light of this fact, Coalition Senators regarded as potentially misleading, evidence which implied that Indigenous communities and people would suffer a substantial loss of income if a profits based royalties system were adopted for future uranium mines in the Northern Territory. There is no doubt that all Indigenous people who currently receive funding from Government programs will continue to do so as will the minority who receive the additional funding represented by royalties.

1.6 Coalition Senators had some concerns about remarks in the NLC submission relating to decision making practices which referred to senior and authoritative Aboriginal persons as the main decision makers of Indigenous communities. The point was made by the NLC that such senior persons, who can be taken as elderly males, are concerned that given their age, they themselves may not benefit personally under a system were the system payments changed. Coalition Senators can understand such concerns however trust that the change to the profits based system of royalty payments will mean that future decisions relating to the expenditure of royalties will be based on consideration of the long term benefit of all people within the Indigenous communities receiving such royalties.

1.7 Another matter of concern which was raised by several witnesses was that mining companies, particularly if owned by an overseas based parent company, could avoid paying any royalties based on profit by use of creative accounting methods which has been referred to in the Chair's report. Coalition Senators wish to specifically express their concurrence with the Chair's view and were satisfied by the evidence given that the Northern Territory Government has the legal means to determine what royalties a mining company (of any kind) should be paying based on production and sales. Given this evidence Coalition Senators do not accept that actual profits on sales can be concealed by creative accounting leading to avoidance of royalty payments. Accordingly the Coalition Senators are of the view that the concerns that were expressed regarding the concealment of actual trading profits as a means of avoiding the payment of profit based royalties were unfounded.

> Mr Vukman- …In relation to the second part of your question on the sorts of processes the Territory Revenue Office goes into to ascertain whether royalties are correctly paid, the Mineral Royalty Act has a process whereby royalty payers pay two estimated payments at six monthly breaks and at the end of the year they file an annual return and every one of those annual returns is audited by our office-that is, we have compliance officers who attend and satisfy themselves that the royalty payment is correct.[2]

1.8 Coalition senators believe it is important to emphasise in the context of this new legislation that the one existing uranium mine in the Northern Territory on Indigenous land, namely the Ranger Mine, is exempt from the new legislation and the income stream from royalties derived from that mining operation to the Indigenous land holders would not be effected by the legislation.

1.9 In conclusion, Coalition Senators are of the view that the measure will provide for administrative consistency in the generation of royalties across all mineral

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2 Northern Land Council Submission, page 2

mining in the Northern Territory and do not believe that any convincing case was made for uranium mining to be administered under a separate regime.

Senator Alan Eggleston
Deputy Chair

Australian Greens Dissenting Report

1.1 The Australian Greens do not believe that the merits for treating uranium like any other mineral, or using a profit-based system for calculating uranium royalties, were proven by the Minister in his Second Reading Speech and Explanatory Memorandum on the Uranium Royalty (Northern Territory) Bill 2008, or by the Economics Committee inquiry report.

1.2 Regulatory capture is a phrase used to describe situations where government mechanisms or agencies that are meant to regulate and defend the public interest are used instead to preference commercial, industry or special interests.

1.3 Given that the terms and conditions set out in this Bill emerged from the Uranium Industry Framework, an unrepresentative and industry-dominated creation of the Howard government, it is not inappropriate to use this phrase. Nor is it surprising that the Bill seeks to fast track and remove barriers to the uranium mining industry, prioritising industry imperatives, industry access, industry certainty, industry administrative ease, and industry profits over other criteria such as Aboriginal community development, environmental protection and sustainable regional economies.

1.4 In comparing the relative merits of a profit-based or revenue-based royalty system, the Committee has failed to acknowledge the fact presented to it that neither royalty system is delivering significant or long term benefits to indigenous peoples.

1.5 Several witnesses presented the astounding findings of the Native Title Payments Working Group in their December 2008 report that found: "While hundreds of agreements exist between traditional owners and industry, there are only around one dozen agreements that provide substantial benefits to Aboriginal people and Torres Strait Islanders and exhibit principles embodying best practice …"

1.6 Not only is the royalty system failing to deliver benefits, the current approvals system forces Aboriginal people to consent to mining if they consent to exploration. Failure to consent to exploration often results in the project progressing regardless while cutting traditional owners out of the possibility of receiving monetary compensation in the form of royalties, reinforcing Aboriginal disadvantage.

1.7 This is far from an empowered position from which to negotiate additional payments and benefits. Despite this, ad-hoc negotiation of additional payments appears to be a panacea recommended by the Committee to address the volatility of the industry, the non-profitable start up years, and long periods when remediation, replenishment of equipment or capital items will see operational activity, environmental damage and displacement from the land, but no compensation or revenue coming into communities under the profit-based royalty system.

1.8 Rather than acknowledge this systemic failure, the Committee is instead recommending that uranium agreements be simply folded into a dysfunctional profit-based system – largely on the grounds that this would remove a barrier to mining development and provide administrative consistency that "would be easier and involve less paperwork for business."

1.9 The Committee has failed to recognise that uranium is unique and not like any other mineral. The radiation from uranium mining and its daughter products is uniquely hazardous, persistent and indiscriminate, damaging our most precious legacy, the core human blueprint stored in our DNA and passed on to future generations. We now know that radionuclides with a long half-life are cumulatively loaded into the environment and result in ongoing impacts on health as well as long term damage to the gene pool.

1.10 Given these unique health and environmental risks, uranium mining not only requires special regulatory and environmental requirements, it also requires case-by-case decisions. The health risks posed by proximity of residents and workers to radon gas emissions vary according to the location of the mine. The positioning of tailings streams in relation to water sources is unique in each instance and requires individual treatment, and therefore negotiations and royalty systems should be tailored to the particular circumstance.

1.11 The Committee has failed to answer concerns raised about the scope offered by the profit-based royalty system for creative bookkeeping in the concealment of profits, which in one case resulted in the Northern Territory government not receiving royalties for over a decade. Difficulty in extracting the information required to calculate profit is compounded by the lack of transparency arising from commercial in-confidence and other corporate secrecy provisions, which even the Freedom of Information laws were unable to penetrate in the Xstrata / MacArthur River case. How could an indigenous community combat this wall of silence to verify that they are receiving the royalties based on actual profit?

1.12 The Committee is far too easily satisfied by assurances from the industry and government that the "potential for manipulation would be minimal" and that "rigorous assessment processes" are in place, when in fact there have been very recent cases proving that private profits can be maximised while royalty payments are minimised.

1.13 The Committee has failed to answer the concerns raised about the possibility of marginal outfits being encouraged by the profit-based system to gamble the start-up of uranium mines on eventual profits, but then abandoning the uniquely toxic and long lasting legacy for the government and local community to deal with. On the contrary, the government is interested in encouraging the development of more marginally economic projects, which is reckless, unpopular and out of step with community concerns, as well as Labor's policies of "world's best practice."

1.14 Ironically, in making the case for the profit-based system, both government and industry cited modelling that shows there to be little financial difference over the

life of a mine between the two systems. If that is true, why are the economic arguments for moving towards a profit-based system seen to be so meritorious? Because it provides support to an industry that cannot otherwise compete on the open market, but requires preferential treatment, subsidies and encouragement.

1.15 The Australian Greens oppose uranium mining because it poses unacceptable environmental and health risks and provides the essential ingredient for nuclear weapons. When uranium is mined for use in a nuclear reactor to boil water, it results in carcinogenic and mutagenic waste that remains dangerously toxic to the environment and human health for up to 250,000 years – an unacceptable and unnecessary legacy from an unsustainable and uneconomic industry.

1.16 While the Australian government contributes to the global nuclear dangers by allowing the export of uranium, the Greens will be proposing amendments to this bill that will seek to:

- Standardise the benchmark set by ERA at the Ranger mine whereby the company recognises the timeframe and toxicity associated with uranium mining by undertaking to ensure that the tailings are physically isolated from the environment for at least 10,000 years, and that any contaminants arising from the tailings will not result in any detrimental environmental impacts for at least 10,000 years;

- Quarantine a royalty stream for this rehabilitation and monitoring;

- Establish a mechanism to provide Commonwealth support and oversight of the figures provided by mining corporations to the Northern Territory government; and

- Expand the resources and mandate of the Office of the Supervising Scientist to allow it to provide oversight and monitoring of all uranium mines in the Northern Territory.

1.17 The Australian Greens are convinced by the evidence presented of the Native Title Payments Working Group's recommendation for a review to examine the extent to which indigenous peoples are benefiting from mining royalties and we will pursue such an inquiry.

Senator Scott Ludlam
Australian Greens

Appendix 1
Submissions Received

Submission Number	Submitter
1	Northern Territory Government
2	Australian Conservation Foundation
3 & 3a	Australian Uranium Association
4	Australian Nuclear Free Alliance
5	Arid Lands Environment Centre
6	Environment Centre NT
7 & 7a	Northern Territory Resources Council
8	Northern Land Council
9	Gundjeihmi Aboriginal Corporation
10	Sydney Centre for International Law
11	Department of Resources, Energy and Tourism

Appendix 2

Public Hearings and Witnesses

DARWIN, TUESDAY 31 MARCH 2009

- JACKSON, Miss Donna, Co-Chair,
  Australian Nuclear Free Alliance
- O'BRIEN, Mr Justin Jon Quentin, Executive Officer,
  Gundjeihmi Aboriginal Corporation
- PATERSON, Mr David, General Manager Business Development,
  Energy Resources of Australia Ltd
- PERKINS, Mr John Scott, Chief Executive Officer,
  Northern Territory Resources Council
- SWEENEY, Mr Dave, Nuclear Campaigner,
  Australian Conservation Foundation

DARWIN, WEDNESDAY 1 APRIL 2009

- BLANCH, Dr Stuart James, Coordinator,
  Environment Centre Northern Territory
- COCKING, Mr James Andrew, Coordinator,
  Arid Lands Environment Centre
- KNEEBONE, Mr Jonathan, Solicitor,
  Northern Land Council
- LEVY, Mr Ron, Principal Legal Officer,
  Northern Land Council
- SELLERS, Mr Richard, Executive Director,
  Minerals and Energy, Department of Regional Development, Primary Industry, Fisheries and Resources, Northern Territory
- VUKMAN, Mr Craig, Executive Director,
  Revenue, Northern Territory Treasury

CANBERRA, WEDNESDAY 8 APRIL 2009

- ANGWIN, Mr Michael, Executive Director,
  Australian Uranium Association
- BARTON, Ms Carolyn, Manager,
  Uranium Industry Section, Department of Resources, Energy and Tourism
- HINTON, Ms Nicole, Assistant Manager,
  Uranium Industry Section, Department of Resources, Energy and Tourism
- RILEY, Ms Kathrine, Assistant Manager,
  Petroleum Refining and Retail Section, Department of Resources, Energy and Tourism
- TAYLOR, Mrs Marie, General Manager,
  Fuels and Uranium Branch, Department of Resources, Energy and Tourism