Australian Conservation Foundation

Submission to the Inquiry into the Uranium Royalty (Northern Territory) Bill 2008

February 2009

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ACF welcomes the opportunity to make this submission to the Inquiry into the Uranium Royalty (Northern Territory) Bill 2008. ACF is a national, community-based environmental organisation that has been a strong voice for the environment for over 40 years, promoting solutions through research, consultation, education and partnerships. We work with the community, business and government to protect, restore and sustain our environment.

ACF welcomes this opportunity to comment on the proposed Uranium Royalty (Northern Territory) Bill 2008. ACF has a long and continuing interest and active engagement with the uranium sector in the Northern Territory and throughout Australia. ACF believes the uranium industry is unsustainable and provides no net benefit to Australia. ACF notes that in presenting this Bill to the Parliament it has been promoted as providing industry certainty in order to develop the uranium sector. ACF further notes the unresolved concerns raised about the performance of the Australian uranium industry by a 2003 Senate Inquiry which found the sector characterised by a pattern of underperformance and non-compliance, an absence of reliable data to measure the extent of contamination or its impact on the environment, an operational culture that gives greater weight to short term considerations than long term environmental protection and which concluded that changes were necessary in order to protect the environment and its inhabitants from 'serious or irreversible damage.'[1]

Uranium is the principal material required for nuclear weapons. Successive Australian governments have attempted to maintain a distinction between civil and military end uses of Australian uranium exports, however this distinction is more psychological than real. No amount of safeguards can absolutely guarantee Australian uranium is used solely for peaceful purposes. According the former US Vice-President Al Gore, "in the eight years I served in the White House, every weapons proliferation issue we faced was linked with a civilian reactor program."[2] Despite Government assurances that bilateral safeguard agreements ensure peaceful uses of Australian uranium in nuclear power reactors, the fact remains that by exporting uranium for use in nuclear power programs to nuclear weapons states, other uranium supplies are free to be used for nuclear weapons programs. In reality, the primary difference between a civilian and military nuclear program is one of intent.

The Uranium Royalty (Northern Territory) Bill 2008 is a pro-industry piece of legislation driven by the Uranium Industry Framework (UIF). The UIF is not a representative body or disinterested agency – it is a partisan industry development forum that was initiated by the

[1]Senate ECITA Committee: Regulating the Ranger, Jabiluka, Beverley and Honeymoon uranium mines, October 2003, p. iv.

[2] Al Gore, *Guardian Weekly*, 167 (25), 9-15 June 2006.

previous Howard Government in order to reduce "impediments to exploration, mining and export of Australian uranium."[3] It is unacceptable that an industry advocacy body is the main driver of public policy development, especially in an area of such consistent contest and diverse stakeholder views as uranium mining. Such an approach is not conducive to either robust policy development or broad community acceptance and confidence.

The key points detailed in the submission below are summarised as follows:

- The uranium sector remains controversial and contested. It is characterised by underperformance and regular non-compliance and is in urgent need of regulatory reform.
- The Uranium Industry Framework is an unrepresentative and inappropriate forum to drive the policy and legislative framework of the uranium sector.
- Unresolved concerns over site specific contamination, tailings management, radioactive waste and nuclear proliferation mean that the Australian uranium sector fails any measured sustainability assessment.
- Systemic Aboriginal disadvantage has not been addressed by mining operations and most mining agreements have failed to deliver lasting benefits to Indigenous communities. A dedicated Inquiry should examine and address this continuing failure.
- Indigenous peoples ability to exercise full, free, prior and informed consent and effective input into the activities of mining operations on their traditional lands is compromised by severe capacity and procedural constraints. The legal and approvals framework should be changed to address this power imbalance.
- There is a history of sub-standard mine rehabilitation in the Australian uranium sector and an urgent need to address the long-term impacts of the Australian uranium sector in a way that does not allow cost shifting from mining companies to the public purse.

[3] The Hon Ian MacFarlane, *'Media Release: Vision for Australia's Uranium Industry,'* 11 August 2005.

1. Indigenous land issues

Mining agreements with Indigenous groups have been justifiably criticised for not operating on a level-playing field. Problems relating to financial and administrative resources, confidential and complex agreements, and inadequate representation show that the "Australian Government is unlikely ever to make *adequate* provision for the proper, professionally-supported preparation and execution of all significant future act negotiations."[4] For the UIF to conclude and this Bill seek to embed the concept that any expansion of uranium mining in the Northern Territory is of benefit to Indigenous groups is highly misleading and does not reflect the past or current reality.

ACF maintains that the cards are heavily stacked against Aboriginal people who are concerned about, and would prefer to see no uranium mining on their country. The inequity found in the relationship between mining companies and indigenous communities is further compounded by the limited rights afforded to Aboriginal people in relation to developments on their traditional lands and estate. According to prominent Aboriginal lawyer Noel Pearson:

> The legal framework that applies to mining and native title legal framework that applies to mining and native title severely disadvantages indigenous landowners. Section 38 of the Native Title Act explicitly says that in arbitrating an application for mining, the National Native Title Tribunal "must not determine a condition ... that has the effect that native title parties are to be entitled to payments worked out by reference to:
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> (**a**) the amount of profits made; or
> (**b**) any income derived; or
> (**c**) any things produced."
>
> You might as well make clear in the law that the tribunal can only determine beads and mirrors as acceptable outcomes from arbitration, because that is in effect what it has been doing.
> The mining lobby has been quiet on land rights for the past decade. Having secured an advantageous legal framework through the bitter conflicts over the Native Title Act in the '90s, they have learned that ideological opposition to land rights is unproductive for its members. As long as member companies are winning hands-down through the so-called agreement-making process, they have had no interest in conflict.[5]

The Aboriginal Land Rights (Northern Territory) Act 1976 provides Traditional Owners with some ability to veto mining proposals on their lands, however this is unnecessarily complicated and compromised by the conjunctive linkage between exploration approval and mining approval. It would be far better if exploration and mining approvals were discrete and separate processes. Such an approach would appear beneficial for all parties by providing increased clarity and certainty for Aboriginal Traditional Owners (that saying yes to exploration did not preclude any ability to say no to future mining), for industry (as Traditional Owner's would be

[4] Ciaran O'Faircheallaigh, 'Financial Models for Agreements Between Indigenous Peoples and Mining Companies', *Aboriginal Politics and Public Sector Management,* Research Paper No. 12, January 2003.
[5] Noel Pearson, 'Boom or dust lifestyle', *The Australian, 16* December 2008.

arguably less likely to oppose exploration applications if they knew this would not constrain their options on future mining approvals) and for other stakeholders like ACF (who would have more confidence that the process facilitated and reflected full and informed consent).

Aboriginal communities on native title land have extremely limited ability to say no to mining developments on their country. In ACF's experience, many Aboriginal communities are put in a position where they must choose between (i) non co-operation and non consent with a mining or development proposal, an option that most clearly reflects opposition to the proposed development but is not of itself sufficient to halt the project and also precludes a place at the table should the project go ahead and (ii) forming an Agreement with the developer. This is invariably promoted by the project proponent as proof of community 'consent' and used to confine debate and any continuing concerns over the operation to in house forums. Often unreasonable pressures and expectations are placed on Aboriginal communities in order to fast track mining agreement and approvals.

Aboriginal communities facing uranium developments on their traditional estate need a way to ensure that their key concerns and questions receive meaningful attention, and that they retain a critical and empowered voice, both within and parallel to any Agreement process. The present legislative and procedural framework is clearly failing to provide this and the current Bill fails to recognise or address these deficiencies.

The UIF claims the expansion of the industry will foster benefits for remote Indigenous communities, citing the industry as a vehicle to address Indigenous disadvantage in providing direct employment, secondary industry opportunities and additional revenue through royalty payments. Such claims are flawed and not an accurate representation of past practices and current operational realities. Aboriginal people have not benefitted substantially from uranium mining and changes to the royalty regime and increased mining will not change this trend. Environmental and social concerns relating to uranium mining have been consistently expressed by members of the Aboriginal communities near all uranium mining operations in Australia. Mirarr Senior Traditional Owner Yvonne Margarula echoed these sentiments in a statement preceding the Gundjeihmi Aboriginal Corporation's submission to the 2005-06 parliamentary inquiry into Australia's uranium industry.

> Uranium mining has completely upturned our lives...Uranium mining has also taken our country away from us and destroyed it – billabongs and creeks are gone forever, there are great holes in the ground with poisonous mud where there used to be nothing but bush. I do not like visiting the Ranger mine and seeing what it has done to my father's country. Although the uranium mine at Ranger is taking place on Mirarr country, overall we have not truly benefitted from the mine. Mining and millions of dollars in royalties have not improved our lives… None of the promises last but the problems always do.[6]

[6] Yvonne Margarula, 'Look after country, look after people', in *Yellowcake Country: Australia's Uranium Industry*, Beyond Nuclear Initiative, 2005, p.8.

Most mining agreements have – and continue – to fail to deliver benefits to Aboriginal landowners. According to the Native Title Working Group Report, obstacles frequently get in the way of successful agreements for Indigenous communities with mining companies.

> "There are *only a limited number of good agreements* to provide models…The reasons for the absence of more agreements containing substantial financial and other benefits for traditional owners after almost 15 years of the operation of the *Native Title Act 1993* (NTA) is, in itself, deserving of inquiry."[7]

ACF strongly supports this call for a dedicated Inquiry into the continuing failure of mining and resource agreements and operations to provide significant and on-going benefit to Aboriginal communities, organisations and representative bodies.

The Native Title Payments Working Group Discussion Paper and Report contains many valuable insights and assessments. ACF believes that the proposed Uranium Royalty (Northern Territory) Bill should be informed by and reflect this thinking and work.

2. Profit based royalty model

There are a number of fundamental concerns relating to the recommendation of a profit-based royalty regime as proposed by the Uranium Royalty (Northern Territory) Bill 2008. Linking royalties primarily to profitability as opposed to revenues poses real challenges for Indigenous landowners, their representative bodies and wider community. Furthermore, the social and environmental impacts of uranium mining occur irrespective of profits.

Finite extractive industries are not the basis for developing sustainable remote communities and economies. The uranium sector offers short-term revenues and long-term rehabilitation problems and is further dependent on public expenditure and subsidy. Along with other mineral products, uranium prices are subject to significant price fluctuations, creating uncertainty that can have adverse ramifications for Indigenous organisations receiving uranium royalties. Over the past ten years, the spot price for uranium has seen major fluctuations. The commodity traded at US $9.60 per pound in December 1999, US $20.70 per lb in December 2004, reached a high of US 138 per lb in June 2007 and in February 2009 is trading at $US 48 per lb[8].

Whilst a profit-based royalty regime is advantageous and provides enhanced flexibility for industry, it fails to provide a certain, secure and assured revenue platform for individual Indigenous communities. Detailed research by the University of Queensland has found more than half the indigenous land-use agreements, "were either basket cases that should never of been entered into, or delivered few cultural and monetary benefits."[9] During the first five to ten years of a uranium mining operation, there is a high likelihood that little or no income will be

7 Native Title Payments Working Group report, December 2008
[8] Ux Consulting
[9] Quoted in Pearson, *The Australian*.

generated under a profit-based royalty scheme even though there will be direct environmental and social impacts from any such operations.

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 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".[10]

Current external pressures on the Australian resource sector with industry contraction, unscheduled mine closures and increasing job losses supports the case for a more cautious and measured assessment and approach.

Ciaran O'Faircheallaigh's research has indentified a range of concerns in relation to profit based royalty models including.

- There is a need for a steady income stream to provide services in remote Aboriginal communities. In many cases, mineral exploration is presented or perceived as the only or most deliverable opportunity to increase a community's living standards. Volatile income flows can have disastrous ramifications for communities and the absence of guaranteed revenue severely hinders future community service and infrastructure planning.

- Indigenous communities usually occupy relatively small areas of land. Their capacity to spread risks across projects is therefore minimal. Conversely, Governments can afford to spread risk. With hundreds of projects, a high tax yield will still occur in the event of a few unprofitable mines. Most Indigenous communities will not have numerous mines on their land and only a limited chance of receiving royalties.

- Indigenous communities usually experience a high degree of social, cultural and economic dislocation because of mining. To a certain extent, the rationale of royalty payments is to compensate for these numerous negative impacts. It is unacceptable to adopt a royalty regime that may fail to generate revenue to cover certain adverse impacts of mining, especially given that the existence of these impacts is not related to profitability.

- 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

[10] Ciaran O'Faircheallaigh, *Financial models for agreements between Indigenous peoples and mining companies,* .Aboriginal Politics and Public Sector Management Research Paper No12, January 2003, pp. 14-17.

administer and enforce profit-based royalty regimes, let alone individual indigenous groups.

3. Environmental protection and radioactive rehabilitation

Uranium is a unique mineral and uranium mining and processing poses significant challenges and risks, both now and long into the future. One particular area of concern is the long term management of hazardous uranium tailings. These tailings contain around 80% of the radioactivity of the original ore body and, post mining, are far more bio-available and mobile.

Tailings pose a long term human and environmental hazard and an earlier Senate inquiry into the uranium sector viewed "tailings management as amongst the most serious challenges facing uranium miners and, indeed, the entire nuclear energy industry in the future. It will also continue to be a major preoccupation for regulators and scientists as well"[11].

Australia's longest running uranium mine, Energy Resource's of Australia's Ranger mine in Kakadu, is required to ensure that:

> (i) the tailings are physically isolated from the environment for at least 10,000 years, and
>
> (ii) any contaminants arising from the tailings will not result in any detrimental environmental impacts for at least 10,000 years[12]

ACF doubts that the corporate and political capacity and longevity exists to meet these requirements but welcomes the recognition given to the seriousness and long term nature of the threats posed by uranium mining operations and views this as an industry benchmark. This ten thousand year standard should be a Commonwealth requirement for operations at all current and any future uranium operations in any Australian jurisdiction.

Such an approach may help to mitigate some of the long term impacts of mining and the disturbing and continuing practice of sub standard mine site rehabilitation and cost shifting from the mine operator to the public purse. Amendments to the proposed Uranium Royalty (Northern Territory) Bill should be made to increase the capacity of the Commonwealth to ensure comprehensive environmental protection post mine closure through the provision of a dedicated rehabilitation and remediation royalty stream.

A 2006 House of Representatives Inquiry into the Australian uranium industry recommended "that the Australian Government provide adequate funding to ensure the rehabilitation of former uranium mine sites..."[13] ACF rejects this view and believes that the mining companies responsible for the waste generating operation should meet the full cost of the subsequent clean

[11]Uranium Mining and Milling in Australia - Report of the Senate Select Committee on Uranium Mining and Milling, May 1997 p.63

[12] Ranger uranium mine – Environmental Requirements

[13] Australia's uranium – Greenhouse friendly fuel for an energy hungry world, House of Representatives Standing Committee on Industry and Resources, November 2006, p. 533

up. What was proposed in the 2006 Inquiry is a further form of direct subsidiary and industrial welfare that reinforces the far too common approach of the Australian resource sector to privatise profit and socialise costs.

Instead 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.

There is a long and sorry history of sub standard rehabilitation and poor post closure monitoring and mitigation across the Australian uranium sector and extensive evidence regarding the unsuccessful rehabilitation of past uranium mine sites at Rum Jungle, South Alligator Valley and Mary Kathleen. Any critical evaluation of the rehabilitation of abandoned mines and mill tailings supports the need for concerted efforts at the legislative level to address these issues.

Rum Jungle: The Rum Jungle rehabilitation project is an important case study relating to uranium mining and its legacy. It is a prime example of the many problems facing uranium mines at the end of their life cycle. In operation from 1954 to 1971, poor waste management led to a long-term environmental impact at the site. Belated major rehabilitation work commenced during the 1980s and continues to this day.

Despite the studies and monitoring that has been undertaken on the rehabilitation of Rum Jungle critical gaps remain in representing a complete picture of the project. A comprehensive study undertaken by Dr. Gavin Mudd at Monash University concludes that:

> The Rum Jungle remains a polluting site…Given that groundwater remains contaminated and waste rock dump infiltration is increasing, pollutant loads into the Finniss River can be expected to intensify in the future, The Rum Jungle U-Cu site, despite significant effort has not met the test of time and remains a recalcitrant and polluting mine."[14]

The problems facing Rum Jungle nearly forty years after it ceased operations, are set to continue and possibly worsen. Moreover, the extensive problems come at the taxpayers' expense. And these issues are not stale case studies - Compass Resources Ltd., whose primary focus was the Rum Jungle mineral field, went into voluntary administration in January 2009. The Compass

[14] Gavin M. Mudd and James Patterson, 'The Rum Jungle U-Cu Project: A Critical Evaluation of Environmental Monitoring and Rehabilitation Success,' in Broder J. Merkel and Andrea Hasche-Berger (eds.) *Uranium Mining and Hydrogeology V,* Saxon Ministry of Environment and Agriculture: Freiburg, Germany, p. 326.

saga should serve as a cautionary lesson regarding the gap between the promise and the performance of uranium mining companies operations.

South Alligator valley: The South Alligator uranium mines and mills have also caused environmental problems. Radioactive tailings from mines were discharged onto adjacent floodplains, a poorly funded 'Hazard Reduction Works' program has not stood the test of time and high gamma radiation rates still persist in some areas, with erosion problems and perpetual maintenance required. The Federal Government has allocated $A7.3 million in its 2006 budget over four years to clean up abandoned mines in Kakadu National Park.[15]

Mary Kathleen: Despite winning an award in 1986 by the Institution of Engineers Australia, the rehabilitation of the Mary Kathleen uranium mine in Queensland has similarly faced substantial problems including: The deliberate release of one million litres of radioactive liquid from evaporation ponds in February 1984 and the use of waste rock to cover radioactive tailings instead of engineered fine soil or clay to lower costs. This has increased the potential of further groundwater contamination and has led to groundwater and waste-rock management problems and further public expense.[16]

Nabarlek: In 1970 Queensland Mines Ltd. discovered Nabarlek, a small high-grade deposit just inside Arnhem Land, 15 kilometres east of Gunbalanya (Oenpelli) in West Arnhem and mining operations commenced in 1979.

The Nabarlek ore body was mined over the dry season and 600,000 tonnes of average 2% grade ore stockpiled for treatment from 1980. Just over 10,000 tonnes of uranium oxide (U_3O_8) and sold to Japan, Finland and France between 1981 and 1988. The mining process generated around 2.3 million tonnes of waste and ceased operation in 1988.In August 2003 the operators of the closed Nabarlek uranium mine received 95% of the money previously held in a trust fund dedicated to pay for the cleanup and rehabilitation of the mine.

The decision to grant this money was made by officers in the former Northern Territory Department of Business, Industry and Resource Development (DBIRD). This action occurred without the knowledge or consent of the traditional Aboriginal owners, the Northern Land Council or the Supervising Scientists Division (SSD) – the Commonwealth agency charged with oversight of uranium mining operations in the Alligator Rivers region.

The return of the bond money was made despite there being no final agreed and approved mine closure plan and despite continuing and unresolved rehabilitation and mitigation efforts at the former mine site. Further work is still required at Nabarlek and clearly much further work is needed on both a policy framework and practise to ensure that future generations of Australian citizens and taxpayers will not be left footing the environmental, social and financial bill.

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[15]The Hon Greg Hunt MP, Parliamentary Secretary to the Minister for the Environment and Heritage, *Media Release: Old Mining leases to become part of Kakadu,* Australian Government, Canberra, 5 June 2006,

[16] Gavin M. Mudd, *Uranium Mill Tailings Wastes in Australia: Past, Present and Future Management – Research Report Summary,* MAPW National Conference on Nuclear Issues, Canberra, 2005, p. 8.

The experience of the complexities and failures with rehabilitation of mine sites at Rum Jungle, South Alligator, Nabarlek and Mary Kathleen support the need to increase the capacity of post closure work - a dedicated environmental restoration and rehabilitation royalty stream would be an appropriate mechanism for realising this.

ACF welcomes the opportunity to submit this document and to speak to these issues in more depth at any future hearing. Please direct any inquiries to:

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