COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON ECONOMICS

Reference: Uranium Royalty (Northern Territory) Bill 2008

WEDNESDAY, 8 APRIL 2009

CANBERRA

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SENATE STANDING COMMITTEE ON

ECONOMICS

Wednesday, 8 April 2009

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Bushby, Cameron, Furner, Joyce, Pratt and Xenophon

Substitute members: Senator Crossin to replace Senator Furner on 31 March, 1 April and 8 April 2009

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Eggleston, Furner, Hurley, Ludlam, Pratt

Terms of reference for the inquiry:

To inquire into and report on:

Uranium Royalty (Northern Territory) Bill 2008

WITNESSES

Committee met at 10.34 am

CHAIR (Senator Hurley)—This is the third hearing on the inquiry into the Uranium Royalty (Northern Territory) Bill 2008. On 4 December 2008 the Senate referred the provisions of the bill to the committee for inquiry and report by 30 April 2009. 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 profits based mineral royalty regime under the Northern Territory's Minerals Royalty Act and applying it as a Commonwealth law.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

[10.36 am]

ANGWIN, Mr Michael, Executive Director, Australian Uranium Association

CHAIR—Welcome. Senators Eggleston, Furner and Pratt are appearing via teleconference. Mr Angwin, do you wish to make an opening statement?

Mr Angwin—The Australian Uranium Association welcomes the opportunity to appear before this committee. The association supports the bill. By way of background, the association represents all of Australia's uranium mining and exporting businesses and most of the country's major explorers. The Commonwealth maintained ownership of the Northern Territory's uranium when self-government was granted to the Territory in 1978. Uranium is now in greater demand around the world than when self-government was granted, and there are prospects of mining for uranium in the Territory. The demand for uranium globally is being driven by the need for greater suppliers in nuclear energy to meet rising expectations of future prosperity, to respond to energy security concerns and to provide clean fuel to help meet the challenge of climate change.

The association's economic modelling, based on conservative assumptions, is that production of Australian uranium could increase from around 10,000 tonnes per year, as it is now, to 30,000 to 40,000 tonnes per year by 2030 in response to that rising demand. The modelling shows that under conservative assumptions about the growth of nuclear power overseas, for which uranium is the fuel source, the expansion of uranium mining in the Territory would have the following economic impact in the Territory to 2030 compared to a base case: gross Territory product would be on a $2.3 billion higher, consumption in the Territory would be $844 million higher, investment would be $405 million higher and government revenue would be $330 million higher. Those dollar amounts are expressed in net present value terms. The employment effect is modest: an average of 260 jobs each year from about 2020, with a smaller annual average number of additional jobs before then. These are additional to the existing jobs.

The Northern Territory has about 13 per cent of Australia's uranium. Apart from the Ranger mine, there are deposits in the Territory that are potential mines: the Angela and Pamela deposits south of Alice Springs, Napperby to the north-west of Alice, Mount Fitch which is south of Darwin, Koongarra which is south of Ranger, and Bigrlyi which is 390 kilometres north-west of Alice Springs. The global growth in demand for uranium and the Territory's prospectivity for uranium have given rise to the need to establish a legislative framework for the regulation of the royalty arrangements for uranium.

The bill's regulation impact statement describes the Commonwealth responsibility as:

... to establish a regulatory framework conducive to investment—

that is, the Commonwealth supports the development of the uranium industry in the Territory. The statement goes on to say:

... for private investors to undertake ... exploration and mining within that framework based on their overall assessment of the range of factors ... involved.

That is what private investors do, and our industry operates that way. In the absence of such a framework, investors would be unable to assess fully the range of factors involved. 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.

The second question is: what form should the royalty arrangement take? In considering that, the minister appears to have taken into account the fact that the generalised minerals royalty arrangements for the Territory provide for profit based royalties of 18 per cent, with no provision for the deduction of privately negotiated royalties from the statutory royalty. The bill seeks to apply that arrangement to uranium.

There are differences of view about the basis for royalty payments in regard to uranium and to mining royalties in general. The argument for a profit based royalty is that profit based royalties are less likely to distort investment decisions than revenue based arrangements. That is because profit based royalties are payable when revenue exceeds costs, whereas revenue based royalties are payable when revenue is earned, regardless of the costs. Revenue based royalties may unfavourably impact on the decision to invest because they affect project economics both early and late in the life of a project, when revenue may not be sufficient to generate profit. This could make a difference to investment decisions. As I have used it here, the word 'distort' means 'cause otherwise economic material to be left behind because the extraction cost is not taken into account'.

We agree with that analysis and adhere to the view that the Commonwealth's general economic policy approach should not distort investment decisions. The magnitude of the impact on investment decisions of one or other of the possible approaches to royalty arrangements is contentious—we acknowledge that. However, we submit that it is far less contentious to argue that a royalty arrangement for uranium that is different to the royalty arrangements for other minerals would lead to a more onerous investment framework 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. For that reason, we support the bill.

If the committee were persuaded that revenue based royalties are to be preferred to profit based royalties, then it should recommend that that be addressed as a Territory wide issue, an issue that would have to be addressed for the Northern Territory royalty regime generally. In that case, the committee should recommend to the Commonwealth government that it engage with the government of the Northern Territory to establish a review of the mining royalty arrangements for the Territory overall.

The issue for the committee is whether uranium should be treated the same or whether it should be treated differently to other minerals for the purposes of a royalty arrangement. Our

submission, drawing on the analysis just presented, is that there is no basis for a different treatment for a scheme for uranium royalties in the Northern Territory. Put in the obverse, there is a good case for treating uranium in the same way as other minerals for royalty purposes.

Finally, the association wishes to indicate that it supports the bill's major platforms as well as the bill overall. We support a royalty regime for uranium that applies equally to projects on Aboriginal land and on non-Aboriginal land. We support a royalty regime for uranium that provides that royalty payments made by a mine operator should be passed by the Commonwealth to the Northern Territory and an equivalent amount paid into the Aboriginal benefit account. We support the Northern Territory administering the royalty regime on behalf of the Commonwealth. That is my opening statement and I would be happy to take questions from the committee.

CHAIR—Thank you. You have raised the point that a revenue based system is less likely to distort investment decisions by the uranium industry, and I think you make the argument that it is no different from any other mineral. However, we have had submissions from groups that do regard uranium to be different from other minerals—but that is not the main import of my question. There is an argument that, because Aboriginal groups may not get revenue until the mine makes a profit, and given the sensitivity of uranium as a mineral, they may choose not to agree to mining at all. Do you think there is any basis to that from an industry point of view?

Mr Angwin—I am not sure whether there is any basis for that or not. I think that would have to be tested in practice a bit. Our experience is that opinions in Aboriginal communities about uranium are diverse. There are clearly some Aboriginal communities which have concerns about uranium—that is certainly true—but equally our experience is that that is not a universal view amongst Aboriginal communities. If I may add a point of information on that, our association recently agreed with some prominent Aboriginal Australians to establish an Indigenous dialogue group. The underlying assessment of those who are members of that group, particularly the Indigenous people who are members of that group, is that uranium is in fact a mineral which should be mined. I just offer that as a piece of evidence contrary to the hypothesis that you have put to me.

CHAIR—Some submitters have also argued that at the other end of the process, when the mine is closing down, there might be additional rehabilitation and post-closure monitoring and mitigation involved with uranium. Some submitters have suggested that therefore the uranium mining industry should pay an additional royalty.

Mr Angwin—Under the current arrangements for mines in Australia—and I will speak about the three mines which currently operate in Australia—each of those makes provision for closure and rehabilitation of their mines. At Ranger the current balance sheet provision, I believe, is in the order of $182 million. That is on the balance sheet. In the case of Olympic Dam, I think the figure is $82.6 million and in the case of the Beverley mine, run by Heathgate, the provision is $7.63 million. I think they are the figures, but if they are not I will correct them. So my response to that is that the mines already make provision for that in their balance sheets.

Senator LUDLAM—Will those amounts that you just mentioned in the case of the three mines that are currently operating be sufficient to completely rehabilitate the sites post closure?

Mr Angwin—I understand that those amounts are provided in the balance sheets on the basis of what I think is called the closure model, which those companies have used to estimate the rehabilitation costs for the mines. I suppose you could argue about the terms of the model, but you have to make an estimate in some way, and that is the way that I understand they have made those estimates.

Senator LUDLAM—I guess it would be different from mine to mine as well, but is it the intention that the amount that is being put away would be enough that the taxpayer is not going to be left with some sort of rehab burden at the end of the process?

Mr Angwin—Yes.

Senator LUDLAM—Was there a reason that you did not mention Jabiluka in your opening statement? That is the largest uranium deposit in the Territory.

Mr Angwin—I understand that the company there regards Jabiluka's future as being in the hands of the local Aboriginal people, who have currently withheld their agreement to the development of the mine. That is mainly the reason I did not mention it.

Senator LUDLAM—That is also the case at Koongarra, though, you are no doubt aware.

Mr Angwin—Correct. You are right about that. I understand that recently—and I have only seen this in a press report—the local Aboriginal people have said that they did not favour the development of Koongarra. That is true.

Senator LUDLAM—I thank you for tabling this document. Is this a document that your association commissioned or was involved in producing?

Mr Angwin—We commissioned that, yes.

Senator LUDLAM—Presumably you endorse its findings?

Mr Angwin—Yes, we do.

Senator LUDLAM—Do the projections of future growth in the industry include mining at Koongarra and Jabiluka?

Mr Angwin—I think for the purposes of the modelling they do take that into account, yes.

Senator LUDLAM—There are a couple of different scenarios in here, but what it essentially says is that in the high-growth scenarios virtually every economic deposit in the country is mined out to 2030.

Mr Angwin—I am not quite sure what you mean by high-growth scenarios. We modelled two scenarios essentially about the demand for uranium. One is an aggressive approach to climate change policies and the other is a less aggressive approach. The figures that I have given for this inquiry are based upon the more conservative of those two approaches.

Senator LUDLAM—The more conservative of the two is that by 2030 there will be about 900 reactors.

Mr Angwin—That is correct, yes.

Senator LUDLAM—And that takes into account that by 2030 nearly everything that is currently operating today will have closed?

Mr Angwin—I would have to check the exact details of that, but if you are reading it currently you may well be right.

Senator LUDLAM—I have just been skimming it. This was produced at the end of 2007, when the market was right at the peak, and since then things have—

Mr Angwin—It was produced over the period from about November and I think we published it in April last year.

Senator LUDLAM—The reason I am going into this in detail—I know it is not directly germane to what we are inquiring into today—is that since this was produced the markets, or at least the world spot markets, have deteriorated considerably. Are you a bit concerned that this might not be quite as rosy as it is—

Mr Angwin—No, we are not because the price assumption we make with regard to the price paid for uranium is a long-term contract price. The price that has been used for the model is US$100 per pound by 2030. Yesterday, I think the spot price was US$41.25 per pound. The current long-term contract price is somewhere between US$70 and US$90 per pound. So there is some gap between the current long-term contract price and the contract price used for modelling purposes, but the point is that that contract price is the contract price in 2030. We are reasonably confident that the model stands up to the changes in the market.

Senator LUDLAM—When we spoke last, which was at a JSCOT hearing only a couple of weeks ago, I asked you about the prospect of surplus highly enriched uranium being dumped on the fuel market if disarmament proposals come to fruition, which we obviously all hope that they will. Does this report consider those factors?

Mr Angwin—I think it takes into account that the current agreement between Russia and the United States, under which Russian nuclear weapons are dismantled and the highly enriched uranium in them is down-blended and sold to the United States in order to provide fuel for the US nuclear power industry, would end in 2013, but it has not taken into account a large-scale disarmament program such as is now being sponsored by President Obama. At the time we did that, it would have been a reasonable thing to have done because there was uncertainty about what would happen after 2013.

Senator LUDLAM—Okay, but it is not taking that into account, obviously. To come back to this inquiry, and picking up on a comment that you made earlier, regarding Ranger, would you remind me of the amount that you said they have in the bank for the rehab.

Mr Angwin—I believe it is $182 million.

Senator LUDLAM—And they are parking a little bit in there every year?

Mr Angwin—I think that is the case. If there is anything to add to that answer, I will add it, but I believe that is the case.

Senator LUDLAM—All right, just in rough numbers. I know that when Ranger was initially established they needed to provide for integrity post closure for 10,000 years. Is that amount of money intended to see through that entire period of time?

Mr Angwin—I think the 10,000 years is one of the parameters of their operating licence. I think the question here is about tailings dams principally, but also about the rehabilitation and care of a mine after the mine has closed. In that regard, it is true to say that you cannot monitor a uranium mine for 10,000 years, neither can you monitor any other mine. But the task in regard to a tailings dam or a former uranium mine is essentially not a monitoring task; it is an engineering task. The task of managing a former uranium mine is essentially the same as managing the closure rehabilitation of any other mine. Guidelines and standards for best practice exist for doing that, and in the case of uranium, ARPANSA—the Australian Radiation Protection and Nuclear Safety Agency—produces the definitive framework guide, the Minerals Council produces a guide, the Department of Resources, Energy and Tourism produces a best practice guide on the techniques for managing mine closures and for managing tailings in any mine according to the mine type, the geography, the geology and the weather conditions of each particular site. The mining industry and the engineering profession are experienced in managing mine closures in all kinds of environments. It is a core capability and the mining industry does that well. There will be individual cases of poor performance and they will excite some emotions, but they are not good guides to the risks in managing the closure or rehabilitation of former mines.

Senator LUDLAM—But the closure requirements on Ranger, which are more stringent than other mines around the place, that is twice the age of the pyramids.

CHAIR—Senator Ludlum, we have got other senators who—

Senator LUDLAM—We must march on?

CHAIR—Yes, I think we need to get back to it.

Senator LUDLAM—Okay, I will come back directly. Can you tell us: mining or mining proposals in other parts of the country, do their royalties operate on a profit basis as is proposed for the Northern Territory?

Mr Angwin—No, there are different minerals royalties arrangements in other states.

Senator LUDLAM—You said that the mining industry certainly prefers a profit based regime for royalty assessment. Are you proposing that that be the case in other parts of the country too?

Mr Angwin—The argument I am putting though, is that the royalty arrangement for mining generally in the Northern Territory is a profit based royalty arrangement. Our industry has no desire to be treated any more advantageously or any more disadvantageously than any other

mining operation. We wish to be treated in the same way in the Northern Territory as other mining operations.

Senator LUDLAM—I have some questions about the origin of this piece of legislation, the way it came about. You have a seat at the UIF?

Mr Angwin—I am a member of the UIF, my association is.

Senator LUDLAM—Was it a consensus or was it a majority decision around moving forward with this model of assessing royalties?

Mr Angwin—In the end, there was an agreement in the UIF. I generally do not trail my coat in answer to questions that you have not asked me, but it is arguable that the UIF has a wide range of interests represented on it, including land councils and Treasury officials in the case of this particular working group.

Senator LUDLAM—Are there any environmental interests represented on the UIF?

Mr Angwin—They weren't. I understand they were invited to be members of the UIF, but they declined.

Senator LUDLAM—Sure.

Mr Angwin—The last thing I would say on that question is that while I understand that there may be some interest in the provenance of the report, the more important question is about the merits of it. If I can be so bold as to say to you, Senator: the issue here is to judge what is done on the merits rather than what the provenance of it was.

Senator LUDLAM—I will come back later, if there is time.

Senator EGGLESTON—We have heard there are other minerals being mined in the Northern Territory. What do they include? I believe it is bauxite, manganese, iron and gold. Is that not the case?

Mr Angwin—It is probably all of those. I am no expert in those, but I imagine that is correct.

Senator EGGLESTON—The royalties they pay are paid on a profit basis, I gather.

Mr Angwin—That is correct.

Senator EGGLESTON—I believe the only uranium mine working at the moment is Ranger.

Mr Angwin—That is correct.

Senator EGGLESTON—And that is paid on a volumetric royalty basis.

Mr Angwin—That is correct too, and I think that is due to the historical position of the mine.

Senator EGGLESTON—Yes, I believe that is the case. It is proposed that Ranger will be excluded from any change. Is that right?

Mr Angwin—Yes, that is true.

Senator EGGLESTON—This would mean that any future uranium mines would be paying royalties on a profit basis and that would be consistent with other mining activities in the Northern Territory.

Mr Angwin—Yes, it would.

Senator EGGLESTON—One of the issues that was raised in the hearings we had in Darwin last week—one of the concerns I suppose is a better way of putting it—is that in some way Aboriginal communities will be disadvantaged by a profits based royalty system. In fact, Ranger would remain volumetric. The Northern Land Council, in their submission supporting the bill, said both systems will provide a similar quantum of royalties over the duration of the mine. Would you agree that that is a fair comment?

Mr Angwin—I am looking at the summary of the economic modelling outcomes, which is appendix 2 to the regulation impact statement. Unless I am reading this incorrectly, that seems to be largely true. Perhaps not largely true, but approximately true. 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.

Senator EGGLESTON—Thank you very much for those figures. I am not sure that we have them in the committee's briefing papers. I might be wrong, but if we do not have them, I wonder if you might be able to table them? The Chair might provide guidance on that.

CHAIR—The figures just given by Mr Angwin?

Senator EGGLESTON—Yes.

Mr Angwin—The figures I have read are from the regulation impact statement provided by the minister.

Senator EGGLESTON—Do we have a copy of that, Chair?

CHAIR—I think we would, or we can easily obtain it.

Senator EGGLESTON—If you could, I would be very grateful.

Mr Angwin—No doubt if I have misread what is here, the department, which I understand is following me, will correct me.

Senator EGGLESTON—Thank you very much. One of the other issues that cropped up last week fairly consistently from various witnesses was this question of funding of Aboriginal communities. In fact, the funding of Aboriginal communities and Aboriginal services in the Northern Territory, as in other parts of Australia, is not really dependent on mineral royalties. Would you agree with that?

Mr Angwin—No, I do not believe it is.

Senator EGGLESTON—In fact most of it comes from government sources—the Commonwealth and the Territory providing social security and various other services, from health to education to support for art centres and so on. I think it is very important to establish that the bulk of funding for Aboriginal communities does not come from royalties and that the funding would continue—that is, funding from the government and sources from which funding for Aboriginal communities generally comes from—regardless of any change in the royalties system. I have to say that those sorts of arguments about support for Aboriginal communities are a little bit left of field because the main issue is the royalties payment to Aboriginal communities, and this will apply, will it not, to future uranium mines, not those that exist already?

Mr Angwin—Obviously Ranger already pays royalty arrangements to Aboriginal communities. The existing uranium mine in the Northern Territory pays royalties to Aboriginal communities. Future royalties paid by the industry will find their way to the benefit of Aboriginal communities via the Aboriginal Benefits Account.

Senator EGGLESTON—Thank you, but in fact they will not be the principal source of funding to those—

Mr Angwin—They will not be the principal source of funding—that is correct.

Senator EGGLESTON—So, in other words, what we are looking at now is a plan to have a consistent royalty payment system for all mining operations across the Northern Territory.

Mr Angwin—That is what I believe the minister's intention is.

Senator EGGLESTON—Thank you very much.

CHAIR—I realise this is a bit of a hypothetical question for you. The Northern Land Council talked about negotiated payments. Obviously payments will be delayed until a mine is profitable. They talked about the possibility of negotiated payments. Some of those royalty payments might be brought forward, if you like, to cover the period when the Aboriginal communities need to adjust to the start-up period of the mine. Do you believe that that would be something that the uranium industry would look at sympathetically?

Mr Angwin—Our general disposition in this area is to acknowledge that our industry can be one of the routes—not the only route—for addressing Aboriginal disadvantage, and Aboriginal economic disadvantage in particular. Before I go on to the rest of my answer, I just want to make clear that we are not saying that the uranium industry is the sole route to the removal of Aboriginal economic disadvantage. I want to say that because sometimes I am verballed on that

question, and I do not want to be verballed. Let me make that point clear. We believe that our industry can make some contribution to Aboriginal economic development. Part of the brief of the Indigenous Dialogue Group, which I mentioned earlier, will be to help us improve our performance in that area, whilst the content and outcome of negotiations which are conducted between individual uranium companies and the Aboriginal communities with which they deal will be for them to decide—both sides of those arguments—on what works best. If the Northern Land Council puts that on the agenda, it will be one of the things that our industry will have to negotiate. Broadly, the answer is yes. That sounds a bit longwinded, but I think the answer is yes.

Senator LUDLAM—Going directly to the objects of the bill, have you, your association or your members done in any economic modelling on how payments might differ according to the two different means of assessing royalties?

Mr Angwin—Is the issue you are getting at the difference between the revenue base and the profit base?

Senator LUDLAM—Yes—whether you have done an assessment or how you informed your thinking, I suppose, as to whether the mining company, the taxpayer or the Aboriginal community would be better off, or when royalties might be paid for a given equivalent mine.

Mr Angwin—No, we have not done that modelling. We note that those issues were addressed within the uranium industry framework and were also addressed in the minister's regulation impact statement. But, no, we have not done that modelling.

Senator LUDLAM—Okay, so I presume that—

Mr Angwin—I should add the association has not done that modelling, but I cannot speak for the companies on that issue, I am afraid. I do not know whether they have or not.

Senator LUDLAM—All right, but I am presuming it is not just guesswork. It was said, I think in the Northern Land Council's submission, that they figured over the life of a given mine it would be roughly equivalent, that according to the two different models of assessing royalties you would wind up even at the end of the day.

Mr Angwin—That is what the modelling in the regulation impact statement also appears to indicate.

Senator LUDLAM—But that is not something that you have done or the industry has done.

Mr Angwin—No, we have not done that.

Senator LUDLAM—All right. There have been some concerns raised up to now about the possibility of subsidiaries of companies essentially just offshoring profits or using transfer pricing, to use this kind of model to essentially do the taxpayer and the landowners out of royalties. Have you any comments to make on that possibility?

Mr Angwin—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, 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. Perhaps, Senator, if that were a worry for this committee then it could ask the relevant minister in the Northern Territory for advice on the extent to which that practice has occurred in the Northern Territory under the Mineral Royalty Act to date and on that basis make some recommendations about how it should be dealt with in future.

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.

Senator LUDLAM—We found last week in Darwin, when we had officers from that agency before us, that it was like pulling teeth, to be polite about it, to get any information at all. I recognise that is in the act, but, when it came down to comments on what individual companies may or may not have done and how payments were being made, the system up there is absolutely opaque. It makes Western Australia look like a model of transparency. So, in order to provide the transparency that you are clearly advocating here, is your industry willing to forego those sorts of secrecy provisions?

Mr Angwin—I am not quite sure where you are leading me with this question, Senator. What I am saying—

Senator LUDLAM—It was impossible for this committee to tell from the officers of the department up there what a company had paid in royalties in any given year or how it had been assessed. It is a complete black box, unlike other states. The concerns that were raised by other senators and me were that with a revenue based model you look at the number of tonnes that have gone out and the price and you say, 'Okay, that's the royalty.' You do not run into all these possibilities of gaming the system and using transfer pricing or other ways of hiding profits.

Mr Angwin—I think I dealt with a very similar question at the JSCOT proceedings we were both at last week. I think the answer I gave then was that, subject to good reasons, transparency is to be preferred over the alternatives. So, to answer the question again: subject to good reasons, yes, I do think transparency is exactly what should be the case. Again, the point I make to you is

that perhaps it is possible to go back to the Northern Territory department and/or its minister and ask them perhaps not so much about individual companies but about the record of the industry overall. If your question is: 'Would companies in our industry wish to voluntarily disclose the royalty payments they make?' could I take that on notice. First of all, I do not know what the current practices are in regard to that. Second, I would have to seek advice from my members about their views on that question.

Senator LUDLAM—I would appreciate that. Thank you.

CHAIR—Thank you, Mr Angwin, for coming in this morning and assisting us.

[11.16 am]

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

CHAIR—Welcome. I might just remind the committee that the Senate has resolved that an officer of a department of the Commonwealth or of a state or territory shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Do you have an opening statement you would like to make?

Mrs Taylor—I would like to thank the committee for the opportunity to discuss the details of the uranium royalty bill. As you are aware, the Australian government established a uranium royalty subgroup as part of the Uranium Industry Framework in early 2006 to design a resource charge applying to Aboriginal and non-Aboriginal land in the Territory which balanced efficiency with stability, administrative simplicity and revenue objectives. The uranium royalty bill sets out a royalty framework for uranium in the Northern Territory which is consistent with the recommendations of this subgroup and consistent with the royalty regime for other minerals mined in the Territory.

I note that concerns in the inquiry have primarily focused on the comparison of profit based royalty regimes with ad valorem regimes, including the potential for payments under a profits based regime to be more volatile than that under an ad valorem regime and the potential for no royalty to flow under a profits based regime for some time during the early operation of a mine's life. The government considered these issues very carefully and concluded that the advantages of the proposed regime outweighed any potential disadvantages. Firstly, implementation of this royalty regime replaces the current system of ministerial determinations, which have been taken on a case by case basis, for uranium mining operation in the Territory and thus provides greater certainty for planning and investment decisions for all stakeholders. Secondly, the regime will be the same regime for uranium as for other minerals in the Territory, thereby reducing administrative complexities for all stakeholders: industry, traditional owners and administrators alike, particularly in circumstances where mines produce more than one mineral.

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.

Lastly, 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 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. Secondly, issues associated with traditional owners potentially not receiving any revenue for the first few years of mine's operation—whilst we recognise that this is of significant concern to Indigenous stakeholders—we feel can be offset through the structuring of negotiated payments in mining agreements to either meet any shortfalls during periods when no statutory royalty is paid in the early years of the mining operation or smooth payments if that is preferable. I am happy to take questions.

CHAIR—Thank you. You have, I think, correctly identified the major issues that we have received submissions on and have been discussing so far. I would like to explore the issue of Aboriginal communities and their agreements to mine on the understanding of negotiated payments. That is probably the major area where there is a lack of certainty about the change to the new regime. Also, the one area where uranium may differ from other minerals is that there is often a lot more sensitivity around the mining of uranium, and a community may well have to do certain work around that. In your experience, are mining companies open to that kind of negotiated payment if communities feel they need something upfront and particularly if the elders that agreed to the mining of uranium are worried that they might miss out on those payments?

Mrs Taylor—My understanding of negotiated payments is that in the past many of them have been structured on an ad valorem kind of basis. Our experience is that that tends to be in the one to two per cent type of range, but there are some examples where those sorts of arrangements can be put in place. Mr Angwin certainly identified his company's willingness to enter into those sorts of agreements and to consider those issues. So, whilst a lot of these agreements tend to be commercial-in-confidence and we do not always see the detail, I am reasonably confident that the companies would be willing to enter into those negotiations.

CHAIR—The other, relatively minor, issue raised was about polymetallic mines. Those of us from South Australia know all too well that there might be several minerals mined from the one mine. How would that be treated under the current system as opposed to the new one?

Mrs Taylor—There is really no current system in relation to uranium mining, so the minister would have to make a determination. In the past those determinations have taken account of a number of factors. In respect of the uranium, there would be a different system for the uranium aspect of the mine and the remaining minerals would be mined in relation to the 18 per cent net profit. Going forward, if this legislation is passed, then all of the minerals mined in the Territory would be subject to the 18 per cent regime.

Senator LUDLAM—I might have misinterpreted the comments that you made at the beginning. Is it your understanding that moving to a profit based system of assessing royalties in the Territory will make more mines viable? Is that your thinking?

Mrs Taylor—Certainly more marginally economic mines would be viable—yes.

Senator LUDLAM—I just wonder why that would necessarily be seen as a good thing—that in a particularly volatile industry we would be trying to assist more marginally profitable mines to get started in the Territory.

Mrs Taylor—With mining development comes a range of benefits, including employment in local areas, community services, infrastructure, as well as taxation. In terms of the returns to the local community, we are not just looking at royalty payments but certainly economic benefits from a range of different activities.

Senator LUDLAM—Given the volatility of this industry in particular—and I guess it is not really the Commonwealth's job to do the assessment as to whether mines are marginal or not—I would be very concerned that we would see small start-ups peter out and not last very long without paying any royalties. The converse position was put to us by one of the other witnesses. Is there a view to move to this form of assessing royalties in other states or just for the Northern Territory?

Mrs Taylor—Not that I am aware, with regard to the other states. South Australia and WA both want ad valorem. I understand that Tasmania has a hybrid royalty system which has a profit ad valorem component. At the moment we have a range of different royalty regimes across Australia.

Senator LUDLAM—If the mining boom, depending on your point of view, served the boom states, WA and Queensland, pretty well along an ad valorem model, why do we think the Territory should maintain a profit based model if it is not the case in the other states?

Mrs Taylor—Essentially it is the position of the Commonwealth that we consider a profit based regime to be more economically efficient.

Senator LUDLAM—So we have been economically inefficient in the other states?

Mrs Taylor—In terms of the modelling and certainly economic theory, I could point to a number of references where the different types of royalty regimes have been examined in terms of productive efficiency and whether they would distort investment decisions. Certainly a profit based regime has been seen to be superior.

Senator LUDLAM—It has been tricky to get hold of modelling which shows—and I do not know that this is the sort of work that you are referring to—for any given mine over a period of time, which of the two models ends up providing the greatest royalty return to the owners of the land and to taxpayers more generally? Have you done that work?

Mrs Taylor—Those are two different questions. In terms of the economic efficiency question, it looks at returns to the economy as a whole as opposed to returns to one particular component of the economy—that is, the traditional owners. In terms of the modelling that has been done under the royalty subgroup that looked at a number of specific assumptions in relation to mining and compared an ad valorem regime with a profit based regime and a hybrid royalty regime.

Senator LUDLAM—Is that work in the public domain? We have not seen anything to date.

Mrs Taylor—That should actually be part of the explanatory memorandum to the bill.

Senator LUDLAM—That looked at a specific mine or just a set of assumptions?

Mrs Taylor—It made a number of assumptions. I understand they took a Ranger type of mine and modelled two different prices. Ranger is a quite productive mine in terms of the actual concentration of uranium. It made a series of assumptions. I believe that is all in the explanatory memorandum to the bill.

Senator LUDLAM—Has that been rolled across the Territory as a whole—the prospective increase in the number of uranium mines? Has that modelling being done for the whole Territory to show—

Mrs Taylor—No. Apart from the specific set of assumptions, that is only modelling that the working group undertook.

Senator LUDLAM—Is the Commonwealth at the table at the UIF or is that—

Mrs Taylor—Correct.

Senator LUDLAM—And you are on the royalty subcommittee or is that something that the industry—

Mrs Taylor—Correct.

Senator LUDLAM—So would you say that the motivating force behind this piece of legislation is the Commonwealth or was it led by the industry?

Mrs Taylor—I think it was the Commonwealth. In relation to the royalty subgroup, there were a range of different opinions and viewpoints which came through as part of that process.

Mr Angwin has outlined some of the issues that were raised around the deductibility of the negotiated royalty against the statutory royalty. In addition, the land council have raised their concerns about the revenue streams not being available in the early part of a mine's operation if it was not profitable. On balance what came forward in terms of the legislation was a compromise of all those positions.

Senator LUDLAM—In what sense was it a compromise?

Mrs Taylor—In the sense that some stakeholders wanted more and did not get it. Lots of stakeholders had different positions but did not, I guess, get those taken forward.

Senator LUDLAM—I do not think we have seen a submission from the CLC, but the Northern Land Council certainly were fairly critical of the fact that Elders, in particular, may never see a dollar in royalties coming from its particular mine.

Mrs Taylor—Yes. The CLC advised us that they supported the regime provided that the negotiated royalty was not a deduction.

Senator LUDLAM—That is right.

Senator EGGLESTON—I would simply put the question to the department that this legislation appears to be being put forward basically on the basis of consistency. That, I presume, must have some benefit to the Northern Territory government in terms of administration of the royalty scheme. I wonder if you would like to outline what those benefits might be.

Mrs Taylor—In terms of the benefits around bringing forward a regime which is as consistent for uranium as for other minerals, those benefits would apply not just to the NT administrators but also to the companies operating within the Territory in terms of compliance burden and simplicity of understanding a regime in which the industry and regulators need to operate. So essentially it is around red tape and simplicity of administration.

Senator EGGLESTON—So in other words you are cutting down on the amount of paperwork and it is much more straightforward to administer this system. That is what you are saying, in effect, isn't it?

Mrs Taylor—Yes, that is right.

Senator EGGLESTON—I have asked other people this question. Obviously there are other minerals being mined in the Northern Territory. As I understand it, all the royalties are paid on a profits basis and Ranger is exempt from this proposal. What that seems to presuppose, however, is that there may be other uranium mines established in the Northern Territory. Are there any specifics that you can tell us about in terms of other mines being proposed or considered for establishment in the Northern Territory—that is, uranium mines of course.

Mrs Taylor—Senator, were you asking for other potential uranium mines in the Territory?

Senator EGGLESTON—That is what I meant, yes.

Mrs Taylor—There are a number of deposits being developed. I could point to the Pamela-Angela deposit, which is currently being explored by Paladin and Cameco. Nolans Bore is a polymetallic deposit which contains rare earths, phosphate and uranium. That is certainly very likely to develop. Bigrlyi is another project which is likely to develop. There has been a scoping study completed on that project.

Senator EGGLESTON—That is about four projects, is it?

Mrs Taylor—I am sorry. There is another one—Napperby/Toro are developing that project and are at a scoping study stage.

Senator EGGLESTON—What is the total number of projects under consideration?

Mrs Taylor—In the order of five, I think—four or five. As you know, there are a number of other uranium deposits which the local Indigenous owners have said no to in terms of development. Certainly those are not counted.

Senator EGGLESTON—Are the five you mentioned not in Indigenous controlled land areas?

Mrs Taylor—A variety.

Senator EGGLESTON—And Indigenous people in Indigenous areas have the right of saying whether or not a uranium mine would go ahead, don't they?

Mrs Taylor—Yes, that is correct.

Senator EGGLESTON—Good. So, in other words, this does have some practical import because you do have the possibility of five mines being considered for development in coming years.

Mrs Taylor—I am sorry, Senator. Could you repeat that question.

Senator EGGLESTON—What I am saying is that this is not really a hypothetical consideration because it seems you do have at least five mines being considered for development in coming years, so there is a certain logic about establishing a uniform royalties system before those mines are developed.

Mrs Taylor—Yes, that is right; that is one of the objectives of the legislation, to provide some certainty for future investment.

Senator FURNER—The department commented on the impact of the profit based royalty regime as 'a creation of employment'. I would be interested to hear if they could indicate what the projection may be in terms of that growth.

Mrs Taylor—I am not sure that we have those numbers. If we could take that one on notice, that would be good.

Senator FURNER—Okay. I am wondering whether you are able to indicate whether the move to profits based royalty regimes can result in a gain for Indigenous owners during boom periods at all. Are you able to comment on that?

Mrs Taylor—Only so far as to say that our understanding of a profits based regime facilitates a greater return to the community and to traditional owners when prices are very high. In that regard, the system is preferable to an ad valorem rate, which of course does not change; it does not relate to profitability.

Senator FURNER—So there is certainly incentive there.

Mrs Taylor—That is right.

Senator PRATT—It may be beyond your scope, but one of the things put to the committee in evidence is the idea that, in moving to this scheme, when negotiating with native title holders, because there will be no immediate revenue flowing, there is going to be a greater emphasis on upfront payments to secure the native title in the initial phases. I am not saying that would not necessarily happen anyway under the current scheme, but have the two different scenarios been assessed with regard to the other payments that might be coming to Indigenous communities?

Mrs Taylor—Certainly. I would simply point out that the ability of traditional owners to negotiate royalties and to use the negotiated royalty to perhaps smooth out payments or have higher payments in the early years of a mine's operation, in order to offset any impacts on their income from a profits based regime, is certainly there. I would expect that would be a subject of negotiation between the traditional owners and the companies, but certainly I would expect there would be significant incentive to look at that.

CHAIR—Just on that question, when we are talking about negotiated royalties, I presumed that we were talking about bringing forward the statutory royalties. Can you advise the committee if any negotiated royalties are made under the current profit based royalty regime in the Northern Territory for non-uranium mines?

Ms Barton—I am not aware of any specific cases for the other mines, but I do know that for the other uranium mines in Australia, such as the Beverley mine in South Australia, which is under native title legislation, that company has negotiated a package which includes royalty employment training and community development fund, and that is typical of the types of agreements that we are seeing from mining companies—not only uranium companies, but mining companies per se—and that would be considered as a best practice approach. Of course in the case of the Northern Territory, under the Aboriginal land rights act, the Aboriginal communities have a veto, so they have a greater negotiation power than in any other area in Australia.

CHAIR—In that example, is the negotiated royalty taken out of the total package of royalties or is it an additional payment?

Ms Barton—No. One of the contentions in the working group was that the 18 per cent profit would be a statutory royalty paid to the Crown for the use of the Crown's resources. In addition to that 18 per cent, the mining company and the traditional owners can negotiate a number of

payments, including a royalty but also other things. So we are seeing things like rental payments, compensation for land disturbed and employment and training benefits as well.

CHAIR—Is there any capacity under this legislation for those negotiated payments to be offset against the statutory royalties?

Ms Barton—No, they cannot be. They have to be separate payments, but the timing of the payments would be up to the traditional owners to negotiate whatever they feel is appropriate for their circumstances.

CHAIR—So the statutory royalties might be in place, but there could be a negotiation for them to be brought forward a year or two?

Ms Barton—That would be the negotiated portion of their royalties. A company may end up paying 18 per cent to the Northern Territory, and then in addition they may pay a 1.5 per cent ad valorem rate separately to the traditional owners, which can be smoothed if they choose to do that.

CHAIR—I see. I thank the department. You seem to have answered all of our questions. Thank you for coming in this morning.

Committee adjourned at 11.41 am