



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION  
TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE

**Reference: Environmental regulation of uranium mining**

FRIDAY, 18 OCTOBER 2002

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**  
**ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY**  
**AND THE ARTS REFERENCES COMMITTEE**

**Friday, 18 October 2002**

**Members:** Senator Allison (*Chair*), Senator Tierney (*Deputy Chair*), Senators Lundy, Mackay, Tchen and Wong

**Substitute members:** Senator Crossin for Senator Mackay, Senator Buckland for Senator Lundy and Senator McGauran for Senator Tierney

**Participating members:** Senators Abetz, Bolkus, Boswell, Brown, Buckland, George Campbell, Carr, Chapman, Conroy, Coonan, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Knowles, Lees, Mason, McGauran, Murphy, Nettle, Payne and Watson

**Senators in attendance:** Senators Allison, Buckland, Crossin, McGauran and Wong

**Terms of reference for the inquiry:**

For inquiry into and report on:

The regulatory, monitoring, and reporting regimes that govern environmental performance at the Ranger and Jabiluka uranium operations in the Northern Territory and the Beverley and Honeymoon *in situ* leach operations in South Australia, with particular reference to:

- (a) the adequacy, effectiveness and performance of existing monitoring and reporting regimes and regulations;
- (b) the adequacy and effectiveness of those Commonwealth agencies responsible for the oversight and implementation of these regimes; and
- (c) a review of Commonwealth responsibilities and mechanisms to realise improved environmental performance and transparency of reporting.

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**Committee met at 8.32 a.m.****LLOYD, Mr Andrew Murray, Mining Executive, Energy Services, Rio Tinto Ltd**

**CHAIR**—I declare open this public hearing of the Senate Environment, Communications, Information Technology and the Arts References Committee's inquiry into the environmental regulation of uranium mining. I welcome everybody here today. Today's hearing is the fourth in a program of hearings being undertaken by the committee in order to ensure that we can complete our report by the Senate's 5 December deadline. As everyone is no doubt aware, we have held hearings in Darwin, Jabiru and Adelaide and have visited all four of the mine sites which are specific subjects of our terms of reference. We plan to conduct another hearing in Canberra next Tuesday with the Wilderness Society, whose representative could not make it to today's hearing. We are also in contact with Professor Barry Hart, Chair of the Alligator Rivers Region Technical Committee, to see if we can arrange a mutually convenient time to hold a teleconference with him.

I welcome Mr Lloyd, who is here in response to a request made by the committee to send a representative to discuss the company's relationship with Energy Resources of Australia, the operator of the Ranger and Jabiluka mines in the Northern Territory. The committee prefers all evidence to be given in public but, should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in private, you may ask to do so and we will consider your request. Finally, and I will state this only once for the benefit of all witnesses, witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. Also, I have been asked by the Senate Privileges Committee to remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Mr Lloyd, do you wish to make an opening statement before we go to questions?

**Mr Lloyd**—Yes. I am pleased to appear before the committee today and to answer questions that you may wish to ask. I will commence, if I may, with some background on my role and experience. I am responsible for the strategic planning for Rio Tinto Energy, which includes coordinating our response to sustainable development and climate change issues. I report to the Chief Executive of Rio Tinto Energy, Mr Greg Boyce, who is based in London, and advise him on the management of Rio Tinto's global energy business, which includes coal and uranium operations in Australia, Indonesia, the US and Namibia. I have recently relocated to Melbourne from our London headquarters.

Rio Tinto's relationship with ERA results from the acquisition of North Limited by the group in October 2000. The primary aim of the North transaction was the Robe River iron ore assets in Western Australia, which are strategically significant to Rio Tinto's iron ore subsidiary, Hamersley Iron. North held a 68 per cent holding in ERA, which was acquired by Rio Tinto along with the other North assets. The North transaction was part of a major expansion of the Rio Tinto group in Australia, constituting acquisitions and new investments of some \$A12 billion since 2000. Australia is therefore a vitally important country for Rio Tinto, currently comprising some 45 per cent of the group's global assets, and is by far the largest recipient of our group's investment. Moreover, these figures indicate that Rio Tinto is almost certainly the single largest investor in Australia at the present time.

The company acknowledges the responsibility which comes with its stake in Australia. Rio Tinto accepts that its social licence to operate is predicated upon community acceptance of our

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business. We are committed to transparent and mutually beneficial relationships with the communities where we operate. We have no doubt that the benefits of mining to communities and nations can be profound and fundamental. Australia is a particularly fine example of a nation built solidly on the wealth created by mineral development. However, we understand that the full realisation of those benefits can only occur when companies and communities work in partnership. To that end, Rio Tinto has developed a series of programs designed to facilitate the realisation of genuine partnerships with our communities.

Rio Tinto is one of the largest employers of Indigenous Australians and just two weeks ago received the national corporate leaders' award for the most outstanding organisation in Indigenous employment. I should mention that ERA has a good track record of Indigenous employment, with about 20 per cent of their employees being Indigenous people. Rio Tinto is proudly in the vanguard of reconciliation and has negotiated more than 50 Indigenous land access and mine development agreements with traditional owners across the country. The Rio Tinto Aboriginal Foundation provides funding to Indigenous groups around the nation to support cultural, health and education initiatives. The foundation board enjoys an equality of Rio Tinto and Indigenous membership. Board members include Professor Lowitja O'Donoghue and Mark Ella.

Rio Tinto has an extensive program of partnerships with non-government organisations in the environmental, Indigenous and educational fields through its Business with Communities program. The program is based on extensive research seeking their views of a wide range of stakeholders on the appropriate social direction for the company. Some of the organisations we are proud to partner include the World Wide Fund for Nature, Earthwatch, Conservation Volunteers Australia, the Australian Museum, the Rio Tinto Australian Science Olympiads, the Centre for Appropriate Technology and Garnduwa, a physical education and health program for young Aboriginal women. As an acknowledgment of the success of the Business with Communities program, Rio Tinto was the recipient of the Prime Minister's Award for Excellence in Community Business Partnerships in 2001 for the program with the most impact on community.

Rio Tinto also works closely with communities to build social capital in the regions where we operate. We have established a number of trusts, funds and foundations which fund and facilitate local programs in partnership with community leaders. Those organisations include the Coal and Allied Community Trust in the Hunter Valley; the Tarong Coal Community Development Fund in Central Queensland; the Central Highlands Community Employment Trust, also in Central Queensland; the Comalco Community Fund in Gladstone and the Rio Tinto West Australian Future Fund.

Just as social responsibility is an important aspect of our business, environmental stewardship is a critical competency for Rio Tinto. We believe that environmental management must be just as good as any other aspect of the business and should meet or exceed the regulatory standards. To that end, Rio Tinto has implemented a comprehensive regime of environmental reporting and review. The group has established a global environmental policy which includes coverage of emissions, water usage and rehabilitation and requires all our operations to put in place an environmental management system. All Rio Tinto businesses are required to prepare five-year community plans which are updated annually. They must also prepare annual health, safety and environment reports. All sites are reviewed by specialist teams on a rolling four-year basis. All

Rio Tinto business unit annual environment reports are available in summary on the group's web site.

Since the acquisition of North, the former business units of North have been incorporated into the Rio Tinto product group structure, including ERA, which forms part of the Rio Tinto energy product group. Rio Tinto technical services provides technical support to the Rio Tinto businesses and to ERA. This includes environmental expertise drawn from across the group.

Rio Tinto supports the ERA submission to this inquiry, which made the following key points. ERA does meet comprehensive and independently monitored environmental procedures. ERA's operations are conducted with sensitivity to the physical location of the Ranger site and Jabiluka lease with respect to Kakadu National Park. ERA's operations have not adversely affected Kakadu and its environment, a fact consistently verified by all independent reports. ERA's water management and monitoring system has been designed to ensure minimal deviation from natural background levels. Reporting of deviations is required by the reporting regime, regardless of the cause or the environmental significance. Rio Tinto supports the ERA submission that improved interpretation should be provided as part of this reporting regime. I would be happy to answer any questions.

**CHAIR**—Perhaps I could start with a subject which has been raised a number of times in this inquiry, and that is the future of Jabiluka—I note that your chairman has said that this will not go ahead without the consent of the traditional owners—and the subject of rehabilitation should it not proceed. Can you tell the committee what plans have been prepared for rehabilitation of the Jabiluka site and indicate some time lines, if that is possible?

**Mr Lloyd**—Rio Tinto has stated on many occasions that its practice is not to develop any new operation without the support of the local community and I think that has been made very clear from Rio Tinto's point of view. In today's discussion I am going to need to separate out Rio Tinto from ERA. ERA is a publicly listed company which has its own board and the decisions for ERA are made by that board. Sir Robert Wilson, in talking about Jabiluka, was reflecting the position of the ERA board and ERA that the development at Jabiluka will not proceed without traditional owner support.

**CHAIR**—I am sorry; he was reflecting the ERA board?

**Mr Lloyd**—Correct, the ERA position. There are two forms of rehabilitation. One is continuous rehabilitation which happens during our operations and the other form is at closure. All our operations have a closure plan as a standard routine and that plan is updated on a regular basis. At the moment, Jabiluka is under care and maintenance and ERA has commenced discussions with the Northern Land Council and the traditional owners in looking for improved arrangements for the longer term care and maintenance of Jabiluka. The regulators in the Northern Territory government and the federal government will both need to be involved in those deliberations. At this stage, that is the state of play. Before anything would happen it would be considered by the ERA board and a decision would be made at the ERA board.

**CHAIR**—You say you have commenced discussions on care and maintenance. Is that the same as the continuous rehabilitation?

**Mr Lloyd**—The nature of the rehabilitation would be part of those discussions and we would expect they would be part of the continuous rehabilitation that would be carried out as it is possible. Discussions are under way. At this stage it is too early to say where they will go. What we are seeking to do is move Jabiluka from a condition of care and maintenance to put in place some suitable arrangements for its longer term care and maintenance.

**CHAIR**—Is longer term care and maintenance the same as continuous rehabilitation? Could you expand a bit on the terms and what continuous rehabilitation means, and even what rehabilitation means in terms of closure?

**Mr Lloyd**—In our operations we aim to minimise our footprint and environmental impact throughout the life of any operation—we will do what we can to ensure that during the course of holding any lease or operation. There are a number of things that can be done that will include planting, water monitoring and the environmental regime that is in place at the Jabiluka site. Clearly, Jabiluka is not going to proceed in the immediate future, so we wish to put in place a regime that will provide for Jabiluka to remain on care and maintenance for a longer period of time than was originally envisaged. A closure plan would remain as a separate plan that sits aside ready for eventual closure, as would be the case for all of our operations.

**CHAIR**—So the closure plan is fully developed as to precisely what would occur under those circumstances.

**Mr Lloyd**—Yes, there is a plan. It would always be updated in the light of new knowledge and new circumstances; they are regularly updated and reviewed. As part of that, there would be a provision of the funding that sits there ready for the closure work.

**CHAIR**—Have you discussed this plan with the traditional owners?

**Mr Lloyd**—I would hope ERA has. I cannot speak for ERA in terms of what is discussed or what is not discussed. I am not aware of the exact status of the plan with the traditional owners.

**CHAIR**—It has been difficult for the committee to understand when the decision will be made as to whether it is continuous rehabilitation or closure. Do you have some sense of time? You say that in the medium term there is no prospect of proceeding with the mine. What is medium term? What is long term? Where do you see a decision having to be made?

**Mr Lloyd**—That would be speculation. The actual rehabilitation is clearly a complex issue that is going to involve complex discussions with many parties—traditional owners and the Northern Land Council as their representative, the Northern Territory government and the federal government. We need to meet the needs of all parties as best we can. So I cannot speculate, nor would it be appropriate. It is going to be the subject of discussions that we will need to move through. Looking forward is too difficult for me to do and probably inappropriate. Whatever happens would be finally resolved through the ERA board and that is a process that, again, as yet, I cannot speculate upon.

**Senator CROSSIN**—I am just trying to get a handle on the exact relationship between you and ERA given that—and I may well be wrong here—the Managing Director of Rio Tinto is also the chair of the ERA Board. Is that correct?

**Mr Lloyd**—The Managing Director of Rio Tinto Australia, Mr Brian Horwood, is the chair of the ERA Board; that is correct.

**Senator CROSSIN**—Does ERA have some compulsory reporting capacity to Rio Tinto?

**Mr Lloyd**—We are the majority shareholder—we have 68 per cent. ERA is a member of the Rio Tinto Group but it is a separate public company in its own right. We have those arrangements with many of our companies. In fact, in the Energy group there are three similar organisations that are run as separate business units but we have a majority shareholding in them. Therefore, Rio Tinto staff members are directors on that board and the board of the company would be the decision making body for the company. In the case of ERA, Brian Horwood is the Managing Director of Rio Tinto Australia and is the chair of ERA. My boss, Mr Greg Boyce, who runs the Energy group, also sits on the ERA board. The other two associated directors with Rio Tinto are Mr Bob Cleary, who is Managing Director of ERA, and Mr Barry Cusack, who is the recently retired head of Rio Tinto Australia. There are two other directors who are associated with minority shareholders and there are two independent directors. So there is a group of eight people on the ERA board who will be driving the management and the decision making for ERA.

**Senator McGAURAN**—Who are the minority shareholders on the board and who do they represent?

**Mr Lloyd**—One represents Cameco and Cogema, who are major uranium producers, and the other represents JAURD, which is a consortium of ERA customers.

**Senator CROSSIN**—Does Rio Tinto have any role in not so much the day-to-day monitoring or reporting requirements but environmental or productivity reporting? Or is that simply fed up through the ERA board, on which there are Rio Tinto representatives?

**Mr Lloyd**—Rio Tinto receives reports and some of those are through the board. Rio Tinto also conducts reviews of the ERA operation, as it does with all its operations, in terms of seeking to improve them. It ensures that Rio Tinto expertise, which has been built up over the years and is fairly substantial, and Rio Tinto programs—health, safety and environment programs, in particular, which are very strong—are made available to each of our businesses for them to pick up and run with and to implement more easily than if they were not part of the Rio Tinto group. From that perspective, ERA certainly embraces the Rio Tinto programs, when appropriate.

**Senator CROSSIN**—Can you give me an example of where that is the case?

**Mr Lloyd**—Safety, in particular, is a very structured program. We have a number of programs based around the Dupont review system—a safety management system of review called SMAT. We have training that is brought to the organisation from Rio Tinto. We have advisers who will go to site on a regular basis, work with the ERA and its management and look for ways of improving systems and processes, as are available within their own operating regime. From that point of view, there is a very strong advisory capacity from our technical staff and a regular role in review of some aspects.

**Senator CROSSIN**—You mentioned in your opening statement ‘reviewed by teams on a four-year basis.’ What sort of review is conducted?

**Mr Lloyd**—That particular review is a health, safety and environmental review and it is conducted by a combination of environmental health and safety experts. They will go to site, review the procedures on site and look for improvements, which will then be recommended to the ERA management team.

**Senator CROSSIN**—When was that review last conducted at ERA?

**Mr Lloyd**—The last review commenced in October 2001 and was completed in April this year.

**Senator CROSSIN**—So you had a review team there at the same time we had the publicity about leaks earlier this year. Is that correct?

**Mr Lloyd**—The review team had completed their major onsite review before the major round of incidents. Certainly, the report was finalised about the same time, but the team was there before that round of incidents.

**Senator CROSSIN**—When there is an incident of that nature at either mine site, does Rio Tinto play any role in either reviewing the company’s assessment of what has happened or giving the company some advice? Or is it completely hands-off?

**Mr Lloyd**—It is not completely hands-off. The prime response is ERA’s responsibility, and so ERA are accountable for the response, the follow-up, and to make sure that if weaknesses are found they are corrected. Rio Tinto’s advice is actively sought in most instances. In the particular case of the period around April this year, a Rio Tinto technical expert was involved in reviewing the response of ERA and assisting ERA’s management to ensure that the measures taken were appropriate, that we fully understood what was going on, that the response was adequate and that any holes found through that experience are corrected.

**Senator CROSSIN**—Does Rio Tinto in a sense see itself at arm’s length in providing advice to ERA about incidents and environmental management?

**Mr Lloyd**—I hope ERA feels that it is empowered to manage its business; that would be our goal. We want them to understand that they are part of the group. Part of being Rio Tinto means that there is a lot of expertise there, so we do not want them to feel that they are on their own and unable to get help. There is lots of help available. Rio Tinto has enormous technical expertise that they can call on whenever they require it but, at the end of the day, the management of ERA is going to manage the operation. They are there on site; they need to be across the issues and respond to them as they arise.

**Senator McGAURAN**—Is there anyone here from ERA?

**Mr Lloyd**—I am joined by Matt Coulter, who is the General Manager of Strategy and Planning.

**Senator CROSSIN**—Mr Lloyd, I am aware of some of the Rio Tinto programs that operate in Canada with the involvement of Indigenous people. Has there been any discussion or perhaps a suggestion that ERA should expand its relationship with Indigenous people and use the same model that operates in Canada?

**Mr Lloyd**—Yes, we are very proud of the model that is operating in Canada. We think it is very sound. ERA will need to consider what is appropriate for their situation, and we are encouraging them to improve their relationship with the local community, with the traditional owners and the NLC in particular. But ERA needs to make sure that the actions it takes are appropriate for its own circumstance. We certainly encourage cross-fertilisation of best practice across the group and, from that point of view, we would encourage them to be aware of the developments in Canada and to learn from them appropriately.

**Senator CROSSIN**—Has anyone from ERA been to Canada to have a look at what is happening? Do you take the encouragement to the next step and actually provide assistance?

**Mr Lloyd**—We often do. I cannot comment on whether we have, in this instance, had ERA people go to Canada. But, in many ways, they probably do not need to—we would bring our experts who specialise in community relations and community affairs to all our sites. They are extremely experienced and well able to make sure that the lessons from overseas are brought to bear on individual sites. That is their role. We have a very competent group of experts available to assist the ERA management and make sure that transfer of best practice happens.

**Senator CROSSIN**—As a result of the incident that happened in May 2000, OSS conducted a review and published a number of recommendations. During the estimates process this year, it seemed that a number of those recommendations were still to be implemented. Does Rio Tinto play any active role in pursuing that so that recommendations are either implemented or, if not implemented in the way in which they are suggested, appropriately adapted? Or is that again something where ERA are a self-managing company that makes up their own mind on what they implement and what they do not implement?

**Mr Lloyd**—There is a process within ERA so ERA is accountable to make sure it puts in place the measures that are required. The ERA board receives a status report that would describe each of the actions that have been required and their status. I cannot comment on specific items off the top of my head, as to where they are at and their current status. But my understanding is that the overwhelming situation with the actions that were required is that they are either complete or almost complete, so I am surprised by the suggestion that there are items outstanding from that, but I am not across the detail. That reporting and review process properly resides within ERA and is reviewed as part of the ERA board deliberations.

**Senator CROSSIN**—Does Rio Tinto have any direct dialogue with the Office of the Supervising Scientist, or is that always through ERA and only with ERA?

**Mr Lloyd**—That would be through ERA. It would be appropriate that ERA manages that relationship, and Rio Tinto having dialogue with the Office of the Supervising Scientist would be likely to cause miscommunication and get in the way, I would imagine. So the appropriate line of communication is direct with ERA to the Office of the Supervising Scientist.

**Senator CROSSIN**—Thank you.

**Senator McGAURAN**—Madam Chair, as we have the managing director of ERA with us, I wonder whether he could come to the table?

**CHAIR**—The committee has already heard from ERA.

**Senator McGAURAN**—I am sorry; that is what you get for being new on a committee.

**CHAIR**—If we have time, perhaps, and there is something you want to press—

**Senator McGAURAN**—No, it is not to say that Mr Lloyd has not been doing a good job. I was going to ask some questions about what I thought was a very exciting submission about the Indigenous employment program. I have a few questions but, in the end, what I would really like is some sort of a submission on it or some sort of knowledge. Are the intricacies of the program and its successes publicised in the annual report?

**Mr Lloyd**—We have an extensive program at all our operations which is aimed at achieving Indigenous employment. ERA in that regard has an extremely sound track record with a very high representation from Aboriginal people—around 20 per cent.

**Senator McGAURAN**—But that is 20 per cent of what?

**Mr Lloyd**—Twenty per cent of their total work force comprises Aboriginal employees.

**Senator McGAURAN**—Working where and at what levels?

**Mr Lloyd**—Working within ERA at a number of levels within the organisation.

**Senator McGAURAN**—Can you give us a couple of examples of the levels?

**Mr Lloyd**—No, I cannot, I am afraid.

**Senator McGAURAN**—Okay.

**Mr Lloyd**—Again, I am not involved in the day-to-day management of ERA.

**Senator McGAURAN**—Is that 20 per cent a stable 20 per cent or is there a turnover of the 20 per cent? Do they go on to somewhere else, perhaps, and new ones come?

**Mr Lloyd**—There is turnover. At the moment, there is quite a high turnover of the whole ERA work force. That is normal in northern Australia. The turnover in remote mining locations is always an issue for us. So, yes, we do tend to have some turnover amongst Aboriginal employees as well, and we would hope that we might also manage to move them between our operations and provide them with career paths also. We have a broad program. I do have some material for the committee that is available at the end, and it includes some details on the Indigenous employment program.

**Senator McGAURAN**—I think it is important—

**CHAIR**—Would you like to table those now, Mr Lloyd, when you are ready?

**Mr Lloyd**—Okay.

**Senator WONG**—As I understand it, Rio Tinto is the majority shareholder, although I missed the exact numerical make-up of the board. Do Rio Tinto representatives also represent a majority of the board of directors of ERA?

**Mr Lloyd**—No, they do not. There are four Rio Tinto associated directors, two independents and two associated with minority shareholders.

**Senator WONG**—With the chair being a Rio Tinto person?

**Mr Lloyd**—Yes. But the chair has no casting vote, so the lines are four-all. But in terms of ERA board decisions, I have never in my time seen anything other than consensus decision making on a Rio Tinto board.

**Senator WONG**—Senator Crossin asked you some questions about whether or not Rio Tinto took an active interest in compliance by ERA with any particular recommendations, perhaps from the Supervising Scientist or arising out of a spill. If there was a concern from Rio Tinto that ERA were not doing that, has it ever been the case where that view of Rio Tinto's has been put to the board and actions have been taken as a result?

**Mr Lloyd**—If Rio Tinto has concerns, they would normally be expressed through our technical staff advising ERA. ERA's management hold our staff, I believe, in high regard and pay attention to their recommendations, and that is reflected in the actions that they take. I have never specifically had any instance, since Rio Tinto took over ERA, where Rio Tinto has needed to feed something to the ERA board and say, 'This is not good enough'. It has always been a case that Rio Tinto expertise goes to site and talks to the ERA management. ERA's management and our technical experts will agree on the best way forward, and those actions are then recorded and appropriately followed up and implemented. We have never had call to intervene in that manner, and I would consider that to be highly unusual if we did. The processes of providing advice directly to ERA work, and we make sure that they are well documented and followed through.

**Senator WONG**—How often does this process of providing advice through technical staff occur? Is that a regular occurrence or is that a crisis management issue?

**Mr Lloyd**—It is a regular occurrence. We have people who are assigned to manage ERA and who have a direct relationship with ERA. They are regarded as experts. They become associated in that they understand the continuity of the project.

**Senator WONG**—Do they work permanently on the site or do they visit every week? What is the actual relationship?

**Mr Lloyd**—A number of people will be involved. None of them are on site; they travel to site as required.

**Senator WONG**—About how often is ‘as required’? I am just trying to get a sense of whether this is a weekly, a monthly or an annual thing.

**Mr Lloyd**—No. It is ongoing and continuous. I will talk about our chief or key relationship manager from the technical group. I believe from our discussions that he has been to site four times this year, but he would not be the only one involved in providing assistance and advice. There would be a constant dialogue between our technical people by phone and by email around the issues and there would be very regular visits to sites from technical people.

**Senator WONG**—Senator Crossin asked you some questions about your relationship with indigenous people in Canada. To what extent has that expertise been utilised in relationship to ERA? Have you had anybody who has had the experience of the success in Canada discuss or deal with ERA in terms of enriching its expertise vis-a-vis the Aboriginal communities in the Northern Territory?

**Mr Lloyd**—I am not involved in the day-to-day management of ERA, and we are heading very much into areas that are detail around the management on site.

**Senator WONG**—It is not really details of management on site, Mr Lloyd. You have some understanding of the parameters of the technical relationship. I am just asking whether there is any other mechanism whereby this social expertise is transferred or is there nothing to your knowledge?

**Mr Lloyd**—There are numerous mechanisms, which involve the staff in our group programs visiting ERA and having dialogue with ERA’s management. Representatives of that group were involved in the review that was completed in April this year. In terms of direct exchange, I cannot comment; I do not know. It may well have happened, but I am just not in a position to comment on the detail of the exchanges. I know that our programs are well documented. ERA certainly have accepted the need to build improved relationships with their local community, and they recognise the Canadian example as being a very good example for them to draw upon, and Rio Tinto would be encouraging that process as much as it can. Wherever we have got good examples like that, we will be seeking in a very planned and deliberate manner to make sure we flow operational excellence back to our operations. It is not just communities; it is going be around safety; it is going to be around environmental performance and environmental processes; and it is going to be around operational excellence. We work very hard to make sure that our processes are well thought through, consistently delivered and, at the end of the day, taken up within each of our organisations in an appropriate manner and are appropriate for that business.

**Senator WONG**—But you are not in a position today to give any detail of that plan and the deliberate manner in which that expertise is being transferred or imparted to ERA?

**Mr Lloyd**—I have not got details of the individual plans that I can give you today.

**CHAIR**—I want to come back to your opening remarks on genuine partnerships with Indigenous people. The representatives of the traditional owners in Jabiru, in relation to the committees that have been formed to work with Indigenous people, said:

There is a proportion of other Aboriginal people, the mining company and the government representatives with their own views, which usually are not running concurrently with the traditional owners. There has been a problem for 20 years

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with getting Mirrar people to participate fully on these committees because their views have not been heard or acted upon.

**Senator McGAURAN**—For my information, where did that quote come from?

**CHAIR**—That was from Mr Ralph. Given that statement, can you indicate to the committee that there has been some progress made since Rio Tinto became involved in ERA? How do you build genuine partnerships when we have a history of that kind of thing, of being ignored by traditional owners? It was Indigenous people themselves who said they were not properly informed about the implications of leaks on site. They felt they were shut out of the whole process. What efforts has Rio Tinto made to improve that situation so there are genuine partnerships?

**Mr Lloyd**—I agree that this is a very important issue and it is one that has received a lot of attention. October 2000 was when we acquired ERA. So we are a new influence on ERA. We acknowledge that the relationship with the Mirrar people that ERA has had over a long period has not been good and we are working to assist ERA to improve that relationship as best we can. We are encouraging ERA to make sure they establish appropriate relationships with the Mirrar and with their representatives on the NLC.

Trust is a precious and difficult thing to build. It takes time and genuine efforts on the part of everybody involved and ultimately it takes relationships with people. It is a fragile and difficult process and we are doing our best to encourage this. ERA have appointed a general manager for strategy and planning, Mr Matt Coulter, who is in charge of those relationships. This is a positive move to assign accountability within ERA and to make sure that there is a clear program of building those bridges as they are required.

ERA has responded and has set in place a program. That program will take time but we acknowledge that the Mirrar people felt in the past that they have not had an appropriate say and have not been provided with appropriate information. You mentioned information about leaks and about feeling shut out. I think that is part of the problem with the reporting regime that ERA have pointed out in their submission, that every minor incident—even some small event contained within the lease—is reported in a manner that does not provide the appropriate context or the interpretation to understand whether the event is a really significant event that could have potential implications or whether it is something that can be quickly controlled.

The context around the reporting regime is very important in reducing the anxiety around the many incidents. We support the transparent reporting of incidents. We believe that the transparency of the system is higher than at any of our other mine sites, and therefore it is unusual. But in the circumstances, it is appropriate and we accept it.

**CHAIR**—Do you support timely reporting?

**Mr Lloyd**—We do. We believe it should be timely, but with appropriate interpretation. We believe that finding ways to reduce the anxiety associated with the reporting regime is an important area and we would certainly welcome the committee considering how that should be improved.

**CHAIR**—Event based monitoring is another consistent theme in this inquiry. Can you give the committee some idea of whether or not this is standard practice for Rio Tinto in mines and sensitive areas in other places? What is your view of the need to move to that approach, rather than the monitoring that we have at Jabiluka and Ranger?

**Mr Lloyd**—I am not an environmental expert. ‘Event based monitoring’, and what you mean by it, is not a term that we would use traditionally or widely in our group to the point where I am fully aware of it.

**CHAIR**—That is fine.

**Senator BUCKLAND**—After going to Jabiluka and Ranger and hearing the evidence we have heard in the Northern Territory, I am still trying to weigh up what to make of the comments of some of the witnesses. One thing that struck me when I was there was the inability of ERA to properly communicate to the Aboriginal communities. That does not seem to fit with Rio Tinto’s general method of operation with Indigenous people. Can there be better disclosure of information to Aboriginal communities than there is now? It would be a bit like dealing with me: you could give me all the technical information you want, and it would sit on the top shelf for the rest of time because I would not read it and, if I did, I would not understand it. It appeared to me, in speaking directly to the Aboriginal people and those who gave direct evidence—and, indeed, I have to say from some anecdotal evidence I picked up outside of that—that they do not understand what they are being told. They cannot take that information in and pass it on. Is there any way that Rio Tinto itself can have influence over that? It seems to me to be the biggest problem they have.

**Mr Lloyd**—I recognise the issue, and ERA, I am sure, also recognises the issue. My discussions with ERA’s management indicate that they also understand the issue. ERA is moving to build up its capability in this area. We need to accept that it is still fairly early days in terms of Rio Tinto exercising its programs and assisting ERA. We recognise the issue, and we agree that it needs to improve. We are looking to make sure that it does improve. I know that resources are being put in place to ensure that those relationships are built and the mechanisms of communication are built. We would, again, be assisted by making sure that the other reporting mechanisms that create noise around the relationship are also appropriate and well designed around ensuring sound reporting that assists. We recognise the issue. ERA have moved to improve their capability. I hope the program will move forward and continue to build that capability.

**Senator BUCKLAND**—It seemed to me that the reporting that was being done was lending itself to professional responses in a technical sense when, in fact, what the people want to know is whether the land is safe to continue hunting on and whether they can still catch fish out of the river and eat it and not be affected later on. I have read some of the evidence two or three times, in fact, because it is haunting me as to what the best way is of doing that. Is there a time frame that can be put in place to use Indigenous people themselves—and I do not know if some are available—to interpret the technical advice and translate it into something that I could read and understand?

**Mr Lloyd**—We recognise that such an interpretation service, if we could find it, would be ideal. The nub of this issue is that there needs to be a direct exchange between ERA representatives who are able to convey this information and the people who are affected and

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have concerns. The direct relationship between ERA's employees, representatives and management and the people in their local community is extremely important. This is an area where we believe ERA should be building and encouraging stronger direct relationships. It is a key to making sure that appropriate understanding is passed from the company to the local community.

**Senator BUCKLAND**—We visited the Jabiluka site that is shut down at the moment. I for one was extremely impressed by some of the water management practices they had in place. As to whether or not I am rightfully impressed, I will not comment—it is just a view I had. A lot of money has been spent there; there appear to be significant reserves. I am also very conscious of what Robert Wilson has had to say about the place. Are there active negotiations going on with the community at the moment to try and resurrect that project?

**Mr Lloyd**—I would not put it that way. The discussions that have been commenced between ERA, the Northern Land Council and the traditional owners have more to do with establishing an improved regime for the longer term care and maintenance of Jabiluka. We have no immediate plans for development, and development would require traditional owners' support.

**Senator BUCKLAND**—I interpreted that operation as having very low environmental impact, surface impact. I understand and am very conscious and mindful of the traditional owners' spiritual awareness and links to the site, so I do bear that in mind, but my own view is that it was a very low-impact operation. My understanding is that one of the real issues is transporting the material from Jabiluka to Ranger for processing. I am not entirely sure of the reasons why processing cannot be done at Jabiluka, apart from perhaps lowering the profit margin. Are there other reasons?

**Mr Lloyd**—That is one option that is being examined, but there are numerous options being examined in terms of those discussions and, as it stands today, we would not have approval to move that material and we would require approval. Within the scope of the discussions around appropriate longer term care and maintenance, that is one option that will be considered by traditional owners, the Northern Land Council and the regulators. Certainly, there is a dialogue ongoing—it is too early to tell where that dialogue will go. A recommendation will come back to the ERA board at some point in time, but I am unable to say any more than that.

**Senator BUCKLAND**—With the removal of the material, is that removal from the site or from the actual earth, from the shaft?

**Mr Lloyd**—The immediate issue being referred to is in fact the low-grade ore—the low-grade material—stockpile, which has a cover over it at the moment. There are various options for that material, including leaving it there protected; but we do not believe that is the best option. So there are a number of possible options for that material.

**CHAIR**—The proposal to mill at Ranger would involve taking the high-grade uranium—

**Senator BUCKLAND**—Removing it from the site—I understand that.

**Mr Lloyd**—I am sorry, I missed the question.

**CHAIR**—In the long term, should Jabiluka proceed, it is the wish of the company that the ore grade would be taken to Ranger for milling, isn't it? I think ERA is on the record as saying that that is their preferred option.

**Mr Lloyd**—That is ERA's preferred option.

**CHAIR**—So we are not talking about low-grade ore that has come out of a decline?

**Mr Lloyd**—But that is if you were moving to a developed operation.

**CHAIR**—Precisely.

**Mr Lloyd**—That is not the current proposal. The current planning work that is being done is around moving to an even lesser footprint around the Jabiluka site, if that regime can be found to be appropriately acceptable, and leaving the site under longer term care and maintenance. So for now there are no discussions proceeding around a development option for moving into production. That is not on the agenda and it is not the subject of the current discussions.

**Senator BUCKLAND**—I think you have answered the question. Thank you.

**CHAIR**—Thank you very much for accepting our invitation to come and appear before us today. It has been very useful.

**Mr Lloyd**—Thank you.

**Proceedings suspended from 9.26 a.m. to 9.36 a.m.**

**THOMPSON, Mr Bruce Peter, National Nuclear Campaigner, Friends of the Earth, Australia**

**CHAIR**—Welcome. The committee has before it your submission, which we have already published. Are there any alterations or additions you want to make to that document at this stage?

**Mr Thompson**—No, I do not think so.

**CHAIR**—The committee prefers all evidence to be given in public but should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in private you may ask to do so and the committee will consider your request. I invite you to make an opening statement after which we will go to questions.

**Mr Thompson**—I have a document for you to follow along with my presentation.

**CHAIR**—Is it the wish of the committee that this document be tabled? There being no objections, it is so ordered.

**Mr Thompson**—By way of introduction, my background is in mechanical engineering, but for the last five years I have worked with Friends of the Earth on nuclear issues in an Australian context. Friends of the Earth is a federation of 60 national environment groups across the world, so we are represented in 60 nations. This gives Friends of the Earth a global experience of the nuclear industry.

To start my presentation, I want to touch on broader issues that we believe have an impact on the issues contained in the terms of reference and the specific regulation of uranium mining in Australia. I will touch first on where we see regulation in general of heavy industry and of mining specifically in a global context. There is a trend at present within industry for voluntary codes of conduct, which we see as an avoidance of national or international regulatory frameworks. One key example of this has been an industry-led move called the global mining initiative, which has as a subgroup the mining, minerals and sustainable development project. That has been a wide-ranging project for the last two years, seeking to have roundtable discussions with environment NGOs, traditional owners, unions and other interest groups. We have been concerned that this is a considerable public relations process, but what is failing is clear empirical shifts in operations specifically in mining across the world. I would like to table a statement by Friends of the Earth, Australian Conservation Foundation and Mineral Policy Institute, which has our position on that issue.

From that position, as a civil society concept—the move community groups across the globe are making to ensuring good practice from corporations—we are very clear that there need to be corporate codes of conduct that are taken on by governments at national, state and international levels. There is a clear demand for empirical improvement in existing operations, for clear recognition of landowner rights—and that includes Indigenous and traditional owners—and for a clear acceptance that there is a ban on mining in protected or sensitive ecological systems. The role of governments in this situation has been one of increasing uncertainty. It is a juxtaposition of the role of supporting the community wishes and, at the same time, of facilitating corporate

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development. We believe there is increasing corporate influence on this decision making, and the broader impact of free trade agreements is that they have an impact on the sovereignty or regulatory capacity of individual nations.

One example in a nuclear context was in the media last week about New Zealand, whom the US has been pressuring to remove their nuclear free status to allow a trade agreement. We support New Zealand in their stand of wanting to retain that right as a unique marketing opportunity as well as a principle.

The next step is to look at the concept of environmentally sustainable development, which has become a catch phrase in the nineties but which is widely accepted now as a model to advance industrial development. There are five key elements, and I will read them. Decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations. If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. There is the principle of intergenerational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the betterment of future generations. The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making. Improved valuation, pricing and incentive mechanisms should be promoted.

Those five points are not from the Friends of the Earth mission statement; they are from the EPBC Act. Section 3A is the object of our act—the overarching legislation for environmental protection in Australia. They are the aims of the act. To put that in context, there are some significant statements in the act which refer directly to the regulation and the impacts of uranium mine operation in Australia.

Following on from the ESD concept is the concept of life cycle analysis—that is, decisions based on real cost in terms of ecological, economical and sociological impacts. Uranium is a global trade. In a globalised world, it has a global impact. From mining, we have issues of release of radioactive materials into the ecosystem. Milling, again, involves exposure to both workers and the surrounding communities. The enrichment process of uranium again involves a series of waste emissions and results in a by-product, depleted uranium, which has been used notably in Iraq and in the Kosovo war. Following through, there are issues around reactor use for energy. To clarify: nuclear power is basically not high-level nuclear science. It is in terms of containing the material; nuclear energy just produces heat, which turns water into steam, which powers a turbine—just like coal-fired power stations. It is not an advanced technology; it is actually a 1950s way of boiling water.

Following through, there are the large, high-level waste issues around reprocessing. Reprocessing was a technology developed in the 1950s to extract plutonium for use in weapons material. It does not serve a purpose in the management of radioactive waste in Australia. Australia still supports the reprocessing of our nuclear waste from the Lucas Heights reactor but the US—not only one of the leading nuclear weapons nations but also one of the leading nuclear power generators—has outlawed reprocessing for the last 15 years due to the potential for security issues around that. Then we go onto radioactive waste, which is a longer-term issue. I put this in context. Australia's role in the uranium cycle has an international impact. It has a significant impact on communities across the world but also a practical impact on Australia. We

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have seen in the last couple of years significant political and media coverage of the potential for Australia to be an international radioactive waste dump. That ties in ultimately with our role at the start of that cycle.

Australia has a series of regulatory obligations in terms of export and safeguards of the uranium material. But if we look to each assessment of the uranium mine, the first stage is the environmental impact assessment process. The Honeymoon uranium project draft EIS, May 2000, states:

The guidelines limit the EIS to issues and alternatives directly related to the development of the Honeymoon Uranium Project, as described above, and the potential impacts of the proposed project upon the region. They specifically exclude any requirement to address policy issues about the appropriateness of uranium mining or the use of exported uranium in the nuclear fuel cycle.

This statement is the same as that found in the Olympic Dam uranium project's EIS, the Olympic Dam expansion EIS, the Jabiluka uranium project EIS and the Beverley uranium project EIS. There has been no Commonwealth assessment of the nuclear industry nor of Australia's role since the Fox inquiry in 1974. We have had 20 years of activity and operations of uranium mines. We have had significant issues. There have been several Senate inquiries into uranium and its broader aspects—issues such as whether we have a reactor—but there has never been a Commonwealth assessment done before it has taken a new action to approve a uranium mine.

Friends of the Earth believe that the issues around regulation of operational mines at the moment and those outlined in the terms of reference are systemic issues resulting from ineffective or inappropriate environmental impact assessment, that we are making mistakes at the approval stage which are translating down the track. If greater action were taken at the EIS stage, you could not only better remove or minimise the potential impacts but also provide more active regulatory regimes that would carry during its operation. An obvious example is Jabiluka. We believe that the approval of Jabiluka, situated within the World Heritage area of Kakadu National Park, clearly demonstrates a failure to represent public interest and environmental protection ahead of private interests. The mining, milling and tailings waste disposal within such a sensitive area that is subject to monsoonal rainfall will inevitably have environmental impacts. We believe that the issues that are arising today are inevitable, given that operations like that exist in such an area.

Another example is the Beverley uranium project. The Beverley uranium mine was the first mine to use the controversial in situ leach technique in Australia and remains the only uranium mine within the OECD using a sulfuric acid leachate in this process. Approval of the project was made despite significant uncertainties remaining about potential ground water contamination and liquid waste disposal. The ESD principles state:

(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation ...

Significant scientific debate remains about how contained the aquifer being mined is, and reports of ground water excursions or leaks were revealed to the public only after approval had been granted. These impacts will accumulate over the period of operation and will remain when the project is decommissioned. The Honeymoon uranium project is involved in a similar mining technique to the Beverley mine and was again given approval within a cloud of political

controversy. In the case of the Honeymoon mine, there is clear evidence that the aquifer mine is connected to surrounding ground water, and an excursion during trial operations was recorded.

We believe that recent approvals tend to ignore environmental impacts or assume that this is a reasonable consequence, given the perceived benefits of mining. However, we believe that environmental protection is not just a matter of principle; the impacts of the processes have consequences for communities in these regions and may prevent utilisation of resources, notably water supply, in the future. For example, about 10 kilometres from the Honeymoon mine—I believe the Senate travelled to the Honeymoon site a couple of weeks ago—there is a bore and a dam. The bore is used to supplement surface water during times of drought—which we are in; that region is certainly affected by drought—to supply the livestock, the sheep, that are being run on the station surrounding it. At the mine site, the water from the top aquifer is being used through a reverse osmosis technique for potable water. The miners in that operation are drinking that water. So it is not a science fiction concept to say that that water could be used in the future; it is actually being used at the moment. If there is increased accumulation of radioactive material due to the process in those connected aquifers, that will clearly prevent that water being used.

The EIA process provides a key point in mitigating environmental impact from industrial actions. Given the nature of uranium mining and long-term waste management, it can be impossible to reverse impacts once they are in operation. I will give a couple more examples of impacts, once approval has been given. I understand that the Olympic Dam mine is not in the terms of reference but I will use it by way of example. In February 1994, WMC revealed that up to \$5 billion litres of tailings liquid—that is, liquid that had seeped from the radioactive tailings dam—had leaked from a tailings retention system at Roxby Downs. According to WMC, the leak had been happening for at least two years but only came fully understood in January 1994. A plume now extends vertically and laterally below the tailings dam. While attempts can be made to decrease the liquid content of tailings effluent from the plant, the impact is difficult to mitigate and ultimately impossible to reverse. This is a sustained environmental impact that may have been picked up in an environmental assessment process but that is now, during operation, impossible for the company to reverse.

Another example is ground water contamination at Honeymoon. On 5 December 2001, only one week after receiving final government approval for the mine, Southern Cross Resources confirmed an asset excursion that occurred in 1999. The leach acid solution—a solution which is injected into a bottom aquifer at the mine site to dissolve uranium ore—escaped into an overlying middle aquifer. That is similar to the potential leak that we were talking about before. This is a case where that information was withheld from the public until an approval had been given. We found out about it a week later.

These were exactly the issues that environmental groups put forward in their submissions during that EIA process. They were either ignored, neglected or considered not reasonable. This is part of the frustration that environment groups have: a large amount of work is put in to assist the Commonwealth in making its decisions, but we see an increasingly political decision being made about uranium operations. We do not see a good, solid and independent assessment of those operations.

To shift back a bit closer to the terms of reference, I will talk about some broad areas of regulation. Uranium is given a unique status under federal environmental impact assessments

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and export controls. Practical regulation of mining operations remains less effectual than in other hazardous industries. In South Australia, uranium mining remains exempt from the Environment Protection Act and the actual active regulation of the EPA, and there is no on-ground federal monitoring of operations. There have been repeated incidents at mines in both South Australia and Kakadu that demonstrate a clear failure of existing regulatory regimes to improve mining practices once they are in operation.

Moving on to concepts, the first concept is about monitoring. There needs to be adequate and effective monitoring of radioactive release into the environment. The physical nature of radiation and the mechanisms of release make monitoring a very difficult task. However, steps can be made to expand the present monitoring and allow for assessment, independent of the mine operator. In general, monitoring on sites remains periodic, rather than continuous, and it does not cover the spectrum of potential radiological exposures or release. The location of monitoring stations in most cases is not sufficient to assess intermittent and accumulative impacts. Aside from long-term accumulation of radiation, potential worker exposure is a very significant issue. The current practice in assessment of human exposure continues to use risk analysis with acceptable worker and accident doses above a general population dose. In the history of the past 50 years, the acceptable level of exposure for humans has exponentially dropped, and we believe that that will continue, even with further scientific evidence to say that there is no safe level of radiation exposure.

In this context, there remains no government collection of records to assess long-term health impacts of workers. Given the health impacts now recognised with asbestos mining, for example, long-term health assessment should be a public duty of care. We believe the actual assessment of worker doses over a long period of time is a significant issue that could expand regulation. It is a duty of care. We believe that there are obviously broader impacts. We have seen litigation to do with smoking and asbestos. We believe that the recognition of or some work in assessing the long-term impact to workers would be in the public interest.

Regarding reporting, recent incidents in uranium mines have not been promptly reported to authorities or to the public. It should not be the judgment of the mine operator as to whether reporting should be made or whether it is in the interests of the broader community. That should not be a decision that the proponent takes.

Beyond monitoring and reporting, we believe that there needs to be some enforcement and penalty mechanisms. Comparable incidents involving the discharge of pollutants occurring in other industrial operations would face significant penalties or be shut down. Impacts on artesian water in an arid region or World Heritage wetlands should attract the same penalties associated with discharge of industrial pollutants into an urban sewer. When I relayed the examples of Honeymoon and Beverley to a person I know who has worked in the paper manufacturing industry, he was alarmed. He worked at quite a high level in a management position. He said that their operation would have been shut down and severely fined if they had conducted the same sorts of impacts. These repeated impacts show a clear failure by both mine operators and regulators to empirically improve operational practices. Friends of the Earth is interested in those issues of reporting and monitoring, but what we ultimately want to see is improved environmental performance. That should be the key aim of the Senate inquiry.

One example of the failure to improve performance is the Olympic Dam fires. The Olympic Dam operation had two major kerosene fires in the immediate vicinity of a concentrated

uranium oxide plant in the last two years. Kerosene, which is used as a solvent in the uranium extraction process, is stored in an open pool. It is basically out in the desert. There is a pool that is probably twice the size of this table, which has kerosene. It is within 20 metres of the uranium extraction plant, which is where uranium is extracted from the other ore process solution and where it is concentrated into uranium oxide. The official reports from each of the fires, which happened within 12 months of each other, said that the flames were reaching 50 to 100 metres and that there was a plume of smoke that extended 30 kilometres. We believe that such an extreme fire should never have occurred within the vicinity of concentrated uranium, and to be repeated within 12 months is gross negligence. This example demonstrates an absurd design failure that should have been identified firstly in the EIA assessment process, but to repeat that same incident shows that it is a clear failure by regulators to amend operating practice based on experience. Kerosene should never have been stored in an open air situation in such a dry and hot environment and in such close proximity to uranium. But for that accident to happen twice within 12 months shows a total failure for both the operator and the regulatory framework to improve the performance.

Another example is at the Beverley uranium mine. Over 20 major spills involving mining solution have occurred at the site within the last two years of operation. During the EIA process, the company Heathgate, or US General Atomics, had claimed that the operation was a closed system and, as such, there would be no release of radioactive material to the surface environment. Since operation, the company has publicly denied impact rather than commit to improved practice. We do not believe that it is appropriate for the company, once it has been given approval in such a controversial context, to say that this is not a problem. We believe that this company has an obligation to actually improve that performance.

Given the repeated, and at times, chronic incidents, the present regulatory structure fails to enforce environmental protection. Regulation requires independence and potency to deliver effective control over mining operations. In South Australia, regulation remains primarily with the Department of Primary Industries and Resources. This department is responsible for facilitating mining exploration and project development by private companies. This relationship fails to provide the independence or disinterest required to establish firm regulation. Further, to have measurable impacts on operators practice, regulators must have active powers of enforcement. Given the nature and repetition of these incidents, there needs to be a stronger use of financial penalties combined with the suspension or revocation of operating licences.

Friends of the Earth is aware of detailed submissions to the Senate inquiry by the Environment Centre of the Northern Territory and by the Australian Conservation Foundation. We fully support their recommendations. We also support submissions by the Gundjehmi Aboriginal Corporation, who represent the Mirrar community. I understand that a witness who represents the Adnyamathanha people presented in camera to the committee in Adelaide.

Given that we believe that the Territory government is failing as a lead regulator based on its track record, we would reinforce the fact that there needs to be the following: increased independence of the OSS in that role; a transfer of regulation from the Mines Department to the EPA in South Australia; an increased role for Environment Australia and possibly a set-up similar to the OSS in that state; a bond for the ground water impact taken out by companies involved in ISL mining; a clear requirement for those companies to rehabilitate ground water and the potential for an EPB assessment for the Beverley project. We note that the Honeymoon

project is not an approved mine at a state level yet. That is my opening statement, and I hope it was not too lengthy. I am open to questions.

**CHAIR**—What do you say to the claims by the mining industry and by the Office of the Supervising Scientist and others who presented to the inquiry that the leaks, the excursions, the accidents and other events have not been shown to have damaged the environment? Whose responsibility is it to demonstrate that?

**Mr Thompson**—We view mining as a privilege, not as a fundamental right. It involves the Commonwealth—the wealth of the Australian people—and a private company undertaking a project for commercial gain. I appreciate there are royalties paid to governments which expand the public interest, but that needs to be balanced by governments in the initial decision making. Furthermore, based on the fact that it is a privilege, the company has to be able to prove that it is effectively managing its operations. Friends of the Earth does not believe that you can effectively manage uranium mining; it is intrinsically hazardous. At every stage you will have the release of radioactive material. In talking about the technical impacts and whether the levels of radioactivity are harmful to humans and those sorts of things, a lot of those frameworks, with a lot of technical jargon, are basically rules of thumb. We believe that there is a continual accumulation of radioactive material within the environment from uranium operations and that continues to increase the background radiation. In the example of the Olympic Dam fires, it is very contentious whether there was any radioactive release. The company claims that there wasn't and that they set up monitoring stations within the vicinity—one half a kilometre away to the east and another possibly one kilometre to the north.

If you look at the mechanisms of fire, everybody knows what a bonfire does when you burn stuff. The material burns and it goes straight up and that plume extends for 30 kilometres. When it settles on the ground you are probably not going to pick it up with conventional radiation monitoring devices. But if you are a kangaroo and you are grazing on that grass there you are going to ingest the uranium. If you are an Aboriginal community or another community across South Australia which is eating kangaroo meat that radioactive material is going to start to enter the food chain.

Radiation is a very funny thing. With uranium—I would not advise it—it is probably reasonable that you do rub it on your hand. The impacts from uranium are more specifically due to inhalation or ingestion, so if you are actually absorbing these particles the impacts will affect the soft tissue that is inside you much more. When you get to the end of the nuclear cycle and you talk about radioactive waste there is a greater hazard from gamma radiation, which is very dangerous to stand in the vicinity of. These impacts are not recorded effectively by the present monitoring program. Firstly, we do not know the genuine impact in terms of the monitoring capacity but also it is very hard to get clear information because some of that information has been diluted or filtered through company processes and reporting.

**CHAIR**—Thank you. You suggest that the Office of the Supervising Scientist should be changed in some way to increase its independence. Do you have some suggestions to make about that? The Office of the Supervising Scientist claims to be independent over the mining company. What is your view about that?

**Mr Thompson**—My general experience has not been in great detail in the regulation within Kakadu. I would refer specifically to the ACF and the ECNT submissions on those aspects. My

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broad understanding, just in brief, is that there has been a stepping down of monitoring for company monitoring and that the OSS has removed its operation from Jabiru and is now based in Darwin, so that is a sporadic on-site presence. That is a concern in accumulation of evidence of things that are going on.

The other comment is this. Just recently there was a report or a media release just before the Senate committee first met in Darwin. I think it was released on the Friday before by the environment minister. We think it is inappropriate that the Office of the Supervising Scientist is actually a spokesperson in that context defending what appears to be a political position by saying that things are okay. There needs to be a greater independence of those regulatory bodies and the public service from ministerial positions on these issues.

**Senator CROSSIN**—What do you believe would be achieved if the Commonwealth undertook another assessment of the nuclear industry similar to the Fox inquiry? In fact, should it be similar to the Fox inquiry or should it have different terms of reference? What do you think could be achieved by that?

**Mr Thompson**—If we are serious about accepting the ESD principles—and I assume we are because it was legislated by the previous session of government—then that ultimately says that as we go forward with industrial development we need to be mindful of and responsible for that life cycle impact. This is not a concept from the greenies. This is, as I understand, now an accepted industrial practice and is certainly accepted by governments across the world and specifically in Europe. It is quite clear that the nuclear cycle has been probably one of the most controversial industrial practices of the last 50 years.

On those two points, Friends of the Earth believes that Australia does actually have a responsibility. Some industry and different ideologies believe that once it has left Australia it is somebody else's problem, but that does not weigh with us as being a responsible international citizen. If there is a clear impact from that industry then we actually need to take a role as both community and governments in actually reviewing whether that is an appropriate industry in a global context. If we are living in a global world we need to actually make an assessment and make a contribution, as opposed to just making a short-term financial export gain from that.

Apart from being a responsible international citizen, the other part is the reality of the boomerang—it is going to come back to haunt us. Australia has clearly been a target as an international waste dump. It is not because we are a great democracy; it is purely because we have potential sites for radioactive waste. No-one overseas has found a solution for high-level radioactive waste. For the last 30 years the industry has said that it is okay but there is no established site in the world that is accepting high-level radioactive waste which is the end result of using Australia's uranium. People are looking around. The Australian community is very opposed to Australia being targeted for that but it is ultimately a direct result. People argue that because we sell it we do have a responsibility.

**Senator CROSSIN**—Are you suggesting that a Commonwealth assessment would simply determine whether we should mine uranium and, if we do, what we would do with the end result?

**Mr Thompson**—If the government has the capacity to approve or disallow projects, it is appropriate that it is fully aware of the impact of those projects. Friends of the Earth argue that,

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if the Australian government made an independent assessment of the nuclear industry, it would realise that uranium was not in our best interests for commercial development. There are other industries that we could back that would give Australia the same financial benefit.

**Senator CROSSIN**—What if the assessment came to the reverse conclusion? You are pre-empting a new assessment of the nuclear industry. What if there is an assessment that mining uranium is satisfactory as long as there are certain procedures and monitoring in place?

**Mr Thompson**—That could be the case. I would certainly hope not. I think there is an overwhelming amount of evidence across the world that comes from scientific and community experience—apart from submissions put by the industry—that suggest that this is not a viable industry. Australia has banned asbestos mining. It was quite a simple task in the end. It had a significant impact on people. The nuclear industry has the same impacts. It is a hazardous carcinogenic material. Ultimately we are weighing up whether the financial gain for Australia is worth the impact to health. We believe it is not. We would hope that a government would come to a similar decision about the care of its community.

**Senator CROSSIN**—You have said that you believe that if the initial EIA or EIS stages were more stringent, there would not be problems further down the track. What is it about the initial stage that you believe needs to be improved?

**Mr Thompson**—It is a twofold thing. My understanding of the policy positions of the major parties in Australia is that they are opposed to the expansion of uranium mining. When there is a government that has a policy that supports uranium mining, that is clearly a concern for us. We would bring in the option of having an investigation into the broad cycle before we go ahead with those decisions. It is obviously inappropriate to do a specific assessment of a project each time but if you are talking about site-specific assessments, there has been a failure to adopt the issues set out in the act. We have made decisions for approval that have not looked at the basis of scientific uncertainty, and that is quite clear in the Honeymoon and Beverley examples. There is clear scientific uncertainty about the impacts of ground water contamination and there has been a failure to rehabilitate. These are practices which either do not occur overseas or occur where there is a clear commitment to rehabilitation. Those are clear examples where approval has been given in spite of clear evidence that has been put forward during the assessment process to say that either there should be discussion about rehabilitation or there should be discussion about not approving that specific project.

**Senator WONG**—I am just trying to focus a bit more closely on our terms of reference and I am particularly interested in South Australian mines. I understand your complaint about Beverley and Honeymoon as being that there was a flawed EIS process and consequent approval process at the Commonwealth level and that that has ensured that there are systemic problems associated with those mines. From this committee's perspective of trying to analyse that, there seem to be two issues. One is that we may look at what would have been a better EIS approval process and the consequent Commonwealth approvals, and the other is what measures, if any, the Commonwealth could take now to improve the performance of those mines. Do you have any submission to make about that second issue?

**Mr Thompson**—Now that they are operating, we believe that there should be a reassessment of the ground water impact, that there should be discussion about a bond that is placed by the company relating to ground water and that there should be a clear review for the Beverley

operation. The discussion required about Beverley is twofold. One is the rehabilitation of ground water and the other one is that there is no liquid disposal of the radioactive waste accumulating in the process. It would be appropriate to go forward with that under the EPBC Act as part of the EIA process. The EPBC has the powers to do that to assess a different aspect of a mine's operation.

**Senator WONG**—Even after the approvals have been obtained?

**Mr Thompson**—Yes. The requirement is that the environment minister makes a recommendation that that aspect is assessed under the EPBC Act.

**Senator WONG**—So, essentially, it is the rehabilitation of ground water and you do not wish to see any of the liquid solution reinjected into the aquifer.

**Mr Thompson**—Yes. We do not want to see any of the liquid waste discharged.

**Senator BUCKLAND**—In relation to your comments on Honeymoon, you draw your conclusions from, and seem to base your references largely on, Dr Mudd's work. We took evidence from him in the Northern Territory. Is Dr Mudd a member or employee of Friends of the Earth?

**Mr Thompson**—He has been a consultant to Friends of the Earth. He obviously shares the policy positions of our organisation.

**Senator BUCKLAND**—I respect that. I just wanted to establish the link between Dr Mudd and Friends of the Earth. He is a consultant to Friends of the Earth, so is he a paid consultant?

**Mr Thompson**—No, he is a consultant in a voluntary capacity.

**Senator BUCKLAND**—I see you have about six or seven references to articles that he has written. Do you know how those articles that he produced that you rely upon are funded?

**Mr Thompson**—Gavin Mudd now has a PhD in hydrogeology. The papers that he has written have been either part of his academic work that has been supported by a tertiary institution or papers that have gone through the formal process of peer review and then been tabled at international hydrogeology conferences.

**Senator BUCKLAND**—He was certainly impressive to listen to when we were there. On page 4 of your document you talk about the long-term impact and the key issue of ground water impact. He is a hydrogeologist, so I understand that. You refer to the technical assessment methodology and say that it was based on a series of inadequate assumptions. Can you expand upon that a little for me? Why are they inadequate assumptions?

**Mr Thompson**—With the assessment process for the Honeymoon mine, there was clear controversy over the Beverley approval about whether the ground water aquifer is contained, whether it is like a box. The hydrogeological data from Honeymoon said that it is clearly not contained, that it is open at one end. So the debate surrounded not whether it would move but ultimately how fast it would move to the connected aquifers. During that assessment process,

there was a series of contributions put by environment groups that were very concerned that the modelling had not been adequate. Environment Australia took an additional step in its assessment and hired a consultant to look at those issues. From that assessment, we believe that the modelling was not adequate, that it was not rigorous or independent, and that the decision at the end did not prove that there would be what is called an ‘attenuation’—basically, that the movement of the fluid slows down and starts to stagnate within the ground water body.

**Senator BUCKLAND**—Has Friends of the Earth commissioned studies to counter the industry’s views? Have you done your own studies to examine the likely, possible or true flows of water through the aquifer?

**Mr Thompson**—The great catch with this issue is that you need data to make that assessment and the community has not had access to the data to make that independent assessment.

**Senator BUCKLAND**—What does Dr Mudd base his conclusions upon if he has not had access to that data?

**Mr Thompson**—His is a review of the methodology and it was undertaken by a PhD student. With due respect to the person involved, he was a PhD student who was completing his studies. Previously, part of his project was involved with the Honeymoon mine, so he had been to the site and had worked with the company. We would have expected somebody with more significant experience in the area and in that field to make the assessment. Having said that, the modelling that was used was not based, as I understand it, on the data either. It was based on a series of tests that were taken on site and it did not incorporate the detailed data. So it was basically a computer model of what could happen. In a computer model, you can put in various factors and it will give you a result. If you are not actually putting in the core data from the trial mine operation over the last three years and also the trial mine operation in 1981 then you are not getting a realistic model or result from that.

**Senator BUCKLAND**—The computer modelling is reasonably accurate on most occasions though, isn’t it?

**Mr Thompson**—I am not an expert in the field but I understand that there are a whole series of mechanisms and that it is not just an issue of flow of water but that there is a chemical relationship that relates to attenuation. The mining solution—the sulfuric acid and other chemicals that are either injected into the ground water or released during the process of dissolving—affect the ability of the uranium to attenuate, to slow down.

**Senator BUCKLAND**—Or to stop moving at all?

**Mr Thompson**—Yes. It is not just an issue of ‘Have you increased the mobility due to pressure from the pumping process?’ but ‘Have you increased the mobility just due to the fact that you’ve dissolved the material that was once actually part of the sand base in that aquifer?’

**Senator BUCKLAND**—I want you to understand that I respect the position you take. We may not agree on a lot of things. You made a comment that uranium is a hazardous and carcinogenous process. I think that is known; I would not dispute that for a moment. It worries me that those comments are made and relied upon when, in fact, we have coalmining and

coking operations that are probably, from the data I have available to me, more hazardous and more carcinogenous. Could you tell me what your position is on that, because there do not seem to be any efforts to stop coalmining?

**Mr Thompson**—There are. I do not think that we should be in a position where we are constrained in decision making about what we do in the future for our energy source by the industries that we are already involved in. There are obviously clear impacts from coalmining for workers' health and for communities surrounding that area, in terms of particular pollution. Obviously, in a broader sense, it is a very significant player in global warming. These are decisions which environment groups are bringing to the community and to the public forum for discussion. We are basically trying to put forward what we understand is scientific evidence and community experience, not just in uranium mining but in other industrial processes, for discussion and debate. We are never at a point where we are constrained in what we actually choose to do in terms of our capacity in the future. I understand the argument, but the Friends of the Earth position is that we have a capacity in Australia as a democracy to make decisions about our energy mix for the future, which should not be constrained by the position we are in.

**Senator WONG**—You criticised one aspect of the technical assessment of the impact of the mine for the EIS—that is, the studies and data presented by Mr Pirlo. Is the primary nature of his analysis the attenuation model—that is, assumptions about when the liquid solution, once reinjected, will then revert back to its constituent parts? Is that correct?

**Mr Thompson**—Yes, that is correct.

**Senator WONG**—Was a peer review taken of that aspect of his studies that you are aware of?

**Mr Thompson**—I understand that there was a peer review. Our concern is that there was a peer review that said 'If you've nominated this form of modelling, do your methodology and results support that approach?' Our concern is that it was the wrong approach from the start. It did not prove clearly whether there would be attenuation. It does in the modelling. If you limit the parameters of the modelling you will get that result, but if you look at the real parameters in that system the result is uncertain.

**Senator BUCKLAND**—I think you were here earlier today when we had the previous witness before us. One of the criticisms that I have picked up during this inquiry has been the view of the Indigenous people to the dissemination of information. Indeed, one aspect that was covered by Dr Mudd in his evidence was getting that information to be understandable. If that was satisfied and the Indigenous people were satisfied that the process was safe to them, would that alter the view of Friends of the Earth?

**Mr Thompson**—We have a strong respect for the rights of traditional owners to determine what happens on their land. If they chose to support a mining operation, we would respect that position but we would continue to oppose the projects because we believe that there are environmental impacts at the site. It is also our opposition to the broader industry. Just on that point, and I understand the line of questioning to Rio Tinto, our concern has been—and it fits in with those introductory comments—about the industry approach and, for example, the global mining initiative. We are very concerned that this is a public relations exercise. Companies are going into communities that do not necessarily have an independent expertise in those fields

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and an ability to translate that information into language or culturally appropriate material. We would be concerned that the company was able to do that without some sort of independent observation of that process.

The other clear point is that when a community says no, it is not appropriate, we believe, to continue the process of wearing that community down. Whether that is through continual information dissemination or offers of various opportunities, or whether it is financial and those sorts of aspects, health and education should be services that are provided by government. Access to employment should be in the interests of the government. It should not be a trade-off that companies have for access to mineral wealth.

**Senator BUCKLAND**—Thank you very much. I appreciate that.

**CHAIR**—Thank you, Mr Thompson, for presenting to us today. Just before we move on, the committee has been given two documents, which I think you all have a copy of. They are ‘MMSD and Beyond: preconditions for effective engagement’; and the report ‘Independent Review of Reporting Procedures for the South Australian Uranium Mining Industry’.

**Proceedings suspended from 10.32 a.m. to 10.42 a.m.**

**KERR, Mr Michael John, Legal Adviser, Australian Conservation Foundation**

**SMITH, Mr Wayne Christopher, National Liaison Officer, Australian Conservation Foundation**

**SWEENEY, Mr Dave, Nuclear Campaign Coordinator, Australian Conservation Foundation**

**CHAIR**—I welcome representatives of the Australian Conservation Foundation. We heard from your colleague David Noonan in Adelaide on 4 October, who discussed the South Australian situation. As I understand it, you are here to discuss the Northern Territory projects and the legal aspects of the Commonwealth system of regulation. Is that correct?

**Mr Sweeney**—We are also going to touch on the South Australian concerns as well.

**CHAIR**—The committee has your submission before it, which we have already published. Mr Noonan advised us of two corrections to that written submission. Are there any more, before we proceed?

**Mr Sweeney**—No.

**CHAIR**— The committee prefers all evidence to be given in public, but should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in private, you may ask to do so and the committee will consider your request. I now invite you to make an opening statement, after which we will go to questions.

**Mr Smith**—Thank you. As mentioned before, I am the National Liaison Officer with the Australian Conservation Foundation, based in Canberra. Dave Sweeney is our nuclear coordinator and he will be giving an overview of ACF's submission and talking about issues to do with the Northern Territory and South Australia. Mick Kerr will be talking about a particular case study in relation to ERA. I will hand over to Dave Sweeney.

**Mr Sweeney**—I would like to start by thanking very much the senators for the opportunity to present here today and for the attention given to this important issue by this inquiry. ACF believe, in the big picture, that overall Australian uranium mining operations are characterised by underperformance and underreporting. We believe that there is a serious and growing lack of public confidence and credibility in the conduct and impacts of this sector, and that there are systemic regulatory deficiencies. We very much welcome the committee giving its attention to these issues.

I would like to take a moment of the committee's time today to talk broadly and briefly to the submission that ACF have provided and to give a snapshot of the national situation as we see it, as well as some suggestions for improvement or at least reduction of adverse impact. I would then like to pass to Mick Kerr, the legal adviser for ACF, to look in a little more detail at some of the examples that characterise ERA or Rio Tinto-ERA's operations in Kakadu as a highlight of the deficiencies that exist in the current regulatory pattern.

In relation to operations in the Northern Territory, the committee has been looking at the stalled Jabiluka project and the operating Ranger mine. In relation to the broader Territory regulatory system, ACF believe that the Department of Business, Industry and Resource Development, DBIRD, and their predecessor, DME, the Department of Mines and Energy, have fundamentally failed as regulators. That is one of our key concerns about the whole aspect of uranium mining in the Northern Territory. We believe there is a persistent pattern of non-enforcement of existing regulation; we believe there is a high degree and an unacceptable degree of regulatory capture; and we believe that the regulator's role is inconsistent with the other aspects of the department's functions, which include industry support and the provision of information, back-up, and technical and other support to the mining industry in the Northern Territory.

The site-specific issues in relation to Jabiluka are continuing and controversial. It is unfortunate that I missed the presentation from Rio Tinto this morning. We will be looking at the transcript of that with keen interest, as we look at all of Rio Tinto's actions and comments on this matter. We believe this is a matter that Rio Tinto will be judged on and weighed on, in relation to their commitment to wider corporate aims and commitments, including the Global Mining Initiative and the Mining, Minerals and Sustainable Development Project. We see their performance and positioning on Jabiluka as a key litmus test of the credibility of their other commitments. We see a growing tension between the unequivocal statements of Sir Robert Wilson, the chair, and the 'keep listening' position of Robert Cleary, General Manager of Energy Resources of Australia.

ACF believe that all Commonwealth and NT agencies with a role in this issue should now be working actively to facilitate the rehabilitation of the site and the retirement of the Jabiluka mineral lease. We believe that this course of action is consistent with meeting our international World Heritage obligations. We believe it is consistent with Rio Tinto's stated commitments. We believe it is consistent with community expectations and the clear aspirations of the area's traditional owners, the Mirrar people. We also believe and note for the committee's information that it is consistent with a resolution made yesterday in the 46th meeting of the Australian chapter of the International Union for the Conservation of Nature. I will read that resolution for the record:

ACIUCN welcomes the recent statement from Rio Tinto's Sir Robert Wilson in relation to the rehabilitation of the Jabiluka mine site. ACIUCN notes that the IUCN, the International Union for the Conservation of Nature, has previously supported rehabilitation of the Jabiluka mine site. ACIUCN urges Rio Tinto to commence discussions with traditional owners and other stakeholders with regard to the rehabilitation of the Jabiluka mine site. ACIUCN further urges Rio Tinto to initiate discussions with traditional owners and the Northern Territory and Commonwealth governments about the future of the Jabiluka mineral lease. ACIUCN acknowledges and supports the view of traditional owners that following full rehabilitation, the Jabiluka lease should be retired and that the area should be handed back to traditional owners for incorporation into Kakadu National Park.

That resolution, which we see as both modest and positive, was passed unanimously yesterday by ACIUCN. I am sure that senators are aware that the Australian government is a party to ACIUCN. So we see this as a positive step forward and one that needs to be reflected in clear, staged and immediate action to rehabilitate the Jabiluka site, reduce the threat, retire the Jabiluka mineral lease and fold that lease back into Kakadu National Park and the World Heritage area.

In relation to the adjacent and operating Ranger mine, we believe that it is cutting costs and corners and we believe it is underperforming. It is not paying a dividend to its shareholders this

year, it is not profitable and it is suffering increasing stress and pressure on its management systems, its internal process systems and its infrastructure. We believe that there needs to be increased monitoring points at Ranger. We believe there needs to be increased event based monitoring at Ranger. That monitoring needs to be interactive and active. Given the failure of the Northern Territory regulator, there is an urgent need for a review and an increase in Commonwealth presence, role, resourcing and responsibilities. We believe there needs to be clear movement towards rehabilitation, closure and the implementation of an exit strategy at Ranger.

We believe there is an urgent need to facilitate the process of clarifying the roles and responsibilities between the multilayered agencies that exist in relation to this area, and we call on this committee to help. The committee will be aware of the complexities of tenure, of responsibility and of jurisdiction. We strongly support calls from Gundjehmi Aboriginal Corporation and others who are calling for greater clarity, greater role definition, greater responsibility and allocation of task and responsibility. We are concerned that there is a growing web of memorandums of understanding, informal agreements and ad hoc advisory committees that have an operational status but no legislative or regulatory or recourse or reporting status. We commend to your attention the recommendations in the ACF submission as part of the way of resolving what is an unsatisfactory and continuing situation.

If I could briefly move south into South Australia, we believe, again, there are two problem sites. In some ways it is similar to the Northern Territory, where there is a stalled site and an operating site. There are two sites that the committee looked at, visited and examined information on over this period. One of them was Honeymoon. In the view of ACF, Honeymoon is clearly not an approved mine. In the course of this inquiry it has been revealed that Honeymoon lacks a commercial uranium mining and milling process or licence. I believe that was spoken to in considerable detail by my colleague David Noonan in his presentation in Adelaide. We believe that it is not an approved mine. It is clearly not an agreed and fully authorised and operational facility, and there needs to be movement towards facilitating the rehabilitation of the site and the retirement of the lease.

In regard to the operating Beverley mine, ACF views with concern that Beverley uses a technique that is not applied commercially in any other Western nation, being acid based in situ leach mining. We support strongly claims by Friends of the Earth and others that there should not be the discharge of liquid mine waste to ground water. We see this as inconsistent with movement towards increased responsibility and increased sustainability of processes. We believe there should be a bond to cover ground water impacts, the same as there is for surface impacts. We believe that there should be a requirement to rehabilitate ground water to pre-mining standard. Given that the assessment process was partial and segmented and, we would say, ad hoc and given that the main technique that is used for waste management at this mine is the liquid disposal of radioactive waste—which we believe is unacceptable—we believe there should be a new public environmental assessment process involving Commonwealth agencies to revise, detail and examine Heathgate Resources' revised waste management plan at Beverley. We believe that there should be a more active Commonwealth role in relation to overseeing the South Australian mine, particularly through the Beverley environmental consultative committee—a committee that we maintain has simply failed to realise its responsibilities—and through the input and dissemination of appropriate and applicable industry codes and standards and guidelines.

We further welcome the move that is currently happening in South Australia away from PIRSA—Primary Industries and Resources South Australia—having regulatory oversight and towards a dedicated focus of South Australian EPA. We believe that makes more sense; we believe it breaks the connection, the perception and the reality of the regulator being too close to what they regulate. We believe that it is more in line with community expectation and national and international best practice, and we commend South Australia for that and commend that model to the Northern Territory.

In conclusion, ACF believes that uranium mining is a complex, problematic, hazardous and always contentious industry. We maintain that the existing operations are falling well behind community expectation and that they are in urgent need of review and in urgent need of change. We welcome the committee's attention to this and we very much support recommendations that you, as a committee, can make that can facilitate increased reporting, increased monitoring, reduced impact and increased attention to what we see as an underperforming industry. I would be very happy to take questions from the committee on a whole range of issues. I think the value of the Northern Territory regulator is particularly a key concern for ACF. With the chair's consent, I would like to hand over now to Michael Kerr to provide the committee with a more focused example of the sorts of concerns and the sorts of regulatory failures that we are trying to see addressed.

**Mr Kerr**—As Wayne mentioned in the introduction, I am a legal adviser to the Australian Conservation Foundation. I am also a legal practitioner admitted as a barrister and solicitor in the Supreme Court of Victoria, where I was admitted in 1997. I have provided the committee with a document that I have prepared. This is basically a case study outlining the contraventions of Commonwealth and Northern Territory legislation by ERA arising from the incident which has become known as the incorrect stockpile incident at Ranger mine in January and February 2002—that is the description that ERA itself gives the incident.

I would like to take you through the document very briefly. I understand that you will take it away and read it, but I would like five minutes to take you through some of the important points. Pages 1 and 2 deal with the incident itself and set out the nature of that incident. I trust that all committee members have a copy of the paper in front of them. Basically there are three components to the incident. Firstly, there was the incorrect stockpiling of fresh or uncompacted material on the grade 2 stockpile at the Ranger mine site. That was contrary to the approved management plan that was in operation with respect to the stockpiling of such material.

The second aspect to the incident was the fact that the incorrect stockpiling resulted in higher than normal concentrations of uranium being detected in water at the entrance point to the Corridor Creek wetland filter system. On page 2 I have detailed those higher than ordinary concentrations of uranium in the water recorded by the Office of the Supervising Scientist and by ERA. You will see that they first emerged on 29 January 2002 and went through to 20 February 2002. The measurements ranged from as low as 31.95 times greater than the Australian drinking water standard to as high as 114 times greater than the Australian drinking water standard—which is as high as 2,287 parts per billion of uranium in the water at that entrance point.

The third aspect to the incident was that ERA's employees—despite the fact that they were aware of the higher than normal concentrations of uranium in the water as early as 29 January—failed to report those recordings to the appropriate authorities and stakeholders until 26

February 2002, which is almost a full month after they first became aware of that. It is my contention, and the contention of the Australian Conservation Foundation, that this has resulted in contraventions of the Commonwealth and Northern Territory legislation dealing with the mine: firstly, the Commonwealth Atomic Energy Act 1953 and, secondly, the Northern Territory Mining Management Act 2001.

I have broken the contraventions into two parts for the purposes of this paper. The first part deals with contraventions of the Atomic Energy Act. You will note that, basically, if the Commonwealth environmental requirements governing the Ranger uranium site are breached, this constitutes an offence under section 41D of the Atomic Energy Act—it is a strict liability offence.

**Senator WONG**—That section gives legal effect to the environmental requirements, does it?

**Mr Kerr**—That is correct. There are two important things that I would like to take you to. There are a number that I have mentioned here but I would like you to take you to the environmental requirement at 7.1 which, if breached, constitutes an offence under the Atomic Energy Act. It states:

All excavated material must be managed such that there is no detrimental environmental impact outside of the Ranger Project Area, and—

most importantly—

that environmental impacts within the Ranger Project Area are as low as reasonably achievable.

In my submission I state why ERA's actions with respect to that incorrect stockpiling incident constitute a breach of that requirement. If they breached their stockpile management plan—and the Office of Supervising Scientist state that they did—they have effectively breached ER 7.1 because they have not managed all excavated materials on the site so that there are no detrimental environmental impacts within the Ranger Project Areas and so that they are as low as reasonably achievable.

I would also like to take you to page 4, ER 16.1(c), which is the reporting requirement. I stated before that ERA was aware as early as 29 January of higher than normal concentrations of uranium in the water yet they failed to disclose that recording to the Aboriginal community and the broader public until 26 February. That is almost a full month later. You will note that 16.1(c) says:

The company must directly and immediately notify the Supervising Authority, the Supervising Scientist, the Minister and the Northern Land Council of all breaches of any of these Environmental Requirements and any mine-related event which ....c) which is of or could cause concern to Aboriginals or the broader public.

It is my contention that a reading of 114 times the Australian drinking water standard of uranium concentrations in water would be the kind of thing that Aboriginal communities in the area would be concerned about.

I will move on to contraventions of the Mining Management Act. They are quite similar in some ways to the environmental requirements and draw on them quite extensively. Section 29 is a similar reporting requirement. Again, we allege that the failure of ERA to report that to the

appropriate authorities until one month afterwards constitutes an offence under section 29(1) of the Northern Territory legislation. Similarly, section 39 deals with the authorisation that is granted to the mining operator, which is ERA. They have breached that authorisation and I have referred to how they have breached that. Basically, the authorisation that is in place is known as the Ranger General Authorisation No. A82/3. It is a condition of that authorisation that ERA shall ensure that, during mining excavation, mineral processing and subsequently during and after rehabilitation, operations do not result in environmental impacts within the Ranger Project Area which are not as low as reasonably achievable. The fact that they breached their own stockpile management plan constitutes an offence under section 39.

That is enough of the offences. I have outlined them clearly there, and there are several of them. I just want to point out that this latest incident is not the first incident at the Ranger mine site. I have attached a document which outlines, as I counted them, 178 incidents that have occurred at the Ranger mine site over roughly a 20-year period. We have updated that document and I think we have attached it to our primary submission. It now includes the 2002 incidents at the mine site as well.

The most important incident to point out, I think, is one which took place in the year 2000 involving a leak of about two million litres from the tailings return pipeline. ERA first detected that problem on 29 March 2000, but failed to notify the authorities until 28 April. Again, that was a failure in their reporting requirements. In a letter to the Supervising Scientist dated 19 May 2000, in an effort to explain what had occurred and what they were hoping to do, R.A. Cleary, Chief Executive of ERA, stated:

... the actions taken and planned by ERA in response to the investigation of this incident are extensive and far reaching, and will hopefully satisfy your Minister that the Company has treated this matter seriously and has responded accordingly.

It is my contention that they have not responded accordingly. They breached their environmental reporting requirements in the year 2000 and they breached them again in the year 2002, yet we have a situation where a number of breaches of Commonwealth and Northern Territory legislation have occurred in this latest incident. I provided you with a sheet of incidents that have occurred over the past 20 years, yet no charges have been brought against the company ERA for the breach.

I pointed out before that the breach of the Atomic Energy Act provisions that I have alleged is a strict liability offence. I think we all know what a strict liability offence is. It is like a parking ticket. If you park in the wrong spot—it does not matter why you did it or what reason you have—you are guilty of an offence and you will get a \$100 ticket. The same thing applies to ERA. Their investigation report into this incident says that they incorrectly stockpiled excavated material onto a grade 2 stockpile. They have stated that they incorrectly did that. Taking that principle of an offence of strict liability, they would be guilty of an offence under the Atomic Energy Act. Likewise, their failure to report constitutes an offence.

I put it to you that there has been a failure by the Commonwealth and the Northern Territory officials to enforce their legislation. I have outlined for you a clear example of breaches of the two acts. I suppose it is part of a continuing pattern of a failure by Northern Territory and Commonwealth authorities to enforce their legislation with respect to the Ranger uranium mine site.

**CHAIR**—Just on that last point, the question of whether or not there has been environmental damage from various events, including the two million litres of water that you point to, has been pretty central to this inquiry. What is your response to the argument as a defence that, if it is not possible for anybody to prove damage to an organism, a system, the people of the Northern Territory or the traditional owners, there is no case to answer? Can I ask you to expand on that?

**Mr Kerr**—I think part of the problem is that we have always focused on damage outside of the mine site. I think that the authorities have said that, because there has been no damage outside the mine site, they are not going to be taking action against the company. If you look at the provisions closely, they relate to damage outside of the mine site and management of the mine site within the project area so as to minimise the environmental impacts to a point that they are as low as is reasonably achievable. With respect to impacts outside the mine site, they talk about environmental damage. But when you look at the impacts on the mine site itself, the extent of the environmental impact really does not make any difference. The point is that you have to manage your operations on that mine site so as to make sure that your impacts are as low as is reasonably achievable. If you manage it incorrectly and there is an impact, however small, I suppose you have not achieved your objective of managing it so that the impact is as low as is reasonably achievable.

**Mr Sweeney**—Further, we are concerned about the cumulative effects of radiation, radioactive materials and heavy metal contamination. We are concerned about the long-term impacts and containment of those materials in the pits for the tailings at Ranger. We are also concerned about cultural damage. This is a World Heritage listed area for natural and cultural values. The traditional owners have taken legal action against Energy Resources of Australia to stop or to change their practices. There has been significant documentation of people changing food practices or hunter-gathering practices because of concerns over impacts of contaminant in the food supply. So there is a range of impacts, there is a range of damage and there is the longevity of threat. It is far more than the Office of the Supervising Scientist taking some data—often supplied by the company—and saying that, at this point in time, it is all clear in Kakadu.

**CHAIR**—So how do you measure those cumulative effects?

**Mr Sweeney**—That is one of the challenges that faces a genuine regulatory regime. To be genuinely effective and to deliver community confidence and stakeholder confidence, there needs to be a regime that is robust enough, thorough enough and holistic enough to do that. At the moment it is not. There is great concern and disenchantment on the part of the traditional owners. I am not here to speak for them; they are well capable of speaking for themselves. But they have made very clear in a number of forums their level of disenchantment. There is great concern from the national environment groups—not just from one or two but as a national position. National environment groups are deeply concerned about the impacts of uranium mining.

I think what we are seeing is a regulatory system that is responding to public pressure on a case-by-case basis and giving each case a tick and saying, ‘There was no appreciable damage downstream and so therefore it is okay.’ It is not okay in the wider picture and it is not okay under the environmental requirements. They are the governing document—the primary document—for an environmental regime at Ranger, and the ERs clearly state that the Ranger project area is to be managed in such a way that it can be rehabilitated to fit into a future land

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use as part of Kakadu National Park with minimum interference. We would say that this focus away from Ranger project area impacts and onto Kakadu is a focus that suits the expediency of the mining company to maximise its operational flexibility, rather than to realise the intent or the specific nature of the ERs.

**CHAIR**—You point to the failures of the Northern Territory government department in properly monitoring and regulating Northern Territory sites and you call for more Commonwealth involvement. The Commonwealth is already involved in the Northern Territory and yet we have Ranger and we have Jabiluka and many incidents, and you point to the fact that we have not taken appropriate action. How would it benefit South Australia if the Commonwealth model, if you like, in the Northern Territory was repeated in South Australia, which I think is something that you suggest, too?

**Mr Sweeney**—If I can clarify that, I certainly do not suggest and ACF does not suggest a replication of the Territory model in South Australia. Uranium is recognised as a trigger mineral and a trigger issue under the EPBC. It is recognised that there is a legitimate and necessary Commonwealth role in the oversight of uranium issues. That is also recognised through uranium export licences and the procedures there under the Customs Act. So there is a recognition of a Commonwealth role and responsibility in uranium. What we are seeking to see is that role and responsibility reflected in an on the ground presence, and an active and interactive and effective presence.

At the moment in the Northern Territory the Supervising Scientist provides advice and the Supervising Scientist runs research programs. The Supervising Scientist is packing up its boxes to move to Darwin. It is increasingly a hands-off operation, a desk based operation; an operation that receives primary data from the company and assesses it. The ideal, or if not the ideal a preferable system, would be different. First of all, we believe there needs to be a parallel process. There needs to be a territory or state monitoring and regulatory framework. That is appropriate in the Commonwealth system.

**CHAIR**—In that the state department would move in and take samples directly?

**Mr Sweeney**—We want to see the breaking of an industry related department doing regulation. We believe the South Australian model is an appropriate state model whereby the state agency is a dedicated environment protection agency. The role of the Commonwealth would be to work with that agency to also play a role to ensure that all Commonwealth frameworks, guidelines and codes of practice were applied rigorously and made public. It would be in the provision of performance based and clear conditions on export licences and other regulatory tools that the Commonwealth has. It would also be to ensure that there is an increased and heightened transparency and understanding. There needs to be a delineation between the roles so that there is not this confusion—and I believe the term has been used—of ‘regulatory competition’. There needs to be a delineation so that competition is not there, and there is in fact enhanced regulatory cooperation and enhanced regulatory transparency and effectiveness.

We would like to see an increased Commonwealth role in South Australia. It might mean that Environment Australia rather than PIRSA becomes the lead agency in the Beverley Environment Consultative Committee and actively plays that role to table information and ask questions like, ‘How come there is a systematic series of leaks?’, rather than having a

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committee that, as part of the conditions of that mine's operation, effectively does not exist and which effectively fails to deliver.

The Commonwealth has points of intervention now within its existing framework which it could effect to improve the situation. The Commonwealth has a range of regulation and law, as Mick Kerr has pointed out, which it could apply. We are not asking for massive regulatory or legislative change, Senator; we are asking that the existing laws be applied rigorously and not in a sense of letting us facilitate further dialogue with the company and to have a self-monitored outcome. We are saying that self-regulation in the uranium industry is a patent failure. We understand that governments are sometimes loath to be seen as heavy-handed and onerous outside. But we also understand that, more importantly, government has as a primary responsibility of a duty of care for the Australian environment and for the Australian community. The Australian community's attitude—irrespective of whether they think nuclear power or uranium mining is good, bad or indifferent—is that it is dangerous, problematic and questionable and it need to be done effectively. There needs to be a transparent, independent, genuine watchdog. At the moment that is not happening.

**CHAIR**—So you say that Environment Australia's argument—and I probably will not be able to find the relevant section in their submission—that the Northern Territory government is the principal regulatory body is not correct and the current laws do allow the Commonwealth to intervene and to prosecute and to take the action you think ought to have been applied. Can I have that clarified?

**Mr Sweeney**—Yes. Our understanding of the legal situation is that, clearly, the Northern Territory government is the day-to-day regulator. It is charged with primary day-to-day regulation responsibility, but there are a range of existing mechanisms and instruments that the Commonwealth can use. We also—and I suppose this is our key point—believe that the Northern Territory government and the current regulated DBIRD have fundamentally failed and they do not reflect the duty of trust placed in that position of day-to-day regulator.

**Senator CROSSIN**—To follow on from there, I have a couple of issues. Mr McGill, the Director of Mines in the Northern Territory department, informed the committee during the hearings that the roles of that department have been split, that resource development has gone to the Chief Minister's department as the Office of Territory Development. They now maintain solely just a day-to-day regulation. Is that initial step in the right direction as far as you are concerned?

**Mr Sweeney**—I do not accept that is in fact the case. I do not think that is an accurate reflection of the current situation. I think that Mr McGill has not reflected their situation accurately. My understanding of the situation is that indeed the Office of Territory Development is now a part of the Chief Minister's office. That is indeed correct. The Office of Territory Development, as I understand it, has a focus on offshore oil and gas. It has a focus on mineral processing—value adding as opposed to mineral extraction. It has a focus on promoting and managing the Alice Springs to Darwin railway project and the Darwin East Arm Port project. Those four areas, as I understand, are priorities to be in the Office of Territory Development. That is indeed—to be correct and fair to Mr McGill—now firmly in the Office of the Chief Minister of the NT. The wider point, though, and the important point that is in danger of being missed, is that in Darwin—my colleagues from the Northern Territory Environment Centre

raised the point—there is concern over conflict of interest between an industry support role and an industry regulation role.

The fact exists that DBIRD, the Department of Business, Industry and Resource Development, is firmly involved in the provision of information, infrastructure, support and back-up to the mining industry. I could table this later, with the chair's consent. It was this week downloaded from the Northern Territory government's web site following Mr McGill's presentation in Darwin. It speaks of the key role of DBIRD being the flagship agency to deliver government programs and services to industry throughout the Northern Territory. It goes on to look at the various sectors within DBIRD. In relation to the Minerals and Energy Group, it says its role is promoting growth and development of the Territory's mining and petroleum industries through the delivery of advisory services and high quality geoscientific information. The group also provides regulatory services to mineral and petroleum exploration and extraction to ensure good practice in health, safety and environmental management.

I do not think it is a fair impression for the committee to have a view that all DBIRD mining group does is regulate. DBIRD mining group is the primary and most significant point of contact between the Northern Territory mining industry and the Northern Territory government. Its mission statement is 'to facilitate the mining industry through the provision of quality information and service'. Its subsection is to regulate. It is an industry body. We are very concerned. To be generous to Mr McGill, perhaps the misunderstanding happened with the use of the term 'development', because that task has been given to the Office of Territory Development inside the Chief Minister's office. But the concern about a clear, direct, daily linkage between an industry support function and an industry regulation function exists, and that is a concern we believe is reflected in the performance of DBIRD.

If I may make the point that Mick Kerr did, DBIRD did not see the 2000 leak as a breach. The Commonwealth saw that as a clear breach; the company saw that as a breach and acknowledged it publicly—DBIRD said there was no breach. We have the Commonwealth saying it is a breach, we have the company saying it is a breach, *mea culpa*, and we have DBIRD, the regulator, saying there is no breach. There is a persistent pattern of non-enforcement by DBIRD, and we see the confusion over the roles and responsibilities.

That was again obvious in Darwin. There was confusion over the status of the MOU between the Commonwealth and the Territory. After two years, despite there being an undertaking after a previous leak and despite a commitment being made publicly to the World Heritage Committee, to the international community, by the Australian and NT governments as one of their series of staged responses to the 2000 incident, there is complete confusion, complete uncertainty and absolute inaction from the department charged with heading these changed and revised working arrangements and MOU. Mr McGill said he was not aware of the public standing or otherwise of the document. 'I believe this is not a public document,' said Mr McGill. 'It is an appendage to the OSS report to this inquiry. No movement for two years. I must have some responsibility for that. It has fallen through the cracks.' How big are the cracks in Northern Territory regulation? What else is falling through the cracks? That is what we are concerned about, and that is why we, as stakeholders, have no confidence in DBIRD as the primary regulator.

**Senator CROSSIN**—In relation to some of the comments that occurred in the Northern Territory, I suppose, like you, Mr Kerr, I am a little baffled as to why we have had so many

incidents and as to why it has been proven the acts have been breached, the company has admitted the breaches and yet, under the strict liability offence, no-one has ever been penalised.

When I asked that of Mr McGill, his response—and I do not have the transcript with me, so I am trying to remember—was something along the lines of: before they make a statement about whether there has been a breach or not, they seek a legal opinion. I would have thought you could still make an assessment that there has been a breach, but then seek a legal opinion if you wanted to take action on what to do with that breach. Would that perhaps be your view about what should happen?

**Mr Kerr**—Yes, I would agree with that. Is Mr McGill the chief executive officer of the department?

**Senator CROSSIN**—No, he is the director of the mines section. Going back to my question, it may well be that this committee may need to write to the Northern Territory government to get that clarified, but I fail to understand why they would seek a legal opinion before they came to the conclusion that there had been a breach or not, rather than on taking action on that conclusion.

**Mr Kerr**—According to the Northern Territory Mining Management Act, that department is the body primarily responsible for the enforcement of this act. Like you say, you would think that they would go through that process and then seek the advice from elsewhere. So I share your concerns. Notwithstanding that, I think that the legal advice they claim to have obtained is incorrect. They have breached their environmental reporting requirements. Any person who does not have a legal degree does not require a legal degree to see that, if you report a month after you discover the incident, that is a breach of your environmental reporting requirements. There has been a breach; you do not need legal advice. I think their legal advice is wrong, but I share your concerns and agree that they did not need to go through that process.

**Senator CROSSIN**—I notice that a number of times even the OSS or the Commonwealth may be forthcoming in saying that there has been a breach. But one of the gaps I perceive is that there is never then any action to pursue any penalty under that breach. Pursuing the breach will not necessarily ensure that it will not happen again. Perhaps you might offer a view about that.

**Mr Kerr**—I think that it would. I am always concerned, as a citizen, that if you and I commit a minor offence, such as parking in the wrong spot or throwing a cigarette butt out of the window, we will be slapped with a \$100 fine, but when a major corporation continuously breaches legislation they are not penalised even one cent. I am very concerned about it. It is part of a continuing pattern. I think that if they are charged and convicted of one offence, it will send a message that they will be required to clean up their act. I would hope that they would be less inclined to breach again.

**Senator CROSSIN**—Are there any Commonwealth acts used in the oversighting of the process, particularly in relation to the Northern Territory, that you believe need to be reviewed and changed as a result of the incidents over the last few years?

**Mr Kerr**—As I mentioned, the Atomic Energy Act covers the Ranger uranium mine site through the environmental requirements. However, I believe that the current penalties are insufficient. If I am correct, they are only around \$10,000 for a breach, whereas the Mining

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Management Act penalties are lot larger than that. The other problem is that not many people within the Commonwealth actually know that they have legislation which they can use to enforce breaches of reporting requirements and other such breaches. They are not aware of that. There needs to be some sort of educative process within the Commonwealth department to say, 'Hang on a minute; the Atomic Energy Act applies here.' They should not rely on a lawyer from the Australian Conservation Foundation to provide them with that advice.

**Senator CROSSIN**—The Gundjehmi association told us in their evidence that they believe there are too many complicated regulatory, monitoring and reporting regimes and that in some way these should be reviewed and perhaps simplified. Is that also a view of the ACF?

**Mr Sweeney**—We support the clarification of roles and the improvement of outcome.

**Senator CROSSIN**—Can you give us an example?

**Mr Sweeney**—One of the key things is the current working arrangements between the Commonwealth and the NT and the fact that there is a memorandum of understanding asking that they be revised. That was in 2000—of two years standing—and it has not happened. In evidence before this committee in Darwin, we had the director of the relevant department charged with that task saying, 'Sorry, I do not have an explanation to give you as to why it has not happened. We were only made aware of it when a subsequent report, which was tabled to this committee, came out. It slipped through the cracks.' To us, that is saying in flashing neon lights that the current system is not working. There are clear breakdowns in the linkages of delineation of responsibility. So we strongly support Gundjehmi's call for streamlining understanding of responsibilities so that the roles are actually carried out so that what this is there for—the protection of the natural and cultural environment of Kakadu, in this case, or in the South Australian region—is realised.

**Senator WONG**—I do not propose to ask you much about South Australia because I think that has been covered adequately. On Mr Kerr's analysis of the legal breaches—I am not particularly familiar with the scheme—I understand you are saying that the Commonwealth Atomic Energy Act gives legal effect to the environmental requirements. Am I to understand that any prosecution or the commencement of action on any offence is vested with DBIRD alone?

**Mr Kerr**—No, it is not. It would be with the Commonwealth authorities with respect to the breaches of those environmental requirements.

**Senator WONG**—The failure to take any action in relation to breaches of those environmental requirements is actually at whose feet? Which body is enabled to—

**Mr Kerr**—There are two pieces of legislation in play here: the environmental requirements in the Commonwealth Atomic Energy Act—

**Senator WONG**—That is what I want to focus on first.

**Mr Kerr**—They have full responsibility for enforcing breaches.

**Senator WONG**—Who is 'they'?

**Mr Kerr**—The Commonwealth authorities.

**Senator WONG**—Who would that be? Is that specified in the act, or is it just the Commonwealth?

**Mr Kerr**—I would have to take that question on notice. I am confident that I will be able to provide an answer to that. They would be responsible for the enforcement of that. Then you have the Mining Management Act, which has a lot of other environmental requirements, if you would want to call them that DBIRD and the Northern Territory authorities have responsibility for the enforcement of that. As I have pointed out, there has been a breach under both the Northern Territory and Commonwealth legislation. The Commonwealth people should go away and enforce their legislation and likewise the Northern Territory.

Senator Allison, or perhaps it was Senator Crossin, pointed out before that the Supervising Scientist often says there has been a breach, and the Commonwealth are often more open to showing that there has been a breach. But I am surprised because they do not back their words with action. They say there has been a breach but never actually take any proceedings.

**Senator WONG**—In the discussion earlier with Senator Crossin it was stated that there were a number of occasions on which the Commonwealth and the company acknowledged there was a breach but DBIRD did not. Did they relate to breaches of the Northern Territory legislation or the environmental requirements, or both?

**Mr Kerr**—I am not sure what their denial amounted to. However, they certainly have the responsibility for managing their own act. So they are certainly entitled to do that. Often the environmental requirements under the Commonwealth legislation almost mirror the Northern Territory requirements. If there has been a breach of one, there has been a breach of the other.

**Mr Sweeney**—In that particular case it was also in relation to the environmental requirements.

**Senator WONG**—In relation to which DBIRD has no regulatory authority?

**Mr Sweeney**—It was in relation to both aspects. They commented on whether the ERs had been breached. It is our experience that in cases where the Commonwealth does recognise a breach, which has happened on a number of occasions, the convention seems to have developed whereby, because the Northern Territory is the primary regulator, the Commonwealth waits to see what the Northern Territory will do, and the Northern Territory consistently fails to take any legal action.

**Senator WONG**—Yes, but my point is that they are presumably only empowered to take legal action under their act.

**Mr Kerr**—That is correct.

**Senator WONG**—I understand your concern about them and I think some aspects of the evidence given in Darwin on that point were quite troubling, but if they are going to be criticised about failing to take legal action it really should only be in relation to those aspects

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where they have standing and are the appropriate authority to do so. As I understand Mr Kerr's evidence, that would only be in relation to the Northern Territory legislation. Is that right?

**Mr Kerr**—That is correct. But, as I have pointed out, the incident resulted in a breach of that legislation as well.

**Senator WONG**—Yes, I understand that.

**CHAIR**—Thank you for appearing before us today. The document 'Contraventions by ERA of the Atomic Energy Act 1953 (Cth) and the Mining Management Act 2001 (NT) arising from the incorrect stockpile incident at Ranger January/February 2002' has been presented to the committee. As there are no objections to that being tabled, it is so ordered. There is a further document from the Northern Territory web site on its role. As there are no objections to that document being tabled, it is so ordered.

[11.39 a.m.]

**DAVIES, Mr Peter Milton, Assistant Director, Mining and Industrial Section, Environment Australia**

**EARLY, Mr Gerard Patrick, First Assistant Secretary, Approvals and Legislation Division, Environment Australia**

**FORBES, Mr Malcolm Andrew, Assistant Secretary, Environment Assessment and Approvals Branch, Environment Australia**

**KAHN, Mr Tim, Director, Mining and Industrial Section, Approvals and Legislation Division, Environment Australia**

**CHAIR**—I welcome representatives of Environment Australia. The committee has before it your submission, which we have already published. At this stage, are there any alterations or additions to that document?

**Mr Early**—No.

**CHAIR**—The committee prefers all evidence to be given in public, but should you at any stage wish to give your evidence, part of your evidence or answers to specific questions in private, you may ask to do so and we will consider your request. As you are all departmental officers, I point out that you will not be expected to answer questions which invite you to express an opinion on matters of policy, and that you will be given a reasonable opportunity to refer questions to superior officers or to a minister. Mr Early, I now invite you to make an opening statement, after which we will go to questions.

**Mr Early**—Thank you. As noted in the Environment Australia submission, the Ranger and Jabiluka uranium mining operations in the Northern Territory, and the Beverley and Honeymoon in situ leach operations in South Australia were all assessed under the now repealed Environment Protection (Impact of Proposals) Act 1974, known as the EPIP Act. The Ranger uranium mine was assessed by the Ranger uranium environmental inquiry established under the EPIP Act in July 1975. The presiding commissioner was Mr Justice Fox. He presented his first report in October 1976 and his second report in May 1977. The Jabiluka uranium mine was also assessed under the EPIP Act. It was assessed through an environmental impact statement completed in 1979, although no mining subsequently occurred. Since 1979, Kakadu National Park has been inscribed on the World Heritage List, and the wetlands of Kakadu National Park have been listed as internationally important under the convention on wetlands of international importance—the Ramsar convention. The full range of Australia's current obligations in respect of Kakadu National Park were beyond the scope of the 1979 environmental impact statement.

In 1996, ERA indicated that it wished to develop the Jabiluka uranium deposit. Two main options were considered: the Ranger mill alternative and the Jabiluka mill alternative. The proposal was referred under the EPIP Act and an environmental impact statement prepared in 1997 dealt principally with the Ranger mill alternative. ERA subsequently sought

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environmental clearance for the Jabiluka mill alternative. As a result of further assessment process, a public environment report was required of the company by the Commonwealth and the Northern Territory governments. The outcome of these assessment was that the minister for the environment recommended to the minister for resources that the Jabiluka mine could proceed, subject to stringent conditions being imposed.

Both the South Australian in situ leach operations were also assessed under the EPIP Act—both by environmental impact statement. The Beverley assessment was completed in March 1999 and the Honeymoon assessment was completed in November 2001. The environmental impact assessments undertaken by Environment Australia or its predecessor organisations led to government decisions on those mines. Under the EPIP Act, the environment minister made recommendations to the action minister—the industry minister—who took those recommendations into account when formulating conditions to attach to export permits. Although we have a general advisory role to government, the formal Environment Australia role in these uranium mines was limited to the assessment process. We are not a regulator in respect of any of the mines. This is unlike the current situation with the Environment Protection and Biodiversity Conservation Act 1999, or EPBC Act, which now provides the vehicle for Environment Australia to directly issue approval conditions to a proponent with respect to any new uranium mining proposal or any substantial expansion of the existing operations. Under the now repealed EPIP Act, there was no such provision. Also, because all environmental assessment of these mines was completed under the EPIP Act, the provisions of the EPBC Act do not apply. That is as a result of the Environmental Reform (Consequential Provisions) Act 1999.

In relation to the Northern Territory mines, therefore, the regulator is the Northern Territory Department of Business, Industry and Resource Development, with the Supervising Scientist having a monitoring, research and supervisory role with respect to mining activities in the Alligator Rivers region. In South Australia, day-to-day management of uranium mining is the responsibility of the Office of Minerals and Energy Resources, with regulation of radiation safety aspects of mines being the responsibility of the Environment Protection Authority. The Commonwealth's formal role, apart from the Supervising Scientist, is limited to ensuring compliance with conditions attached to export permits, and that is the responsibility of the Department of Industry, Tourism and Resources. Environment Australia has an advisory role only through its membership of various consultative committees.

The Customs (Prohibited Exports) Regulations 1958 provide the power for the Commonwealth industry minister to revoke permissions to export if conditions are not complied with. I understand that in relation to the Northern Territory mines the Minister for Industry, Tourism and Resources may take action under the Atomic Energy Act 1953.

The environmental impact assessment of the uranium mines by the Commonwealth under the EPIP Act provided for a degree of reassurance and certainty in the public's perception that environmental protection measures for all proposals were rigorous, fully transparent, open and consistent. However, the current situation is much improved. If a new nuclear action, such as the construction and operation of a uranium mine or a substantial expansion of an existing one, has, will have or is likely to have a significant impact on the environment then a referral must be made to the Commonwealth environment minister under the EPBC Act. If the environment minister determines the proposal to be a controlled action under the act it must undergo assessment and the environment minister will then determine whether to approve the proposal

and if so under what conditions. While much of the decision-making process affecting the environment, including the day-to-day operation of mines, rests largely in local or state hands, there is a legitimate national dimension to environmental policy in relation to uranium mining. The best way of ensuring national and Commonwealth interests are served is for new proposals to be assessed under the EPBC Act.

**CHAIR**—Mr Early, you were here for the evidence of the previous witness. Could you take the committee through the suggestions that the Atomic Energy Act gives the Commonwealth the power to prosecute when there are breaches? I do not know whether a copy of the document has been provided.

**Mr Early**—I am not fully across all that because it is the responsibility of another department.

**CHAIR**—Which department is that?

**Mr Early**—It is the Department of Industry, Tourism and Resources and that minister has responsibility under the act. My understanding is that there is a power to prosecute under the act but I am not very familiar with it. Mr Kerr mentioned the contraventions of ERS. The submission by the Office of the Supervising Scientist said:

The revised ERs came into force in January 2000. The ERs reflect the role of the Commonwealth; that is, they set the Primary and Secondary Environmental Objectives and broadly identify mechanisms for meeting those objectives with very little prescription.

If they are not very prescriptive then opportunities to take action may be limited but I do not know much about it because it is this portfolio's responsibility.

**CHAIR**—So you do not reject the proposition; it is just not your department's responsibility?

**Mr Early**—As I understand it from the Supervising Scientist's submission, what Mr Kerr said is correct. The Atomic Energy Act 1953, administered by the Minister for Industry, Tourism and Resources, does provide that power.

**CHAIR**—On the subject of the in situ mines in South Australia, some key issues have come to the attention of the committee about whether the waste material that is reinjected into aquifers eventually becomes inert. Can you indicate to the committee whether you are satisfied with that suggestion and what time frame this is likely to occur within?

**Mr Early**—Certainly those considerations were part of the assessment process for both mines. The Beverley mine is located directly over the Great Artesian Basin but the ore-bearing aquifer is separated by 80 metres of Namba Formation clay. An essentially sealed aquifer together with the strict fluid pressure balance was considered important in ensuring that any waste did not enter the Great Artesian Basin. The Honeymoon mine is situated over 70 kilometres south of the boundary of the GAB—

**CHAIR**—That was not my question, Mr Early. I do not know whether someone else has got more detailed knowledge of this question of attenuation—whether liberated material goes back into its original form.

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**Senator WONG**—After going into solution.

**Mr Early**—Which mine are we talking about?

**CHAIR**—Both of them.

**Mr Early**—I was just saying that in Beverley, because it is a sealed aquifer, that was part of the considerations—

**CHAIR**—But whether it is sealed or not is not the point of this question. We have heard from the mining operators, and I think the EIS claims, that this material will not remain in solution for a certain time—I am not sure what the given period is—and that there is evidence and modelling to show that it will return to the original state.

**Mr Kahn**—It will eventually return to a very similar situation to the existing ground water.

**CHAIR**—How long is ‘eventually’?

**Mr Kahn**—It could be tens of years or it could be longer. No-one knows in great detail.

**CHAIR**—You cannot know?

**Mr Kahn**—It is very difficult to model exactly where it will return to. All this was discussed and provided in the submissions from Heathgate and Southern Cross—the papers before you that we agree with.

**CHAIR**—Which papers were they?

**Mr Kahn**—The submissions from those companies, which we agree with on this description of the attenuation of mining fluids. The really important thing is to what extent it interacts with the biosphere at any time.

**CHAIR**—Why is that more important than the attenuation of the aquifers?

**Mr Kahn**—The important thing is to protect the environment, and the most important parts of the environment are the biosphere—that is, the living parts of the environment. It becomes a philosophical debate as to whether you consider ground water to be a sacrosanct thing that you can never touch or do anything with, or whether it is something that is already unusable in its natural state so that when you have finished mining it goes back to that state and after a number of years will go back to a very similar state to the original ground water.

**CHAIR**—As I remember, Environment Australia sent a team to the United States, perhaps two or three years ago, to look at this whole question of reinjection of the waste.

**Mr Kahn**—A group of people went to the USA to look at a number of different ISL mines and to talk with the regulators, at both the different state and federal levels.

**CHAIR**—Was this philosophical debate about whether an aquifer can be sacrificed because it is less damaging than the biosphere—they were your words—advice that was gleaned from the US experience?

**Mr Kahn**—I do not agree that anything is sacrificed, because it may be a short-term—

**CHAIR**—But they are your words.

**Mr Kahn**—I do not think I said it would be sacrificed.

**Mr Davies**—Sacrosanct.

**CHAIR**—The question of whether it is sacrosanct—okay. I assume that if it is not sacrosanct it can be sacrificed.

**Mr Kahn**—It is like any natural resource that can be used for a certain length of time and will eventually return to the same state in which it was originally available.

**CHAIR**—Surely this becomes a circular argument when we do not know the length of time it will take.

**Mr Kahn**—As it has no potential use anyway—

**CHAIR**—That is another argument. I think we are getting off the key question.

**Mr Early**—But, as Mr Kahn said, from our point of view it becomes a rather theoretical question if it has no impact on the environment.

**CHAIR**—It depends on what environment you are talking about.

**Senator CROSSIN**—Isn't it a case of out of sight, out of mind?

**Senator WONG**—Do I understand your position to be that you did not regard the sort of length of time the aquifer might take to return to something consonant with its pre-mined state as being a precondition for Commonwealth approval of this mine?

**Mr Kahn**—The matter was certainly looked at in quite a lot of detail with respect to the hydrological modelling and the so-called natural attenuation of the ground water.

**Senator WONG**—Let us talk about that. As I understand it—and I am no scientist—one of the criticisms of the hydrological modelling and the assumptions around attenuation is that there is poor data about projected time frames for attenuation. That is, even assuming this attenuation does occur, there is insufficient evidence to show when it will happen. Did Environment Australia look at some analysis of what sort of time it would take for these aquifers to be returned to something consonant with their pre-mining state?

**Mr Kahn**—There are two elements to that. It is certain that attenuation will take place.

**Senator WONG**—Is it certain?

**Mr Kahn**—Yes.

**Senator WONG**—On what basis do you say that?

**Mr Kahn**—Even if you just took physical dilution into account, as you have an almost infinite area and you are putting a limited amount of stuff into it, natural diffusion and dilution will occur over time. If you take the physical modelling of that, which is one element of the process, you get diffusion back to background levels with time.

**CHAIR**—Are there any mines where you can demonstrate that has taken place?

**Mr Davies**—No.

**Senator WONG**—Was there any analysis of the Honeymoon mine—was it in 1982-83—

**Mr Kahn**—Yes, 1982.

**Senator WONG**—to look at what attenuation had occurred subsequent to those invasions, for want of a better term?

**Mr Kahn**—Not by us, no.

**Senator WONG**—Did you seek that data?

**Mr Kahn**—No.

**Senator WONG**—Presumably, there is a reason for that. You did not think it would be useful?

**Mr Kahn**—That is explained in the submission.

**Senator WONG**—I am asking you.

**Mr Kahn**—I agree with the submission.

**Senator WONG**—Did you not consider that data to be relevant to your analyses of these mines?

**Mr Kahn**—It may have been relevant if we had known exactly what fluids were being injected and what the background levels were at that time in the past. That data, as I understand it, was not available.

**CHAIR**—Why not?

**Mr Kahn**—I do not know why. It is lost in the mists of time.

**Senator WONG**—1982 is hardly the mists of time, I would have thought. I appreciate that is not necessarily your problem.

**Mr Kahn**—It was not data that was held by Environment Australia.

**Senator WONG**—I understand that.

**CHAIR**—Is it held by the South Australian state government or the mining company?

**Mr Kahn**—I cannot answer that.

**Mr Davies**—I sought advice from South Australia and the mining company to try and obtain it, and it was not available. I spent some time trying to find it. I also looked through the records in our department, where I could not find it either.

**Senator WONG**—You did so because there was a view that that data might be useful?

**Mr Davies**—Yes. This is an area which is evolving very quickly—the idea of detailed chemistry for the attenuation of the introduced chemicals into a water body. I thought some early information would be valuable. I was not able to find it.

**Senator WONG**—I have some more questions, but not on this topic.

**CHAIR**—You may proceed, Senator Wong.

**Senator WONG**—I understand the Beverley aquifer is apparently self-contained. I think in your submission you say that one of the bases on which the Commonwealth were satisfied this project could proceed was that it was hydrologically confined. I notice in your submission that there were additional studies required by Senator Hill in relation to Honeymoon regarding the aquifer. Is it the case that there were concerns regarding whether that aquifer was in fact contained?

**Mr Kahn**—The aquifer was not contained. That was why the additional work was required to see what, if any, impact it would have on the artesian basin.

**Senator WONG**—There is pretty clear evidence given to our committee by the company that the aquifer is not laterally confined and discharges at some unknown location somewhere down the track. Obviously, to a layperson that presents some cause for concern. Could you comment on that?

**Mr Kahn**—The additional studies requested were to better define the boundaries of the palaeochannel—the underground channel—in all directions. It was known at that time that it was open at the upper and lower ends. It is a channel, so it is a matter of degree of flow. The studies better defined the outer edge and also some aspects of the interleaving of the vertical geology.

**Senator WONG**—The fact that it is discontinuous?

**Mr Kahn**—Yes. The matter of discharge is an open question. ‘Discharge’ is an interesting term in the sense—as I understand it from AGSO—that it does not actually discharge to the outside world at all; it comes into a sand delta which is buried deeper down under other sands and other sediments. So no-one knows exactly where the end point of those waters might be.

**Senator WONG**—If we do not know where it is, how can we predict with such certainty that it discharges into this delta and never sees the light of day?

**Mr Davies**—The end point of the gradient is about Lake Frome. The end point would be at a point about 80 metres underneath the surface of the ground.

**Senator WONG**—But we are not sure where?

**Mr Davies**—Not precisely.

**Senator WONG**—Were there concerns about the particular geological and geographical make-up of this area, including the fact that it discharges?

**Mr Early**—There were concerns, which is why the additional studies were undertaken. One of the issues is that we are talking about this discharge having to travel about 70 kilometres. The advice we have is that it moves only 15 to 20 metres per year. So by the time it had reached that distance, the waste would have returned to sort of background conditions.

**Senator WONG**—Let us analyse that. Your concerns were allayed by the fact that it appears to be moving quite slowly and, therefore, there would be a certain amount of attenuation—if that is the right term in these circumstances—before it reached its discharge point. But as I understand your earlier evidence, there is not particularly good data on the time frame for attenuation. Can you explain to me how those two propositions meet.

**Mr Kahn**—There are models which look at purely physical attenuation of materials dissolved in ground water and their movement; even if you take those, it is certain that, in the period of time it would take things to move at that rate to that end point, they would be at unmeasurable levels above background.

**Senator WONG**—What sort of time frame are we talking about? How long would it take?

**Mr Early**—To get that distance? A long time.

**Senator WONG**—We can work out the maths of it.

**Mr Early**—Some 300 years or so.

**Senator WONG**—I understood from the company’s submission—and other senators might correct me—that, because of the particular pressure arrangements, they believed that most of the solution would stay pretty well near the mine site. Do you recall that evidence?

**Mr Kahn**—Yes, I think they say that within 100 years it would still be within their mine lease.

**Senator WONG**—Is that consistent with the evidence you have just given us?

**Mr Kahn**—We were giving the worst possible scenario that it would move along with the flows. The evidence is that it is more likely not to move at that speed. As well as physical, natural attenuation—physical dilution—there are also chemical processes which tend to lock up the system, slow down the flow and also precipitate some of the elements that might be of concern—the heavy metals and so on.

**Mr Early**—Just to correct my poor maths, I was out by a factor of 10; it is actually 3,000 years rather than 300 years.

**Mr Forbes**—It is 3,500 years if it moves 20 metres per year over 70 kilometres.

**Senator WONG**—I now want to turn to the Commonwealth codes of practice. What gives those their legal effect?

**Mr Kahn**—The codes of practice for the mining and milling of uranium and so on?

**Senator WONG**—Yes.

**Mr Kahn**—That is not our department anymore.

**Mr Forbes**—Sorry, which codes?

**Senator WONG**—The Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores, the Code of Practice on the Management of Radioactive Wastes from the Mining and Milling of Radioactive Ores and a series of nuclear codes under the Environment Protection (Nuclear Codes) Act 1978.

**Mr Early**—Is that a South Australian act?

**Senator WONG**—No, it is a Commonwealth act. Who is the agency responsible?

**Mr Kahn**—I believe it is probably now ARPANSA. In the early days it was the department of environment and then went to the department of health. With the establishment of ARPANSA I expect that those codes will be their responsibility.

**Senator WONG**—You have no role in even developing those?

**Mr Kahn**—No, no more.

**Senator WONG**—But previously?

**Mr Kahn**—At one stage in the past, a decade or so ago, they were Environment's responsibility. We looked after some of those codes.

**Senator WONG**—You are not aware of how they are given legal effect?

**Mr Kahn**—No.

**Senator WONG**—I turn now to the BECC—the Beverley Environmental Consultative Committee. I understand that the establishment of that committee was a condition of authorisation; is that right?

**Mr Kahn**—The establishment of a committee for exchange of information and other matters was a recommendation of Senator Hill.

**Senator WONG**—Accepted by the action minister?

**Mr Kahn**—Yes.

**Senator WONG**—So it is a condition of the Commonwealth authorisation?

**Mr Kahn**—Yes.

**Senator WONG**—And one of the tasks of that committee is to review the environmental performance of the mine and to provide information to stakeholders? I am reading from what I understand to be an aspect of the recommendation.

**Mr Davies**—That sounds right.

**Senator WONG**—Is that correct?

**Mr Kahn**—Yes.

**Senator WONG**—There has been quite a bit of evidence to our committee about that committee not functioning particularly well, including that there are no environmental representatives on that committee and questions as to the extent to which that committee actually distributes information to stakeholders. I understand your department is represented on that committee; is that correct?

**Mr Forbes**—It is probably useful to come back to the word ‘stakeholder’, because that word is not in the condition as I understand it.

**Senator WONG**—I am sorry, that is what I was provided with.

**Mr Forbes**—My advice is that the condition reads that the proponent must participate in and provide information to the environment monitoring committee for the Beverley mine, including an EMMP and annual environmental reports. The EMMP and the annual environmental reports must also be released to the public. That is the condition as I understand it.

**Senator WONG**—I am quoting from recommendation No. 8 of the Environment Australia assessment report into the Beverley uranium mine proposal at page 66.

**Mr Forbes**—Yes, but—

**Mr Davies**—That is the South Australian recommendation—recommendation 8.

**Senator WONG**—Does the committee have a function under the Commonwealth authorisations to distribute information to stakeholders or not?

**Mr Forbes**—We are members of the committee, as are our Commonwealth colleagues from the Industry, Tourism and Resources portfolio. There has been a bit of discussion within the committee itself in relation to the need to release information. We have been advocating for some time that annual environmental reports must be released to the public—the bottom part of the condition. It would be better for the company and the South Australian authorities to be a little more open than they have been in the past. There is a general move now within South Australian authorities to be a little more open. The Beverley Environmental Consultative Committee is also privy to some commercial-in-confidence information. Some of that information would clearly be difficult to release. The company and PIRSA are quite keen to try and release other information. The issue of transparency is one which has been put on the table and discussed quite openly within the committee. There is a need to be more transparent than it has been in the past. That has certainly been a position which has been taken by the Commonwealth—not only Environment Australia but also our colleagues in Industry, Tourism and Resources.

**Senator WONG**—That is pleasing. What are the options for the Commonwealth if the committee fails? I am not suggesting this is your view but if you came to a view that the committee had failed to meet its obligations and role as set out in Minister Hill's recommendations, what would the options for the Commonwealth be to try and shift that?

**Mr Forbes**—In the end, it is not Senator Hill's recommendations; it is the industry minister's condition.

**Senator WONG**—Okay. I understood that this was a condition of the Commonwealth's approval. What I am interested in is what options the Commonwealth would have in those circumstances?

**Mr Forbes**—The option we have is always to apply peer pressure, if you like. We apply peer pressure to our South Australian government colleagues and clearly they also apply pressure to us if they believe we are not being as open as we should be, either. But peer pressure within and between governments is an important issue in actually moving positions.

**Senator WONG**—Is there any other option other than peer pressure?

**Mr Early**—I will have to double-check this; I might have to take it on notice. My understanding is that it is a condition attached to the export permit and the only thing—

**Senator WONG**—The only option would be revocation of the permit.

**Mr Early**—Yes, that would be the only thing that the minister could do, which might be seen to be a bit heavy-handed. I am not sure.

**Senator WONG**—I am not suggesting that this should be done. What I am interested in finding out is what options the Commonwealth actually has to enforce the conditions of approval.

**Mr Early**—I think they are attached to the export permit.

**Senator WONG**—Is it only the export licence? I am happy if you take it on notice. It is something that I would certainly be keen to understand.

**Mr Early**—We would have to probably get advice, given that the legislation is not ours. That is my understanding but we would have to double-check.

**CHAIR**—I thought, Senator Wong, we might write to the department and put some of these questions to them.

**Senator WONG**—You have got out of it, Mr Early. Thank you. I have nothing further.

**Senator CROSSIN**—What is your response to calls for a new public environment assessment process at the Beverley mine in South Australia?

**Mr Early**—A new what?

**Senator CROSSIN**—A new environment assessment report to be done at—

**Mr Early**—So assessment to be done again?

**Senator CROSSIN**—Yes.

**CHAIR**—About waste management.

**Mr Early**—I do not know. I guess that is really a policy issue for the government, isn't it? Legally speaking, we have been through an assessment under the EPIP Act. That has finished. There would have to be some major change to the facility to bring it under the EPBC Act so I am not quite sure legally how the Commonwealth could do that.

**Senator CROSSIN**—Does a change to the facility trigger a new assessment or change to scientific knowledge?

**Mr Early**—It is the action. It has to be a significant expansion or intensification.

**Mr Forbes**—Or modification.

**Senator CROSSIN**—By the company?

**Mr Early**—Yes, to the actual operation.

**Senator CROSSIN**—Gundjehmi Corporation put a view to us that they believed that the existing regime was overly complex, confusing and inconsistent. In fact, I think their view was

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that perhaps there should be one new act written that actually revises and in some way consolidates all of this activity—in a similar way to, I suppose, how the new environment act was done. Has there been given any consideration to reviewing or revising the act or in fact having one act that would monitor and regulate the industry in this country?

**Mr Early**—I can understand what you are saying, given that there is a lot of history to this. It goes right back to the Fox inquiry. But in terms of whether there should be changes to the legislation, again I think that is really a policy question for the minister and the government to determine.

**Senator CROSSIN**—Have there been incidents where Environment Australia believe that there have been confusing and conflicting roles and that there should have been greater clarification of these roles by the different bodies?

**Mr Early**—I do not think so, partly because we do not have a regulatory role ourselves. Basically, as I said, it is the Northern Territory that has the regulation role and the Supervising Scientist has a role. Environment Australia really does not have a role and therefore does not get directly involved so we probably do not have the background to know the answer to that.

**Senator CROSSIN**—A great deal of criticism has been put to us by witnesses about the relocation of ERISS from Jabiru to Darwin and about OSS itself being located in Darwin but having only one person on site. What has been the reason for the change and for this move, particularly in relation to ERISS?

**Mr Early**—I think you really need to ask the Supervising Scientist that, as a separate statutory officer. My understanding is that the move to Darwin was an efficiency measure and that the Supervising Scientist believes he can carry out all his duties appropriately in the new building.

**Senator CROSSIN**—Were Environment Australia consulted on or involved in the decision to relocate ERISS to Darwin?

**Mr Early**—Not from a technical point of view, no.

**Senator CROSSIN**—How about from a policy implications point of view?

**Mr Early**—I would have thought probably from a financing point of view and so forth. But, as I say, the Supervising Scientist is a separate statutory agency.

**CHAIR**—The ACF suggests that EA should be the lead agency on BECC and that you should host a web site which provides information about incidents and spills and the like. A lot of evidence to this committee would suggest that there is confusion about the information related to spills and that the industry says, ‘We are having to report too many. It would be better if we reported only the ones that really made a difference.’ What is your view on that suggestion from the ACF and on the idea that we have adequate information dissemination and adequate scrutiny of spills, particularly in the Northern Territory?

**Mr Early**—I would have to say I am not very enthusiastic about the idea.

**CHAIR**—Which idea?

**Mr Early**—The idea that Environment Australia should be either hosting the committee or having a web site.

**CHAIR**—Why is that?

**Mr Early**—We do not have any formal role. You cannot host a web site and give authoritative information if you do not have any capacity to actually get information accurately. I think that would be counterproductive. It would make us less credible to be putting out information which we could not rely on because we do not have that capacity. If it was under EPBC Act and we had conditions and a formal role in terms of monitoring and audit, that would be appropriate, but under the current arrangements I do not think it would be very useful for anybody.

**CHAIR**—I know you are not responsible for the Office of the Supervising Scientist, but do you have any observations to make about the monitoring of Jabiluka and Ranger uranium mines in terms of whether or not sufficient samples are taken independent of the mining company and whether or not incident monitoring is preferred to the current arrangement? Can you expand on that?

**Mr Early**—The only thing I can say is that Environment Australia has complete confidence in the Supervising Scientist.

**CHAIR**—I am sure he will be pleased to hear that. I do not have any further questions. If the committee finds that there is an area where we have forgotten to ask you something about submissions that have been made, I am sure you will be happy to give us some answers.

**Mr Early**—Sure. Thank you.

**CHAIR**—That concludes today's hearing. I thank the observers and our witnesses.

**Committee adjourned at 12.19 p.m.**