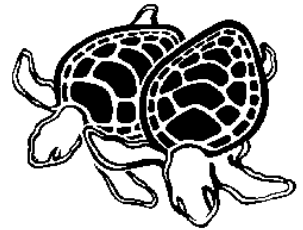


The Environment Centre N.T. Inc

GPO Box 2120 Darwin NT 0801 Unit 3/98 Wood St Darwin NT 0800
Telephone: (08) 8981 1984 Mobile: 0412 853 641 Fax: (08)8941 0387
Email: ecnt@octa4.net.au Website: <http://www.ecnt.org>



The Secretary
Senate ECITA References Committee
Parliament House
Canberra ACT 2600

To whom it may concern,

Re: Senate Inquiry into Environmental Regulation of Uranium Mining

Please find attached a submission from the Environment Centre NT to the above inquiry. The Environment Centre has over 500 individual and organisational members and is the largest community based conservation organisation in The NT. The Environment Centre NT has been a key player in the debate surrounding uranium mining in the Alligator Rivers Region since its inception in 1983. We have participated in this debate both inside and outside formal processes. Currently we are the NGO representatives on the Alligator Rivers Region Advisory Committee.

The attached submission is focused upon the NT mines. Obviously however we are also greatly concerned about the emerging pattern of leaks and spills at the South Australian in situ leach uranium mines. We will however leave discussion of the South Australian mines to our colleagues in South Australia and nationally.

ECNT would appreciate the opportunity to give evidence at the Darwin hearings of the Senate ECITA Committee.

Please let us know if you have any questions regarding our submission or if you require any further information.

Yours sincerely

A handwritten signature in red ink that reads "LWK." with a period at the end.

Mark Wakeham
Coordinator

13/08/02

Senate Environment, Communications, Information Technology and the Arts References Committee

Inquiry into Environmental Regulation of Uranium Mining

The Senate has referred the above matter to the Committee for inquiry and report by 5 December 2002.

The terms of reference are:

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.

1. the adequacy, effectiveness and performance of existing monitoring and reporting regimes and regulations;

Ranger and Jabiluka mines-

Ranger and Jabiluka uranium mines are administered by a complex and inconsistent mix of Commonwealth and Northern Territory legislation, regulations, memoranda and company commitments.

Responsibility for guaranteeing environmental protection is vested with both the Commonwealth and the Northern Territory Government (NTG). The way that the division of regulatory responsibilities is usually explained is that the NTG has responsibility for day-to-day regulation of mining activities and that the Commonwealth, via the OSS, is vested with the responsibility of protection of the Alligator Rivers Region from the effects of uranium mining. In practice this demarcation of responsibilities raises as many questions as it answers. Obviously the protection of the Alligator Rivers Region is contingent upon the day-to-day regulatory framework and its effectiveness in minimising both on-site and off-site environmental impact.

The ECNT believes that the monitoring and reporting regimes at Ranger and Jabiluka are currently inadequate and ill-conceived. The confused demarcation between Commonwealth and NTG responsibilities has the effect of obfuscating lines of accountability. The following examples outline weaknesses and inadequacies in the current regulatory, monitoring and reporting regime.

1.1. NT Government a poor regulator, but has primary carriage of regulation

The NTG has become the 'primary regulator' of uranium mining activities in the Kakadu region, with the OSS taking a 'back-seat' role in regulation. This poses a number of problems. The NTG's regulatory involvement is currently through the Department of Business, Industry and Resources (DBIRD) which has replaced the Department of Mines and Energy. This department is principally a resource development agency and is ill-equipped to play the role of an independent regulator of mining activities. Indeed the Department has a conflict of interest in this regard. The history of mining in the NT is littered with examples of development agendas subordinating environmental protection outcomes. In recent years leaks of contaminated materials from the Nabalco, McArthur River, Mt Todd and Ranger mines have all occurred without sanction or appropriate action on the part of the NT Authorities. At Mt Todd the then NT Department of Mines and Energy waived a rehabilitation bond in the mid-90's in an effort to encourage development at the site. In 1999 production ceased as the operators of the mine went into administration. The future of the site is uncertain with rehabilitation costs being estimated at over \$20m and the NTG only holding \$900,000 in the form of rehabilitation guarantees. The NT public are being forced to wear both the environmental costs of the abandoned mine and the cost of any future rehabilitation efforts. ECNT believes that these examples demonstrate

the degree to which economic development goals are prioritised over environmental protection and the public interest by the NT DBIRD.

Furthermore the democratic structures in place in the NT are not conducive to open and effective regulation. This is highlighted by the fact that there is still no Freedom of Information legislation in the NT. The unsatisfactory regulatory situation is exacerbated as the resource development bias of DBIRD is not counterbalanced by a strong environment department. There is no Environmental Protection Agency in the NT. Regulation of the impacts of mining impacts is carried out predominantly by DBIRD rather than the Environment and Heritage Unit. Under the new Mining Management Act, Mine Management Plans are not required to be public documents. In the NT there is a closed shop attitude towards regulation and the NTG has a poor record of communication and consultation with stakeholders.

We have outlined the above argument in an attempt to demonstrate that the current regulatory regimes in place at Jabiluka and Ranger, with their heavy reliance on the role of the NTG, are ill-equipped to succeed. The regulatory frameworks in the NT are at best immature, at worst designed to fail. If the Commonwealth wants to make the regulatory regime more robust at Ranger and Jabiluka then it either needs to take a more active role in the regulation of these mines, or require a higher level of regulatory performance from the NT Government.

1.2 Inadequacies in the Environmental Requirements at Ranger and Jabiluka

Environmental Requirements at Ranger

The Environmental Requirements (ER's) at Ranger are attached to the authority to mine- that is there is a link between the ER's and Commonwealth statutes- the Atomic Energy Act. Therefore any breach of the reporting requirements is a breach of Federal Legislation, and the Minister for Industry, Tourism and Resources is the Action Minister. However the Atomic Energy Act is not set up to regulate performance (for example it doesn't outline sanctions for breaches etc), so it is unclear at a Commonwealth level who would respond to a breach of the Ranger ER's and how. This lack of clarity is inconsistent with the best practise protection of this unique and internationally recognised region.

Environmental Requirements at Jabiluka

The ER's in place at Jabiluka differ from those at Ranger. Whilst the ER's at Ranger were updated in January 2000, the ER's for Jabiluka were not updated as doing so may have required a renegotiation of the Jabiluka lease agreement. which don't outline reporting requirements. Reporting requirements are basically an existing Minesite Technical Committee 'gentleman's agreement'. A failure to report above action levels does not constitute a breach of the legislation as the reporting levels are not outlined in the ER's or legislatively linked to the Mines Management Act.

1.2 Breaches of Environmental Requirements go unrecognised and unsanctioned

The adequacy of the monitoring and reporting regimes and regulations at Ranger and Jabiluka can only be measured by their ability to a) prevent incidents and breaches and b) in the event that a breach does occur, respond in a way that minimises impacts and encourages future compliance with environmental requirements. On both counts the regulatory arrangements at Ranger and Jabiluka have failed. Serious breaches and incidents have occurred at Ranger in 2000 and at both Ranger and Jabiluka in 2002. In both cases the response from the Commonwealth and NTG regulators has been inadequate leading to further erosion and weakening of the regulatory framework and a marked reduction in community and stakeholder confidence.

Example 1 – Tailings water return pipe leak, Ranger, 2000.

On April 4 2000 ERA discovered a leak in a tailings water return pipe at Ranger uranium mine, which they repaired on April 5, 2000. ERA subsequently failed to notify the regulatory authorities of the incident until April 28. Over the period December 1999 to April 2000, ERA estimate that 2 million litres of contaminated water leaked from the pipe. A significant proportion of this water escaped from the lease area via a culvert and flowed into Corridor Creek and then into the waterways of Kakadu. The water was reported to contain high levels of manganese.

ERA's failure to report the incident to traditional owners and the regulatory authorities for a period of 23 days after fixing the leak has since been assessed as a breach of the Environmental Requirements by the Supervising Scientist. Supervising Scientist Report 153 "Investigation of tailings water leak at the Ranger uranium mine" concludes:

Under the Environmental Requirements, ERA must directly and immediately report any breach of the Environmental Requirements and any mine-related event which:

- a) results in significant risk to ecosystem health; or*
- b) which has the potential to cause harm to people living or working in the area; or*
- c) which is of or could cause concern to Aboriginals or the broader public.*

It has been concluded that ERA did not comply with this requirement on two grounds: (i) the leak of tailings water to the external environment is a breach of Environmental Requirement 3.4 and (ii) there should have been no doubt that such a leak would have been of concern to the local Aboriginal people and the broader public.¹

Despite a clear breach of the ER's being recognised, the Commonwealth failed to prosecute ERA, instead imposing a series of recommendations that ERA were required to meet. As at December 2001 a number of the 17 recommendations made in the Supervising Scientist's report had not been implemented. ECNT recommends that the Senate ECITA committee request a progress report on the implementation of these recommendations from the OSS.

By contrast the NT Government conducted an internal investigation into the incident (the results of which were not made public) and came to a very different conclusion- that no breach of the ER's had occurred. The NTG's position on this incident was enunciated at an August 2000 meeting of the Alligator Rivers Region Advisory Committee (of which ECNT is a member) by the Director of Mines, Tony McGill. The NTG argued at this meeting that a breach of ER 3.4 had not occurred and that ERA had not breached any reporting requirements as 'there was no reason for Aboriginals or the broader public to be concerned about the incident' (paraphrase).

Therefore the responses from the regulators to this serious incident were as follows- the Commonwealth viewed the leak and reporting failure as a breach of the ER's but failed to prosecute ERA instead imposing a list of requirements. The NTG did not recognise a breach and imposed no sanction or conditions. ECNT believes that such mixed messages send a signal to the proponent that the regulatory arrangements allow for a lax interpretation of the Environmental Requirements that will go unsanctioned in the event of an incident. ERA failed to treat the incident seriously which led to a very similar incident occurring in 2002.

Example 2- Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002.

The 2001-02 wet season saw further serious water management problems and reporting failures at Ranger and Jabiluka uranium mines.

¹ Supervising Scientist 2000. *Investigation of tailings water leak at the Ranger uranium mine*. Supervising Scientist Report 153, Supervising Scientist, Darwin.

At Ranger mine ERA incorrectly stockpiled nearly 85,000 tonnes of low grade waste rock. Rain water and seepage coming off the stockpile was of poor quality as a result of the incorrect stockpiling, and water entering the Corridor Creek (which flows into Kakadu) contained elevated levels of uranium. The OSS report into the incident explains that “ERA measured a uranium concentration of 2287 parts per billion and a turbidity of 2000 NTU on 20 and 26 February respectively in water samples taken some 200m upstream of the entrance to the new wetland filter constructed in the headwaters of Corridor Creek wetland filter system.”² ECNT believes that this operational error by ERA represented a failure to adhere to the Ranger Environmental Management Report signed off on by the Minesite Technical Committee and therefore represented a breach of the NT Mines Management Act and the company’s authorisation to mine.

The company failed to report the elevated uranium levels and the stockpiling error until 27 February. This is despite the fact that Managers at ERA were advised by staff of elevated uranium concentrations at the entrance to the Corridor Creek wetland filtration system as early as the beginning of January and despite ERA’s earlier commitment to improve reporting procedures following the earlier 2000 leak.

In addition to this incident ERA again experienced an accumulation of poor quality water on the Ranger site in the 2001-02 wet season with uranium levels in Retention Pond 1 again reaching high levels. This occurred despite company assurances given to ECNT (at successive Alligator Rivers Region Advisory Committee meetings) and traditional owners over the past couple of years that the ‘uranium spikes’ in the wet season would not be repeated.

At Jabiluka over the same period routine monitoring by the company detected uranium levels downstream of the mine at above reporting levels (these results were confirmed on 25 January 2002) however again the company failed to notify the authorities until three weeks after the event. The OSS investigation report concludes “ERA did not adhere to the reporting requirements related to action levels in Swift Creek in January 2002...there are clear deficiencies in ERA’s internal processes in the Environment Department to ensure that monitoring data are properly assessed and action taken where appropriate.”³

ECNT believes that the regulator’s response to these incidents is indicative of the failure of the current regulatory regime. The initial response to the incidents by the NTG was to announce that there had not been any breach of environmental standards of reporting. Indeed the NT Minister for Business, Industry and Resources, Paul Henderson was reported on ABC news as stating that “the fact that ERA did not notify the Territory Government of the leak until weeks after the incident is not relevant.”⁴ Shortly afterwards on the same day ERA CEO Bob Cleary apologised to traditional owners and the public for the incidents . The Australian newspaper reported that “ERA chief executive Bob Cleary conceded the mistaken dumping had occurred and that the company had breached its reporting guidelines by delaying informing stakeholders” (The Australian, 6/03/02). ECNT was extremely concerned that the NTG immediately leapt to the defence of the company prior to examining the incidents in any detail or in the sort of rigorous and impartial manner that the community expects from a formal regulator .

Following the ERA apology the NTG strengthened its approach and in May, partly in an attempt to be seen to address the growing calls for a Senate Inquiry, the Minister announced that the NTG would conduct a review of the environmental regulation of Ranger and Jabiluka with the following terms of reference:

- The adequacy of the existing authorisations issued by the NT Government to protect the environment and the health of workers and the public;

² Supervising Scientist, Investigation of the Stockpile and Reporting Incidents at Ranger and Jabiluka 2002, p.3.

³ Supervising Scientist, *ibid.* p.13

⁴ (<http://www.abc.net.au/news/australia/nt/metnt-6mar2002-3.htm>)

- The adequacy and timeliness of monitoring and reporting systems including the role of the NT Government in ensuring the company's compliance with the authorisations; and
- Whether the NT is meeting its obligations to the Commonwealth under an agreement reached in November 2000. This agreement was titled "Agreement between the Commonwealth of Australia and the Northern Territory of Australia in relation to principles to be applied in the regulation of uranium mining in the Northern Territory of Australia".⁵

This review will be carried out by an 'independent expert' with no process for public input into this review. Whilst the ECNT welcomes any review of ERA's under-performing Kakadu uranium operations we maintain that an ad-hoc and closed-shop approach is no substitute for a robust and effective regulatory framework.

The OSS investigation report refers to the NTG's assessment of whether the incidents constituted a breach of the NT Mines Management Act. According to the OSS report

*"In discussion with the Supervising Scientist, DBIRD has indicated that the primary test is, in its view, whether or not any prosecution would be likely to succeed. It is the view of DBIRD that, since the actions of ERA did not give rise to any environmental impact outside the Ranger Project Area, a prosecution would very probably fail"*⁶.

Such an interpretation by the principle regulator of mining activities at Ranger and Jabiluka is extremely concerning. This view has the effect of negating all aspects of the ER's, Mine Management Plans and authorisations that determine reporting requirements and on-site environmental management standards. The effect of such a view of the NTG's regulatory powers is to streamline the whole regulatory system to a narrow determination of whether an incident had a major off-lease impact. Clearly such an approach weakens the regulatory framework greatly and is inconsistent with both regulatory best practise and community expectation.

The OSS response to these incidents is also instructive. Despite the fact that the 2002 incidents were in many respects a repeat of the reporting failings of ERA in 2000, the OSS seemed to respond in quite a different manner. The 2002 Investigation report made no recommendations that ERA must implement, despite identifying a range of systems and management failures. Instead the Supervising Scientist accepts ERA's proposed program to 'plug the gaps' within the company and introduce environmental management systems. This response epitomises the shift towards self-regulation that has taken place at Ranger and ERA. ERA's commitment to attaining ISO 14001 certification (by 2005), a voluntary program that relies to a high degree on self-assessment has been presented by the OSS as an appropriate response to the systems and management failures. This confidence is not shared by key stakeholders nor can it be justified given the repeated and continuing failure of ERA to realise its existing commitments.

Committee members may be aware that there is a growing debate about the effectiveness of Voluntary Environment Measures (VEM's) at an international level, including the role of VEM's like ISO 14001. Robert Gibson's Voluntary Initiatives: the new politics of Corporate Greening,⁷ provides a good summary of this debate. Whilst there are disparate views on the role of VEM's in improving environmental performance, there is a strong degree of consensus that VEM's and programs like ISO 14001, will only improve environmental performance if they complement, rather than supplement existing Government regulation. This is particularly the case with ISO 14001 which doesn't outline performance benchmarks, but rather accredits management systems. In Gibson et al Martin von Mirbach warns that:

"certification initiatives are part of a climate of deregulation that sees governments retreating from their traditional regulatory role in favour of industry self-regulation... This is the beginning of an ominous trend, of which the logical next step is for government legislation to reference ISO 14000 standards. Since the ISO standards are founded on the principle of adherence to government

⁵ http://www.nt.gov.au/ocm/media_releases/20020603_jabiluka.shtml

⁶ Supervising Scientist, Investigation of the Stockpile and Reporting Incidents at Ranger and Jabiluka 2002, p.3.

⁷ . Gibson, Robert (ed) Voluntary Initiatives: the new politics of Corporate Greening, Broadview Press, 1999.

regulations, the result will be a perfect con game, with regulations everywhere in appearance but nowhere in effect."⁸

While ECNT is not stating that this is currently happening at Ranger and Jabiluka, the response of the OSS seems to us to provide another example of an overall, and disturbing, shift towards greater self-regulation and a reduced role for government in regulating performance. We believe that ERA has demonstrated neither the maturity nor the competence to be entrusted with further self-regulation and that the World Heritage listed Kakadu region deserves a far higher level of protection.

1.4 In conclusion -

➔ Primary responsibility for regulation rests with the NTG which has a poor record as a regulator of mining activities at both Ranger and Jabiluka as well as at other NT mines. The lack of an independent EPA and the fact that environmental protection duties for mines in the NT are with the Department of Business, Industry and Resource Development, rather than the Department of Environment and Heritage, undermines the ability of the regulators to prioritise and provide adequate environmental protection.

➔ The working arrangements which divide regulatory responsibilities between the NTG and the Commonwealth are confusing and sub-standard. The existing regulations have not prevented a number of incidents and breaches of ER's at Ranger and Jabiluka in recent years. The response by regulators to these incidents has been too weak to discourage further incidents and breaches and insufficient to guarantee environmental protection for this important region.

➔ The Environmental Requirements at Ranger and Jabiluka lack the legislative clout to be used as effective regulatory tools. This is further exacerbated by the regulators narrow interpretation of the ER's. ECNT views this approach as inconsistent with the clear intent of the ER's which state: "Nothing in these Environmental Requirements must be interpreted to prevent or discourage the Company from attaining higher environmental standards than those specified". (ER 17.1)

➔ The strength of the reporting and monitoring regime can be best measured by the response of the regulators to breaches. If the regulations are not upheld then over time there will be a weakening effect. This has occurred at Ranger and is now presenting as a problem at Jabiluka.

➔ The company has responsibility for most of the environmental monitoring that takes place at the mine sites. The regulators are highly dependent on data provided by the company and over time the company has been granted greater powers of self-regulation. This is likely to continue with the introduction of ISO 14001. While this does not automatically mean that environmental performance will deteriorate, ERA have struggled to meet basic regulatory requirements in recent years and have demonstrated that major management and systemic weaknesses exist within the company. Moreover the company has demonstrated that it cannot be trusted to report incidents of significance. Therefore ECNT has major concerns about the heavy reliance on company monitoring and self-regulation.

2. the adequacy and effectiveness of those Commonwealth agencies responsible for the oversight and implementation of these regimes; and

In this section we will focus upon the role of the principal Commonwealth agencies involved in monitoring and regulation of mining at Ranger and Jabiluka- the OSS and the Department of Industry, Tourism and Resources.

⁸ Gibson, *ibid.*, p.223.

2.1 Office of the Supervising Scientist

In the previous section we identified examples of the ‘back seat’ role played by the OSS in regulating mining activities at Ranger and Jabiluka and the continuing devolution of regulatory control to the NTG and ERA.

The OSS was established in an attempt to ensure that uranium mining did not damage the environment of Kakadu. The role and powers of the OSS have changed considerably over its twenty-year history. The 1980’s saw considerable conflict between the OSS and ERA, with ERA consistently failing to cooperate with the OSS. The 1988-89 Annual Report of the OSS stated:

“Ranger has, by continually ignoring OSS advice on environmental issues, appeared to wish to establish that OSS performs no useful function... it has attempted to impugn the scientific credibility of the office, and has lobbied for its disbandment.”⁹

Two years later the Supervising Scientist Annual report stated:

“Ranger is now a mature mine; losses of contaminants to the environment are increasing and their presence is measurable in local waterbodies and streams.”¹⁰

In 1995 the Memorandum of Understanding between the Commonwealth and the NTG was revised, further devolving regulatory responsibilities to the NTG. The Environmental Impact Assessment process for Jabiluka saw a further downgrading of the role of the OSS, with the Federal Minister for Resources and Energy re-defining the NT as the Supervising Authority. Throughout the 1990’s OSS funding was reduced significantly until 1999 when funding was partially reinstated, largely as a result of World Heritage Committee scrutiny of the proposed Jabiluka development. Over the life of the Ranger mine OSS on-ground operations have been reduced and now the OSS is fundamentally reliant upon monitoring data provided by ERA.

The OSS’s reliance on ERA monitoring data and its infrequent on-ground presence at Ranger and Jabiluka means that in the event of an incident at the mines the OSS is highly reliant upon the company to inform them that the incident has taken place. Both the 2000 and 2002 incidents described in detail in section 1 saw the OSS being unaware of incidents on site for lengthy periods. This was particularly the case when the company failed to meet their reporting requirements. As the Supervising Scientist, Dr Arthur Johnston, told an Australian Senate Estimates Committee following the Ranger leak *“We (the OSS) do not do regular routine monitoring downstream at the mine site”¹¹*.

In addition to our concerns about the OSS’s reliance on company data and the inadequacy of its monitoring effort, ECNT also holds the following concerns about the performance of the OSS:

➔ ECNT believes that the OSS has been overly focused on off-lease impacts and that it views the defined project areas as ‘sacrifice zones’. The Environmental Requirements for Ranger state:

1.2 In particular, the company must ensure that operations at Ranger do not result in:

e) environmental impacts within the Ranger Project Area which are not as low as reasonably achievable, during mine excavation, mineral processing, and subsequently during and after rehabilitation.

However the OSS has approved significant increases in water application areas at both Ranger and Jabiluka thereby greatly increasing the contaminant footprint of the area.. This approach has a direct bearing on environmental values now and into the future and further complicates site rehabilitation

⁹ Supervising Scientist for the Alligator Rivers Region, Annual report 1988-89, Canberra: AGPS, 1989, p.8

¹⁰ Supervising Scientist, Annual Report 1990-91, page 14- 15)

¹¹ Proof Committee Hansard, Senate Environment, Communication, Information Technology and the Arts, Consideration of Budget Estimates, Monday 22 May 2000, Canberra.

issues. ECNT is deeply concerned by both the apparent increased preparedness by the OSS to facilitate ERA's operational needs ahead of all other concerns and its reporting sophistry. This can be clearly seen in the recent OSS investigation report which states:

“Whilst it is true that, as a result of the incorrect dumping of material on the Grade 2 stockpile, the load of contaminants that entered the Corridor Creek wetland filter system on the Ranger Project Area was increased, it is not correct to equate this with an increase in environmental impact on the Ranger Project Area.”¹²

Until fairly recently the Corridor Creek wetlands filter system did not exist. The creation of the system has seen contaminated water applied over a larger surface area and now the OSS seems to be saying that given that the system is designed to receive contaminated water then it does not now matter how contaminated that water is. It is clear that increasing the size of the contaminated area on the site and the levels of contamination has major implications for rehabilitation and also for the long-term impacts of the mine on areas downstream. Focusing upon off-site impacts also restricts full analysis of the cumulative on and off site impacts of mining and obscures a view of the complete impacts of mining and any potential problems or issues that may emerge at a landscape scale. Given that the Ranger Project Area is supposed to be incorporated into Kakadu National Park following rehabilitation ECNT believes that the OSS needs to pay much greater attention to on-site impacts.

➔ As outlined in section 1 the OSS response to environmental breaches and incidents at Ranger and Jabiluka including the 2000 and 2002 leaks and incidents has generally been weak, with no sanction being applied. This has led to recurring problems, a weakening of the regulatory framework and, in the absence of strong regulatory disincentives to breach the Environmental Requirements, a poor company culture. To date ERA has failed to implement all of the recommendations of the 2000 leak report and yet we've had a further breach of the reporting requirements very similar to the 2000 breach. The OSS response to the 2002 incidents was again extremely weak.

Despite ERA's inability to meet expected standards and explicit undertakings the OSS approach supports a further devolution of regulation to the company via the ISO 14001 process rather than tightening regulatory controls. As previously outlined, an increasing reliance on Voluntary Environment Measures is inappropriate given the company's repeated failure to meet basic regulatory requirements and stakeholder and wider community expectations.

2.2 Department of Industry, Tourism and Resources

Ranger mine operates under an authority issued under section 41 of the Atomic Energy Act, 1953. The Commonwealth agency responsible for the administration of this Act is the Department of Industry, Tourism and Resources, with the Commonwealth Minister also responsible for issuing uranium export licences.

Given that uranium is a prescribed mineral under the Atomic Energy Act, ECNT believes that the Commonwealth must be actively involved in the direct regulation of environmental performance at Australian uranium mines. However DITR and the Commonwealth have facilitated the devolution of regulatory control to the NTG and have had minimal involvement in regulation at Ranger and Jabiluka.

In those cases where the Minister for ITR has engaged in regulatory action at Ranger and Jabiluka, the intervention has had a weakening effect. Amendments to the Customs (Prohibited Exports) Act made at the end of 2000 provided an increased ability for the Minister to place conditions on export licences in order to improve performance. Additionally the amendments altered the export licence arrangements

¹²Supervising Scientist, Investigation of the Stockpile and Reporting Incidents at Ranger and Jabiluka 2002, p.3.

to lengthen the period for which export licences are valid. These amendments were made in response to the Ranger Tailings water return pipe leak in 2000 and World Heritage Committee commitments. To date, as far as ECNT is aware, the Minister has not imposed any further conditions upon ERA to improve environmental performance as a requirement attached to the export permit. However under the new regime export permits are valid for a period of time rather than on a consignment by consignment basis. Therefore despite altering the legislation to provide for further Commonwealth regulatory powers the result to date has been no change to ERA's performance requirement yet the company now holds an export permit that is valid for a longer period.

In section 1 ECNT outlined the weaknesses of the Atomic Energy Act as a regulatory mechanism. Although the ER's outline expected performance standards the Atomic Energy Act does not have an appropriate sanction mechanism and therefore there are limited legislative tools to respond to a breach of the Environmental Requirements. ECNT believes that consistently weak responses from DITR to incidents and breaches at Ranger have had a weakening effect on the regulatory mechanisms in place at Ranger and Jabiluka and have contributed to a culture of complacency within ERA.

Finally, DITR significantly weakened the environmental conditions attached to the Jabiluka Environmental Impact Statement in 1997 and Public Environment Report approvals in 1998. The initial set of requirements recommended by Environment Australia and approved by the then Environment Minister were diluted significantly before approval by the then Minister for Resources and Energy. Again the involvement of the Minister for ITR dragged down expected performance requirements at Ranger and Jabiluka.

3. a review of Commonwealth responsibilities and mechanisms to realise improved environmental performance and transparency of reporting.

In order to address the regulatory weaknesses and failures outlined in the previous sections ECNT recommends:

- 1) All recommendations of the previous Senate Inquiry 'Jabiluka: The Undermining of Process'¹³ be implemented.
- 2) Problems that stem from multi-agency regulation be addressed by streamlining the regulatory framework. This could take place in a number of ways. The simplest way to achieve this would be to implement recommendation 6 of the above Senate Inquiry, that:

“the Committee recommends that powers of day-to-day regulation of uranium mining in the Alligator Rivers Region be removed from the Northern Territory Department of Mines and Energy and restored to the Office of the Supervising Scientist.”¹⁴

Failing that another possibility would be to introduce a single piece of Commonwealth legislation that encompasses all of the current legislative components under the umbrella of a single Act that would be replicated at the Northern Territory level with a similar Act. This would remove the dissonance and inconsistencies between the various Acts that regulate uranium mining Activities in the Alligator Rivers Region.

- 3) If the NTG is to retain its role in the monitoring and regulation of uranium mining in the NT the working arrangements between the NT and the Commonwealth need to be strengthened to ensure that the NT's legislative framework is adequate, robust and effective. The Commonwealth must ensure that at a minimum the NT:

¹³ Jabiluka: The Undermining of Process. Inquiry into the Jabiluka Uranium Mine Project, Report of the Senate Environment, Communications, Information Technology and the Arts References Committee, June 1999.

¹⁴ Ibid. p.xxi

- a) establishes an independent Environment Protection Agency (EPA)
 - b) shifts responsibilities for monitoring and regulation of environmental protection objectives from the Department of Business Industry and Resource development to the EPA.
 - c) introduces best practice Freedom of Information legislation.
 - d) ensures that Mine Management Plans and key documents and data relating to uranium mining operations and impacts are in the public realm.
- 4) The working arrangements need to be amended to ensure that any difference in interpretation of events between the Commonwealth and the NTG is resolved by adopting the interpretation that gives most regard for environmental protection objectives. (ie the precautionary principle needs to be applied in the case of any doubt as to the significance of an incident).
 - 5) All regulators need to pay much greater attention to the on-lease impacts of uranium mining. Currently the lease area is viewed as a 'sacrifice zone', however in the long term this has major rehabilitation implications. Given that both the Ranger and Jabiluka leases are to be incorporated into Kakadu National Park following mining there should be a detailed and independent review of the potential impacts of current and future operations on site rehabilitation plans and the adequacy of the existing rehabilitation bond and financial provisions.
 - 6) The OSS needs to increase both its on-site and off-site monitoring and conduct event-based monitoring. There needs to be more statutory monitoring points at both operations and a greater frequency of monitoring.
 - 7) The regulators need to take action to ensure that the culture within ERA is improved. Reliance on ISO 14001 alone will not change company culture. The company needs to be held accountable to submitted and approved Mine Management Plans (which need to be public documents), ER's and authorisation conditions.
 - 8) The ER's at Jabiluka need to have legislative status, as is currently the case at Ranger. Currently the ER's at Jabiluka operate under a 'gentleman's agreement' but the latest ER's have not been enshrined in the legislation, which will create difficulties in the case of a breach of the ER's at Jabiluka.
 - 9) The DITR Minister applies stringent conditions on all uranium export licences. Such licences should be withdrawn in the event of compliance failure by ERA (or other operators).
 - 10) In accordance with the aspirations of the traditional owners and many in the Australian community, ECNT recommends that the Senate Inquiry re-states the existing Senate opposition to the Jabiluka project proceeding. On April 10, 2001 the Senate passed the following motion:

Senator Allison moved that the Senate-

(a) notes the announcement by Rio Tinto in the week beginning 18 March 2001 that it would not support mine owner Energy Resources of Australia's development of Jabiluka in the short term;

(b) advises the Government that it is unacceptable for this major mine site including retention dams, mine construction and associated works to remain in this state for any length of time; and

(c) calls on the Government to commence discussions with Rio Tinto immediately with a view to an early rehabilitation of the site and for it to be handed back to the traditional owners as soon as possible.

The motion passed on the voices.