

Uranium Mining – Information strategy for Aboriginal stakeholders

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The question facing society as a whole is how, based on an objective appraisal of the facts, and in the face of major threats to global climate from fossil fuel burning, do the risks posed by nuclear energy compare with those posed by fossil fuel use, and are they acceptable. (Commonwealth of Australia 2006b:73)¹.

1. Introduction

Many Aboriginal groups in central Australia presently face the issue of whether to allow uranium exploration on their land. While a large proportion of Australians are unresolved over the merits of uranium mining and have no pressing concern to decide, traditional Aboriginal owners do have immediate decisions to make. This is due to the way the mining provisions operate under land rights legislation in the Northern Territory.

This paper describes the right to consent Aboriginal people have under the *Aboriginal Land Rights Act (Northern Territory) 1976* and details the method used by the Central Land Council (CLC) to inform traditional Aboriginal owners when making decisions over uranium exploration on their land. The aim is to illustrate the extent of collaboration and resources involved to properly inform indigenous groups whose first language is not English and whose formal education is limited.

With respect to mining, informed consent is provided for by the Land Rights Act - at the exploration stage only. The consent provisions are a qualified version of the right to free, prior, and informed, consent (FPIC) contained in the United Nations Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in September 2007 (United Nations 2008)².

A secondary aim of the paper is to impart the CLC's recent experience with informing Aboriginal people over uranium mining in order to assist others concerned with operationalising particularly the information 'pillar' of the right to FPIC in other jurisdictions (for instance see IUCN-ICCM 2008).

2. Aboriginal consent to mining

The Land Rights Act is the first statute to comprehensively provide for Aboriginal land rights in Australia and "remains the high water mark of legislative recognition of these rights" (Levy 1996). Its introduction largely followed the recommendations of Justice Woodward, the Aboriginal Land Rights Commissioner appointed by the Whitlam Federal Government in 1973 to report on the means by which Aboriginal land rights could be recognised in the Northern Territory.

Fundamental to the Act is the right of traditional Aboriginal owners to be consulted over the use of their land and the right to control access. Woodward insisted that mining and other developments on Aboriginal land should proceed only with the consent of the Aboriginal landowners unless the national

¹Commonly referred to as the Switkowski Report after the Nuclear Review Taskforce Chairman Dr Zygmunt (Ziggy) Switkowski.

²Article 32.2 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (*emphasis added*).

interest required that Aboriginal objection be overridden. This "[w]ould not be determined on a mere balance of convenience or desirability but only a matter of necessity" (Woodward 1973:108).

In reaching his conclusions, Woodward carefully considered the mining industry's arguments against Aboriginal control of mining but was not convinced:

I believe that to deny Aborigines the right to prevent mining on their land is to deny the reality of their land rights. I find it quite impossible to inspect developments on Groote Eylandt or the Gove Peninsula or proposed works on uranium deposits in Arnhem Land and to say that such developments, without consent, could be consistent with traditional land rights for Aborigines. (1973:108).

Subsequent changes to the original mining provisions³, particularly the 1987 amendments, substantially qualify traditional Aboriginal owners' right to consent such that:

- the right to consent is with respect to exploration licences only. No such consent is required at the mining stage
- refusal is not a definitive veto, it results in a moratorium for 5 years after which the applicant is entitled to re-apply
- the right to consent must be exercised within prescribed time limits⁴
- the national interest is overriding (although this have never been invoked)

Being limited to such a degree brings into scrutiny the extent that the amended consent provisions meet the principal and purpose of the Act. The critical issue for this paper is that once consent is given to exploration, traditional Aboriginal owners cannot refuse any subsequent mining. They are locked into a statutory process such that an agreement for mining must be made to allow the mining of any discovery to proceed.

Viewed in this context, the decisions required of traditional Aboriginal owners over exploration access are quite onerous. Such decisions have to be made at the earliest point in the development process when the least information on the nature of any possible mining is available. As landowners they have to literally live with their decisions.

The CLC's role is to be satisfied that traditional Aboriginal landowners understand the nature and purpose of the agreement and, as a group, consent to them prior to entering into any agreement. Providing information to traditional Aboriginal owners in an accessible and appropriate form is of high operational priority. In the case of uranium exploration and mining, the technical nature of issues, such as radiation, are compounded by the contested nature of the facts. This means there is an increased level of difficulty with informing Aboriginal people and greater need for collaboration and resources.

3. Northern Territory's uranium rush

Since 1987, the CLC has successively operationalised the processing of exploration licences under the amended mining provisions. Over this period, exploration interest has been predominantly in petroleum, gold and minerals other than uranium. At present no agreements exist permitting uranium

³ Exploration for minerals and petroleum is regulated under Northern Territory legislation administered by the Minister for Mines and Energy. Exploration licences (ELs) are required for exploring for minerals. With respect to EL applications on Aboriginal land, Part IV of the *Aboriginal Land Rights (NT) Act 1076 Cwth* applies. The Northern Territory Mining Minister initiates the process by consenting to applicants entering negotiations with the CLC. Applicants then have three months to apply for the consent of the CLC to the grant of the EL. In response, the CLC organises meetings to consult the relevant traditional Aboriginal landowners and ascertain their views. The applicant is entitled to present the exploration proposals to traditional Aboriginal owners at the first meeting. Where instructed, the Central Land Council negotiates an agreement over the terms and conditions of the grant. Through this process the rights and interests of traditional Aboriginal landowners are protected, and once a decision is made, the applicants obtain the certainty they need to make the substantial investment exploration requires.

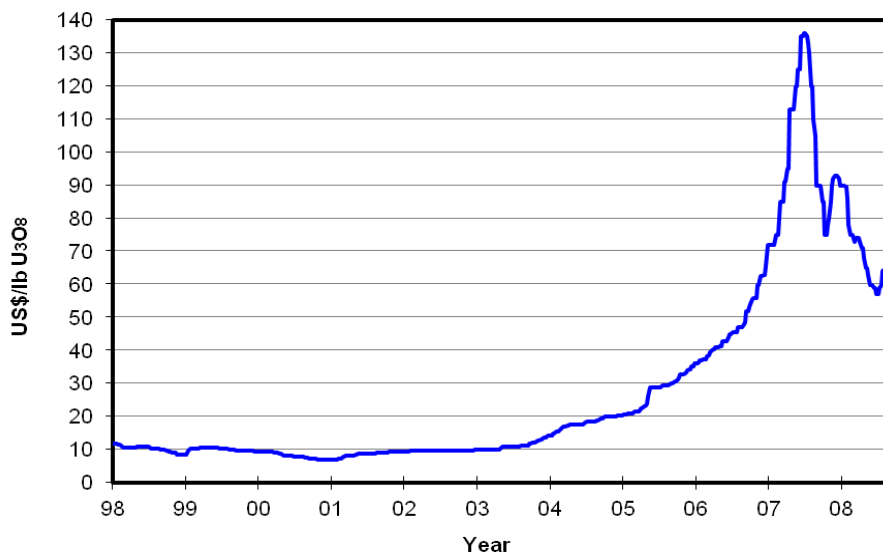
⁴ Amendments to the mining provisions in 2006 altered the effect of failing to meet statutory negotiation timelines. Previously the consent of the traditional Aboriginal owners was deemed to be given, which was amended so the applicant's permission to negotiate is deemed withdrawn in the circumstances where the deadline is not met.

exploration on Aboriginal land and up until 2004 there were no exploration proposals specifically for uranium.

Since 2004, central Australia has experienced a rush of interest in uranium. This is explained largely in terms of rising value of uranium coinciding with significant government policy initiatives and increasing bi-partisan political support.

Prices for uranium oxide (U_3O_8) have increased dramatically from average prices per pound (lb) of U_3O_8 through the 1990s at around \$US10. The graph of historical prices below shows this price climbing rapidly from 2004 to peak at \$138 in July 2007. Since then prices since July 2008 have stabilised around \$US65.

Figure 1 Historical Ux uranium oxide prices in US dollars



Source with permission: The Ux Consulting Company, LLC viewed at <http://www.uxc.com/>

Several significant events occurred at the political level which also contributed to increased exploration interest over this period:

- March 2005 - the then Minister for Resources, Ian Macfarlane, initiated a Parliamentary inquiry into the development of Australia's uranium resources - the Prosser Inquiry. The committee's report produced in November 2006 strongly advocates nuclear energy for Australia as well as increasing Australia's production and export of uranium⁵ (Commonwealth of Australia 2006a).
- August 2005 – the Australian Government 'took control' of the Northern Territory's uranium resources and declared "the Territory open for business on uranium" (Michelmore 2005).
- August 2005 – Minister McFarlane established the Uranium Industry Framework (UIF). UIF Steering Group are mostly from uranium companies and also includes representatives of the Australian, South Australian and Northern Territory governments. The UIF aims to facilitate increased uranium exploration and mining in Australian and has a number of working groups focusing on particular issues including indigenous engagement.
- June 2006 – the then Prime Minister, John Howard, appointed a taskforce to undertake a comprehensive review of uranium mining, processing and nuclear energy in Australia, headed by Dr Switkowski. A draft report, released in November 2006, recommends increasing Australia's uranium mining and export, as well as establishing domestic uranium enrichment, fuel fabrication, and nuclear power industries (Commonwealth of Australia 2006b).

⁵The report also recommends industry, Indigenous groups and state/territory governments to develop strategies to improve Indigenous training and employment outcomes at uranium mines.

- April 2007 – bi-partisan support for uranium mining was formalised at the Labor Party’s Nation Congress with a resolution to revise its uranium policy. Current Labor policy is to allow the mining and export of uranium “under the most stringent conditions”. The policy prohibits nuclear power and Australia’s entry into other parts of the nuclear fuel cycle, including fuel fabrication and nuclear energy (Australian Labor Party 2008). The Labor governments in South Australia and Northern Territory subsequently followed suit and support new uranium mines. Western Australia and Queensland, however, maintain a ban on uranium mining, although titles allowing uranium exploration continue to be issued in those states.
- Since winning the 2007 election, Martin Ferguson, the current Federal Minister for Resources and Energy, has confirmed the Australian Government’s intention to continue implementation of the UIF and support of new uranium mines.⁶

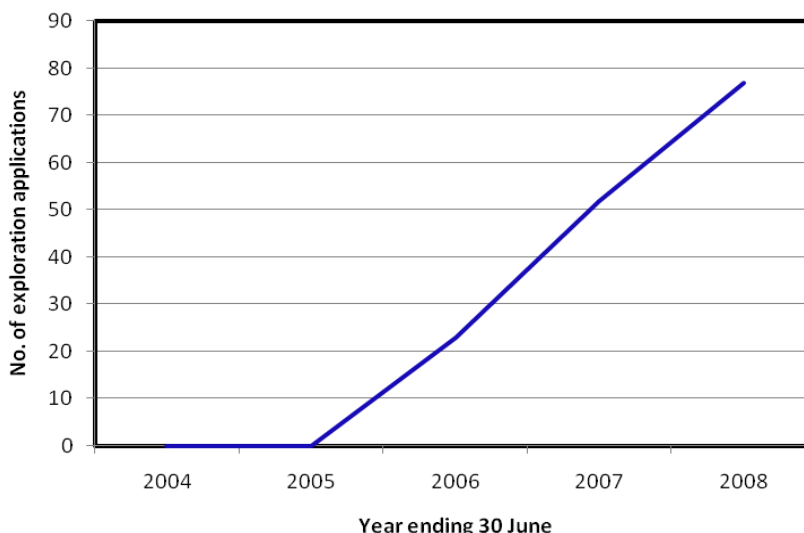
A result of the renewed interest and political support for uranium has been the creation of a plethora of new uranium exploration companies. In the first half of 2007 for instance company floats on the Australian Stock Exchange were dominated by uranium listings (Kearne 2007).

A significant portion of this exploration interest is aimed at central Australia as there are several well known uranium deposits including Pikili on Mt Doreen station, Angela/Pamela next to Alice Springs, Napperby, and Nolan’s Bore (by-product in a rare earth deposit). These deposits are not on Aboriginal land and are subject to native title rights and interests.

Other areas with prospective geology are on Aboriginal land and are also the focus of much of the renewed interest in uranium. In the financial year ending June 2008, 75% (77 out of 96 applications) of exploration applications received by the CLC were solely or primarily aimed at discovering uranium (Central Land Council 2008).

The Tanami region is almost wholly Aboriginal land and is prospective for uranium. In 1986 applications for uranium exploration were considered by traditional Aboriginal owners and these were refused. Uranium has not been of interest over the 20 years since then. Rather in that period there has been extensive consultation and agreement-making for gold exploration and several gold mines have been developed.

Figure 2 Number of exploration applications received by the CLC



⁶ See http://www.ret.gov.au/resources/mining/australian_mineral_commodities/uranium/Pages/uranium_industry_framework.aspx

4. Complexity with providing information

In the Tanami, traditional Aboriginal owners have gained considerable experience and a relatively good understanding of the impacts of gold exploration and mining as well as familiarity with the process of consultation and agreement-making. Proposals for uranium exploration, however, raise issues unique to uranium mining. To be fully informed, traditional Aboriginal owners need to be aware of issues at the local level of the mine site and, as well, issues beyond the mine site to do with downstream processing and supply.

Uranium is a unique commodity because it emits ionising radiation. While radiation in its naturally occurring setting are considered low, subsequent processing systematically increases the intensity and potential effects of the radiation. The nature and effects of ionising radiation are generally not well understood in wider society and much less so with traditional Aboriginal owners. Furthermore there are divergent views amongst professionals regarding possible adverse health effects of radiation.

Conveying complex technical concepts to traditional Aboriginal owners about mining is challenging enough, however, this task takes on an additional order of difficulty where the 'facts' of uranium mining are so contested. Opponents to uranium mining emphasise the issues with downstream processing, particularly problems with nuclear waste and generator by-products that could be used for nuclear weapons. Proponents of uranium mining emphasise economic and employment opportunities. Also highlighted are the medicinal uses of radioisotopes and the potential to alleviate disastrous global warming by using nuclear energy.

At the political level in Australia these matters are unresolved, yet Aboriginal people are required to come to a consensus in relation to specific exploration applications presented to them under the Land Rights Act process⁷. In 2005, the Chief Minister stated that new uranium mining would not be approved by the Northern Territory Government. Despite such statements the Northern Territory Mines Department continued its business of processing applications for exploration as usual. In response, the Commonwealth invoked its primacy in the regulation of uranium in the Northern Territory and took control. Subsequently the Chief Minister indicated her support for uranium mining, in line with sections of the Australian Labor Party, which were advocating the end of its long held 'three mines policy'.

The initial response by the CLC was to produce a uranium information briefing in local languages, Arrernte and Warlpiri. A trip to BHP Billiton's Olympic Dam was also organised in September 2005. Exposure to operations at the mine site, however, was limited to the regular visitors mine tour. While people gained an understanding of differences in relation to uranium mining, the chance to engage with substantive issues, as land owners potentially affected by such activity, was limited. The need was identified for a more sophisticated information strategy, which took advantage of collaboration on offer from sectorial interests and the resources available under government initiatives.

5. CLC Uranium Information Strategy

Given the range of factors discussed above, the CLC was concerned that its usual process of consultation meetings to consider exploration proposals by explorers would not allow the breadth and complexity of issues to be sufficiently canvassed. A preliminary level of awareness needed to be established in order for the consultations meetings over specific exploration proposals to be effective. It is at these meetings where informed decisions have to be made. The CLC decided to implement a Uranium Information Strategy with the aim to:

- deliver information in a format accessible to people who speak English as a second language and have low educational levels

⁷This issue has an additional layer of complexity as the Australian Government in July 2005 announced an assessment process of three defence sites in the Northern Territory for the co-location of the Commonwealths low level waste repository and intermediate level waste storage facility. Two of these sites are located in central Australia, both of which are vigorously opposed by respective traditional Aboriginal landowning groups.

- disseminate information widely through the affected communities whilst maintaining primacy of land owning groups in making land use decisions
- give communities exposure to divergent views and opinions held in wider society
- separate the process of informing Aboriginal people about complex issues from the consultation process with traditional Aboriginal owners that seeks decisions over access to land
- provide sufficient time for information to circulate and encourage discussion amongst the communities ahead of meetings deciding on access to land
- collaborate with other agencies to develop appropriate, accurate, and balanced information resources
- compile an information package for subsequent use with other Aboriginal communities and groups in CLC region that are dealing with uranium exploration applications

The result was a two-tiered approach to consultations over uranium related applications:

- In the first instance, the uranium information strategy aims to provide affected Aboriginal communities with general information on uranium and the nuclear supply chain, as well as exposure to the various views held in wider society.
- Consultation meetings with traditional Aboriginal owners over specific exploration licences would follow once the communities had sufficient time to consider the information.⁸

	Target group	Decision making	Presentations	Information
1st Tier	Affected Aboriginal communities and groups	Information only. No decision required	Sector interests representing respective views and positions	<ul style="list-style-type: none"> • Information on uranium exploration and mining, radiation, contested nature of issues, nuclear fuel cycle. • Specific exploration programs and companies not discussed
2nd Tier	Traditional Aboriginal landowners	Whether to enter into negotiations	Mining company representatives explaining exploration proposals	<ul style="list-style-type: none"> • Mining company explains their exploration proposals and potential impacts • Information on impacts of possible mining • Rights and processes under the Land Rights Act explained by CLC

The following section describes the process undertaken to deliver the first-tier meetings at the two main communities in the northern Tanami Region, Lajamanu and Kalkaringi, in September 2007. It intends to show the range of considerations taken into account and the level of collaboration engendered with other organisations to meet the aims of the strategy.

Collaboration

In developing the information resources, the CLC worked in collaboration with the Northern Territory Mines and Energy Division, the UIF Subgroup on Indigenous Engagement and other groups. A series of seven (7) two metre high posters were produced covering several themes related specifically to the environmental and social issues associated with uranium mining. The banners were designed to focus discussions and prompt discussion and questions from community members.

⁸ The format for the meetings will follow the standard procedure for CLC exploration licence application meetings. At the time of writing the schedule of further meetings dealing with specific exploration licences had just commenced.

The poster series include such matters as the physical properties of uranium and radiation, the nuclear fuel cycle, uranium mining in Australia, potential radiation exposure pathways, techniques for uranium exploration, radiation safety and management, arguments for and against using uranium:

1. **Uranium and radiation** – introduces uranium as an element in nature, the nature of radiation and how it transmits in different forms. It deals with how radiation behaves as it travels through various substances such as parts of the body such as hands, paper, the metal lead, and concrete; the possible effects of various levels of radiation on humans; and introduces the phenomenon of decay and daughter products.
2. **Uranium exploration** – shows the methods and technology used in exploring for uranium deposits including specialised instruments such as Geiger counters, as well as standard techniques including the use of airborne and ground based geophysics and drilling. Shows uranium exploration as essentially similar to other minerals with added protective measures such as use of protective clothing and sample disposal in trenches.
3. **Uranium mining in Australia** – including maps and images of the operating mines in Australia such as Olympic Dam, Ranger and Beverly.
4. **Nuclear Fuel Cycle** –graphics of the nuclear fuel cycle and also actual photos of nuclear power facilities to put mining in context of the nuclear fuel cycle. Images were largely sourced from AUA and Cameco.
5. **Radiation Safety** – illustrates the extent radiation hazards are managed on the mine site and includes images of mine people wearing personal protective equipment, as well as photos of people on communities and animals with text raising questions over the possible effects of radiation on the environment.
6. **Radiation contamination pathways** – shows the various possible routes for radiation to harm the human body, including groundwater and surface water, dust and importantly for Aboriginal people, eating contaminated bush food.
7. **Anti Uranium case** – includes text explaining highly contentious and political nature of the issue of uranium mining, highlighting that all new mines are strongly opposed. Includes images of the walk from Roxby to Hiroshima in 2003-2004 and highlights the massive water requirements of the Olympic Dam mine.

Community meetings

Two large-scale community meetings were held over a whole day, firstly in Lajamanu and then in Kalkaringi. Each meeting was advertised in advance and the rationale discussed with respective senior community members. On the day, the meeting was open to anyone in the community. Some 80 to 100 people attended each of the meetings.

It is common for community based meetings for a significant proportion of people to sit on the fringes of meeting so a public address system was used. Aboriginal interpreters based in each of the communities were employed to assist with guest speaker presentations and also questions from the people at the meeting.

The poster series was displayed for the whole day to make it accessible both before and after the formal part of the meeting. During the presentations, the relevant parts of the information on the posters were referred to by the presenters to assist with explanations. Officers from the CLC's Mining Section commenced proceedings with explanation of the purpose of the meeting, roles of the participants, general introduction to the issues surrounding uranium mining.

Representatives from the uranium representative body, the Australian Uranium Association (AUA) and the peak Australian conservation body, the Australian Conservation Foundation (ACF) addressed the meeting in turn. The Radiation Officer from the Northern Territory Government's Minerals and Energy Division also presented information on the regulatory regime and safety. The main points of each of these presentations were:

- The AUA's message was that uranium mining is much like any other mining and good for the economy. There are risks associated with uranium but those risks can be managed. Uranium miners are concerned to protect the environment and look after the health of their workers and nearby communities. Australian mining companies have experience and a good record with managing hazards. They want to work with communities to create benefits from employment and income that mining can generate. Uranium is a very clean fuel for the world which is desperately needed to counter global warming.
- The ACF's message was that uranium is not like other minerals and uranium mining is not like other mining. It is dangerous and can have serious impacts on people and country. There have been many incidents at existing mines and it is not possible to guarantee safety. Uranium is linked to the worst sort of waste, radioactive waste, and linked to the worst sort of weapons, nuclear weapons. The risks outweigh any potential benefits and people need to think very carefully about it.
- The Northern Territory Government Radiation Officer emphasised that rigorous monitoring is carried out to ensure adherence to regulations that protect health and safety. Mining can be carried out safely and there are well established procedures in place to promote best practice. Done properly, uranium mining presents no additional risks compared with other mining.

A question and answer session followed to allow community members to seek further clarification or raise other matters.

A more informal session featuring several videos followed each meeting. Three films were shown including a film the CLC had produced recording the trip by Aboriginal people to Olympic Dam in 2005, a film provided by the ACF, *A Climate of Hope*⁹, and a film provided by the Uranium Industry Association *Australia's Uranium*. The ACF and AUA representatives were present to answer questions and contest information.

Mine visit

There was considerable interest generated by the road shows and a strong interest in experiencing first-hand an operating uranium mine and to relate the information with the reality of the mine.

The CLC collaborated closely with Energy Resources Australia Ltd (ERA) which operates the Ranger Uranium Mine to enable a mine visit in October 2007. A bus, supported by Central Land Council officers and vehicles, took 22 Aboriginal people from Lajamanu, Kalkaringi, Balgo, Halls Creek and Ringers Soak to Jabiru in the Top End of the Northern Territory. Two companies which have applications in the region, Northern Uranium Ltd and Thundelarra Exploration Ltd, contributed to the cost of hiring the bus and the accommodation in Jabiru.

ERA's community relations department hosted the group and facilitated a detailed inspection of the Ranger mine and processing facilities. The processes and safety procedures were discussed at a meeting held with mine personnel. A further meeting was held at Jabiru with Environmental Research Institute of the Supervising Scientist, which has a statutory monitoring role at Ranger. As well there was a meeting to hear the concerns of the senior Mirrar traditional Aboriginal owners regarding mining on their land and gain an appreciation of the variety of opinions of people close to the mine.

The tour group experienced a range of views and opinions on uranium mining and saw firsthand how uranium is recovered and radiation is managed on an operating mine site.

Production of uranium information resources

A film crew from an Aboriginal community based media association, Aboriginal PAW Media and Communications, were commissioned to film the community information sessions as well as the

⁹Climate of Hope is a 30 minute documentary dealing with climate change, nuclear power and the energy revolution, produced by Scott Ludlam and the Anti-Nuclear Alliance of WA see <http://radicalhack.com/anawa/DVD>.

Ranger mine tour. Professional quality DVDs were produced, one of the community meetings and the other of the visit to Jabiru and the Ranger Uranium Mine.

The DVDs record the range of issues and opinions on uranium mining and provide valuable visual illustration of an operating mine site. They provide an educational resource to give other Aboriginal people who were not on the tour an opportunity to learn from the events¹⁰.

Feedback

Following the community meetings the CLC interviewed the representatives from the peak representative organisations. Extract of their comments are below.

Dave Sweeney, Nuclear Free campaigner Australian Conservation Foundation:

Yeah, it's been really positive, it's been an important trip and it's been an important opportunity at this time for both sides of the story about uranium and the story about its impacts on people and country to be told. A lot of the time you hear just one way of the story about uranium. You get only the story of the benefits of mining operations and I think it's really important now when there's a lot of pressure on communities and a lot of push for uranium mining in the Tanami and in the Western Desert for there to be a more balanced two-side story to what's a pretty controversial and complex issue.

Michael Angwin, Executive Director Australian Uranium Association:

Look I think this has been a tremendously important experience for us all and I know there's a lot of good will from everybody who participated because we know that the Warlpiri and the Gurindji have got to make some important decisions about how much they want to be involved in the uranium mining and exploration. I just hope we've been able to give them enough information from you know from our own points-of-view to help them with that decision.

Some Aboriginal participants were surveyed following the Ranger mine visit. Participants stated that the visit to Ranger was helpful, "we have good information now", "we didn't know about uranium before, but now we know". Their concerns about uranium mining centred on damage to "Dreamings and culture", possible affects on animals, bush tucker, water quality, and "people getting sick".

6. Conclusions

- Aboriginal people need be informed as fully as practicable in order to be able to exercise properly their right to decide over resource development on their land
- information needs to be made accessible and provided in an appropriate format
- conveying complex and contested information has a higher degree of difficulty and requires a higher level of resources and planning.
- collaboration with a range of relevant agencies can lead to good outcomes in terms of providing accuracy of views, balance, and validation of process
- even parties with opposing views can collaborate in a positive way where there is a common aim, in this case, of informing Aboriginal communities as far as practicable about uranium mining.
- there is clear scope for collaboration under information 'pillar' of indigenous people's right to free, prior, and, informed consent

¹⁰As part of the on-going uranium information strategy, the poster exhibition and the DVD's have been shown at other communities affected by uranium exploration in the Central Land Council region. Sessions were held in Tennant Creek, Alekarenga, and Ti Tree in April 2008, Alice Springs in May 2008 and Areyonga in June 2008.

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