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CABINET DECISION

NO. 554

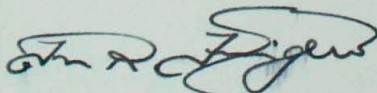
Submission No.: 480

Title: LEGISLATION FOR ENVIRONMENTAL REGULATION
OF URANIUM DEVELOPMENT

Cabinet

- (a) Approved the proposed legislation for environmental regulation of uranium development.
- (b) Decided that the Chief Minister inform the Commonwealth that if the Northern Territory is to accept responsibility for the regulation of uranium mining, it must be able to legislate so that the regulation of mining is enforceable in all its aspects including the requirement that mining companies rehabilitate the land. Therefore, the Northern Territory Government believes that the mining companies should be required to give security for all aspects of mining projects including rehabilitation.
- (c) Decided that the legislation be prepared before the end of January 1979 and circulated to each member of the Legislative Assembly with an explanatory memorandum prepared by the Solicitor General and Secretary, Department of Mines and Energy and an advice that it is proposed to seek passage of the legislation at the February/March sittings of the Legislative Assembly.

The explanatory memorandum and the legislation should also be made available to the press and all other likely interested parties.



(M.R. FINGER),
Secretary to Cabinet.

2 January 1979

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THE NORTHERN TERRITORY OF AUSTRALIA

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Copy No. 1

FOR CABINET

SUBMISSION No. 480

Title: Legislation for environmental regulation of uranium development.

Cabinet Member: Chief Minister, acting for and on behalf of Minister for Mines and Energy.

Purpose: To approve legislation for environmental regulation of uranium development and to ensure enforcement of the same by means of security to be furnished by the mining companies.

Relation to existing policy: Conforms to existing policy for maximum Northern Territory involvement and responsibility for natural resource development.

Timing/legislative priority: Urgent. Legislation to be introduced and passed in February sittings.

Announcement of decision, tabling, etc.: Draft legislation to be circulated to Assembly Members in advance of formal introduction if possible, but no public announcement prior to introduction.

Action required before announcement: Final draft requires clearance with Commonwealth to ensure no delay in receiving assent once Bill has been passed.

Staffing implications, numbers and costs, etc.: 16 positions in Department of Mines and Energy initially, rising to about 30 later on.

Total cost: No cost to Northern Territory, as all costs will be recoverable from Commonwealth.

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ENVIRONMENTAL REGULATION OF URANIUM DEVELOPMENT

Comment by
Director of
Finance:

amendments similar to those already made to
the Environment Act should be made in relation to
the protection of the uranium province.

The Territory should accept the responsibility
for the control of the province after work
if so, on what terms

Approved/Not Approved

Signed:

Date:

The Territory has agreed with the Commonwealth
responsibility for controlling the mining and
uranium in the Northern Territory. The agreement

Comment by
Public Service
Commissioner:

No objection to legislative amendments.

Approval to staffing levels, subject to financial
negotiations, given by this Office some time ago.

The Minister will have some discussion in this
area to this in detail.

Director No. 308 on 3.8.78 approved amendments
to the Environment Act, the Soil Conservation and Land
and the Explosives Act to allow regulations

~~Approved/Not Approved~~

G. GASKILL for Public Service Commissioner

Signed:

Date:

28.12.78

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C O N F I D E N T I A L

ISSUES

1. Whether amendments further to those already made to the Mines Regulation Act should be made in relation to environmental protection of the uranium province.
2. Whether the Territory should accept the responsibility for environmental control of the province after work commences and, if so, on what terms.

BACKGROUND

3. The Northern Territory has agreed with the Commonwealth to accept responsibility for controlling the mining and milling of uranium in the Northern Territory. The agreement means that the Government of the Northern Territory will have the power to enforce the most important recommendations of the Ranger Inquiry, although under the proposed legislation, the Minister will have some discretion in how closely he adheres to this in detail.

4. Cabinet Decision No. 366 on 3.8.78 approved amendments to the Control of Waters Act, the Soil Conservation and Land Utilization Act and the Explosives Act to allow regulations to be made for environmental control of the Ranger Project and contemplated the making of regulations under the Mines Regulation Act for similar environmental control.

5. The amendments to the Acts which were required by that

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decision have now been passed by the Assembly.

6. Since then, the Ranger Uranium Project Agreement under section 44 of the Aboriginal Land Rights (Northern Territory) Act 1976 between the Commonwealth and the Northern Land Council has been signed.

7. The relevant provisions of the agreement and the proposed authorization under Section 41 of the Atomic Energy Act are set out in Attachment "A".

8. Negotiations are proceeding between the Joint Venturers and the Commonwealth in relation to an agreement on certain aspects of the authorization under Section 41 of the Atomic Energy Act. The Northern Territory is not a party to the negotiations.

9. The questions of most concern to the Northern Territory are what conditions should be imposed on the joint venturers by Northern Territory law and how the law regulating the environmental aspects of the mining and milling of uranium is to be enforced, bearing in mind the enormous cost of rehabilitation. The only realistic sanction would be adequate security given by the joint venturers to the Government of the Northern Territory before the work commences.

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10. The draft agreement referred to in paragraph 8 in its present state provides that each joint venturer is to furnish security for the carrying out of the rehabilitation work and the security is to be held by the Commonwealth. The basis of this is that the Commonwealth has an overriding liability to the Northern Land Council to carry out the work.

CONSIDERATION OF THE ISSUES

Security

11. The arrangements in relation to Ranger are as follows:

- (1) The Commonwealth has a liability to the Northern Land Council to ensure that rehabilitation work is carried out by the Joint Venturers or by it to the satisfaction of the Supervising Authority (in this case the Northern Territory Government).
- (2) In order to secure that obligation and to ensure compliance by the Joint Venturers with it, the Commonwealth will extract from Peko and EZ (but not necessarily from the Australian Atomic Energy Commission) security in an amount satisfactory to the Commonwealth and with a Bank satisfactory to the Commonwealth. This will mean that the body which fixes the standard to which rehabilitation must take place (i.e. the Northern Territory) will not be capable of enforcing that standard in any meaningful fashion. This is because the only

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meaningful method of enforcement is a bond, but the Commonwealth Government, not the Northern Territory Government will hold a bond. There is not even a requirement that the amount form or bank with which the bond is lodged be satisfactory to the Government.

12. In addition, environmental aspects other than rehabilitation will not be covered by the bond held by the Commonwealth, and, in view of the size of the Commonwealth's bond, it is doubtful whether the Joint Venturers would agree to a second bond. This situation will recur with Nabarlek and the other mines in the area.

13. This situation is clearly undesirable. If the Northern Territory is to be responsible to regulate the mining, it must have direct recourse to adequate security held by the Government of the Northern Territory. The security must relate to all environmental aspects, such as damage caused by water pollution, as well as to rehabilitation of the mine site.

14. The Commonwealth's attitude appears to be as follows:

- (a) As the joint venturers are required to give a bond to the Commonwealth in respect of rehabilitation they should not be required to give a further bond to the Territory in

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respect of the same matter.

- (b) The Commonwealth cannot forego the bond to be given to it because the Commonwealth is required under its agreement with the Northern Land Council to carry out rehabilitation work if the work is not done by the joint venturers.

- (c) There is a distinction between Ranger and the other mining ventures because the Ranger negotiations commenced before self-government and the ore will be mined pursuant to an authority granted under the Atomic Energy Act whereas Nabarlek and the other deposits will be mined according to titles granted under the Northern Territory Mining Act. Therefore, whilst it would be appropriate for the Northern Territory Minister to require other mining companies to give security for the cost of rehabilitation, Ranger should not be subject to the same requirement.

- (d) As the Commonwealth has guaranteed to the Northern Land Council that the work will be done the Northern Territory does not need security to be given by the joint venturers.

- (e) The Commonwealth may be prepared to give to

the Northern Territory a guarantee that the Commonwealth will be responsible for carrying out the rehabilitation work if the joint venturers fail to do so - that is, the Commonwealth may be prepared to give to the Northern Territory the same guarantee which it gave to the Northern Land Council. This however, is as far as the Commonwealth would be prepared to go.

The Northern Territory Government's problem then is whether it is prepared to accept the responsibility of legislating if it cannot have direct recourse to security provided by the joint venturers in respect of the cost of rehabilitation of the mine site. There is no dispute that our legislation should provide for the joint venturers to provide security in respect of other breaches of the law, for example, damage caused by water pollution and so on.

As I said in paragraph 13, in my view, we should have direct recourse to adequate security held by the Northern Territory.

Legislation

15. In relation to the need for legislation, the Solicitor-General has advised that in order to support the regulations

under the Mines Regulation Act which were contemplated in the earlier Cabinet Decision, further amendments to the Mines Regulation Act will need to be made. It would appear the matters which would be covered by these Regulations are set out in Attachment "B".

16. Rather than attempting to control the environmental aspects of mining and milling by regulations, it would be preferable to introduce a new Act. Fresh legislation is desirable because of the extent and nature of the amendments proposed which relate to environmental safety rather than human safety, which is the principal concern of the Mines Regulation Act.

17. The basis of the new Act would be that a person shall not carry out mining operations in the uranium province unless he obtains an authorization from the Minister for Mines and Energy and complies with the requirements of that authorization. There would need to be specific requirements for consultation with the Supervising Scientist and the Northern Land Council as well as with the other parties to the various agreements. However, it is not envisaged that the Minister should be bound by the specific provisions of the Ranger/Northern Land Council agreement or the Section 41 authorization.

OPTIONS

Security

18. The options are:

- (1) to accept that a bond from the Joint Venturers to the Commonwealth to secure its obligations to the Northern Land Council in relation to rehabilitation, coupled with a guarantee by the Commonwealth to the Northern Territory, is sufficient security to ensure compliance with all the environmental requirements laid down by the Northern Territory Government; or
- (2) to refuse to accept the responsibility for environmental control unless the responsibility can be adequately backed up by security satisfactory to the Territory.

Legislation

19. If the Government is to accept a role in setting environmental standards, the legislation recommended is required.

PUBLIC IMPACT

20. If the recommendations as to security are not adopted, and environmental damage occurs which cannot be rectified, the blame will be laid at the feet of the Government of the Northern Territory on the basis that it permitted mining and

set standards without ensuring that they would be met.

FINANCIAL CONSIDERATIONS

21. The Commonwealth has agreed to reimburse the Territory in respect of expenditure relating to uranium mining.

CO-ORDINATION

22. N/A.

LEGISLATION

23. Legislation required for the second aspect of the recommendations should be introduced in February.

INTER-GOVERNMENT RELATIONS

Security

24. I have already informed the Prime Minister of our attitude - see the copy telex, Attachment "C".

RECOMMENDATION

25. (1) that Cabinet approve the proposed legislation;
and

(2) that the Chief Minister inform the Commonwealth that if the Northern Territory is to accept responsibility for the regulation of uranium mining, it must be able to legislate so that the regulation of mining is enforceable in all

its aspects including the requirement that mining companies rehabilitate the land. Therefore, the Northern Territory Government believes that the mining companies should be required to give security for all aspects of mining projects including rehabilitation.

carry out the whole or part of the land rehabilitation work, the Commonwealth shall carry out any part of the work not carried out by the Joint Venturers

5.1 Taken as a whole and in their component parts, the plant and the mine shall be designed, and the mining, milling and related operations within the Major Project Area shall be carried on, in accordance with best practicable technology.

5.2 For the purpose of this clause, "best practicable technology" is that technology from time to time relevant to the Major Project which produces the minimum environmental pollution and degradation that can reasonably be achieved having regard to

- (a) the level of efficient control achieved, and
- (b) the extent to which environmental pollution and degradation has been prevented, is being and

ANNEXURE "A"

1. s.44 Agreement between the Commonwealth and
the Northern Land Council

"8.1 The Commonwealth shall ensure that all rehabilitation work in the Ranger Project Area is undertaken by the Joint Venturers in accordance with the Authority.

8.2 If, for any reason, the Joint Venturers fail to carry out the whole or part of the said rehabilitation work, the Commonwealth shall carry out any part of the work not carried out by the Joint Venturers."

"6.1 Taken as a whole and in their component parts, the plant and the mine shall be designed, and the mining, milling and related operations within the Ranger Project Area shall be carried on, in accordance with best practicable technology.

6.2 For the purposes of this clause, "best practicable technology" is that technology from time to time relevant to the Ranger Project which produces the minimum environmental pollution and degradation that can reasonably be achieved having regard to -

(a) the level of effluent control achieved, and the extent to which environmental pollution and degradation are prevented, in mining and

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in addition to milling operations in the uranium industry
anywhere in the world,

- (b) the total cost of the application or adoption of that technology relative to the environmental protection to be achieved by its application or adoption,
- (c) evidence of detriment, or of lack of detriment, to the environment after the commencement of the Ranger Project,
- (d) the physical location of the Ranger Project,
- (e) the age of equipment and facilities in use on the Ranger Project and their relative effectiveness in reducing environmental pollution and degradation, and
- (f) social factors including possible adverse social effects of introducing new technology."

2. Proposed authority under Section 41, Atomic Energy Act

30.(a) "The sites of mining excavations, tailings dam and other areas where ground has been disturbed shall be rehabilitated and revegetated to the satisfaction of the Supervising Authority."

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In addition, the authority lists a large number of specific conditions applying to:

- . water release standards
- . tailings dam design
- . dust emissions
- . blasting procedures
- . siting of explosives magazine

etc.

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ATTACHMENT "B"

MATTERS TO BE COVERED IN PROPOSED
ENVIRONMENTAL LEGISLATION

1. The limitation period of 6 months for bringing complaints for breaches of legislation, as provided for in the Justices Act, should be extended indefinitely in respect of offences against these provisions.
2. The Act should provide that no mining operations in relation to uranium should be carried out without an authorisation from the Minister. This would be in addition to the authorisations and requirements required and imposed under the Soil Conservation and Land Utilisation and the Control of Waters Act, but specific approval should not be required from the Minister for works or procedures already authorised under these Acts.
3. There should be specific provision empowering the Minister to impose conditions on any authorisation which he grants, and there should be provision that an authorisation may be amended at any time by altering or adding to the conditions where detriment to the environment is occurring or appears likely to occur, where appropriate new technology has become available or where standards are not yet available or require to be altered as a result of further investigations.

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4. The conditions should include power to impose a requirement to lodge a bond in a form and amount and with a bank satisfactory to the Minister to secure compliance with the authorisation, and any requirements imposed under the Control of Waters Act and the Soil Conservation and Land Utilisation Act.

5. The power of the Minister under the proposed Act should be wide enough to control the construction of mining buildings and structures (but should not cut across the power of the authority created under the Jabiru Town Development Act).

6. Penalty should be in the sum of \$100,000 for each breach plus a daily penalty of \$10,000 for continuing breaches.

7. There should be a provision permitting a complainant to aver matters of fact.

8. There would need to be provision permitting an inspector under the Mines Regulations Act to have the same powers with respect to a breach of the proposed Act as the inspector has under section 33 of the Mines Regulations Act. (This relates to the powers of inspector to stop operations which are in breach of the Act.)

9. It should be clearly established that conditions of the Ranger - N.L.C. agreement and section 41 authority, including

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the requirement to use "best practicable technology", is an obligation of the mining companies, resulting from negotiations to which the Northern Territory was not a party. The Minister, in issuing an authorisation, should have regard to these conditions, but is not bound by them.

10. The Minister to have power to delegate any of his functions under this legislation.

AS YOU KNOW, THE NORTHERN TERRITORY IS TO ACCEPT RESPONSIBILITY FOR REGULATING THE MINING AND MILLING OF URANIUM IN THE TERRITORY, WHICH MEANS THAT WE WILL BECOME RESPONSIBLE FOR ENFORCING THE MOST IMPORTANT RECOMMENDATIONS OF THE RANGER INQUIRY.

TALKS WERE HELD IN DARWIN RECENTLY BETWEEN TERRITORY AND COMMONWEALTH OFFICERS ABOUT PROPOSED NORTHERN TERRITORY MINING LEGISLATION. IN THE MEANTIME, NEGOTIATIONS PROCEEDED IN CANBERRA BETWEEN THE COMMONWEALTH AND THE JOINT VENTURERS. MY GOVERNMENT WAS NOT A PARTY TO THE NEGOTIATIONS.

IN THE VIEW OF MY GOVERNMENT THE ONLY EFFECTIVE WAY THE NORTHERN TERRITORY WILL BE ABLE TO ENFORCE ENVIRONMENTAL CONTROLS WILL BE BY REQUIRING THE JOINT VENTURERS TO JOINTLY AND SEVERALLY GIVE SUBSTANTIAL SECURITY TO THE NORTHERN TERRITORY.

THE SECURITY WILL HAVE TO BE ADEQUATE TO REMEDY DAMAGE CAUSED BY FAILURE TO COMPLY WITH ENVIRONMENTAL LAWS SUCH AS THOSE CONTROLLING ATMOSPHERIC EMISSIONS SOIL CONSERVATION AND WATER POLLUTION, AS WELL AS FAILURE TO REHABILITATE THE LAND.

I UNDERSTAND THAT THE DRAFT AGREEMENT BETWEEN YOUR GOVERNMENT AND THE JOINT VENTURERS CONTEMPLATES A BOND IN A FORM AND AMOUNT SATISFACTORY TO THE COMMONWEALTH TO SECURE THE COMMONWEALTH'S OBLIGATIONS TO THE NORTHERN LAND COUNCIL WITH REGARD ONLY TO REHABILITATION WORK.

NOTWITHSTANDING ANY BOND TO BE EXECUTED IN FAVOUR OF THE COMMONWEALTH, MY GOVERNMENT IS OF THE VERY FIRM OPINION THAT IF WE ARE TO BE RESPONSIBLE FOR REGULATING THE MINING AND MILLING OF URANIUM THEN WE MUST LEGISLATE TO REQUIRE MINING COMPANIES TO GIVE SUBSTANTIAL SECURITY TO THE NORTHERN TERRITORY BEFORE ANY WORK COMMENCES.

IT MAY BE THAT THE RANGER JOINT VENTURERS WILL OBJECT TO HAVING TO EXECUTE TWO BONDS. A SOLUTION WOULD BE FOR THE COMMONWEALTH TO FOREGO ITS BOND, BUT I AM ANXIOUS THAT THERE SHOULD BE NO DOUBT ABOUT MY GOVERNMENT'S ATTITUDE. IF WE ARE TO BE RESPONSIBLE THEN WE MUST HAVE DIRECT RECOURSE TO SUBSTANTIAL SECURITY.

I UNDERSTAND THERE MAY BE A FURTHER MEETING TOMORROW IN DARWIN CONCERNING THE PROPOSED LEGISLATION. IN VIEW OF THE LIMITED TIME AVAILABLE I SUGGEST THAT A COMMONWEALTH OFFICER COMPETENT TO DISCUSS THE BOND SHOULD COME TO THE MEETING.

PAUL EVERINGHAM
CHIEF MINISTER

19TH DECEMBER 1978



SECRETARY
DEPARTMENT OF MINES AND ENERGY
DARWIN

22 December 1978.

SECRETARY TO CABINET: *22/12*

CABINET SUBMISSION ON LEGISLATION FOR
ENVIRONMENTAL REGULATION OF URANIUM DEVELOPMENT

The attached submission was prepared for the consideration of Cabinet today.

The text of the submission was prepared following discussions in the last few days between the Solicitor-General and the Department of Mines and Energy.

To be obtained
The urgency of the proposed legislation on environmental controls over uranium is stressed. The clearance of the Under Treasurer and the Public Service Commissioner has not been endorsed due to late completion but is submitted on the basis that it could proceed subject to this being obtained.

V. T. O'Brien
(V. T. O'BRIEN)