

Kakadu: World Heritage under threat

**Report to the World Heritage Committee of UNESCO by
Australian environment NGO's
November 2000**

This report outlines the continuing concerns of Australian environment NGO's about the threats posed to the Kakadu World Heritage Area by the Jabiluka uranium mine. We believe these warrant Kakadu's inclusion on the list of 'World Heritage in Danger'.

**The report has been prepared by:
Australian Conservation Foundation
Environment Centre of the NT
Friends of the Earth Australia**



**Australian
Conservation
Foundation**



Environment Centre NT Inc



Executive Summary

Kakadu is a truly unique and magnificent region. It is one of fewer than 20 places listed on the World Heritage register for both natural and cultural values. Kakadu contains some of the world's oldest and most important archaeological and art sites and is home to a living cultural tradition and practise. Kakadu protects ecosystems of outstanding value, diversity and beauty. The area known as the Jabiluka mineral lease is surrounded by Kakadu National Park and shares these remarkable values. Mining operations at Jabiluka pose a direct threat to these values and the integrity of the interconnected and co-dependent natural and cultural values of Kakadu.

At the Third Extraordinary Session of the World Heritage Committee in July 1999 the Australian Government outlined a programme of corrective measures in an effort to mitigate the threats posed by the Jabiluka project to Kakadu's World Heritage values. These measures were also reviewed by the World Heritage Bureau at its June 2000 meeting. Despite these efforts the Australian Government has shown little commitment and made scant progress in implementing this programme. Sadly, the threats to Kakadu remain.

Outstanding threats to Kakadu

The threats to the World Heritage values of Kakadu from uranium mining continue. Particular concerns include:

- ◆The Australian Government's failure to adequately progress the programme of corrective measures coupled with a refusal to acknowledge the primacy of the Mirrar traditional owners on cultural matters. The cultural impacts of the Jabiluka proposal are examined in detail in the Gundjehmi Aboriginal Corporation's report and we commend this document to the Committee's attention.
- ◆Continuing water management problems at Ranger and Jabiluka- An estimated 2 million litres of water containing uranium, radium and other contaminants leaked into the wetlands filtration system and the Kakadu wetlands from a restricted area of the Ranger mine over the 1999/2000 Wet season. ERA failed to comply with its reporting requirements following this incident. This incident highlights the unacceptable extent to which the regulators are reliant on company provided data.
- ◆Regulatory Inadequacies- The fact that the regulatory regime failed to detect the Ranger leak highlights the inadequacy of this regime and its inability to protect the region's World Heritage values. The OSS itself acknowledged in its investigation into the incident that "the statutory monitoring program has been found to be deficient". Deficiencies in the regulatory regime for uranium mining in the Kakadu region are compounded by the NT Department of Mines and Energy's primary role in the regulation of day-to-day mining activities. The NT DME is neither a credible nor effective regulator.

◆ There is limited detail and public disclosure on key issues relating to the Jabiluka project making full assessment of the likely impacts of the mine extremely difficult. This lack of detail is compounded by major gaps in baseline information and a flawed Environmental Impact Assessment process.

◆ Increased corporate and political uncertainty surrounds the future of the mine. The ownership of the mine has recently changed and intense speculation surrounds its status and future. There has been no further construction at the mine site since September 1999. This uncertainty raises opportunities for the Australian Government and the relevant corporate entity to act to prevent any further development and associated impacts at Jabiluka.

Conclusion- Australian Environment NGO's submit that the Jabiluka uranium mine poses a threat of 'serious and specific danger' to the World Heritage listed Kakadu National Park. Furthermore the Australian Government's programme of corrective measures has not mitigated this threat has failed to meet the commitments given to the World Heritage Committee and Bureau. We believe that the lack of progress in key areas of the programme of corrective measures and the further deterioration of the situation in Kakadu has increased the threat posed by Jabiluka to the region's World Heritage values. **We believe that Kakadu should be added to the list of 'World Heritage in Danger' in order to best reflect the severity of the threats facing this region and to help protect the region's unique World Heritage values.**

Recommendations for corrective measures- Australian environment NGO's respectfully recommend the Committee's consideration of the following corrective measures:

- 1) the World Heritage Committee request that there be no further development or construction work at Jabiluka until such time as the outstanding issues in the programme of corrective measures and the outstanding threats to Kakadu outlined in this report have been addressed.
- 2) the World Heritage Committee reaffirm the previously articulated view of the Assessment Mission, the Committee and its Advisory bodies that the Jabiluka proposal poses a threat to the World Heritage values of Kakadu.
- 3) the World Heritage Committee note concern over information deficiencies in relation to key project details of the Jabiluka proposal and the existence of a number of unresolved scientific and technical issues that have not been publicly examined.
- 4) The World Heritage Committee encourage the active development and implementation of a Cultural Heritage Identification and Management Process that acknowledges, and is based upon, the fundamental primacy of the Mirrar traditional owners.
- 5) the World Heritage Committee seek a public commitment from the new majority owners of ERA, Rio Tinto Ltd, to act in a manner consistent with the principles of the

World Heritage Convention and to accept and comply with previous ERA undertakings to the World Heritage Committee.

6) the World Heritage Committee and Advisory bodies continue to actively engage with and monitor the Jabiluka project.

7) the World Heritage Committee require further reports from the Australian Government detailing the implementation status of commitments concerning Jabiluka along with supplementary detail on the proposed Jabiluka project configuration and baseline monitoring frameworks.

8) the World Heritage Committee support an independent and comprehensive review of the existing regulatory regime for uranium mining in the Kakadu region given the clear deficiencies identified in the current regime by key NGO stakeholders and the Office of the Supervising Scientist. This review should have particular regard to failings in the primary regulatory role played by Northern Territory Department of Mines and Energy.

1. Kakadu- an extraordinary Region

One of fewer than 20 sites listed on the World Heritage Register for both its outstanding natural and cultural values Kakadu National Park is an extraordinary place.

Natural values- Kakadu is home to 21 of Australia's 29 mangrove species, 900 plant species, 300 bird species, 50 native mammals, 100 species of amphibians and reptiles, one quarter of Australia's freshwater fish and an estimated 10,000 insect types, making it one of the most biodiverse environments in Australia. Many of these species are endemic to the region. Kakadu contains the world's richest breeding grounds for migratory tropical waterbirds.

The Australian Government's stage 3 nomination for World Heritage listing stated:
"Kakadu National Park contains natural features of such outstanding diversity and value that they are considered to meet all four natural criteria for a World Heritage property."

From the escarpment country and rainforests to the wetlands and tidal mudflats, Kakadu National Park encompasses a unique natural heritage.

Cultural values- It is estimated that Kakadu has been continuously occupied by humans for around 50,000 years. The cultural legacy of 50,000 years of occupation and ownership is imprinted on the region and witnessed by over 250,000 visitors to Kakadu each year. What makes this legacy truly unique is the fact that Kakadu is home to the ongoing living tradition and cultural practise of the region's traditional Aboriginal owners. At the time of its inscription on the World Heritage List, Kakadu was listed for meeting cultural criteria i) and vi):

i) represent a unique artistic achievement, a masterpiece of the creative genius;

vi) be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance.

Following modification of the operational guidelines criteria vi) now recognises the importance of living tradition.

Jabiluka- an extraordinary place

The Jabiluka, Koongarra and Ranger mineral lease enclaves are surrounded by Kakadu National Park and share Kakadu's outstanding natural and cultural values. The Jabiluka lease contains the oldest archaeological site in the region, and one of the oldest in Australia, Malakananja II. This site was used as a justification for the Stage 3 inscription of Kakadu on the World Heritage List. In addition the lease contains at least 196 art sites and significant religious sites,

stone quarries and burial sites. The cultural values for which Kakadu was inscribed are well represented on the lease area, which is indistinguishable from the surrounding World Heritage area.

Similarly the Jabiluka lease shares the natural values of the surrounding World Heritage area. The conservation values of the lease area epitomise the natural values of the region. Swift Creek, directly downstream from the mine site had a River disturbance index of zero prior to construction commencing at Jabiluka. This is the highest Wild River value. The Jabiluka lease contains important wetlands and waterways. These are interconnected with, and in some cases the same waterbody as, the Ramsar-listed wetlands of Kakadu. Any disturbance or destruction of the natural and cultural values of the Jabiluka site will impact upon the integrity of the interconnected and co-dependent natural and cultural values of Kakadu.

2. A Snapshot of UNESCO's involvement in Kakadu

1981-1992 In 1981 Stage 1 of Kakadu National Park is inscribed for its natural and cultural values on the World Heritage List. Further inscriptions of Stages 2 and 3 of Kakadu National Park follow in 1987 and 1992.

1996 March Energy Resources of Australia proposes to mine uranium at Jabiluka and mill the uranium ore at Ranger mine. This project option is known as the RMA- Ranger milling alternative). The Environmental Impact Assessment process begins.

October IUCN resolution opposes development at Jabiluka on the grounds that it would threaten the World Heritage values of the region.

1997 State of Conservation Report for Kakadu examined by the World Heritage Bureau. IUCN and ICOMOS outline their concerns over the Environmental Impact Assessment regime and process for Jabiluka.

1998 October World Heritage Committee Mission visit Australia to investigate the impacts of Jabiluka on Kakadu's World Heritage values.

November-December The World Heritage Mission reports to the Bureau and Committee. The primary recommendation of the Mission report reads:

“The Mission has noted severe ascertained and potential damage to the cultural and natural values of Kakadu National Park posed primarily by the proposal for uranium mining and milling at Jabiluka. The mission therefore recommends that the proposal to mine and mill uranium at Jabiluka should not proceed”¹.

The 22nd Bureau meeting expressed grave concern at the dangers posed by the proposal for uranium mining and milling at Jabiluka and noted that in spite of these dangers construction had commenced and was progressing.

A joint IUCN and ICOMOS position statement to the Committee states ***“ICOMOS and IUCN believe that the conditions exist for inscribing Kakadu on the List of World Heritage in Danger”².***

An Extraordinary Session of the World Heritage Committee in July 1999 examined the Jabiluka issue and the possible inclusion of Kakadu in the List of World Heritage in Danger.

¹ WHC-98/CONF.202/INF.3, p.6.

² WHC-98/CONF.203/18 Annex vi.2

3. World Heritage Committee Third Extraordinary Session on Kakadu July 1999

The World Heritage Committee Third Extraordinary Session was convened to decide whether to immediately inscribe Kakadu National Park on the List of World Heritage in Danger. Without revisiting the meeting's proceedings in detail, we wish to draw the Bureau's attention to key statements made by the World Heritage Convention and Centre's formal advisory bodies.

Joint ICCROM, ICOMOS and IUCN Statement- At the Extraordinary Session the Advisory Bodies made a joint statement to the Committee. Dr Patrick Dugan of IUCN told the Committee that:

"in reviewing the response of the Australian Government concerning the mitigation of threats posing ascertained and potential dangers to Kakadu National Park by the Jabiluka mine, we have sought to assess whether this response removes the concerns identified by the Mission and confirmed by the Committee relating to the ascertained and potential dangers to the site. These (concerns) can be summarised as concerns over:

- (i) scientific uncertainties and the application of the Precautionary Principle*
- (ii) visual encroachment on the integrity of Kakadu National Park*
- (iii) a series of threats to the cultural values of the Park".*³

Addressing each of these areas the advisory bodies made the following points:

(i) scientific uncertainties and the application of the Precautionary Principle- IUCN stated that:

"weaknesses in the mine design were recognised only following international review by the World Heritage Mission, and the final design of the mine and the detailed chronology of its development, is not yet available, including details for issues of major concern, notably the water retention system and the disposal of tailings... We therefore believe that the potential threat to the natural values of Kakadu as identified by the World Heritage Mission remains. We do not believe that the recently proposed sequential development of Ranger and Jabiluka removes this threat."

(ii) visual encroachment on the integrity of Kakadu National Park- IUCN noted that the Supervising Scientist recommended an increase in the size of the retention pond and further that the road between Jabiluka and Ranger had not yet been constructed. *"Both would aggravate the visual encroachment which we consider already to be severe."*

(iii) a series of threats to the cultural values of the Park"-ICCROM stated that:

“ICCRUM is of the opinion accordingly , that the outstanding cultural values of Kakadu National Park are, at this moment in time, in danger from ascertained and potential threats and that the site should be inscribed on the World Heritage List in Danger”.

The three bodies concluded:

“in the light of our opinion that the response of the Australian Government to the issues raised by the Committee last December has not removed the threats posing ascertained and potential dangers to Kakadu National Park, and in view of the recognition by the Bureau in its report of last Friday that the threats and uncertainties we have identified remain present, we believe that the conditions continue to exist for inscribing Kakadu on the World Heritage List in Danger and that the Committee, if it is to be consistent with its use of the criteria for such inscription in the past, should inscribe Kakadu on the World Heritage List in Danger immediately”.⁴

The decision of the Third Extraordinary Session of the World Heritage Committee concerning Kakadu National Park- The Committee’s decision expressed the Committee’s deep regret that construction had not ceased at Jabiluka despite previous requests by the Committee, and stated the Committee’s ‘grave concerns’ “about the serious impacts to the living cultural values of Kakadu National Park posed by the proposal to mine and mill at Jabiluka. The decision also noted the Committee’s concern “about the lack of progress with the preparation of a cultural heritage management plan for Jabiluka” and stated that the Committee “continues to have significant reservations concerning the scientific uncertainties relating to mining and milling at Jabiluka.”⁵

The Committee requested that the Australian Government submit a progress report to the Bureau on April 15 2000 on three areas, principally relating to cultural mapping, the Kakadu Region Social Impacts Study, and details of any parallel mining activities at Ranger and Jabiluka. As outlined in our June 2000 submission to the Bureau of the World Heritage Committee, Australian environment NGO’s believe that progress towards implementing the program of corrective measures has been inadequate. This is further detailed in section 5 of this report.

³ WHC-99/CONF.205/5Rev, Annex vi

⁴ WHC-99/CONF.205/5Rev, Annex vi

⁵ WHC-99/CONF.205/5Rev, Annex xi

4. Developments in Kakadu since July 1999

4.1 ERA's preferred development option stalled

The project option available to Energy Resources of Australia (ERA) in November 2000 is radically different from that assessed by the 1997 Environmental Impact Statement and the 1998 Public Environment Report. It is also a different project from that considered by the Third Extraordinary Session of the World Heritage Committee in July 1999.

Background- the approvals process- The Jabiluka project has changed radically in scope since it was proposed by Energy Resources of Australia (ERA) in 1996. The 1997 Environmental Impact Statement concentrated on ERA's preferred development which involved Jabiluka ore being transported to the existing Ranger mine for milling and processing- the Ranger milling alternative (RMA). This project option however required traditional owner consent under the 1992 Deed of Transfer of the Jabiluka lease. According to the original project proposal tailings were to be disposed of in surface pits. It was planned that these would be covered on the mine's closure.

The RMA was approved by the Australian Government (subject to conditions) in October 1997 despite the fact that traditional owners had not been approached about the RMA. In June 1998 the Federal Minister for Environment and Heritage commissioned a Public Environment Report (a form of environmental impact assessment that is considerably weaker than an Environmental Impact Statement) to assess the impacts of constructing and operating a mill on site at Jabiluka and disposing of tailings via a combination of surface pits and underground storage. This proposal is known as the Jabiluka mill alternative (JMA). This inadequate level of assessment occurred despite an earlier assurance by the Supervising Scientist that:

"If ERA were to proceed with the Jabiluka mill alternative, I would recommend, in the strongest possible terms to the Minister for the Environment, that ERA be required to prepare a new Environmental Impact Statement as required by the Environment Protection (Impact of Proposals) Act 1974".⁶

The same month, prior to a decision on the Public Environment Report, the Northern Territory Government approved the commencement of construction. **This approval was given notwithstanding that the RMA was not a legal project option without traditional owner consent, and that the JMA had not been assessed for environmental impacts.** In August 1998 the Federal Minister

for Resources and Energy approved the JMA Public Environment Report on the condition that 100% of tailings be disposed of underground despite there being no details or proposals for this tailings management option. There has still not been any public release or scrutiny of ERA's current project configuration.

Since July 1999- In September and October 1999 ERA formally sought approval for the Ranger milling alternative from the Northern Land Council. The Northern Land Council, operating on behalf of the Mirrar traditional owners and acting on their instruction, vetoed further discussions on the RMA for a period of 5 years. This means that if ERA are to pursue the development of Jabiluka in the next 5 years (as of October 1999) their only project option is the JMA which would greatly increase the project's ecological and cultural footprint and impacts.

4.2 Limited detail and public disclosure on key issues

As discussed above, the environmental impact assessment process for the Jabiluka project in general, and the JMA in particular, has been piecemeal, rushed and inadequate. A 1999 Australian Senate Inquiry into Jabiluka recommended that:

*“in view of the inadequate level of assessment applied to the Jabiluka proposals and the premature decision-making of the Action Minister, the Minister for Environment and Heritage establish a Commission of Inquiry into the Jabiluka project”.*⁷

A further Inquiry into the environmental impact assessment and approvals process has not been forthcoming. Indeed the Government's belated response to the Senate Inquiry tabled in the Australian Senate in October 2000 incorrectly claimed that the World Heritage Committee had found that “the values of Kakadu National Park are protected, not endangered”⁸.

The inadequacy of the environmental impact assessment process is epitomised by the fact that despite the JMA being approved details on the project configuration for the JMA have not yet been seen by the Mirrar traditional owners, Australian NGO's or the public. This failure has seriously undermined measured consideration and detailed assessment of Jabiluka's environmental and cultural impacts.

While the Australian Government has promised the Bureau that the recommendations made by ICSU and the Supervising Scientist will be incorporated into the project design, ERA have yet to make their project

⁶ Peter Bridgewater, Supervising Scientist, correspondence to members of the Alligator Rivers Region Advisory Committee, 12/08/97

⁷ 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, recommendation 10, pp.xxii

⁸ Government Response to the Report of the Senate Environment, Communications, Information Technology and Arts Reference Committee: Jabiluka: The undermining of Process: Inquiry into the Jabiluka Mine Uranium Project, October 2000, Senate Hansard, 16/10/00

configuration known to the public. Key details such as contingency plans for extension of mine life, the positioning and likely impacts of waste rock piles, and a detailed water management plan have not been made public. The project appears to be a moveable feast, as acknowledged by the IUCN delegate to the UNESCO Mission to Kakadu 3-7th July 2000 when he states that “plans for the proposed development at Jabiluka are in a state of transition”⁹. Given the lack of detail about the project configuration for the JMA, it is misleading of the Australian Government to claim that *“the natural values of Kakadu National Park are not threatened by the Jabiluka development. The degree of scientific certainty that applies to this assessment is very high.”*

The lack of detail regarding the mine configuration is compounded by the major gaps in baseline information, including the failure of the Government to require the proponents to prepare detailed flora and fauna surveys for the lease and surrounding areas, and to conduct adequate ecological modelling.

4.3 Serious Problems at Jabiluka and Ranger

The Australian Government’s insistence that *“In order to be certain that Kakadu will not be damaged, we have imposed the world’s most stringent and rigorous regulatory and monitoring regime”*¹⁰ is not supported by:

- a) a history of water management problems at Ranger that continues to the present day.
- b) emerging environmental problems at Jabiluka since July 1999
- c) the continued downgrading of the powers and on-ground role of the Supervising Scientist.

a) Problems at Ranger December 1999-April 2000- 2 million litres of contaminated water leaks into the wetlands filtration system and Kakadu National Park. Despite a legal obligation ERA failed to inform traditional owners or regulatory authorities.

On May 2 2000 ERA admitted in an announcement to the Australian Stock Exchange that a leak had been detected from a tailings water return pipe at Ranger mine. From December 1999 until the leak was found on the 3rd April, ERA has estimated that over 2 million litres of contaminated water leaked from a restricted area of the minesite into the wetlands filtration system on the lease and Magella Creek which flows into Kakadu National Park. ERA detected the leak upon discovering elevated levels of manganese in the wetlands filtration system and at monitoring point 009 in the World Heritage area. It has since been confirmed that ERA had been searching for the source of this leak since January

⁹ Mission to Kakadu 3-7th July 2000- Final Report to the IUCN, p.8.

¹⁰ Statement by the Australian Minister for the Environment and Heritage, Senator the Hon Robert Hill to the World Heritage Bureau, UNESCO. Paris, July 7, 1999, WHC-99/CONF.204/15, p.84

2000. The leaked contained elevated levels of uranium and radium and manganese.

ERA failed to report the incident to the regulatory authorities until the 28th April 2000, two weeks after the Australian Government's report to the World Heritage Bureau was submitted, and twenty-five days after the source of the leak was found and repaired. Traditional owners were not informed of the incident until the May 2 stock exchange announcement. This represents a serious breach of ERA's obligations as detailed in their authorisation to mine and the Ranger Environmental Requirements. The delay in reporting the incident also represents a serious breach of the public trust and calls into question the adequacy of the regulatory and monitoring regime for the region. Subsequent developments have done nothing to restore this trust and confidence. The Australian Government pre-empted a report into the ERA leak by the Office of the Supervising Scientist when they stated that they would not prosecute ERA for its failure to meet the company's reporting requirements, thereby undermining the OSS report's subsequent recommendation that:

*"The Minister for Industry, Science and Resources should consider what action should be taken in response to the established breach of Environmental Requirements 3.4 and 16.1"*¹¹

The OSS report into the leak outlined a catalogue of errors which cumulatively contributed to this leak including:

- the use of inappropriate construction materials;
- the inappropriate burial of a pipe;
- a reduced standard of maintenance by ERA;
- the failure of the mine inspection programme carried out by the Northern Territory Department of Mines and Energy and to a lesser extent the OSS.
- the failure of the bunded corridor system;
- the OSS's finding that the "statutory monitoring program has been found to be deficient"¹².

This deficiency is stark in the case of the mine's day to day supervisor, the Northern Territory Government, which failed to take any action. Indeed as noted in subsequent reports into this event by both the ISP and IUCN, the NT Authorities failed to even acknowledge the leak as a breach of the mine conditions. Australian environment NGO's believe that this incident represented a prosecutable breach under the Atomic Energy Act and the Uranium Mining and Environmental Control Act and maintain the failure of both the Federal and NT Governments to pursue this is indicative of the lack of political will and regulatory rigour which surrounds the operations of this industry.

¹¹ Supervising Scientist 2000, *Investigation of tailings water leak at the Ranger uranium mine*. Supervising Scientist Report 153, Supervising Scientist, Darwin.

¹² Ibid, p.viii

NGO's believe that the performance of the NT Department of Mines and Energy in this industry and this instance is unacceptable and that the NT DME is neither a credible nor effective regulator.

ERA internal investigations into the Ranger leak concluded that:

"There has been a long-term issue with the management and ultimate disposal of water on the lease that has not been adequately addressed. The Ranger staff face an increasingly intractable water management problem which is becoming the primary driver behind operational and environmental decision making."¹³

Such a frank acknowledgement of the problems associated with mining at Ranger should warn against taking similar risks at Jabiluka.

b) Water management problems at Jabiluka 1999/2000-

Since September 1999 the Jabiluka mine site has been on standby mode. However over the course of the 99/00 Wet season serious water management problems emerged in the interim water management pond with the pond filling almost to capacity. Meetings were held in March 2000 to address these problems and to look at options for disposing of contaminated water prior to the 2000-2001 wet season. One option mooted involved releasing treated contaminated water into a tributary of Swift Creek, and then into the Kakadu wetlands. The water contains high levels of uranium and other radio-nucleides. **These water problems have emerged as the interim water management pond was only designed to be operational for 12 months. As identified in the ISP reports project delays could result in use of the interim pond for a much greater period than it was designed for.** This raises serious questions about the pond's ability to withstand a series of wet seasons and highlights the severe impacts of the premature approval for construction prior to either consent being sought for the RMA or assessment being completed on the JMA. The fact that Jabiluka is experiencing water management problems at this early stage does not bode well for the future of the mine or for the protection of the region's World Heritage values. Reverse osmosis treatment of contaminated water in the interim water management pond may reduce water management pressure in the short term, but in the Jabiluka context the absence of a detailed water management plan is fundamentally unacceptable.

c) Limitations on the resources, powers and on-ground role of the Office of the Supervising Scientist (OSS)-

Background- The OSS was established in an attempt to monitor and mitigate the impacts of uranium mining on the environment of Kakadu. The role and powers of the OSS have changed significantly over its twenty-year history. The 1980's saw

considerable conflict between the OSS and ERA, with ERA consistently failing to co-operate 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.”¹⁴

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.”¹⁵

In 1995 a Memorandum of Understanding shifted primary responsibility for the day-to-day supervision and regulation of uranium mining from the Office of the Supervising Scientist to the Northern Territory Government. The Northern Territory Department of Mines and Energy has a poor record as a regulator and has failed to identify problems and prosecute breaches at a number of mines throughout the NT. The Department of Mines and Energy acts to facilitate and promote mining operations in the NT and as such is an inappropriate regulator in such a sensitive and complex environment. The Environmental Impact Assessment process for Jabiluka saw a further downgrading of the role of the OSS, with the Australian Minister for Resources and Energy re-defining the NT as the Supervising Authority. Over the same period OSS funding has been reduced significantly until 1999 when funding was partially reinstated, presumably in an attempt to address community concern and action over Jabiluka. OSS on-ground operations have also been reduced and now the OSS is fundamentally reliant upon monitoring data provided by ERA.

July 1999-present- Over the past 15 months the OSS has undergone some major structural changes and relocations. Staffing levels at the Jabiru office have been cut with the relocation of the bulk of the Office staff to Darwin. This relocation may have had an impact on the ability of the OSS to detect incidents like the recent Ranger leak, reported to the regulatory authorities on April 28, 2000. The OSS has little on-ground presence at Ranger and Jabiluka and is reliant on ERA data to fulfil its brief. Therefore it is not surprising that the OSS and the NT Department of Mines and Energy were unaware that 2 million litres of contaminated water had leaked from Ranger until they were informed by ERA. 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”¹⁶*.

¹³ ERA Internal Review: Significant Incident Investigation Report- Process Water Pipe Leak at ERA, attached at Appendix 3 to OSS report, *ibid.*, p.E

¹⁴ Supervising Scientist for the Alligator Rivers Region, Annual report 1988-89, Canberra: AGPS, 1989, p.8

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

¹⁶ Proof Committee Hansard, Senate Environment, Communication, Information Technology and the Arts, Consideration of Budget Estimates, Monday 22 May 2000, Canberra.

The inadequacy of the regulatory regime has been highlighted by ERA's failure to meet their reporting obligations and the subsequent reluctance of both the NT and Federal Governments to prosecute over this breach. In contrast to the assurances of the Australian Government this leak has again demonstrated both that the regulatory regime is unable to respond to the significant threats posed by mining in the region and that ERA lacks the capacity and will to self-regulate its activities, meet its reporting obligations and protect Kakadu's World Heritage values.

4.4 Corporate and political uncertainty surrounding the future of the project

Corporate uncertainty- In material presented to the World Heritage Bureau in June 2000 Australian environment NGO's noted the intense speculation at that time concerning the future of ERA and its majority shareholder North Ltd. In the subsequent period North Ltd has ceased trading after being taken over by the London based Rio Tinto group. There is further renewed speculation that Rio Tinto intend to on-sell Jabiluka, possibly to the French nuclear group Cogema. The Rio takeover has highlighted the significant uncertainty surrounding both a) the future of the Jabiluka project and also b) the commitments that have been made by ERA regarding the development of Jabiluka to the World Heritage Committee.

a) the future of the Jabiluka project- Rio Tinto are currently conducting a review of ERA and have yet to make a public statement on the future status of the Jabiluka project. This development has highlighted the continuing uncertainty in relation to key aspects of this project. **It also highlights that the project is not a fait accompli and that there is considerable scope for the Australian Government to work with Rio Tinto to avert certain, probable and possible impacts both on the Jabiluka lease area and the surrounding World Heritage Area by foregoing development at Jabiluka and incorporating the lease area into Kakadu National Park. The Australian Government has a clear and decisive course of action available should it choose that would guarantee the protection of the World Heritage values of the Jabiluka lease and Kakadu National Park.**

b) ERA Commitments to the World Heritage Committee- At the Third Extraordinary Session of the World Heritage Committee ERA made a series of commitments to the Committee and to traditional owners. Many of these commitments related to the Ranger mill alternative and as such are of little relevance given the dramatically changed circumstances surrounding this project. However it is unclear if the remaining commitments made by ERA will be

honoured by new owners Rio Tinto, particularly given that Rio Tinto may well on-sell ERA in the near future. Considerable uncertainty surrounding both the ownership and future of ERA operations in the region raises uncertainty about the status of commitments made to the World Heritage Committee.

Political uncertainty- Construction at Jabiluka ceased in September 1999. Since then the mine has been on standby mode and it seems likely that it will continue to be on standby for some time. No export permits have been issued for uranium from the Jabiluka mine. As Committee members may be aware, the Jabiluka proposal does not enjoy bipartisan political support in Australia. In September 2000 the Australian Labor Party, the major opposition political party, reaffirmed its policy that it would continue to oppose the proposed mine at Jabiluka and any application for the export of ore from the mine. Thus the project is likely to be disallowed if there is a change in Government. Given this and the high level of corporate uncertainty surrounding the project it is imprudent and unacceptable to pursue development of the project at the expense of World Heritage values. Once again, the cessation of construction and the future uncertainty of the project raises considerable opportunities for the Australian Government to prevent further development at Jabiluka and safeguard the region's World Heritage values.

4.5 Koongarra- still a threat

Koongarra is a uranium mineral lease surrounded by Kakadu National Park, approximately 15 km south of the Ranger lease. Australian NGO's acknowledge and welcome the principled decision made earlier this year by Aboriginal traditional owners of the area who resisted strong company pressure and refused license approval for Koongarra Ltd to develop this deposit.

Recommendation 13 of the 1998 World Heritage Mission's report reads:

*"The Mission is of the opinion that the Australian Government should discuss rescinding the 1981 Koongarra Project Area Act (which proposes amendment of the boundaries of Kakadu National Park to accommodate a mine at Koongarra) with the traditional owners and seek their consent to include the Koongarra Mineral Lease in the Park and therefore preclude mining."*¹⁷

The Australian Government's response to the Mission's report, "Australia's Kakadu", prepared for the Extraordinary Session, stated that "This Recommendation is supported in principle. The Government has raised the scope of this recommendation with the Aboriginal parties concerned".¹⁸

¹⁷ WHC-98/CONF.202/INF.3, p.8

¹⁸ Australia's Kakadu: Protecting World Heritage, April 1999, p.98

Despite the Australian Government's stated support for incorporating the Koongarra area into Kakadu National Park, the mining company Koongarra Ltd have since July 1999 sought consent for the grant of an exploration licence at Koongarra. Consent to the granting of an exploration licence amounts to consent to mine under the NT Land Rights Act. Traditional owners and the Northern Land Council refused such consent in March 2000 and thus there has been no subsequent development at Koongarra, however the company has stated their intention to continue to pursue the project.

This is of particular concern given that Koongarra Ltd is owned by Cogema- a French nuclear utility widely reported in the Australian national media as being involved in advanced negotiations with Rio Tinto to purchase ERA and Jabiluka. Cogema are also active in uranium exploration in other parts of the Kakadu region and in this context the Australian Governments tardy approach to moving towards protecting the Koongarra region is a major concern.

5. Australia's failure to meet World Heritage commitments.

Despite the active attention of the World Heritage Bureau, Committee and Centre the Australian Government has failed to adequately progress key aspects of commitments it has given which are aimed at reducing the threats posed by the Jabiluka project.

Australian environmental NGO's view the following areas with particular concern:

a) Failure to address cultural identification and heritage management

Australian environment NGO's support Mirrar's position on cultural matters. The Australian Government has made no real progress with regard to the preparation of a cultural heritage management plan. The Australian Government has consistently failed to acknowledge the Mirrar's primacy on cultural issues. Mirrar have been treated as just another stakeholder rather than as the custodians and practitioners of a living cultural tradition. In 1999 Mirrar outlined their preferred process for the development of cultural protection measures- this process has been ignored by the Australian Government. Until the Mirrar's role as driver of cultural protection measures is recognised as fundamental, the Government will continue to fail to both understand and protect cultural heritage in the region.

b) Kakadu Region Social Impact Study (KRSIS)-

Any effort to address the dearth of basic services and infrastructure and the chronic disadvantage faced by Aboriginal people in the Kakadu region is long overdue and welcome. However it should be noted that KRSIS was specifically prevented from addressing the likely social impacts that would result if Jabiluka proceeded. It is not appropriate that this issue now be seen as linked with Jabiluka. Implementation of the KRSIS recommendations should in no way be seen as an acceptable rationale or justification for developing Jabiluka. Similarly, the provision of basic infrastructure in the region should not be dependent on the development of Jabiluka or imposition of any uranium mining operations in the region.

c) Programme of Corrective measures- The Australian Government made a raft of commitments to the 3rd Extraordinary Session in an effort to avoid Kakadu's inclusion on the list of 'World Heritage in Danger'. Sadly there has been little genuine progress made towards meeting many of these commitments in the time since July 1999

We submit that the Australian Government has made very little progress in meeting the commitments made to the World Heritage Committee in July

1999. Moreover in several critical areas including cultural issues, public disclosure of key Jabiluka project details and the regulatory and monitoring regime for mining in the region the situation has deteriorated and the threats to Kakadu continue or have grown.

6. Outstanding threats to World Heritage values.

Australian environment NGO's believe that the Jabiluka mine continues to pose both ascertained and potential dangers to the World Heritage values and properties of Kakadu National Park. These dangers include:

- 1) **Disregard for Traditional Owners-** Having experienced the operation of Ranger mine on their country for 20 years, Mirrar are opposed to the development of Jabiluka mine. Mirrar have documented their longstanding opposition to the mine and the duress under which the 1982 'agreement' was obtained ¹⁹ As Mirrar state:

*"If the project is completed, the total loss of cultural value will be inevitable. The loss in cultural value encompasses both the destruction of cultural sites of significance by specific mining activity and a structural decline in the Mirrar living tradition resulting from imposed industrial development manifested as an attack on the rights of Mirrar... Mirrar cultural values are integral to the cultural values of Kakadu National Park."*²⁰

Threats posed by Jabiluka to Mirrar country and culture and the World Heritage cultural values of Kakadu remain specific and imminent. They have not been addressed through the Australian Government programme of corrective measures and a fundamental human and cultural abuse is occurring in relation to this project.

- 2) **Inadequate approvals process for the mine-** The Environmental Impact Assessment process for Jabiluka was inadequate, piecemeal and inconsistent. Incorrect levels of assessment were prescribed and environmental conditions were weakened prior to approval. The approvals process for the mine has been characterised by premature and ill-considered decisions that have been made to meet political timeframes. Serious consideration was not given as to the impact of Jabiluka on Kakadu's World Heritage values. This is epitomised by the fact that approvals were granted to commence construction prior to the completion of the Public Environment Report on the Jabiluka mill alternative. Similarly the commencement of construction was approved prior to the company meeting the environmental conditions attached to the EIS and PER approvals- many of these conditions have not yet been met. This piecemeal and incremental approach to project assessment has undoubtedly contributed to the 1999/2000 water management problems at the Jabiluka site. The inadequacy of the approvals process is exemplified by the fact that ERA have failed to make their project configuration for the Jabiluka mill alternative public.

¹⁹ Submission from the Mirrar people to the World Heritage Committee, ICCROM and ICOMOS, 1999, Chapter 6.

²⁰ *ibid.* p.7

3) *Inadequate regulatory framework for mining in the region-* Incidents like this year's leak at Ranger demonstrate that the existing regulatory framework lacks the capacity to detect system failures and that ERA cannot be relied upon to report such failures to the regulatory authorities. The OSS's supervisory and monitoring role in the region has been reduced since it was established with a concomitant increase in company self-regulation and a supervisory role by the pro-mining NT Government.

The NT Government has a poor record managing the environmental impacts of mines and has lost the confidence of many stakeholders in relation to its competence and credibility as a regulator.

4) *Limited detail and public disclosure about the project-* At the Extraordinary Session of the Committee, a joint statement from ICCROM, ICOMOS and IUCN stated:

*“weaknesses in the mine design were recognised only following international review by the World Heritage Mission, and the final design of the mine and the detailed chronology of its development, is not yet available, including details for issues of major concern, notably the water retention system and the disposal of tailings”.*²¹

Important details regarding tailings disposal remain unavailable to the public. The Australian Government has approved a project that requires 100% of tailings be stored in underground pits. How ERA propose to do this without creating artificial landforms with additional environmental and cultural impacts and the long term security of storing radioactive tailings in fissured sandstone are examples of two key concerns which have not been publicly addressed.

The outstanding scientific and design uncertainties, documented lack of ecosystem wide baseline data and monitoring programmes and restricted public disclosure of key project details mean that mining operations at Jabiluka present an unacceptable risk to Kakadu's World Heritage values.

5) *Failed programme of corrective measures-* The Australian Government has failed to adequately progress its declared programme of corrective measures since the 3rd Extraordinary Session of the World Heritage Committee. In several critical areas including cultural issues and concerns, public disclosure of the Jabiluka project details and the rigour, independence and effectiveness of the region's regulatory and monitoring regime the situation has deteriorated and the threat to the unique values and properties of the Kakadu region has increased and demands urgent attention.

²¹ Joint ICCROM, ICOMOS and IUCN statement read by Dr Patrick Dugan, IUCN, WHC-99/CONF.205/5Rev. Annex vi, p.56

7. Conclusion and Recommendations.

Conclusion- Australian Environment NGO's submit that the Jabiluka uranium mine poses a threat of 'serious and specific danger' to the World Heritage listed Kakadu National Park. Furthermore the Australian Government's programme of corrective measures has not mitigated this threat and has failed to meet the commitments given to the World Heritage Committee and Bureau. We believe that the lack of progress in key areas of the programme of corrective measures and the further deterioration of the situation in Kakadu has increased the threat posed by Jabiluka to the region's World Heritage values.

We believe that Kakadu should be added to the list of 'World Heritage in Danger' in order to best reflect the severity of the threats facing this region and to help protect the region's unique World Heritage values.

Recommendations for corrective measures- Australian environment NGO's respectfully recommend the Committee's consideration of the following corrective measures:

- 1) the World Heritage Committee request that there be no further development or construction work at Jabiluka until such time as the outstanding issues in the programme of corrective measures and the outstanding threats to Kakadu outlined in this report have been addressed.
- 2) the World Heritage Committee reaffirm the previously articulated view of the Assessment Mission, the Committee and its Advisory bodies that the Jabiluka proposal poses a threat to the World Heritage values of Kakadu.
- 3) the World Heritage Committee note concern over information deficiencies in relation to key project details of the Jabiluka proposal and the existence of a number of unresolved scientific and technical issues that have not been publicly examined.
- 4) The World Heritage Committee encourage the active development and implementation of a Cultural Heritage Identification and Management Process that acknowledges, and is based upon, the fundamental primacy of the Mirrar traditional owners.
- 5) the World Heritage Committee seek a public commitment from the new majority owners of ERA, Rio Tinto Ltd, to act in a manner consistent with the principles of the World Heritage Convention and to accept and comply with previous ERA undertakings to the World Heritage Committee.

6) the World Heritage Committee and Advisory bodies continue to actively engage with and monitor the Jabiluka project.

7) the World Heritage Committee require further reports from the Australian Government detailing the implementation status of commitments concerning Jabiluka along with supplementary detail on the proposed Jabiluka project configuration and baseline monitoring frameworks.

8) the World Heritage Committee support an independent and comprehensive review of the existing regulatory regime for uranium mining in the Kakadu region given the clear deficiencies identified in the current regime by key NGO stakeholders and the Office of the Supervising Scientist. This review should have particular regard to failings in the primary regulatory role played by Northern Territory Department of Mines and Energy.