THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

URANIUM ROYALTY (NORTHERN TERRITORY) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy, the Honourable Martin Ferguson AM, MP)
FINANCIAL IMPACT STATEMENT

The Commonwealth will be in a revenue neutral position for new projects containing designated substances on non-Aboriginal Land Rights (Northern Territory) Act 1976 land as the Commonwealth would be required to make payments to the Northern Territory Government of amounts equivalent to the royalties collected.

The Commonwealth will be in a revenue negative position for new projects containing designated substances on Aboriginal land, as declared under the Aboriginal Land Rights (Northern Territory) Act 1976, as the Commonwealth would be required to make two payments of amounts equivalent to the royalties collected – one payment to the Aboriginals Benefit Account and one payment to the Northern Territory Government.

However, this will make uranium royalties consistent with the existing Northern Territory mineral royalty regime for other minerals. Additionally, this royalty regime will obviate any additional administrative complexity for Northern Territory royalty collection processes, especially in relation to poly-metallic mines containing designated substances, i.e. where a Northern Territory and Commonwealth royalty is liable.

REGULATORY IMPACT STATEMENT

The Regulatory Impact Statement is provided in Attachment A.
URANIUM ROYALTY (NORTHERN TERRITORY) BILL 2008

OUTLINE

1. The Uranium Royalty (Northern Territory) Bill 2008 ('the Bill') will apply the existing profits-based mineral royalty regime under the Mineral Royalty Act 1982 (NT) ('the MRA') to new projects containing designated substances, including uranium, on Aboriginal land, as defined by the Aboriginal Land Rights (Northern Territory) Act 1976 ('the ALRA'), and non-Aboriginal land.

2. The definition of designated substances includes uranium and other prescribed substances as defined by the Atomic Energy Act 1953, for which the Commonwealth retains ownership.

3. The Bill excludes the application of certain Commonwealth laws, makes certain modifications to the application of the MRA as a Commonwealth law and applies other relevant Northern Territory laws to: (1) keep the administration of the Bill as consistent as possible with the administration of the MRA; (2) restrict the amount of additional burden on Northern Territory officials to administer the two pieces of legislation; and (3) limit any increase in regulatory burden on industry in complying with two sets of regulation for separate projects and/or for poly-metallic projects containing designated substances.

4. The Bill provides for the Northern Territory to administer the royalty regime on behalf of the Commonwealth, to retain the royalties collected, and to repay any overpayment of royalties on behalf of the Commonwealth.

5. Where mining occurs on Aboriginal land, the Commonwealth is obligated under section 63(1) of the ALRA to make payments of amounts equivalent to royalties from the Consolidated Revenue Fund to the Aboriginal Benefits Account. This payment would be in addition to the payment to the Northern Territory of amounts equivalent to the royalties collected under the Bill.

6. The Bill requires the Commonwealth Minister for Resources and Energy and the Northern Territory Treasurer to agree on administrative arrangements prior to enabling the operation of the Bill. The administrative arrangements will be made publicly available via the Gazette.

7. The Bill recognises and permits the use of the Northern Territory judicial system and other relevant authorities, procedures and laws to ensure consistency of process between action arising from offences under the Bill and action arising from offences under the MRA.

8. The Bill provides for the Governor General to make Regulations as necessary to ensure the intended operation of the Bill, including making necessary and rapid modifications resulting from unintended consequences arising from the amendment or repeal of the MRA.
NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 Short Title

9. This clause provides that the Act may be cited as the *Uranium Royalty (Northern Territory) Act 2008* ("the Act").

Clause 2 Commencement

*Subclause 2(1) Table*

Item 1

10. Sections 1 and 2 and anything not otherwise covered by the Table will commence on Royal Assent.

Item 2

11. Sections 3 to 20 will commence on either the day of Proclamation, or six months and one day after Royal Assent, whichever is earliest.

12. A period of six months is provided for the Northern Territory Government to enact consequential amendments to relevant NT legislation, including the *Mining Act (NT)*, to reflect the new arrangements and preserve existing arrangements for the Ranger mine.

13. If the Northern Territory Government does not enact such amendments within six months of Royal Assent of the Act, the Act will automatically be proclaimed six months and one day after Royal Assent. This provision is included to ensure the royalty regime is in place prior to the possible commencement of production from a number of new projects containing designated substances within the next few years.

*Subclause 2(2)*

14. The additional information contained in column 3 of the table does not form part of the Act.

Clause 3 Simplified Outline

15. This clause provides a short description of the Act. The Act imposes a royalty on uranium and certain other designated substances recovered in the Northern Territory by applying the MRA, as modified by clause 6, as a law of the Commonwealth.

Clause 4 Definitions

16. This clause provides definitions for a number of terms used generally in the Act.

*applied law* This term refers to the provisions of any Northern Territory law that also applies as a Commonwealth law for the purposes of the Act. This term is used in clauses 7, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

*authority of the Northern* This term refers to persons in the Northern Territory
**Territory**

that are able to exercise or perform a power, duty or function under any Northern Territory law. This term is used in clauses 7 and 14.

**corresponding applied law**

This term refers to an applied law that also applies under the MRA. This term is used in clause 16.

**corresponding Northern Territory royalty law**

This term means the MRA as it applies to non-designated substances in the Northern Territory. It is also means any other relevant Northern Territory mineral royalty legislation and regulations which may be updated from time to time. This term is used in clause 13.

**designated substance**

This term defines the substances for which royalties are payable under the Act. This term is used in clause 6.

Designated substances are the prescribed substances defined under the *Atomic Energy Act 1953* as:

- (a) uranium, thorium, an element having an atomic number greater than 92 or any other substance declared by the regulations to be capable of being used for the production of atomic energy or for research into matters connected with atomic energy; and
- (b) any derivative or compound of a substance to which paragraph (a) applies.

that are naturally occurring; can be obtained (or are obtainable) from land in the Northern Territory by any mining method; and are owned by the Commonwealth. The Commonwealth retains ownership of prescribed substances in all Australian Territories, including the Northern Territory, under s35 of the *Atomic Energy Act 1953*.

This term excludes designated substances in the Ranger Project Area, therefore preserving the pre-existing royalty arrangements for the Ranger Project Area. The Ranger Project Area is excluded because the Ranger mine is the only operating uranium mine in the Northern Territory and the only royalty determination which is currently in place.

**modifications**

This term means changes to an Act or Regulation and includes additions, omissions and substitutions. This term is used in clauses 6 and 15.

**Northern Territory law**

This term means any law, or an instrument made or having effect under a law, in force in the Northern
Territory. This term is only used in the definitions.

Northern Territory royalty law

Means the Northern Territory Mineral Royalty Act or any other Northern Territory law that is relevant to the operation of the Mineral Royalty Act. For example, the Northern Territory Interpretation Act and Criminal Code apply for the purposes of the Act. This term is used in clauses 6, 13 and 16.

Proceedings

Means any proceedings, whether civil or criminal and whether original or appellate. This term is used in clause 13.

Ranger Project Area

This term has the same meaning as it is described, immediately before the commencement of the Act, in Schedule 2 to the Aboriginal Land Rights (Northern Territory) Act 1976. This term is only used in the definitions.

responsible Northern Territory Minister

This term refers to the Northern Territory Treasurer who is responsible for the administration of the Mineral Royalty Act. This term is used in clause 7.

Clause 5 Crown to be bound

17. This clause applies the Act to the Australian, State and Territory Governments and makes clear that although a Government must comply with any requirements imposed on it by the Act, nothing in the Act makes the Government liable to be prosecuted for an offence.

PART 2 – APPLICATION OF NORTHERN TERRITORY ROYALTY LAWS IN RELATION TO DESIGNATED SUBSTANCES

Clause 6 Application of Northern Territory royalty laws in relation to designated substances

Subclause 6(1)

18. This clause applies the MRA as a law of the Commonwealth as modified by subsections 6(1)(a) and 6(1)(b).

19. When enacted, the Act shall be read separately from the unmodified version of the MRA, which applies a royalty regime to non-designated substances, i.e. to all minerals which the Northern Territory owns.

Subclause 6(1)(a)

20. This subclause allows for additional modifications to be made to the application of the MRA through Regulations.
21. This subclause omits, amends and inserts provisions into the MRA as necessary for the purposes of the Act.

**Item 1** The effect of omitting subsection 3(8) is to allow the application of the MRA as a Commonwealth law for uranium and other designated substances.

**Item 2** The effect of this amendment means that authorized persons under the MRA are also authorized persons for the purposes of the Act. This will allow Northern Territory government officials to administer the Act on behalf of the Commonwealth.

**Item 3** The definition of **corresponding Northern Territory Royalty Act** is added to differentiate between the Act and the MRA.

**Item 4** The definition of **designated substances** is added and linked to the definition used in the Act to ensure consistency in meaning.

**Item 5** This amendment to the definition of **mineral** has the effect of limiting the application of the Act to designated substances, i.e. only to uranium and other designated substances which the Commonwealth owns under s35 of the *Atomic Energy Act 1953*.

**Item 6** The effect of this amendment means that the Secretary appointed under the MRA is also the Secretary for the purposes of the Act. This assists in giving the Northern Territory Treasury the authority to collect royalties on behalf of the Commonwealth.

**Item 7** This amendment means that mining tenement holders will be required to make payments of royalties directly to the Northern Territory (instead of the Commonwealth) and that the Northern Territory will, in effect, be acting as an agent for the Commonwealth.

The amounts of royalties collected by the Northern Territory on behalf of the Commonwealth are public moneys and will automatically form part of the Consolidated Revenue Fund (CRF) on collection. The rate of royalty is defined under s10 of the MRA.

**Item 8** The effect of this addition means that any additional amounts of royalty in respect to designated substances shall be paid to the Northern Territory Treasury, on behalf of the Commonwealth.

**Item 9** The effect of this addition means that any amounts of interest payable in respect to unpaid royalties for designated substances shall be paid to the Northern Territory Treasury, on behalf of the Commonwealth.

**Item 10** The effect of this addition means that any amounts of penalty royalty in respect to designated substances shall be paid to the Northern Territory
Treasury, on behalf of the Commonwealth.

**Item 11** The effect of this addition means that any amounts of penalty royalty in respect to designated substances shall be paid to the Northern Territory Treasury, on behalf of the Commonwealth.

**Item 12** The effect of this addition means that any amounts of royalty payable in respect to designated substances shall be paid to the Northern Territory Treasury, on behalf of the Commonwealth.

**Item 13** This amendment clarifies that amounts of overpayments retained are retained by the Northern Territory Treasury on behalf of the Commonwealth; and amounts of overpayments payable to the royalty payer shall be made by the Northern Territory Treasury on behalf of the Commonwealth.

Clause 7(6) provides the authority for the Northern Territory to make payments of public moneys on behalf of the Commonwealth.

**Item 14** Omitting subsections 49AA(1) and (2) means that the Minister administering the MRA (i.e. the Northern Territory Treasurer) retains the power to appoint the Secretary for the purposes of the MRA.

**Item 15** This amendment applies the secrecy provision of the MRA to the Act in respect to Northern Territory employees and/or contractors.

See item 18 for information on the application of secrecy provisions on Commonwealth employees.

**Item 16** This amendment allows employees of the Northern Territory Treasury performing a function under this Act to communicate information or produce a document for the purpose of carrying out that function under the Act.

**Item 17** This amendment allows the communication of information and documents between employees of the Northern Territory Treasury and the Northern Territory Department of Regional Development, Primary Industry, Fisheries and Resources for the efficient administration of the Act.

**Item 18** This addition allows the communication of information between employees of the Northern Territory Treasury and the Minister for Resources and Energy and/or the employees within the Minister for Resources and Energy's department (currently the Department of Resources, Energy and Tourism).

Employees in the Australian Public Service (APS) are employed under the *Public Service Act 1999* and are bound by the APS Code of Conduct which includes, amongst other things, the obligation for APS employees, when acting in the course of APS employment, to abide by all Australian laws. Division 2.1 of the *Public Service Regulations 1999* applies secrecy provisions to APS employees and includes a note explaining that, pursuant
to section 70 of the _Crimes Act 1914_, it is an offence for an APS employee to publish or communicate any fact or document which comes to the employee’s knowledge, or into the employee’s possession, by virtue of being a Commonwealth officer, and which it is the employee’s duty not to disclose.

**Item 19** This amendment applies particular secrecy provisions to Northern Territory employees for the purposes of the Act.

**Subclause 6(2)**

This subclause makes the effect of subclause 6(1) subject to the operation of the Act.

**Subclause 6(3)**

This subclause makes it clear that clause 6 will not have effect until an arrangement with the Northern Territory, pursuant to clause 7, is in place. It is intended that administrative arrangements be negotiated between the Commonwealth Minister for Resources and Energy and the Northern Territory Treasurer.

**Clause 7 Arrangements with the Northern Territory**

24. This clause refers to the administrative arrangements that must be in place to enable the operation of the Act.

**Subclause 7(1)**

The administrative arrangements shall be between the Minister administering the Act (currently the Commonwealth Minister for Resources and Energy) and the Northern Territory Treasurer and will outline a number of administrative matters including (but not limited to) apportionment principles for poly-metallic mines, reporting obligations and dispute resolution processes arising from disputes between the Commonwealth and the Northern Territory Governments.

**Subclause 7(2)**

Once the administrative arrangements are in place, the parties to the administrative arrangements are required to act in accordance with the arrangements.

**Subclause 7(3)**

For example, if the administrative arrangements include a provision for the Northern Territory Treasury to provide the Department of Resources, Energy and Tourism a six monthly report of the amounts of royalty collected, then the Northern Territory Treasury must provide such reports.

**Subclause 7(4)**

The Ministers can vary or revoke the administrative arrangements at any time. However, the Ministers cannot vary or revoke the administrative arrangements unilaterally; the Minister wishing to vary or revoke the arrangements must obtain the other Minister's agreement.

**Subclause 7(4)**

The administrative arrangements, including any subsequent agreement to vary or revoke the administrative arrangements, must be documented in writing.
Subclause 7(5)

30. The document setting out the administrative arrangements, including any subsequent agreement to vary or revoke the administrative arrangements, must be published in the Commonwealth Government Gazette.

Subclause 7(6)

31. This subclause provides an express authorisation for persons who are neither Ministers nor officials in (or part of) a Financial Management and Accountability Act 1997 (‘FMA Act’) agency (considered “outsiders” under the FMA Act) to receive, have custody of, and make payments from the moneys collected on behalf of the Commonwealth. This gives the power for Northern Territory Treasury officials to collect Commonwealth money on behalf of the Commonwealth and be consistent with the FMA Act.

32. The ability to receive, have custody, and make payments from the moneys collected on behalf of the Commonwealth is limited to the Northern Territory Treasury and authorized persons in the Northern Territory as defined by the Act.

Clause 8 Tax laws not applied

33. This clause clarifies that the royalty obligation arising from the Act is not a tax.

Clause 9 Appropriation law not applied

34. This clause means that the Commonwealth will not have the power to spend Northern Territory money.

Clause 10 Applied laws not to confer Commonwealth judicial power

35. This clause means that the Commonwealth will rely on the Northern Territory judicial powers for the purposes of the Act. This power is consistent with the royalty regime for other minerals.

36. Refer to clause 12 for further information.

Clause 11 Applied laws not to contravene constitutional restrictions on conferral of power on courts

37. This clause ensures that powers that are not allowed to be conferred under the Constitution are granted to the NT in respect to the operation of the Act.

PART 3 – MISCELLANEOUS

Clause 12 Jurisdiction of Northern Territory courts

38. This clause means that the Northern Territory judicial powers will be used for the purposes of the Act.
39. For example, if there is an offence against the Act, the Northern Territory will be responsible for prosecuting the person/s in a court within its jurisdiction.

**Clause 13 Procedure in proceedings under applied law**

40. This clause means that the procedures used to prosecute persons under the MRA will also be used to prosecute persons under the Act.

41. Subclause 13(2) makes it explicit that a jury shall be used for proceedings brought by way of indictment for offences against the Act.

**Clause 14 Grant of pardon, remission etc.**

42. This clause means that the Northern Territory shall use the same powers and functions under the Northern Territory law in respect to granting pardons, remission etc for the purposes of the Act.

43. This clause provides for the Governor General retain the option to use her powers as required for the purposes of the Act.

**Clause 15 Certain Commonwealth laws do not apply in relation to applied laws**

44. This clause sets out the Commonwealth laws that do not have affect for the purposes of the Act.

45. The Commonwealth laws that do not apply are the Acts Interpretations Act 1901, Chapter 2 of the Criminal Code and prescribed Commonwealth laws.

46. These Commonwealth laws do not apply as the corresponding Northern Territory power will be applied in respect to offences to maintain consistency with the royalty regime for other minerals.

**Subclause 15(2)**

47. This subclause means that the regulations may specify other Commonwealth laws that shall have affect for the purposes of the Act from time to time.

**Clause 16 Application of Commonwealth laws in relation to applied laws**

48. This clause helps ensure that the Northern Territory royalty laws, which operate as laws of the Northern Territory, and those laws as they are picked up and applied as Commonwealth law by the Bill, have a uniform application.

49. Specifically, this clause provides that if a Commonwealth law applies to, or contains a reference to, a Northern Territory law, that Commonwealth law will also be taken to apply to, or contain a reference to, the Northern Territory law as picked up and applied by the Bill as Commonwealth law.

50. Without this clause, it is possible that a Commonwealth law might be expressed to apply to and affect the operation of a Northern Territory royalty law, but not a Commonwealth law including the corresponding Northern Territory law as picked up and applied as Commonwealth law.
Clause 17 Payments by the Commonwealth to the Northern Territory

Subclause 17(1)

51. This subclause allows amounts equivalent to the royalty, penalty and interest collected by the Northern Territory on behalf of the Commonwealth to be transferred from the Consolidated Revenue Fund to the Northern Territory.

52. Any royalties arising from mining on Aboriginal land, as defined under the ALRA, and paid to the Northern Territory Treasury on behalf of the Commonwealth require a payment into the Aboriginal Benefits Account under s63(1) of the ALRA. In respect to the mining of designated substances under the Act, the payments to the Aboriginal Benefits Account of amounts equivalent to royalties collected will be a matter for the Commonwealth.

Subclause 17(2)

53. This subclause provides for the overpaid royalty amounts collected by the Northern Territory, on behalf of the Commonwealth, to be repaid by the Northern Territory into the Consolidated Revenue Fund.

Clause 18 Appropriation

54. This clause specifies that all moneys payable by the Commonwealth under the applied law or the Act must be paid from the Consolidated Revenue Fund.

55. As clause 6 (item 13) allows the Northern Territory to repay overpayments on behalf of the Commonwealth, the Northern Territory must make these repayments from the Consolidated Revenue Fund.

56. These repayments to persons/companies will be revenue neutral for the Commonwealth as the Northern Territory is required by subclause 17(2) to repay overpayments into the Commonwealth Revenue Fund.

Clause 19 Regulations

57. This clause provides for the Governor General to make regulations to ensure the carrying out or giving effect of the Act.

58. This clause is primarily included to ensure that in the event that the Northern Territory passes amendments to, or repeals, the Mineral Royalty Act in a way which is inconsistent with the Commonwealth's position; the Commonwealth is able to make any appropriate amendments quickly to continue the intended operation of the Act.

59. The Regulations will be Legislative Instruments for the purposes of the Legislative Instruments Act 2003; and shall be subject to the usual tabling and disallowance regime under the Legislative Instruments Act 2003 and to scrutiny by the Regulations and Ordinances Committee.
ATTACHMENT A

REGULATION IMPACT STATEMENT
ON THE DEVELOPMENT OF A ROYALTY REGIME FOR NEW URANIUM MINES
IN THE NORTHERN TERRITORY

1. The problem or issues which give rise to the need for action

1.1 The objectives of the Australian Government’s Uranium Industry Framework (UIF) initiative, announced in August 2005, include the reduction of impediments to the development of Australia’s uranium resources. One of the impediments identified is the uncertainty surrounding fiscal arrangements applying to uranium development in the Northern Territory (NT) where the Commonwealth retained ownership of uranium minerals when it granted self-government to the NT in 1978.

1.2 To date royalty arrangements have been determined for three NT uranium projects (Ranger, Narbalek and Jabiluka) by the relevant Australian Government Minister on a project by project basis taking into account a range of factors, including the world market for uranium, any non-statutory payments to Aboriginal communities, the loss or damage likely to be suffered by Aboriginal communities affected by the proposed mining interest and the royalty rate set for other mines.

1.3 The Ranger mine is the only uranium mine currently operating in the NT. Its royalty of 5.5% ad valorem is composed of three components – 2.5% which is the royalty applicable on Aboriginal reserves under the then NT Mining Ordinance, 1.75% which is the notional negotiated payment for traditional owners (the Australia Government pays the sum of these first two components (4.25%) into the Aboriginal Benefits Account (ABA)) and 1.25% which the Australian Government pays to the NT Government as a grant in lieu of royalty under the terms of a 1978 Memorandum of Understanding between the Commonwealth and NT Governments. The 1.25% paid to the NT Government equates to the royalty rate for minerals under the NT Mining Ordinance at the time of self-government in 1978.

1.4 The Narbalek deposit was relatively small and mining was completed in 1988 and the mine site rehabilitated. An ad valorem royalty of 3.75% applied to the Narbalek operation. The Jabiluka mineral lease, which is yet to be activated, specifies an ad valorem royalty of 5.25%. The Jabiluka royalty comprised two components of 4% payable into the ABA and 1.25% payable to the NT Government. However, this royalty arrangement applied only until 30 June 1990 and the project has not proceeded.

1.5 Industry requested that the arrangements for determining uranium royalties in the NT be reviewed so that potential investors in new uranium exploration and mining projects in the NT would know the applicable royalty arrangements upfront. This

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1 The Aboriginal Benefits Account (ABA) is established and maintained under Section 62 of the *Aboriginal Land Rights (Northern Territory) Act 1976* to receive royalty equivalent payments in respect of mining on Aboriginal land in the NT and to make payments to Aboriginal communities (30%) affected by mining operations on their land, to Land Councils for their administrative costs and for general Aboriginal developments in the NT.
would improve regulatory certainty for investors should the Australian Government decide to allow an expansion in uranium mining.

1.6 The Government’s responsibility is to establish a regulatory framework conducive to investment and for private investors to undertake investment in exploration and mining within that framework based on their overall assessment of the range of factors and the risks involved. The royalty regime facing potential investors is only one factor which potential investors in exploration and mining take into account in deciding where to invest. The geologic potential, political stability, land access issues, and overall taxation regime are likely to be of equal or greater importance than the royalty regime. While growing world energy demand and climate change issues are expected to result in growth in uranium mining, it is not possible to predict how many new uranium mining projects are likely to be established in the NT.

1.7 In the NT, non-uranium minerals are subject to the Mineral Royalty Act 1982 (NT). The royalty regime is this Act involves a profit-based royalty applied at 18% of net receipts (revenue minus specified costs including operating costs, exploration costs and an allowance for capital costs including plant and equipment). Royalty regimes vary throughout the jurisdictions in Australia – there is no common royalty regime. In South Australia, the only other jurisdiction in which uranium is presently mined, the royalty applicable to all minerals, including uranium, is 3.5% ad valorem (ie, 3.5% of revenue). Tasmania applies a hybrid royalty to most minerals of 1.6% of net sales plus a profit royalty of 1.6% with a maximum royalty limited to 5% of net sales. Other jurisdictions apply a variety of different royalty regimes to different minerals.

2. The desired objective(s)

2.1 The Commonwealth, States and Territory Governments own the petroleum and mineral resources within their jurisdictions on behalf of the community. The Governments impose resource taxes or royalties on petroleum and mineral production to ensure that the community receives a fair share of the value generated from the development of community-owned resources. As noted above, the Commonwealth retained ownership of uranium minerals in the NT when it granted self-government to the NT in 1978.

2.2 The objectives of the exercise are to establish an efficient royalty regime to apply to new uranium projects developed in the NT so that regulatory certainty for potential investors in new uranium exploration and mining projects in the NT will be improved by them knowing the applicable royalty arrangements upfront, and to ensure that the community receives a fair share of the value from the development of uranium resources.

3. The options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s)

3.1 The non-regulatory option would be for the Government to not charge royalties for uranium produced in the NT. This is not a tenable option as uranium producers would receive the resource free of charge and the community would not receive any share of the value generated from the development of community-owned uranium resources.
With regard to regulatory options, three types of royalty options were considered. These were an ad valorem royalty, profit-based royalty and a hybrid royalty.

**Ad valorem royalty**

An ad valorem royalty is levied as a percentage of the revenue (output and price). Ad valorem royalties are relatively stable and predictable and easily administered. Because they are based on revenue only, ad valorem royalties are payable from project commencement to close down and can therefore deter investment, particularly in respect of marginal projects, and also result in premature mine closure as the resource is depleted and unit costs increase.

**Profit-based royalty**

Profit-based royalties take account of revenue and costs and are thus more economically efficient and less distorting of investment decisions compared with ad valorem royalties, which are based only on revenue. Under a profit-based royalty regime, little or no profit may be earned, and thus little or no royalty may be payable, in the initial years of a mining operation and towards close down as resource is depleted and mining costs per unit increase. Profit-based royalties are thus a more efficient form of resource charge that allows producers to mine more of the resource, particularly in times of lower prices and higher costs. A profit-based royalty regime also enables windfall gains from strong market conditions to be shared between investors, Government and the community.

The NT’s profit-based royalty is applied at 18% of net receipts (revenue minus specified costs, including operating costs and an allowance for capital costs including plant and equipment). It is sensitive to changes in commodity prices, the amount of ore extracted and the costs of extraction. Because of the greater amount of information required from companies to calculate the royalty payable, profit-based royalties are generally more administratively complex than an ad valorem royalties. However, the NT Government has applied the profit-based royalty to non-uranium minerals under its *Mineral Royalty Act 1982 (NT)* since 1982 and the mining industry is familiar with its operation.

**Hybrid royalty**

A hybrid royalty system combines an ad valorem with a profit-based royalty. A hybrid royalty offers the flexibility to avoid the possibly unsatisfactory revenue outcome for government of a purely profit-based royalty, while reducing the possibility of efficiency losses which may occur under a pure ad valorem royalty. However, the optimal mix between the ad valorem and profit components is difficult to establish. Hybrid royalties trade off economic efficiency for a measure of revenue predictability while maintaining the administrative complexity of a profit-based royalty.

**Modelling exercise**

A full and development cycle economic modelling exercise of a uranium mining project scenario was conducted under ad valorem, profit-based (18% of profit as per the current NT royalty regime), and hybrid royalty regimes, for Aboriginal and non-Aboriginal land to provide broad indicative comparisons of the outcomes which the application of each of the three royalty types would yield for the uranium producer, the Government and the traditional owners. The royalty options also used
base case and upper case price assumptions and a notional privately negotiated royalty to traditional owners of 1.75% was also included so the returns from exploration and mining on Aboriginal and non-Aboriginal land could be compared. A summary of the economic modelling is at Appendix 2 and details of the modelling methodology are provided in Appendices 3 and 4.

3.8 It is inherently difficult to compare the outcomes from ad valorem and profit-based regimes over the life of a mine. An ad valorem royalty, which is a percentage of revenue, would apply from the commencement of mining while a profit-based royalty regime takes account of revenue and costs and the actual royalty payable would rise and fall with profitability. The NT’s profit-based royalty recognises the costs related to uranium extraction as eligible deductions and the project may therefore pay no royalty for the first few years. Any comparison between ad valorem and profit-based royalties can therefore be regarded as indicative only, as changes to cost and price parameters can produce significantly different outcomes.

3.9 Based on the specific parameters in the modelling exercise undertaken for the URS, an 18% profit-based royalty approximates an ad valorem rate of about 2.9% at a price of US$30 per pound of uranium oxide and 5.4% at a price of US$36 per pound of uranium oxide. Indicative ad valorem royalties in other jurisdictions are 3.5% in South Australia, and 5% in Saskatchewan. South Africa is in the process of introducing new royalty legislation under which uranium will attract an ad valorem royalty of 3%.

3.10 Where mining occurs on Aboriginal land in South Australia, any negotiated royalties agreed between mining companies and traditional owners are additional to the statutory royalty. If the notional 1.75% negotiated royalty is added to the 18% profit-based royalty, the total of the statutory and negotiated royalties under the modelled scenario approximates 4.6% ad valorem at a price of US$30 per pound of uranium oxide and 7.1% at a price of US$36 per pound of uranium oxide. This compares with the Ranger 5.5% ad valorem royalty which includes a 1.75% notional traditional owner negotiated royalty.

3.11 While uranium spot prices have increased substantially since the modelling exercise was done, it is noted that Australian Mineral Export Statistics for the March quarter 2007 indicate that the average export price for uranium oxide was US$30.16 per pound of uranium.

4. An assessment of the impact (costs and benefits) on consumers, business, government, the environment and the community of each option

(a) Impact on consumers of uranium

4.1 Any royalty, whether determined on a case by case basis under the old arrangements, or under any of the three royalty options considered would be a component of the price paid by uranium consumers.

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2 Australian Mineral Statistics, March Quarter 2007, ABA RE indicates that 1,725 tonnes of uranium oxide were exported at a value of A$142 million which converts to A$37.34 per pound or US$30.16 per pound at the Reserve Bank of Australia exchange rate of A$1.00 = US$0.8070 at 30 March 2007.
(b) Impact on Business

Ad valorem royalty:

4.2 The Ranger and Jabiluka deposit are large and high grade and their ad valorem royalties are relatively high by international standards. New uranium mining projects are likely to be based on smaller deposits, so their economic viability could depend on the level of royalty. Because ad valorem royalties are based on revenue only, they would be payable from project commencement to close down and can therefore deter investment, particularly in respect of marginal projects, and also result in premature mine closure as the resource is depleted and unit costs increase. While ad valorem royalties are generally easier to administer (as they are a percentage of the project's revenue), they are less economically efficient because they take no account of costs.

4.3 The modelling indicated that an ad valorem royalty has the greatest adverse impact on investors and could act as a disincentive for investment in new uranium mines under difficult economic conditions, particularly on Aboriginal land.

4.4 Implementing an ad valorem royalty for uranium would result in uranium continuing to be treated differently for royalty purposes from non-uranium minerals in the NT.

Profit-based royalty:

4.5 Profit-based royalties take account of revenue and costs and thus are more economically efficient and less distorting of investment decisions compared with ad valorem royalties, which are based only on revenue. Under a profit-based royalty regime, no profit may be earned, and thus no royalty may be payable, in the initial years of a mining operation and towards close down as resource is depleted and mining costs per unit increase. The Ranger and Jabiluka deposit are large and high grade and their royalties are relatively high by international standards. As new uranium mining projects are likely to be based on smaller deposits, they would be more likely to proceed under a profit-based royalty.

4.6 Profit-based royalties are generally more administratively complex than ad valorem royalties because of the greater amount of information required from companies to calculate the royalty amounts payable. However, the existing profit-based mineral royalty regime in the NT has been in place for 25 years and the NT Treasury and the NT mining industry are familiar with its operation and administration. At an early stage in the development of a new mining project which would be subject to the NT’s Mineral Royalty Act 1982, the NT Treasury, as the royalty administrator, would meet with the relevant company to make sure the company is aware of the format of royalty returns, resolve any valuation issues (eg, where there are transactions between related companies), and agree on the composition of the deductible costs and the records it will need to keep to meet its compliance and audit obligations. Royalty returns would be submitted on a 6 monthly basis with any adjustment made at the end of each 12 month period. As each project will be different, it is not possible to determine the proportion of costs which would be attributable to compliance with royalty requirements.

4.7 The outcomes of the modelling scenario indicated that a profit-based royalty was likely to provide investors with the greatest potential for a positive return over the life of a mine.
4.8 Bringing uranium under the existing NT mineral royalty regime would make uranium royalties consistent with the regime applying to non-uranium minerals and obviate additional compliance costs in relation to poly-metallic uranium mines. Because of the nature of uranium, uranium mining has been subject to more stringent regulatory and environmental requirements. However, there is no reason why uranium should be treated differently from non-uranium minerals for royalty purposes.

4.9 In consultation during policy development, there was discussion of whether royalties negotiated by traditional owners for mining on Aboriginal land should be an allowable deduction in calculating a statutory profit-based royalty. Some stakeholders disagreed with this because:

- negotiated royalties in respect of other minerals produced on Aboriginal land in the NT are additional to the statutory royalty and not deductible in its calculation;
- privately negotiated royalties with other landowners or tenement holders are not deductible in calculating the statutory royalty;
- it would result in uranium being treated differently for royalty purposes from other minerals on Aboriginal land in the NT;
- it would add a complexity to administration of the NT’s profit-based royalty regime in respect of new uranium mines, and particularly poly-metallic mines which include uranium; and
- of concerns that it would diminish the statutory royalty which would accrue to the Australian Government and thus to the NT Government and the ABA.

4.10 Industry supports a uranium royalty regime that is the same as the royalty regime generally for minerals in NT.

Hybrid royalty:

4.11 Hybrid royalties trade off economic efficiency for a measure of royalty revenue predictability for Government while maintaining the administrative complexity of a profit-based royalty. Establishing a hybrid royalty regime for uranium would add administrative complexity for industry. The compliance requirements would involve maintaining information to comply with the ad valorem component of the royalty, plus the information required to comply with the profit component of the royalty, as described in paragraph 4.6 above.

(c) Impact on Government

Ad valorem royalty:

4.12 An ad valorem royalty would be more likely to provide a more predictable royalty revenue flow for the Australian Government and thus to the NT Government from project commencement to close down. However, because an ad valorem takes no account of costs and would be payable from project commencement, it could therefore deter investment, particularly in respect of marginal projects, (which would result in no royalty being payable if no project eventuates) and also result in premature mine closure as the resource is depleted and unit costs increase.

4.13 Implementing an ad valorem royalty for uranium would result in uranium not being treated consistently for royalty purposes from non-uranium minerals in the NT.
Profit-based royalty:

4.14 Profit-based royalties take account of revenue and costs and thus more economically efficient and less distorting of investment decisions compared with ad valorem royalties. Under a profit-based royalty regime, no profit may be earned, and thus no royalty may be payable, in the initial years of a mining operation and towards close down as resource is depleted and mining costs per unit increase. Profit based royalties are therefore more encouraging of investment in resource development, which is consistent with Government economic policies, and enable windfall gains from strong market conditions to be shared between investors, the Government and other stakeholders. Though profit-based royalties are generally more administratively complex than ad valorem royalties, the NT mineral royalty regime has been in place for 25 years and the proposal involves the NT Treasury administering royalty collections on behalf of the Australian Government.

4.15 Implementing the NT’s profit-based royalty for uranium would make the uranium royalty regime consistent with the existing NT mineral royalty regime which would obviate any additional administrative complexity for NT royalty collection processes, especially in relation to poly-metallic uranium mines.

Hybrid royalty:

4.16 Hybrid royalties trade off economic efficiency for a measure of revenue predictability while maintaining the administrative complexity of a profit-based royalty. Establishing a hybrid royalty regime for uranium would add administrative complexity for the NT Treasury in administering the uranium royalty on behalf of the Australian Government.

General Comment:

4.17 The current Ranger royalty arrangements were determined by the relevant Minister in 1980. Of the 5.5% ad valorem Ranger royalty, 4.25% is paid into the ABA and 1.25% is paid to the NT Government as a grant in lieu of royalty at the existing rate, as required under the 1978 MOU on financial arrangements between the Commonwealth and the NT Governments. This means that the royalty collected has a neutral effect on Government revenue. In practice, the NT Treasury administers and collects the royalty on behalf of the Australian Government and pays it to the Australian Government which then makes the above payments to the ABA and the NT Government.

Since the Ranger royalty arrangements were determined, the Aboriginal Land Right Act 1976 has been amended so that the equivalent of all royalties from mining projects on Aboriginal land must be paid into the ABA. In addition, the NT royalty regime has changed to a profit-based rate of 18% (as distinct from the 1.25% ad valorem which applied under the NT Mining Ordinance prior to 1982). This means that whatever new royalty regime is put in place, the Australian Government will need to pay the equivalent of all the royalties collected for uranium into the ABA. In addition, to meet its obligation under the 1978 MOU to pay a grant in lieu of royalties to the NT Government, the Australian Government will need to make an equivalent payment to the NT Government.
The outcome would be that royalty collections would no longer be revenue neutral, because the Australian Government would be required to pay the equivalent of the royalty collected to both the ABA and the NT. However, this would place uranium into the same situation as non-uranium minerals in the NT (ie, NT collects and retains the royalty and the Australian Government pays an equivalent amount into the ABA).

(d) **Impact on the environment**

4.18 Royalties per se would have no effect on the environment as every new uranium mine approved and established would be required to pay a royalty. Because ad valorem royalties are less efficient (as described above) they could deter marginal investments and in this regard reduce the environmental impact. However, this would be counter to the objective of encouraging investment in new uranium mines.

(e) **Impact on the community**

*Ad valorem royalty:*

4.19 An ad valorem royalty would be more likely to provide a more predictable royalty revenue flow for the Australian Government and thus to the NT Government and to the ABA from project commencement to close down. However, because an ad valorem takes no account of costs and would be payable from project commencement, it could deter investment, particularly in respect of marginal projects, (which would result in no royalty being payable if no project eventuates) and also result in premature mine closure as the resource is depleted and unit costs increase. Thus the mine life is likely to be shorter under an ad valorem royalty all things being equal with consequences for lower output, employment and flow-on effects over the life of a mine compared with a profit-based royalty.

*Profit-based royalty:*

4.20 Profit-based royalties take account of revenue and costs and are thus more economically efficient and less distorting of investment decisions compared with ad valorem royalties. Under a profit-based royalty regime, no profit may be earned, and thus no royalty may be payable, in the initial years of a mining operation and towards close down as resource is depleted and mining costs per unit increase. Profit based royalties are therefore more encouraging of investment in resource development, which is consistent with Government economic policies, and enable windfall gains from strong market conditions to be shared between investors, the Government and Aboriginal communities affected by the mining operations through payments from the ABA.

*Hybrid royalty:*

4.21 Hybrid royalties trade off economic efficiency for a measure of revenue predictability while maintaining the administrative complexity of a profit-based royalty. The modelling indicated that the hybrid royalty was likely to have a similar outcome as under a profit-based arrangement.
General Comment

4.22 The Land Councils support an ad valorem royalty because they consider the royalty equivalents paid into the ABA would be more predictable and thus income payments from the ABA to traditional owners would be more stable. Despite mines being more likely to be economic under a profit-based royalty, the Land Councils in general do not support a profit-based royalty because little or no royalty may be payable at some stages during the life of a mine which would adversely affect the level of royalty equivalent payments into the ABA and income payments from the ABA to traditional owners. This position has been maintained despite the fact that 64% of royalty equivalent payments into the ABA are already derived from non-uranium mines which are subject to the profit-based royalty so traditional owners are already managing the royalty fluctuations. The Central Land Council, however, has indicated that it could accept a profit-based royalty providing that traditional owner negotiated royalties would not be deductible in calculating statutory royalties.

4.23 An analysis was undertaken of the effect on royalty equivalent payments into the ABA if two new Ranger-size uranium mines had been operating under a profit-based royalty over the period 2002 to 2006. Total royalty equivalent payments into the ABA from mineral and petroleum projects on Aboriginal land in the NT subject to the both ad valorem and the NT’s profit-based royalty in 2006 would have increased from $62.8 million to $76.8 million. The proportion of royalties derived from all projects subject to a profit-based royalty would have increased from about 64% to 70% while the proportion derived from non-uranium minerals would have declined from 64% to 52%. The proportion is influenced by the large portion of the royalty equivalents which are derived from non-uranium minerals.

4.24 Under the Aboriginal Land Rights (Northern Territory) Act 1976, mining companies and Land Councils are required to reach agreements for exploration and mining on Aboriginal land. These agreements contain a negotiated royalty (generally around 2% ad valorem) which is payable to the traditional owners. The negotiated royalty would provide for income payments to the traditional owner during period when the mine was making accounting losses and therefore paying no statutory profit-based royalty.

Summary of Impacts

Implementing the NT’s profit-based royalty regime for new uranium mines with royalty administration undertaken by the NT Treasury on behalf of the Australian Government is the approach favoured of the majority of stakeholders.

Implementation of the NT royalty regime:

- will provide investors in uranium exploration and mining with the regulatory certainty of a royalty regime which is economically efficient and encouraging of investment;
- will ensure the community (ABA, traditional owners and NT Government) receives a fair share of the value from the development of uranium resources;
- will bring uranium under an royalty regime which has been operating for 25 years and with which the industry is familiar;
- is consistent with the Australian Government’s approach to royalties (eg, the Petroleum Resource Rent Tax which applies to offshore petroleum projects in Commonwealth waters is a profit-based resource tax) and the Ministerial Council
on Mineral and Petroleum Resources principles for ideal resource taxation arrangements of economic efficiency, equity, administrative simplicity and consistency;

- will ensure uranium is treated the same for royalty purposes as other minerals in the NT; and
- will protect the interests of traditional owners and Land Councils by not allowing deductibility of traditional owner negotiated payments in calculating the statutory royalty.

5. **A consultation statement**

A NT Uranium Royalty Sub-group (URS) was formed under the Regulation Working Group of the UIF’s Implementation Group to consider the options for development of a royalty regime for new uranium mines in the NT. The URS consisted of representatives of the key stakeholders:

- Australian Government agencies (Prime Minister and Cabinet Industry, Treasury, Finance and Administration, Industry Tourism and Resources, and Families, Community Services and Indigenous Affairs);
- NT Treasury;
- NT mining industry (NT Minerals Council, Cameco and Energy Resources of Australia); and
- Aboriginal Land Councils (the Central Land Council and Northern Land Council).

The URS was chaired by the former Department of Industry, Tourism and Resources.

The first meeting of the URS (February 2006) agreed to a set of principles as the basis for consideration of a royalty regime to apply to new uranium mines in the NT. These principles are set out in **Appendix 1**.

To assist the URS with its deliberations, a full and development cycle economic modelling exercise of a uranium mining project scenario was conducted under ad valorem, profit-based, and hybrid royalty regimes, for Aboriginal and non-Aboriginal land, as described above. A summary of the economic modelling is at **Appendix 2** and details of the modelling methodology are provided in **Appendices 3 and 4**.

In October 2006, a discussion paper circulated to URS members included the outcome of the modelling exercise and asked members to outline their positions on specific issues identified as relevant to the development of a new uranium royalty regime, namely:

- Options for royalty applying to Aboriginal land and to other NT areas;
- Deductibility of traditional owners’ negotiated royalty under any new uranium royalty regime’
- Methods to allocate royalties between uranium and non-uranium products in poly-metallic mines; and
- Options for the administration of uranium royalties.

Submissions were received on the above issues from stakeholder representatives participating in the URS and these issues were discussed at a meeting in Darwin on 14 March 2007. A report for the UIF Implementation Group has been developed and refined through subsequent teleconferences and e-mail communications and is to be considered by the UIF Implementation Group on 23 August 2007.
All stakeholders are in agreement that:

- a single statutory royalty regime should apply to new uranium mines in the whole of the NT regardless of land ownership;
- a hybrid royalty regime not be introduced; and
- the NT should administer uranium royalty collections and receive a grant in lieu consistent with the 1978 MOU on financial arrangements between the Commonwealth and the NT.

Most stakeholders (except the Land Councils) support applying the NT’s profit-based royalty regime to new uranium mines.

Most stakeholders support there being no deductibility for traditional owner negotiated royalties in calculating the statutory royalty payable.

The NT’s profit-based royalty regime provides a balance between the interests of the Government, industry and Land Councils, in that:

- Government would be implementing a profit-based regime: which is economically efficient in terms of encouraging investment; is consistent with the royalty regime which has applied in the NT for 25 years and thus its administration is well understood by NT Treasury and the industry; and would treat uranium the same as other minerals in the NT for royalty purposes;
- the industry would get a royalty regime which is more economically efficient in terms of encouraging investment and is consistent with the royalty regime which has applied in the NT for 25 years, enabling uranium to be treated the same for royalty purposes as non-uranium minerals, but the industry would not get deductibility for the traditional owner negotiated royalty in calculating the statutory royalty;
- Land Councils interests in ensuring that royalty equivalent payments are not eroded through deductibility of the traditional owner negotiated royalty would be met, and as 64% of royalty equivalents are already derived from mining operations subject to the NT’s profit-based royalty, the extension of the NT’s profit-based royalty regime to new uranium mines should be a manageable issue.

6. A recommendation statement

The features of the NT’s profit-based royalty regime and an ad valorem regime are considered against the URS principles for consideration of a new royalty regime for uranium which are set out in Appendix 1.

The comparison between the two royalty regimes is set out in the table below and indicates that the NT’s profit-based royalty regime meets six of the seven principles whereas an ad valorem regime meets only three of them.
Comparison of the Northern Territory Royalty Regime with Principles for Consideration of a New Royalty for Uranium

<table>
<thead>
<tr>
<th>Principles</th>
<th>Comparison of NT Royalty Regime with the Principles</th>
<th>Comparison of Ad Valorem Regime with the Principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Profit-based NT regime to be used as a benchmark for designing new resource charge arrangements.</td>
<td>The NT's profit-based royalty is consistent with the Australian Government's approach to royalties (eg, PRRT) and the MCMRP's principles of economic efficiency, equity, (see 2) administrative simplicity (see 5), consistency (NT is the only Australian jurisdictions with a profit-based royalty regime applying to all minerals) and international competitiveness (to the extent which can be determined).</td>
<td>An ad valorem regime would not be consistent with this principle, nor the Australian or NT Governments' approaches to royalties. An ad valorem royalty regime for uranium would be a departure from the consistency of a single royalty regime applying to all new mines in the NT and would treat uranium differently for royalty purposes from other minerals in the NT.</td>
</tr>
<tr>
<td>2. Protection of established rights of Aboriginal interests to a share of uranium related resource charge receipts.</td>
<td>Yes. The ALRA requires the Australian Government to pay into the ABA the equivalent of all royalties from minerals mined on ALRA land and for the Aboriginal people in areas affected by the mine to receive 30% of those royalties. In addition traditional owners and mining companies usually negotiate private payment arrangements.</td>
<td>Yes. The ALRA requires the Australian Government to pay into the ABA the equivalent of all royalties from minerals mined on ALRA land and for the Aboriginal people in areas affected by the mine to receive 30% of those royalties. In addition traditional owners and mining companies usually negotiate private payment arrangements.</td>
</tr>
<tr>
<td>3. Meet Commonwealth uranium related administrative costs including obligation to NT from uranium resource charge receipts.</td>
<td>No. The Commonwealth's financial obligations to the NT are to provide a grant in lieu of royalty. Commonwealth's financial obligations to the NT cannot be met from uranium royalty receipts from mines on ALRA land as this would be inconsistent with the ALRA. The ALRA requires all royalties from mining on ALRA land to be paid into the ABA.</td>
<td>No. The Commonwealth's financial obligations to the NT are to provide a grant in lieu of royalty. Commonwealth's financial obligations to the NT cannot be met from uranium royalty receipts from mines on ALRA land as this would be inconsistent with the ALRA. The ALRA requires all royalties from mining on ALRA land to be paid into the ABA.</td>
</tr>
<tr>
<td>4. Seek comparable resource charge outcomes between uranium extraction on non-Aboriginal and Aboriginal land.</td>
<td>The statutory royalty would apply equally to ALRA and non-ALRA land. Privately negotiated mining payments between traditional owner and mining companies under ALRA agreements would be additional to statutory royalties. This is consistent treatment compared with other non-uranium minerals produced from ALRA land.</td>
<td>The statutory royalty would apply equally to ALRA and non-ALRA land. Privately negotiated mining payments between traditional owner and mining companies under ALRA agreements would be additional to statutory royalties. This is consistent treatment compared with other non-uranium minerals produced from ALRA land.</td>
</tr>
</tbody>
</table>
### Principles

<table>
<thead>
<tr>
<th>Comparison of NT Royalty Regime with the Principles</th>
<th>Comparison of Ad Valorem Regime with the Principles</th>
</tr>
</thead>
</table>
| 5. Seek a uranium resource charge which is administratively simple and economically efficient for all uranium discovered in the NT. | Ad valorem royalties are generally more administratively simple. However, they:  
- are less economically efficient and can distort investment decisions;  
- can discourage development of marginal prospects;  
- can result in premature mine closure before the total resource has been extracted. |
| Profit-based royalties are more economically efficient and neutral in terms of investment decisions compared with ad valorem royalties.  
The NT royalty regime has been in operation for 25 years and NT officials and industry familiar with its operation. |  
| 6. Recognise costs related to uranium extraction as eligible deductions. | No. Ad valorem royalties are generally levied as a percentage of revenue without regard to costs of extraction. |
| The NT’s profit-based royalty takes account of operating costs, capital recognition deduction on eligible capital assets, and eligible exploration expenditure in calculating the royalty payable. |  
| 7. Proposed resource charge arrangements will be drafted with a view to minimising compliance costs. | An ad valorem royalty regime could be drafted with minimal compliance requirements, but would result in uranium being treated differently for royalty purposes from other non-uranium minerals in the NT. |
| Adoption of the NT’s mineral royalty regime for new uranium mines would minimise compliance requirements. It is an existing regime and NT officials and industry familiar with its operation. |  

The recommendations agreed by the URS are as follows, noting that the Land Councils do not support recommendation (a) and that the industry does not support recommendation (b):

(a) the NT’s profit-based mineral royalty regime as set out in the MRA should be adopted as the single statutory royalty regime to apply to new uranium mines in the whole of the NT regardless of land ownership and implemented through the Mirror Taxes legislative approach;

(b) negotiated royalties under agreements between mining companies and Land Councils on behalf of the traditional owners would be an additional component above any statutory uranium royalty paid to Government and such negotiated royalties would not be deductible in calculating the statutory uranium royalty;

(c) the NT and the Australian Governments should determine bilaterally the method of apportioning royalties from a poly-metallic mine (the method would not affect the overall level of royalties payable by mining companies, nor royalty equivalents payable to the Aboriginal Benefits Association);

(d) administration of royalty collection and payment of royalty equivalents to the Aboriginal Benefits Account in respect of new uranium mines should operate as follows:  
- in accordance with the 1978 MOU between the Australian and NT Governments on financial arrangements, the grant to the NT of an amount
in lieu of uranium royalties from new uranium mines should be at the existing NT royalty rate of 18% of profits;

- the NT Treasury should administer the collection of royalties from new uranium mines on behalf of the Australian Government and retain those royalties;
- the Australian Government should ensure the necessary appropriation requirements are in place through its annual Budget process so that the NT can legally retain the uranium royalty receipts;
- the NT Treasury will advise the Australian Government of the amounts of royalty collected from new uranium mines on Aboriginal land; and
- the Australian Government will make royalty equivalent payments into the Aboriginal Benefits Account in respect of royalties derived from new uranium projects on Aboriginal land.

7. A strategy to implement and review the preferred option.

In order to apply an ad valorem or profit-based royalty regime to uranium production from new mines in the NT, it would be necessary for Commonwealth legislation to be enacted. The Australian Government Solicitor has advised that there are two implementation options if the Government decided to apply the NT’s profit-based royalty as set out in the Mineral Royalty Act 1982 (NT) to the production of uranium minerals. These are outlined below.

Commonwealth legislation could be enacted which imposed the royalty and picked up and applied all the provisions of the NT MRA to the Commonwealth royalty as if that royalty were a royalty for the purposes of the NT MRA. Alternatively, the approach adopted by the Commonwealth Places (Mirror Taxes) Act 1988 (Mirror Taxes Act) could be used. Under the Mirror Taxes Act, various State Acts imposing State taxes were picked up and applied, together with the State legislation relevant to the administration of those laws, as Commonwealth taxes.

The Mirror Taxes Act approach has the advantage of ensuring that the legislative provisions governing the imposition and administration of the uranium levy will be the same as those governing the imposition and administration of royalties under the NT MRA irrespective of what changes might subsequently be made to the NT legislation. Picking up and applying NT laws as in force from time to time means that the Australian Parliament loses some measure of control over the content of the Commonwealth law imposing the royalty, but this issue could be addressed to some extent by requiring NT authorities to consult with the Commonwealth before any changes are made to the relevant NT legislation.

The preference is to use the Mirror Taxes Act approach and confer powers on NT officials so that the NT Treasury could administer the collection of uranium royalties on behalf of the Australian Government and ensure compliance through the provisions of the profit-based royalty arrangements. This would enable the uranium royalty to automatically maintain consistency with the NT mineral royalty regime and thus would avoid any need to review whether the Commonwealth's legislation has got out of kilter with the Mineral Royalty Act 1982 (NT).
PRINCIPLES FOR CONSIDERATION OF A NEW ROYALTY REGIME FOR URANIUM IN THE NORTHERN TERRITORY

1. Profit-based NT regime to be used as a benchmark for designing new resource charge arrangements.

2. Protection of established rights of Aboriginal interests to a share of uranium related resource charge receipts.

3. Meet Commonwealth uranium related administrative costs including obligation to NT from uranium resource charge receipts.

4. Seek comparable resource charge outcomes between uranium extraction on non-Aboriginal and Aboriginal land.

5. Seek a uranium resource charge which is administratively simple and economically efficient for all uranium discovered in the NT.

6. Recognise costs related to uranium extraction as eligible deductions.

7. Proposed resource charge arrangements will be drafted with a view to minimising compliance costs.
APPENDIX 2

SUMMARY OF ECONOMIC MODELLING OUTCOMES

Economic modelling was conducted to assist in the overall assessment of the costs, benefits and implications of moving towards a more consistent uranium royalty regime in the NT. An Excel model was used to investigate the fiscal implications of ad valorem, profit and hybrid uranium royalty regimes. In summary, the modelled royalty regimes are:

- a 5.5 per cent ad valorem royalty;
- a 18 per cent profit royalty based on the NT’s Mineral Royalty Act 1982; and
- a hybrid royalty regime consisting of a 1 per cent ad valorem and a 1 per cent profit based royalty.

The modelled uranium mine represented a medium to large "Ranger" style development assessed under both marginal economic (base case) and profitable (high price) conditions. Table 1 summarises the key statistics of the uranium project and Table 2 summarises the financial outcomes of the project. These financial outcomes are indicative and not necessarily typical of what will be generated from a future uranium mine in the NT. What is useful for the analysis of the different royalty regimes are the relative differences in the outcomes for stakeholders under the different economic scenarios.

Table 1: Key statistics of uranium project.

<table>
<thead>
<tr>
<th>Uranium reserve</th>
<th>Mine life</th>
<th>Operating cost</th>
<th>Uranium price</th>
</tr>
</thead>
<tbody>
<tr>
<td>84,000 tonnes</td>
<td>25 years</td>
<td>AUS$25/lb</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Base case</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>High Price</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>US$30/lb</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>US$36/lb</td>
</tr>
</tbody>
</table>

Table 2: Before tax full cycle financial outcomes under the ad valorem, profit and hybrid royalty regimes on ALRA land.

<table>
<thead>
<tr>
<th></th>
<th>Ad valorem royalty ($m)</th>
<th>Profit royalty ($m)</th>
<th>Hybrid royalty ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Base case</td>
<td>High Price</td>
<td>Base case</td>
</tr>
<tr>
<td>Project cash flow nominal</td>
<td>$1,140</td>
<td>$2,600</td>
<td>$1,210</td>
</tr>
<tr>
<td>Project cash flow NPV 15%</td>
<td>-$19</td>
<td>$136</td>
<td>-$12</td>
</tr>
<tr>
<td>Revenue NPV 15%</td>
<td>$820</td>
<td>$984</td>
<td>$820</td>
</tr>
<tr>
<td>Traditional owners' negotiated payment nominal</td>
<td>$135</td>
<td>$162</td>
<td>$135</td>
</tr>
<tr>
<td>Traditional owners negotiated payment NPV 15%</td>
<td>$14</td>
<td>$17</td>
<td>$14</td>
</tr>
<tr>
<td>Royalty cost nominal</td>
<td>$289</td>
<td>$347</td>
<td>$213</td>
</tr>
<tr>
<td>Royalty cost NPV 15%</td>
<td>$31</td>
<td>$37</td>
<td>$24</td>
</tr>
<tr>
<td>Royalty revenue NPV 5.32%*</td>
<td>$117</td>
<td>$141</td>
<td>$94</td>
</tr>
</tbody>
</table>

* Royalty revenue represents the value of the royalty from a government perspective. It is the investors royalty cost at a discount rate of 5.32 per cent.
The modelling showed that:

- under the ad valorem, profit and hybrid royalty regimes the base case assumptions agreed by the URS generated net present values (NPV) that were negative or marginal for the full cycle economic assessment;

- if a profit royalty is applied to non-ALRA land while the current ad valorem royalty remained on ALRA land there would be a tax driven incentive to focus exploration effort on non-ALRA land;

- under the development cycle all royalty regimes generated a positive NPV;

- Under base case assumptions less royalty revenue is collected under the profit and hybrid royalty regimes when compared to the ad valorem royalty;

- The profit based royalty provided greater returns to the community under more positive economic conditions;

- From an investor perspective the hybrid and profit based royalty regimes are more attractive than the ad valorem royalty regime under marginal economic conditions;

- Under the base case assumptions, uranium projects under a profit based royalty or a hybrid royalty required a significantly smaller increase in prices or a reduction in costs in order for the project to breakeven when compared to projects under an ad valorem royalty; and

- Ad valorem royalties can act as a disincentive to invest in mine expansion or may lead to premature mine closure under adverse economic conditions. This risk is minimised under the profit based royalty regime because the royalty payable is reduced in line with either an increase in capital expenditure or adverse economic conditions.
Economic modelling was conducted to assist in the overall assessment of the costs, benefits and implications of moving towards a more consistent uranium royalty regime in the NT. An Excel model was used to investigate the fiscal implications of ad valorem, profit and hybrid uranium royalty regimes. In summary, the modelled royalty regimes are:

- a 5.5 per cent ad valorem royalty;
- a 18 per cent profit royalty based on the NT's *Mineral Royalty Act 1982*; and
- a hybrid royalty regime consisting of a 1 per cent ad valorem and a 1 per cent profit based royalty.

With the assistance of the URS a number of modelling assumptions were agreed. These modelling assumptions are detailed in Appendix B.

A uranium project was assessed by investigating its full and developmental cycle economics. Full cycle analysis takes into account exploration and feasibility study expenditure and therefore is an assessment of the project from a pre-exploration commitment perspective. The development cycle analysis assesses the project from a pre-final investment decision perspective. That is exploration and feasibility study expenditures are considered sunk costs.

Before tax economic analysis (excluding company tax) compared the impact of the different royalty regimes on the project’s profitability and community return. The before tax economic analysis has been undertaken using a discount rate of 15 per cent.

After tax economic analysis (including company tax) was used to assess the impact of making payments negotiated with Aboriginal traditional owners deductible for the purpose of calculating the profit royalty payable. The after tax economic analysis has been undertaken using a discount rate of 10 per cent. It is acknowledged that the after tax economics of a uranium project will be influenced by the unique tax position of the taxpayer.

The sensitivity analysis involved assessing the impact of changing price and operating costs. The models were run with a base case uranium price of US$30/lb and high uranium price of US$36/lb, 20% above the base case. Similarly operating costs were run at base case cost of AUS$25/lb and a high operating cost of US$27.5/lb, 10% above the base case.

The Northern Land Council (NLC) provided an alternative production profile that closely reflects the historic production profile of the Ranger mine. This production profile was assessed as an alternative to the base case and was found not to have a significant impact on the outcome.

Aboriginal communities have previously negotiated a royalty-type payment to compensate them for the loss or damage likely to be suffered by Aboriginal
communities affected by the proposed grant of the mining interest. A 1.75 per cent ad valorem traditional owners’ access charge has been modelled to reflect this compensation payment for mines on Aboriginal land (ALRA land). The economic performance of uranium mines on ALRA and non-ALRA land are compared.

A paper assessing options for apportioning costs between uranium and other commodities for the purpose of determining a uranium royalty in a poly-metallic mine was also prepared by Geoscience Australia.
BASE CASE MODELLING ASSUMPTIONS

1. A uranium mine with a producing life of 20 years from 2008 to 2028 (data in real 2006 $Am).

2. Pre development exploration costs of $5m pa for three years from 1999 to 2001. No ongoing exploration expenditure.

3. Feasibility studies from 2002 to 2005 at $12.5 million pa.
   - Feasibility expenditure is treated as capital in nature for the purpose of the profit based royalty.

4. Construction in 2006 and 2007 at $350 million pa. The proportion attributed to operational costs is assumed to be 12% of construction costs.

5. Annual production from 2008 to 2014 of 6000 tpa and 3000tpa U$_3$O$_8$ thereafter to closure (profile based on ERA experience of production history).

6. Operating costs of AUS$25 per lb U$_3$O$_8$ for the life of the mine.

7. CAPEX over the working life of the mine of $30 million pa to 2024 then $10 million pa from 2025 to 2027.
   - These are assumed to be 10 years for Capital Recognition Deduction purposes.
   - Half of annual capital spent in first year is eligible for Capital Recognition Deduction.
   - No capital sales during the life of the mine.

8. Price of US$30 per lb U$_3$O$_8$ and an exchange rate of US0.72 per $AUS

9. Closure costs = $220m commencing 2028. $120m spent over first 6 years of closure ($20m pa) and the rest over the following 25 years.

10. Traditional owners’ negotiated payment: 1.75% ad valorem royalty equivalent

11. Discount rate of 15% (pre corporate tax). Government discount rate of 5.32%.