



**Australian Government**  
**Department of Industry,  
Innovation and Science**

The Hon John Mansfield AM QC  
Aboriginal Land Commissioner  
AboriginalLandCommissioner@network.pmc.gov.au

Dear Justice Mansfield

I am writing to you in regard to the review of detriment issues – Finnis River Land Claim No. 39.

In Report No. 9 into the Finnis River Land Claim No. 39, Commissioner Toohey considered possible detriment to the Department of Industry, Innovation and Science's ('Department') predecessor department's proposed Rum Jungle rehabilitation project. Commissioner Toohey concluded that the proposed rehabilitation project could be permitted under s 14 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth); therefore the Commonwealth would suffer no detriment by the Rum Jungle area becoming Aboriginal land.

The aforementioned rehabilitation project was undertaken by the Northern Territory, using Commonwealth financial assistance, between 1983 and 1986; a further 12 years of monitoring and maintenance was undertaken. These works have resulted in substantial environmental improvement to the Finnis River.

Nevertheless it is recognised that the site continues to be a contaminant source to the upper Finnis River. Since 2009, the Australian and Northern Territory governments have collaborated, along with Rum Jungle's identified traditional owners, the Kungarakan and Warai, to undertake a range of investigative and technical assessments to develop an improved rehabilitation strategy by 30 June 2019 for governments' consideration. The rehabilitation strategy also needs to describe the requirements for any post-rehabilitation monitoring and maintenance programs.

The Northern Territory is the landowner of the Rum Jungle site and has been since self-government in 1978. Apart from the continuing ownership of uranium in the Northern Territory, the Commonwealth has no legal estate or legal interest in the site; it is not an owner or occupier of the site. As such, the issue of detriment identified in Report No. 9 is no longer current.

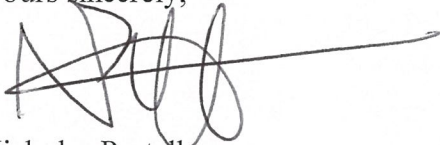
The Department is aware that the Northern Land Council ('NLC'), in its 30 October 2017 evidence to the Senate Inquiry into rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities, advised that its statutory function does not extend to being a receiving entity to manage any future transfer of risk and costs to Land Trusts arising from a rehabilitated or closed site. In particular, the NLC noted 'we receive the land, but we don't have the statutory responsibility to monitor any future environmental issues, if there are any.'

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Resolution of responsibility and liability between parties will be a challenge to settling any matter of detriment; all interested parties will wish to ensure that the performance of current (and any potential future) rehabilitation works is maintained. Under the *Project Agreement for the Management of the Former Rum Jungle Mine Site (Stage 2A)*, the Australian and Northern Territory governments have committed to conducting bilateral consultations on various strategic matters, including responsibility and liability. The outcome of those consultations is unknown. The Department (in consultation with other Australian Government agencies) would be happy to consider options interested stakeholders may identify to assist in resolving the land claim.

Yours sincerely,

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Nicholas Purtell  
General Manager, Major Projects Branch  
Northern Australia and Major Projects Division

21 June 2018



**Australian Government**  
**Department of Industry,**  
**Innovation and Science**

The Hon John Mansfield AM QC  
Aboriginal Land Commissioner  
AboriginalLandCommissioner@network.pmc.gov.au

Dear Justice Mansfield

Thank you for the opportunity to reply to the Northern Land Council's response on behalf of claimants to submissions received for the review of detriment issues – Finnis River Land Claim No. 39.

The Department welcomes the advice from the claimants that they support rehabilitation of the former Rum Jungle Mine site.

In relation to the suggestion that the Land Trust would need to be 'fully indemnified', the Commonwealth has previously advised the Northern Land Council that an indemnity, of the type sought, is not supported. Indemnities are usually conditional and take into account contributory negligence. Further guidance can be found in *Resource Management Guide No. 414 Indemnities, guarantees and warranties by the Commonwealth* (December 2016).

An indemnity requires risk management arrangements appropriate to the complexity and potential costs to be in place and survive into the long term. In this instance, future (land) use and stewardship arrangements would regulate liability. At present, there is no clear and defined position on land use and stewardship arrangements. Also, normal land management activities (e.g. fire breaks, weeds management) accrue to the land owner.

Finally, in the interests of clarity, we confirm that our view is that the Commonwealth is not responsible for Rum Jungle. This is supported by the Department of the Environment and Energy's Notification of Referral Decision for rehabilitation of the former Rum Jungle mine site (dated 4 August 2016) and advice provided by the Australian Radiation Protection and Nuclear Safety Agency. Any interest to be able to continue activities, should the land be granted as Aboriginal freehold, will be a matter for the Northern Territory.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Purtell', written over a horizontal line.

Nicholas Purtell  
General Manager, Major Projects Branch  
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27 September 2018

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