



RADIOACTIVE WASTE AND AUSTRALIA'S ABORIGINAL PEOPLE

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From 1998 to 2004 the Australian federal government tried – but failed – to impose a national radioactive waste repository on Aboriginal land in South Australia (SA). From 2006 to 2014 the government tried to impose a repository on Aboriginal land in the Northern Territory, but that also failed. Now the government has embarked on its third attempt and once again it is trying to impose a repository on Aboriginal land despite clear opposition from Traditional Owners.

The latest proposal is for a repository in the Flinders Ranges, 400 kilometres north of Adelaide in SA, on the land of the Adnyamathanha Aboriginal Traditional Owners.

The proposed repository site is adjacent to the Yappala Indigenous Protected Area (IPA).¹ “The IPA is right on the fence – there’s a waterhole that is shared by both properties,” says Yappala Station resident and Adnyamathanha Traditional Owner Regina McKenzie.² The waterhole – a traditional women’s site and healing place – is one of many archaeological and culturally significant sites in the area that Traditional Owners have registered with the SA government.³

Two Adnyamathanha associations – Viliwarinha Aboriginal Corporation and the Anggumathanha Camp Law Mob – wrote in a November 2015 statement:⁴

Adnyamathanha land in the Flinders Ranges has been short-listed for a national nuclear waste dump. The land was nominated by former Liberal Party Senator Grant Chapman. Adnyamathanha Traditional Owners weren’t consulted. Even Traditional Owners who live next to the proposed dump site at Yappala Station weren’t consulted. This is an insult.

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The whole area is Adnyamathanha land. It is Arngurla Yarta (spiritual land). The proposed dump site has springs. It also has ancient mound springs. It has countless thousands of Aboriginal artefacts [*sic*]. Our ancestors are buried there.

Hookina creek that runs along the nominated site is a significant women’s site. It is a registered heritage site and must be preserved and protected. We are responsible for this area, the land and animals.

We don’t want a nuclear waste dump here on our country and worry that if the waste comes here it will harm our environment and muda (our lore, our creation, our everything). We call on the Federal Government to withdraw

the nomination of the site and to show more respect in future.

Regina McKenzie describes getting the news that the Flinders Ranges site had been chosen from a shortlist of six sites across Australia: “We were devastated, it was like somebody had rang us up and told us somebody had passed away. My niece rang me crying... it was like somebody ripped my heart out.”⁵

The federal government says that “no individual or group has a right of veto” over the proposed national repository.⁶ That wording presumably means that the repository may go ahead despite the government’s acknowledgement that “almost all Indigenous community members surveyed are strongly opposed to the site continuing.”⁷

Adnyamathanha Traditional Owner Dr Jillian Marsh, who in 2010 completed a Ph.D. thesis⁸ on the strongly contested approval of the Beverley uranium mine in SA, puts the debate over the proposed repository in a broader context in an April 2016 statement:

The First Nations people of Australia have been bullied and pushed around, forcibly removed from their families and their country, denied access and the right to care for their own land for over 200 years. Our health and wellbeing compares with third world countries, our people crowd the jails. Nobody wants toxic waste in their back yard, this is true the world over. We stand in solidarity with people across this country and across the globe who want sustainable futures for communities, we will not be moved.⁹

Successive federal governments appear to have been fixated on the idea of attempting to impose a repository on the land of unwilling Aboriginal communities. Regina McKenzie said on ABC television in May 2016:

Almost every waste dump is near an Aboriginal community. It’s like, yeah, they’re only a bunch of blacks, they’re only a bunch of Abos, so we’ll put it there. Don’t you think that’s a little bit confronting for us when it happens to us all the time? Can’t they just leave my people alone?¹⁰

The dispute over the waste repository proposal will probably be resolved in 2017. It has been heavily shaped by previous disputes – in particular, a successful Traditional Owner-led campaign to prevent the imposition of a national waste repository in SA from 1998 to 2004 (discussed below), and a successful Traditional Owner-led campaign to prevent the imposition of a national waste repository at Muckatj Station, Northern Territory, from 2006 to 2014.

earlier attempt to impose a repository in south australia, 1998–2004

In 1998, the federal government announced its intention to build a national radioactive waste repository near the rocket and missile testing range at Woomera.

The proposed repository generated such controversy in SA that the federal government hired a public relations company. Correspondence between the company and the government was released under Freedom of Information laws.¹¹ In one exchange, a government official asked the public relations company to remove sand-dunes from a photo to be used in a brochure. The explanation provided by the official was that: “Dunes are a sensitive area with respect to Aboriginal Heritage.” The sand-dunes were removed from the photo – only for the government official to ask if the horizon could be straightened up as well.

The government’s approach to “consultation” with Aboriginal people was spelt out in an internal 2002 document which details the government’s A\$300,000 public relations campaign.¹² The document states: “Tactics to reach Indigenous audiences will be informed by extensive consultations currently being undertaken [...] with Indigenous groups.” In other words, a questionable “consultation” process was used to fine-tune the government’s promotional messages. The government’s approach sat uneasily with the principle of informed consent enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.¹³

This issue of questionable “consultation” arises time and time again, most recently with the discussion initiated by a Royal Commission (discussed below) into “building confidence” in the safety of nuclear waste repository proposals. West Mallee Protection (WMP), representing Aboriginal and non-Aboriginal people from Ceduna in western SA, responded as follows:¹⁴

WMP finds this question superficial and offensive. It is a fact that many people have dedicated their time and energy to investigating and thinking about nuclear waste. It is a fact that even elderly women that made up the Kupa Piti Kungka Tjuta – a senior Aboriginal women’s council – committed years of their lives to stand up to the proposal for a low-level facility at Woomera.

They didn’t do this because of previously inadequate “processes” to “build confidence” as the question suggests but because:

- A) Individuals held a deep commitment to look after country and protect it from a substance known as “irati” poison which stemmed from long held cultural knowledge.
- B) Nuclear impacts were experienced and continued to be experienced first hand by members and their families predominately from nuclear testing at Emu Field and Maralinga but also through exploration and mining at Olympic Dam.
- C) They epitomized and lived by the worldview that sustaining life for future generations is of upmost [*sic*] importance and that this is at odds with the dangerous and long lasting dangers of all aspects of the nuclear industry.

The insinuation that the general population or target groups such Kupa Piti Kungka Tjuta or the communities in the Northern Territory that succeeded them and also fought off a nuclear dump for Muckaty were somehow deficient in their understanding of the implications and may have required “confidence building” is highly offensive.

Aboriginal groups were coerced into signing “Heritage Clearance Agreements” consenting to test drilling of shortlisted sites for the proposed repository in SA. The federal government

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made it clear that if consent was not granted, drilling would take place anyway. Aboriginal groups were put in an invidious position. They could attempt to protect specific cultural sites by engaging with the federal government and signing agreements, at the risk of having that engagement being misrepresented as consent for the repository; or they could refuse to engage in the process, thereby limiting their capacity to protect cultural sites.

Dr Roger Thomas, a Kokatha man, told an Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) forum on 25 February 2004:¹⁵

The Commonwealth sought from the native title claim group the opportunity to carry out site clearances. They presented to us, as a native title group, some 58 sites that they would like us to consider for the purpose of cultural significance clearance. Of the 58, there were seven sites that they saw as being the priority locations for where they had intentions to want to locate the waste repository. I would like it to be registered that, of the 58, the senior law men and women had difficulty and made it quite clear that there was no intent on their part to want to give any agreement to any of those sites [...] The point of concern and controversy for us is that we were advised – and we were told this by the various agencies involved – “If you don’t proceed with signing the agreement, the Federal Government will acquire it under the constitution legislation.”

From our point of view, we not only had the shotgun at our head, we also were put in a situation where we were deemed powerless. If this is an example of the whitefella process and system that we’ve got to comply with as Indigenous Australians, then we attest that this whole process needs to be reviewed and looked at and we need to be given under the convention of the United Nations the appropriate rights as Indigenous first nation people. Our bottom line position is that we do not agree with any waste material of any level being dumped, located or deposited in any part of this country.

radioactive waste

Aboriginal groups did participate in Heritage Clearance Agreements and, as feared, that participation was repeatedly misrepresented by the federal government as amounting to Aboriginal consent for the repository.

Federal government politicians and bureaucrats repeatedly made reference to the surveys and the resulting Agreements without noting that those Agreements in no way amounted to consent to the repository. The following excerpt from Senate Hansard provides an example of this type of misrepresentation-by-omission:¹⁶

Senator Allison (Australian Democrats) asked the Minister representing the Minister for Science, upon notice, on 18 September 2003:

(e) have any Indigenous groups consented to the construction and operation of the repository at the site known as Site 40a; if so, which groups;

(f) have any Indigenous groups stated that Site 40a has no particular Indigenous heritage values; if so, which groups;

Senator Vanstone – The Minister for Science has provided the following answer to the honourable senator’s question:

(e) The site has been cleared for all works associated with the construction and operation of a national repository, with regard to Aboriginal heritage, by the Aboriginal groups with native title claims over the relative site as well as other groups with heritage interests in the region. These groups are the Antakirinja, Barngarla and Kokatha Native Title Claimant Groups, the Andamooka Land Council Association and the Kuyani Association.

(f) See answer to (e).

There is no recognition of Aboriginal opposition to the repository in the above statement.

Likewise, (then) departmental official Mr Jeff Harris told an ARPANSA forum on 17 December 2001 that:

[...] those Aboriginal groups that have heritage interests in those lands we have consulted extensively with them, and each of the three sites that are going through environmental impact assessment has been

inspected by these Aboriginal groups and have cleared for the construction and operation of the repository.¹⁷

The same misrepresentation-by-omission occurs in the federal Environment Department’s Environmental Assessment Report¹⁸ (“sites, and designated access routes to them, were cleared for all works associated with the construction and operation of a waste repository”) and in other federal government documents.

Misrepresentation-by-omission occurred repeatedly despite the fact that the Heritage Clearance Agreements specifically noted Aboriginal opposition. One such Agreement, between the federal government and the Antakirinja Native Title Group, the Barngarla Native Title Group and the Kokatha Native Title Claimant Group, dated 12 May 2000, includes the following clauses:

E. The agreement to undertake Work Area Clearances is not to be deemed as consent, and the COMMONWEALTH do not under this Agreement seek such consent, by the Claimants to the establishment of a NRWR [National Radioactive Waste Repository] in the Central North Region of South Australia.

I. The COMMONWEALTH acknowledges that there is “considerable opposition” to the NRWR within the Aboriginal community of the region, but notwithstanding that the Claimants have made a commitment that the heritage clearance and the contents of the Work Area Clearance Report will not be influenced by such opposition.

In 2002, the federal government tried to buy off Aboriginal opposition to the proposed repository. Three Native Title claimant groups – the Kokatha, Kuyani and Barngarla – were offered A\$90,000 to surrender their Native Title rights, but only on the condition that all three groups agreed. *The Age* newspaper reported that the meetings took place at a Port Augusta motel in September 2002 and that the Commonwealth delegation included representatives of the Department of the Attorney-General, the Department of Finance and the Department of Education and Science and Training.¹⁹

The government's proposal was refused. Kokatha Traditional Owner Dr Roger Thomas said: "The insult of it, it was just so insulting. I told the Commonwealth officers to stop being so disrespectful and rude to us by offering us \$90,000 to pay out our country and our culture."²⁰

Thomas told an ARPANSA forum on 25 February 2004:

The most disappointing aspect to the negotiations that the Commonwealth had with us, as Kokatha, is to try to buy our agreement. This was most insulting to us as Aboriginal people and particularly to our Elders. For the sake of ensuring that I don't further create any embarrassment, I will not quote the figure, but let me tell you, our land is not for sale. Our Native Title rights are not for sale. We are talking about our culture, our lore and our dreaming. We are talking about our future generations we're protecting here. We do not have a "for sale" sign up and we never will.²¹

Andrew Starkey, also a Kokatha man, said: "It was just shameful. They were wanting people to sign off their cultural heritage rights for a minuscule amount of money. We would not do that for any amount of money."²²

In 2003, the federal government used the Lands Acquisition Act 1989 to seize land for the repository. Native Title rights and interests were extinguished with the stroke of a pen.²³ This took place with no forewarning and no consultation with Aboriginal people.

Leading the battle against the proposed repository were the Kupa Piti Kungka Tjuta, a council of senior Aboriginal women from northern SA.²⁴ Many of the Kungkas personally suffered the impacts of the British nuclear bomb tests at Maralinga and Emu Field in the 1950s.

Mrs Eileen Kampakuta Brown, a member of the Kungka Tjuta, was awarded an Order of Australia on Australia Day, 26 January 2003 for her service to the community "through the preservation, revival and teaching of traditional *Anangu* (Aboriginal) culture and as an advocate for indigenous communities in Central Australia." On 5 March 2003, the Australian Senate passed a resolution noting

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the hypocrisy of the Government in giving an award for services to the community to Mrs. Brown but taking no notice of her objection, and that of the Yankunytjatjara/Antikarinya community, to its decision to construct a national repository on this land.²⁵

The Kungkas continued to implore the federal government to "get their ears out of their pockets," and after six years the government did just that. In the lead-up to the 2004 federal election, with the repository issue causing the government political damage, and following a Federal Court ruling that the government had illegally used urgency provisions in the Lands Acquisition Act,²⁶ the government decided to abandon the repository proposal. The Kungkas wrote in an open letter:

People said that you can't win against the Government. Just a few women. We just kept talking and telling them to get their ears out of their pockets and listen. We never said we were going to give up. Government has big money to buy their way out but we never gave up.²⁷

controversial clean-up of the maralinga nuclear test site

The 1998–2004 debate over nuclear waste dumping in SA overlapped with a controversy over a clean-up of the Maralinga nuclear weapons test site in the same state.²⁸

The 1985 report of a Royal Commission into the British atomic bomb tests documents the effects of the bomb test program on Traditional Owners.²⁹ Permission was not sought for the tests from affected Aboriginal groups such as the Pitjantjatjara, Tjarutja and Kokatha. The use of atomic weapons contaminated great tracts of traditional land. Forced relocation was one of the traumas. The damage was physical/radiological, psychological and cultural.

The controversy surrounding the clean-up of Maralinga in the late 1990s – the fourth attempted clean-up of the site – did nothing to resolve long-standing, multifaceted problems associated with the atomic testing program and its aftermath.

Nuclear engineer Alan Parkinson was the federal government's senior representative on the project and later released vast amounts of information, including internal information, about the flawed clean-up³⁰ – and he wrote a book on the topic.³¹ Parkinson said of the clean-up: “What was done at Maralinga was a cheap and nasty solution that wouldn't be adopted on white-fellas land.”³²

Dr Geoff Williams, an officer with the Commonwealth nuclear regulator ARPANSA, said in a leaked e-mail that the clean-up was beset by a “host of indiscretions, short-cuts and cover-ups.”³³

US scientist Dale Timmons, who was involved in the *in situ* vitrification phase of the project, said the government's technical report on the clean-up was littered with “gross misinformation.”³⁴

Australian nuclear physicist Prof. Peter Johnston (now working at ARPANSA) noted that there were “very large expenditures and significant hazards resulting from the deficient management of the project.”³⁵

Prof. Johnston (and others) noted in a conference paper that Traditional Owners were excluded from any meaningful input into decision making concerning the clean-up.³⁶ The paper notes that Traditional Owners were represented on a consultative committee but key decisions – such as abandoning vitrification of plutonium-contaminated waste in favour of shallow burial in unlined trenches – were taken without consultation with the consultative committee or any separate discussions with Traditional Owners.

Federal government minister Senator Nick Minchin said in a 1 May 2000 media release that the Maralinga Tjarutja Traditional Owners “have agreed that deep burial of plutonium is a safe way of handling this waste.” However, the burial of plutonium-contaminated waste was not deep and the Maralinga Tjarutja Traditional Owners did not agree to shallow waste burial in unlined trenches – in fact they wrote to the minister explicitly dissociating themselves from the decision.³⁷

The Australian Senate passed a resolution on 21 August 2002, which reads as follows:³⁸

That the Senate –

(a) notes:

(i) that the clean up of the Maralinga atomic test site resulted in highly plutonium-contaminated debris being buried in shallow earth trenches and covered with just one to two metres of soil,

(ii) that large quantities of radioactive soil were blown away during the removal and relocation of that soil into the Taranaki burial trenches, so much so that the contaminated airborne dust caused the work to be stopped on many occasions and forward area facilities to be evacuated on at least one occasion, and

(iii) that americium and uranium waste products are proposed to be stored in an intermediate waste repository and that both these contaminants are buried in the Maralinga trenches;

(b) rejects the assertion by the Minister for Science (Mr McGauran) on 14 August 2002 that this solution to dealing with radioactive material exceeds world's best practice;

(c) contrasts the Maralinga method of disposal of long-lived, highly radioactive material with the Government's proposals to store low-level waste in purpose-built lined trenches 20 metres deep and to store intermediate waste in a deep geological facility;

(d) calls on the Government to acknowledge that long-lived radioactive material is not suitable for near surface disposal; and

(e) urges the Government to exhume the debris at Maralinga, sort it and use a safer, more long-lasting method of storing this material.

The Australian Senate passed another resolution on 15 October 2003, which *inter alia* condemned the Maralinga clean-up.³⁹ The resolution was as follows:

That the Senate:

(a) notes:

(i) that 15 October 2003 marks the 50th anniversary of the first atomic test conducted by the British Government in northern South Australia;

(ii) that on this day “Totem 1”, a 10 kilotonne atomic bomb, was detonated at Emu Junction, some 240 kilometres west of Coorber Pedy;

(iii) that the Anangu community received no forewarning of the test;

(iv) that the 1984 Royal Commission report concluded that Totem 1 was detonated in wind conditions that would produce unacceptable levels of fallout, and that the decision to detonate failed to take into account the existence of people at Wallatina and Welbourn Hill;

(b) expresses its concern for those indigenous peoples whose lands and health over generations have been detrimentally affected by this and subsequent atomic tests conducted in northern South Australia;

(c) congratulates the Kupa Piti Kungka Tjuta – the Senior Aboriginal Women of Coober Pedy – for their ongoing efforts to highlight the experience of their peoples affected by these tests;

(d) condemns the Government for its failure to properly dispose of radioactive waste from atomic tests conducted in the Maralinga precinct; and

(e) expresses its continued opposition to the siting of a low-level radioactive waste repository in South Australia.

Just over a decade after the Maralinga clean-up, a survey revealed that nineteen of the eighty-five contaminated waste pits have been subject to erosion or subsidence.⁴⁰

the current plan to import intermediate- and high-level nuclear waste

Aboriginal people in SA currently face a proposal to import intermediate- and high-level nuclear waste as a money-making venture. A Royal Commission established by the SA government in 2015 to investigate commercial opportunities across the nuclear fuel cycle recommended against almost all the proposals it considered – enrichment, fuel fabrication, nuclear power and spent fuel reprocessing – on economic grounds.⁴¹ However, the Royal Commission strongly endorsed and promoted a plan to import 138,000 tonnes of high-level nuclear waste (about one-third of the world's total) and 390,000 cubic metres of intermediate-level waste.

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Announcing the establishment of the Royal Commission in March 2015, SA Premier Jay Weatherill said:

We have a specific mandate to consult with Aboriginal communities and there are great sensitivities here. I mean we've had the use and abuse of the lands of the Maralinga Tjarutja people by the British when they tested their atomic weapons.⁴²

However, the SA government's handling of the Royal Commission process systematically disenfranchised Aboriginal people from the start. The truncated timeline for providing feedback on draft Terms of Reference disadvantaged people in remote regions, people with little or no access to e-mail and the internet, and people for whom English is a second language. There was no translation of the draft Terms of Reference, and a regional communications and engagement strategy was not developed or implemented by the SA government.

Aboriginal people repeatedly expressed frustration with the Royal Commission process. One example was the submission of the Anggumathanha Camp Law Mob (Adnyamathanha Traditional Owners who are also fighting against the plan for a national radioactive waste repository on their land).⁴³

Why we are not satisfied with the way this Royal Commission has been conducted:

Yaiinidlha Udnyu ngawarla wanggaanggu, wanhanga Yura Ngawarla wanggaanggu? – always in English, where's the Yura Ngawarla (our first language)?

The issues of engagement are many. To date we have found the process of engagement used by the Royal Commission to be very off putting as it's been run in a real Udnyu (whitefella) way. Timelines are short, information is hard to access, there is no interpreter service available, and the meetings have been very poorly advertised [...]

A closed and secretive approach makes engagement difficult for the average person on the street, and near impossible for Aboriginal people to participate.

The Royal Commission made some efforts to overcome early deficiencies – such as the appointment of a (non-Aboriginal) regional engagement officer and some limited efforts to translate written material. However, the Royal Commission continued to attract criticism from Aboriginal people and organisations until (and indeed after) it released its final report in May 2016.

Judging from submissions to the Royal Commission, and from other sources, it is clear that the plan to import nuclear waste for storage and disposal in SA is overwhelmingly opposed by Aboriginal people.⁴⁴

The Aboriginal Congress of SA, comprising people from many Aboriginal groups across the state, endorsed the following resolution at an August 2015 meeting:⁴⁵

We, as native title representatives of lands and waters of South Australia, stand firmly in opposition to nuclear developments on our country, including all plans to expand uranium mining, and implement nuclear reactors and nuclear waste dumps on our land [...] Many of us suffer to this day the devastating effects of the nuclear industry and continue to be subject to it through extensive uranium mining on our lands and country that has been contaminated.

We view any further expansion of industry as an imposition on our country, our people, our environment, our culture and our history. We also view it as a blatant disregard for our rights under various legislative instruments, including the founding principles of this state.

The Royal Commission acknowledged strong Aboriginal opposition to its nuclear waste import proposal – but it treated that opposition not as a red light but as an obstacle to be circumvented. In mid-2016 Tauto Sansbury, Chairperson of the SA Aboriginal Congress, said:⁴⁶

In our second meeting with [Royal Commissioner Kevin Scarce] we had 27 Native Title groups from all around South Australia. We had a vote on it. And it was unanimous that the vote said “no we don’t want it”. It was absolutely unanimous. Commissioner

Scarce said “well maybe I’m talking to the wrong people” and we said “well what other people are you going to talk to? We’re Native Title claimants, we’re Native Title Traditional Owners from all over this country [...] this land [...] so who else are you going to pluck out of the air to talk to” [...] we’ve stuck to our guns and we still totally oppose it. That’s every Native Title group in South Australia.

the ghosts of maralinga

A striking feature of submissions to the Royal Commission from Aboriginal people and groups – and other literature concerning the nuclear waste import proposal – is the frequent reference to the Maralinga (and Emu Field) bomb tests and their aftermath.

The ongoing relevance of the atomic bomb tests was noted by the Royal Commission in its final report:⁴⁷

Applied to the South Australian context, the impact of atomic weapons testing at Maralinga in the 1950s and 1960s remains very significant to Aboriginal people. Those tests, and subsequent actions, have left many Aboriginal people with a deep scepticism about the ability of Government to ensure that any new nuclear activities would be undertaken safely. The damage caused by the atomic tests carried out by the British Government is still felt profoundly by many Aboriginal South Australians, particularly those from communities that were directly affected. In these communities, nuclear activities in general are often associated with the detrimental effects of the events at Maralinga. This sentiment was reflected in many submissions from Aboriginal individuals and groups received by the Commission.

The Royal Commission’s report then stressed the need to put as much distance as possible between the bomb tests and the current waste import proposal:

For a specific proposal on land in which there are Aboriginal rights and interests, it would be necessary to demonstrate to Aboriginal

communities' satisfaction how the development would be different to the atomic testing and how lessons had been learned from the past.⁴⁸

Likewise, SA government promotional material designed for Aboriginal people states bluntly: "What the South Australian Government is talking about now, the nuclear waste disposal, it is different to Maralinga."⁴⁹

Yet efforts to distance Maralinga from the current nuclear waste import proposal appear to have had little success. There are some indisputable differences between the bomb tests and current proposals (temporal, spatial, technological) but the disrespect shown towards Aboriginal people, then and now, is one of a number of common threads. That viewpoint is expressed, for example, in a statement written by Aboriginal people at a meeting at Port Augusta on 3 September 2016. The statement read, in part:

The Government says the nuclear waste dump proposal is different to the atomic bomb tests, but *Inaadi vasinyi* – radiation is radiation, poison is poison. Governments stripped Aboriginal people of land, land rights and heritage protections for atomic bomb tests and uranium mining, and exactly the same thing will happen with the high-level nuclear waste dump. Aboriginal Traditional Owners have first-hand experience. Poisoned water, poisoned plants, poisoned animals, poisoned people.⁵⁰

Moreover, Aboriginal perspectives are informed by events more recent than the bomb tests. The tests took place more than fifty years ago, but the clean-up of Maralinga in the late 1990s is recent history. The flawed clean-up exacerbated concerns about a proposed national repository in SA – the proposal advanced by the federal government in 1998 and abandoned in 2004. As might be expected, such connections and concerns were voiced by environmental and anti-nuclear groups, and by affected Traditional Owners, but they were also voiced by others such as Prof. Peter Johnston (then at Melbourne University, now at ARPANSA).

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Johnston drew clear links between the mismanagement of the Maralinga clean-up and the likelihood of a repeat performance with the proposed national repository. He summarised some of his concerns with the Maralinga clean-up thus:

DEST [Department of Education, Science and Training] concluded a contract with Geosafe Australia for technical services that contained no performance criteria. Draft documents prepared by DEST have often been technically wrong due to a lack of technical input. Non-technical public servants made decisions where technical expertise was needed. Technical advice often not sought except from a contractor.⁵¹

Johnston drew connections between the Maralinga clean-up and the government's application to ARPANSA to build a national radioactive waste repository in SA:

The applicant for a licence [DEST] does not have the technical competence required to manage the contracts of a proposed operator. The operator who may have the necessary technical competence is not a co-applicant. I am not convinced the applicant will have effective control of the project. I believe the application has not demonstrated that the applicant has the capacity to ensure that it can abide by the licence conditions that could be imposed under Section 35 of the ARPANS Act because of a lack of technical competence in managing its contractors.⁵²

Perspectives on the current nuclear waste import proposal are shaped not only by the experience of the atomic bomb tests but also by the more recent clean-up of Maralinga.

the uranium industry

Aboriginal experiences with the uranium industry have shaped attitudes towards the nuclear waste import proposal. The establishment of the Beverley and Beverley Four Mile uranium mines in SA was a deeply troubling and divisive issue for Adnyamathanha Traditional Owners.⁵³ Thus the Anggumathanha Camp Law Mob

noted in its submission to the Royal Commission:⁵⁴

Our past experiences in dealing with mining companies and Government regulatory bodies has [*sic*] not been empowering for us; quite the opposite. This makes us very mistrustful of the Government's ability or willingness to represent our interests and fully include us in any decision making. Since colonisation our lands and resources have been severely depleted, damaged and in some cases completely destroyed against our wishes, without our consent, and in the name of development so we ask Who stands to benefit the most from development? And at what cost to our environment?

In the centre-north of SA, BHP Billiton's Olympic Dam (Roxby Downs) mine is exempt from provisions of the SA Aboriginal Heritage Act 1988: the mine must partially comply with an old (1979) version of the Act that was never proclaimed. As the Royal Commission noted in its final report (somewhat euphemistically), "the predecessor to the Aboriginal Heritage Act, the Aboriginal Heritage Act 1979 (SA) applies with some qualification."⁵⁵

That arrangement was further enshrined in SA law when the Roxby Downs Indenture Act was amended in 2011. Traditional Owners were not even consulted about the 2011 amendments. A government parliamentarian said in the SA parliament on 24 November 2011: "BHP were satisfied with the current arrangements and insisted on the continuation of these arrangements, and the government did not consult further than that."⁵⁶

A section of the parliamentary exchange is reproduced here:⁵⁷

The Hon. M. PARNELL (Greens Member of the Legislative Council): I understand there have been negotiations in relation to an Indigenous land use agreement and other negotiations, but what negotiations did the government undertake with, for example, the Aboriginal Legal Rights Movement or other Aboriginal groups in relation to whether this old act should continue to

apply or whether the government should insist on the more modern act applying? What consultation was there?

The Hon. G.E. GAGO (Governing Australian Labor Party Member of the Legislative Council): I have been advised that BHP were satisfied with the current arrangements and insisted on the continuation of these arrangements, and the government did not consult further than that.

The Hon. M. PARNELL: To take a slightly different tack, is the minister able to identify the key differences between the 1979 act and the 1988 act that made the older act so much more attractive to BHP Billiton in relation to Aboriginal heritage?

The Hon. G.E. GAGO: I have been advised that the 1979 act does not have a mandatory consultation provision equivalent to the 1988 act for determining sites and/or authorising damage, disturbance or interference. However, contemporary administrative law principles, particularly in relation to procedural fairness, necessitate the same or similar consultation.

The Hon. M. PARNELL: It seems that there is a lot less consultation involved. It just seems remarkable that the minister has talked about this good corporate citizen and hoping that their goodness will continue into the future, yet when it comes to being obliged to consult with Aboriginal communities they opt for the lowest standard that they can get.

Had the Royal Commission drilled into the politics that allowed BHP Billiton and the SA Labor and Liberal Parties to endorse and enact such an arrangement, the Commission may have arrived at a better understanding of the reasons for Aboriginal scepticism about and opposition towards the current nuclear waste import proposal. However, the Royal Commission opted out of the debate, stating: "Although a systematic analysis was beyond the scope of the Commission, it has heard criticisms of the heritage protection framework, particularly the consultative provisions."⁵⁸

Despite its acknowledgement that it had not systematically analysed the matter, the Royal Commission arrived at unequivocal, favourable conclusions, asserting that

frameworks for securing long-term agreements with rights holders in South Australia, including Aboriginal communities [...] provide a sophisticated foundation for securing agreements with rights holders and host communities regarding the siting and establishment of facilities for the management of used fuel.⁵⁹

Such statements were conspicuously absent in submissions from Aboriginal people and organisations.

Moreover, there is an abundance of evidence that consultation and heritage protection frameworks fall a long way short of being “sophisticated.” The Beverley uranium mine is a case in point. Adnyamathanha Traditional Owner Dr Jillian Marsh summarises the Beverley assessment and approval process. Far from being sophisticated, it was deeply problematic and, for many Adnyamathanha people, disempowering. Marsh writes:⁶⁰

During the mid-1990s three Adnyamathanha persons sought recognition as the “named applicants” on claims intended to be filed as registered claims to the National Native Title Tribunal. Under the Native Title Act, “named applicant” status would confer a “right to negotiate” about mining and to secure what is legally known as consent determination or recognition under the Native Title Act. Prior to the amalgamation of these claims and during the exploration phase of the Beverley project, each named applicant entered into private negotiations with Heathgate Resources, claiming to act as representatives of the Adnyamathanha community. The negotiated consent for a native title mining agreement that was produced was reached “under duress”, according to public media statements claiming that the Yuras had been forced into signing off.

A three-phase approach was used to facilitate mining at the Beverley site. First, the

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South Australian Government granted permission for the trial mine in September 1997 based on statements drafted by mining proponent Heathgate Resources in accordance with South Australian Mining Act 1971 regulations. This enabled Heathgate to extract uranium without either a full impact assessment or a formal mining licence. This arrangement sparked controversy and public concern over the Beverley proposal.

Second, when an environmental impact study (EIS) was commissioned, its limited terms of reference and lack of Adnyamathanha participation during the community consultation phase highlighted fundamental flaws in South Australia’s regulatory system. Despite a call for policy reform over several decades in Australia to bring greater uniformity across states and territories, the impact assessment process remains fragmented and highly diverse, and in some states, including South Australia, governance and assessment continues to lag behind best practice. A key issue in the Beverley case was the effective exclusion of Indigenous perspectives and inability to acknowledge and address conflicts of interest within the Indigenous community. In an important media statement by Elders from the Nepabunna Community after the EIS was concluded for the Beverley Mine, Adnyamathanha Elder Artie Wilton publicly stated he: “was never consulted and has never agreed to the Beverley and Honeymoon mining projects [...] the Beverley Mine must be stopped, dead stopped.

Finally, concerns were raised during the EIS process that the requirements of the South Australian Aboriginal Heritage Act 1988 had not been fulfilled and that Traditional Owners who were part of the native title negotiations had their views suppressed, yet there was never a request made by the Minister for Aboriginal Affairs to rectify this matter. Nor was there any declaration from native title negotiators about the conflicting interests regarding economic development and cultural heritage protection.

The Royal Commission did not recommend a strengthening of frameworks for Aboriginal

consultation or heritage protection. On the contrary, the Commission argued that existing, flawed frameworks should be regarded as “sophisticated” and should be used to progress the nuclear waste import proposal. The Royal Commission’s final report said that “[...] there are established and sophisticated frameworks that have supported deliberation on complex issues in the past, through which Aboriginal communities in South Australia should be approached.”⁶¹

an unexpected twist in the aftermath of the royal commission

After the SA Nuclear Fuel Cycle Royal Commission handed its final report to the SA government in May 2016, the government established a “Consultation and Response Agency” (CARA). Ostensibly, CARA was tasked with a statewide consultation process but it was seen by many as a promotional exercise. Despite the promotion of the waste import proposal by the government, CARA, the Royal Commission, and other key players (not least the Adelaide *Advertiser*), CARA reported in November 2016 that over three rounds of telephone surveys, just 31 per cent of South Australians supported the proposal while 53 per cent were opposed and 16 per cent were undecided.⁶² CARA’s report further stated:

Many [Aboriginal] participants expressed concern about the potential negative impacts on their culture and the long-term, generational consequences of increasing the state’s participation in the nuclear fuel cycle. There was a significant lack of support for the government to continue pursuing any form of nuclear storage and disposal facilities. Some Aboriginal people indicated that they are interested in learning more and continuing the conversation, but these were few in number.⁶³

Also in November 2016, a Citizens’ Jury, established by the SA government and composed of 350 South Australians, released its report.⁶⁴ Two-thirds of the Jury members rejected the waste import proposal “under any circumstances.” Their reasons included

scepticism about proponents’ economic claims, concerns that the Royal Commission and the government downplayed environmental and public health risks, and distrust that the government could deliver the project on time and on budget.

A key factor in the Jury’s rejection of the waste import proposal – perhaps outweighing any other concern – was that Aboriginal people had spoken loudly and in near-unison in opposition. The Jury’s report said:

There is a lack of aboriginal consent. We believe that the government should accept that the Elders have said NO and stop ignoring their opinions. The aboriginal people of South Australia (and Australia) continue to be neglected and ignored by all levels of government instead of respected and treated as equals.

The Citizen Jury’s report further stated:

Aboriginal people are the custodians of the land. They have a long-standing connection with the land. We need to consider the traditional owners and current residents of the land; not only of the final location of the nuclear waste facility, but also the lands that the waste is transported through.

Many Aboriginal people have no or little trust in government based on lack of transparency and lack of attempts to fix previous issues. There is a legacy of government implementing processes that are harmful to indigenous people. There is too much unfinished business [...]

The South Australian Government has a legacy of:

- a. consulting indigenous people in flawed processes that does not allow Aboriginal people to exercise free, informed, and meaningful consent. Instead, we need systems of engagement.
- b. not receiving free, informed and meaningful consent from indigenous people in the past in all matters, including nuclear.
- c. engaging in practices that lead to the disruption of trust in indigenous people; for example, Maralinga.
- d. engaging in practices that disrupt

indigenous people's connection to country, for example the stolen generation and construction of sites like Olympic Dam (p. 128 of the Royal Commission Report). A nuclear waste facility is inherently an imposition on connection to country [...]

Many Aboriginal communities have made it clear they strongly oppose the issue and it is morally wrong to ignore their wishes [...] Jay Weatherill said that without the consent of traditional owners of the land "it wouldn't happen". It is unethical to back-track on this statement without losing authenticity in the engagement process.

Premier Weatherill acknowledged the "overwhelming opposition of Aboriginal people" to the waste import proposal during an ABC radio interview in November 2016.⁶⁵ Weatherill also said that "there's no doubt that there's a massive issue of trust in government [...] that's why we started the whole citizen's jury process" into the nuclear waste import proposal.⁶⁶

In light of the above comments by the Premier, and in light of the strength of the Citizen Jury's rejection of the waste import proposal and the strength of Aboriginal opposition, it was expected that the Premier would abandon the proposal. Instead, he announced that he wanted the proposal to be subject to a statewide referendum and that affected Aboriginal Traditional Owners would have a right of veto over any related developments on their lands.⁶⁷

Narungga Traditional Owner Tauto Sansbury said in response:

The high level nuclear waste dump is overwhelmingly opposed by Traditional Owners and the wider community and the Premier's announcement is a divisive move to get his own way. It is deeply disappointing that Aboriginal communities must continue to fight this issue when we have so many other issues to deal with.⁶⁸

Karina Lester, chairperson of the Yankunytjatjara Native Title Aboriginal Corporation (YNTAC) and daughter of atomic test survivor Yami Lester, said:

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We will stand our ground and maintain what we have said all along: "No waste dump in our *Ngura* (Country)." I will take this to our YNTAC AGM and discuss with our members what the Premier is now saying, to run a Statewide Referendum, and rally my community to use our rights to veto and say no to this unjust and insane idea of storing and disposing of nuclear waste from other countries.⁶⁹

In any event, support for the waste import proposal collapsed in the immediate aftermath of the Citizens Jury's report. The largest opposition party, the Liberal Party, announced that it would campaign against the proposal in the lead-up to the March 2018 state election.⁷⁰ The small but influential Nick Xenophon Team also announced that its candidates would campaign against the waste import proposal, having previously adopted a neutral position on the issue.⁷¹ The SA Greens, with two elected representatives in the upper house of the SA parliament, have opposed the proposal from the outset.

Thus the SA Labor government does not have numbers in parliament to initiate a referendum. Likewise, the government does not have the numbers to repeal or amend the SA Nuclear Waste Storage Facility (Prohibition) Act 2000, which imposes major constraints on the ability of the government to move forward with the nuclear waste import proposal.

systemic, bipartisan racism

On 10 October 2016, federal Labor and (Liberal/National) Coalition parliamentarians endorsed a formal motion of "racial tolerance" in the House of Representatives.⁷² The motion, moved by Prime Minister Malcolm Turnbull, stated *inter alia* that the House of Representatives reaffirmed a commitment to reconciliation with Aboriginal and Torres Strait Islander people and to redressing "profound social and economic disadvantage."

Referring to the bipartisan resolution, Turnbull spoke of a "20 year-old unity ticket perhaps, celebrating and reaffirming the

Australian values of fair go and mutual respect for all regardless of how they look, how they worship or where they come from.”⁷³

Bill Shorten, leader of the federal Labor Party, said in May 2016 that “systemic racism is still far too prevalent” in Australia.⁷⁴ An examination of the pursuit of nuclear projects in Australia – atomic bomb tests and their aftermath, uranium mines and radioactive waste repositories – tends to confirm the prevalence of systemic racism in Australia. That examination further reveals a “unity ticket” – bipartisan, systemic racism in the pursuit of nuclear projects. That “unity ticket” is nothing that the major political parties should be celebrating.

Systemic, bipartisan racism was evident in the South Australian nuclear waste import debate until the SA Liberal Party withdrew its support in November 2016 (the Liberal Party has said little about Aboriginal opposition to the proposal, instead emphasising questionable economic claims as well as the lack of broad public support).

Systemic, bipartisan racism was evident in the passage of the National Radioactive Waste Management Act 2012 through the federal parliament. The Act allows the imposition of a national radioactive waste facility on Aboriginal land in the absence of consultation with or consent from Traditional Owners (to be precise, the nomination of a site is not invalidated by a failure to comply with consultation and consent provisions).⁷⁵

Systemic, bipartisan racism is also evident in the promotion of the uranium industry. It was evident, for example, in the 2011 passage of amendments to the Roxby Downs Indenture Act through the SA parliament. It is also evident in the Northern Territory: sub-section 40(6) of the Commonwealth’s Aboriginal Land Rights Act exempts the Ranger uranium mine from the Act and thus removed the right of veto that Mirarr Traditional Owners would otherwise have enjoyed.⁷⁶

Aboriginal land rights and heritage protections are arguably feeble at the best of times. Those rights and protections have been further weakened, repeatedly, in the pursuit of nuclear projects.

While there is evidence of systemic – and often bipartisan – racism in the pursuit of nuclear projects in Australia, that is not to say that Aboriginal people have been passive victims. A campaign led by Aboriginal people persuaded the federal government to abandon plans for a national radioactive waste repository in SA in 2004. A campaign led by Muckaty Traditional Owners persuaded the federal government to abandon plans for a national radioactive waste repository in the Northern Territory in 2014. And current plans for national and international waste repositories are being fiercely contested by Aboriginal people in SA, with a great deal of civil-society support.



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