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First nations rights and colonising practices by the nuclear industry: An Australian battleground for environmental justice

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ABSTRACT

This paper highlights current events and original research to explore the tensions between First Nations, industry and government in the context of uranium mining and nuclear waste management in Australia. We outline challenges faced by Aboriginal Australians in their role as custodians of the land, and as community leaders. A critical examination of some of the barriers to First Nations empowerment includes government engagement through legislation and practices that have repeatedly resulted in dispossession and disempowerment of Australian Aboriginal Traditional Owners. Laws ostensibly designed to provide rights and protections to Aboriginal people are repeatedly curtailed or overridden to facilitate nuclear projects—in particular radioactive waste repositories and uranium mines. We argue that existing measures provide feeble rights and protections for Aboriginal people as laws have repeatedly produced outcomes that favour government and industry and deny Aboriginal rights to sovereignty. Our research highlights patterns of colonial oppression that transgress human rights, and frames mining and nuclear waste in a way that lacks a decolonisation strategy and are based on industrial violence. Theoretical understandings of Indigenous sovereignty through a decolonising lens will highlight Indigenous standpoints, the continued contestation of Indigenous peoples' customary land rights, and the limitations of post-colonial environmental justice.

1. Introduction

The story of Adnyamathanha experiences of colonisation began in the late 1800s with the first sightings of pale skinned human figures (non-Aboriginal people of European descent) thought to be ghostly spirit images; hence the term *udnyu*, originally used to refer to the faded pigmentation of a dead person and the use of white ochre to signify mourning, was applied as the name for these newcomers with pale skin, in contrast with *yura* as the term for referring to Aboriginal people. These terms Yura and Udnyu remain in place today; Yura as the reference for Aboriginal persons and ways of working, and Udnyu for non-Aboriginal persons and non-Aboriginal ways of working. Adnyamathanha comprises of at least 5 sub-groups and collectively identify as the sovereign peoples of the northern Flinders Ranges region in South Australia (see location map). This region includes the Beverley Uranium Mine and is known locally by the Adnyamathanha Traditional Owners as *Arrngurla Yarta* or 'spiritually significant ground' – this association between Adnyamathanha and their traditional lands has existed for thousands of generations prior to colonial invasion (Marsh, 2010). The area continues to hold immense significance for today's Adnyamathanha Traditional Owners of the area, whose sovereign rights have never been ceded.

The Beverley Mine site is part of a larger portion of land that was occupied and utilised for trade and cultural exchange by predecessors of today's Adnyamathanha population (Curr, 1886; McCarthy, 1939), who have been increasingly displaced by colonisation since the late 1800s (Tunbridge, 1986; Mattingley and Hampton, 1988). Custodial values assigned by the original occupants have been constantly and repeatedly challenged and overshadowed by Western constructs of land and land use during a relatively brief period of colonial domination. For example, cultural associations between living entities, humans and land within this geographic region have changed rapidly since the Udnyu invasion of the northern Flinders Ranges and are constantly impacted by Udnyu priorities such as mining. The area remains heavily exploited by the pastoral and mining industries amidst the ongoing denial of sovereign rights; yet the resilience of the Adnyamathanha Yura continues as a strong social, economic, and cultural presence. One of the few successful measures to protect the area is the Arkaroola Protection

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Bill introduced in 2012, which bans any further mining and exploration in a portion of this country now known as the Arkaroola Wilderness Sanctuary (Government of South Australia, 2017). This does not have any jurisdiction over the Beverley Uranium Mine lease.

During the last 100 years, contemporary commercial development regulations and legal frameworks imposed by Australian governments and industries have brought colonial pressures that deny sovereign rights over traditional lands and resources, including the Beverley area, and these pressures bear directly on the Adnyamathanha community and Yura traditions of today. At an ideological level, the historical evolution of Australian heritage and its management provides background for understanding how Australia's Indigenous heritage is posited and managed amidst a commercial and rapidly changing set of land uses. State and federal government intervention in identification, planning, funding and implementation have been the forte of heritage management but input from private and corporate sectors is increasingly present in these initiatives. The conceptual tools that generally inform heritage identification, protection and management help us to understand how Indigenous heritage within Australia is supposed to be protected and sustained yet, in the context of commercial development, is often violently damaged, spiritually desecrated, and permanently destroyed. These tools include Western science and its body of experts as the primary means of identifying, classifying and managing Indigenous cultural resources, and regulatory processes that are compelled to prioritise commercial ventures. These are enshrined in legislative requirements designed to facilitate commercial development and deny sovereign rights to First Nations peoples of Australia.

The Beverley Uranium Mine is the key focus in this paper due to its integral role in challenging and overturning the 'three mines policy' (ANAWA, 2008) in Australian politics, which effectively reversed Australia's commitment to reducing its support of the nuclear industry and the mining of uranium. This policy related to a long-standing Federal Government position that had been upheld by previous governments restricting expansion of uranium mining and the nuclear industry within Australia. This policy was originally intended to phase out uranium mining, and upon closure of the Narbalek Mine in 1988, there was government agreement for a 'no new uranium mines' policy which permitted ongoing operation of the Olympic Dam Mine in South Australia and the Ranger Uranium Mine in the Northern Territory (ANAWA, 2008).

A rights-based approach in this paper clarifies the colonial interface between players with conflicting priorities and unequal power regarding land ownership and land uses in Australia. We argue that a variety of ideological and structural mechanisms exclude Aboriginal peoples from the contemporary decision-making processes related to the nuclear industry but that site development most heavily impacts on the Aboriginal populations whose historical role is that of sovereign custodians. Findings reveal patterns that perpetuate white privilege in colonial Australia and deny sovereign recognition of First Nations peoples.

We privilege Indigenous voices and highlight cases that are historically significant to the theme of environmental justice, drawing upon Foley's 'Indigenous standpoint theory' claim that '[t]he Indigenous epistemological approaches in an Indigenous standpoint enables knowledge to be recorded for the community, not the Academy' (Foley, 2003, p. 50). In other words, we recognise that epistemologies within social research that are not appreciative of Indigenous ways of knowing effectively discount local ways of knowing and tend to result in a research focus that is relevant primarily to the researcher, the research academy, or the funding body. We seek to endorse principles that include community engagement to create a shift in environmental and cultural IA that moves beyond the current focus on economics.

2. Literature review

2.1. Eurocentric conceptual frameworks of land ownership

Eurocentric conceptual frameworks of land ownership and land uses based on hegemony continue to dominate Australia's land ownership system (Plumwood, 2003). The paradigm of land ownership based on expenditure, exploitation and human labour contrasts with the Indigenous paradigm of historical dialogical relationships between people and land resources (Plumwood, 2003). Literature suggests that the persistence of a colonialist lens continues to influence the ways in which land ownership, land uses and Indigenous rights are interpreted in Australian society despite the Native Title Act (Commonwealth of Australia 1993) being enacted following the overturning of the legal doctrine of *terra nullius*, or 'nobody's land'. This new Act was originally intended as one of three complementary approaches to address the dispossession of lands and waters through colonisation in Australia. The other two included a social justice package, which has only partially been implemented, and a land fund that is widely claimed to have its focus on economic gain rather than reparation for dispossession (ATSI Social Justice Commissioner, 2008, p. 41). A key purpose of native title was to confirm Aboriginal peoples' ongoing connections to country post-invasion and to provide the right to negotiate for compensation or loss due to disturbance, loss of access or destruction of sites. It also promised a pathway for protecting sites under threat by contemporary land use such as mining and other activities.

The impetus to preserve and promote cultural heritage became known as cultural heritage management (CHM) in Australia. This resulted from an increasing need to know about things uniquely Australian as part of an evolving process of 'growth from concentration on single issue concern for … high aesthetic architecture … to an appreciation of everyday places' (Taylor, 1989, p. 28). This historic paper by Taylor on rural cultural landscapes helped to define Australia's CHM within a colonial timeframe from 1788 to the present; in other words, from British sovereignty over Australia. This terminology is still currently used in the management of cultural heritage or resources and the term 'heritage' is specifically used to refer to '…an inheritance from the past; something to be valued and which has beneficial social connotations in promoting a sense of place and belonging' (Taylor, 1989, p. 28). Taylor also discusses the legacy of the term 'cultural landscape' (Taylor, 1989, p. 29), originally used to refer to changes to the 'natural landscape' by human culture. Challenges in Australia arise due to the systemic dispossession of First Nations peoples which included scientific theoretical constructs of race during the late 1800s where the First Nations peoples of Australia were classified as non-human. The classificatory system changed as a result of anthropological evidence. However, there remained questions around the fundamentals of social order:

what constitutes *ownership* and how these are linked to land use and sovereign rights.

Pascoe highlights an ongoing void in Australian rhetoric and the effect this silencing of history and dispossession continues to have in the Australian psyche:

Arguing over whether the Aboriginal economy was a hunter-gather system or one of burgeoning agriculture is not the central issue. The crucial point is that we have never discussed it as a nation. The belief that Aboriginal people were 'mere' hunter-gatherers has been used as a political tool to justify dispossession. (Pascoe, 2014, p. 129)

The development of a 'landscape conservation ethic' (Taylor, 1989, p. 29) is directly informed by Western philosophies embedded in geography, archaeology, history and conservation. These offer an insight into the typically Eurocentric approach to cultural heritage identification and management that remains a dominant force within Australia.

A large portion of Australia's cultural heritage is identified and managed within government according to the Australia ICOMOS Burra Charter 1999 (Australia ICOMOS, 2000). This charter established a code of practice for managing places of cultural significance and was developed and endorsed by Australia ICOMOS in response to international resolutions put forward by the International Council on Monuments and Sites (ICOMOS) originally dating back to 1964. Definitions from the Burra Charter (Australia ICOMOS, 2000, p. 2) help to understand some key elements relating to 'heritage' as an idea. These definitions and explanatory notes provide a foundation for tracking the changes that occur in relation to the meanings attached to heritage. 'Place' is defined as a 'site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views' (Australia ICOMOS 2000, p. 2) and explained as a concept that 'should be broadly interpreted' (Australia ICOMOS 2000, p. 2) with the possibility of 'a range of values for different individuals or groups' (Australia ICOMOS 2000, p. 2). 'Cultural significance' is defined as 'aesthetic, historic, scientific, social or spiritual value for past, present or future generations' (Australia ICOMOS 2000, p. 2). These key definitions are given further meaning in practical terms through various guidelines (Australian Heritage Commission, 1998, 2002) that assist communities, local councils and nature conservation groups wishing to engage in CHM. These ideas and definitions did not necessarily fit within the world views or aspirations of First Nations peoples in Australia.

The colonial imposition of native title legislation in Australia in the early 1990s raised concerns over the need for 'more time and patience … in the negotiating process' and that 'due respect be paid to their sacred sites, their role as caretakers of the land and to themselves as representatives' (Lippman, 1996, p. 174). Principles of engagement reinforce the need for improved clarity and definition of the role of government prior to, and after, agreements are reached outside of the native title legal process in Australia. Greater definition of engagement principles would offer increased certainty to Indigenous peoples regardless of who was in power within mainstream Australian politics and regardless of further amendment to relevant legislation. The 2008 annual review of the native title system in Australia conducted by the Social Justice Commissioner highlighted the lack of government recognition and protection of native title within the government's reform agenda. The Commissioner was concerned that the Australian government sought 'a more efficient and effective native title system' that did not prioritise 'the realisation of Indigenous peoples' rights and legitimate aspirations' (ATSI Social Justice Commissioner, 2008, p. 23).

Western science remains the primary body of knowledge used to validate industry-based priorities over community priorities. Human geographer Richard Howitt argued that claims of 'implementation of "objective", "scientifically-determined" best practices' can be viewed as 'reinforcing of privilege that is constructed and renewed socially' (Howitt, 2001, p. 19). The recognition of Indigenous knowledge systems and development of Indigenous knowledge does not mean a total rejection of Western theory or knowledge; rather it endorses a process of critically informed choice about what is appropriate in any given context. For example, a community engagement plan by government cannot predict what is appropriate without evaluating control over the process through a reflexive process. Anna Hartmann advocates: 'We need not discard our (Western) knowledge, but we must be open to local knowledge, to the narratives and truths of our clients' (Hartmann, 1992, p. 484). This recognition indemnifies the existence of many ways of knowing the world around us and signifies a crucial shift from traditional Eurocentric views regarding the relationship of power and knowledge between the powerful and vulnerable players in society.

3. Methods and site description

We conducted a critical analysis of secondary data from a broad range of academic and non-academic literature and utilised primary data previously sourced and quoted through interviews as part of a doctoral program (Marsh, 2010). An overarching Indigenous methodology developed by Marsh is adhered to in principle to ensure that Indigenous peoples and cultures are not misrepresented and that their knowledge is located in a privileged position. Given the request from most participants for anonymity all quotations from interviews reported in this paper are referred to simply as field interviews.

This commences with a case study of Adnyamathanha experiences in the context of the Beverley Uranium Mine becoming an operational project against the will of many Adnyamathanha Traditional Owners, demonstrating how they and many other sovereign nations across Australia who speak up for their country continue to be ignored and ostracised by government and industry. The voices of Adnyamathanha in relation to the Beverley Mine case are regarded as critical in building an Indigenous Standpoint, and this privileging of voices is a key principle in Australian Indigenous research ethics protocol.

Material presented in this paper is in accordance with ethical principles of respect for and accurate representation of Indigenous perspectives. We note that citations and references from the Beverley case study only refers to information gathered according to Adelaide University's Human Research Ethics Committee approval for Application No H-103-2004 (Marsh, 2010).

4. Case studies

This paper refers to several prominent cases that are of relevance to understanding the status of Indigenous peoples and in particular Australian Traditional Owners who are impacted by imposed structural mechanisms and colonial practices. These cases highlight how Aboriginal populations affected historically by the nuclear industry

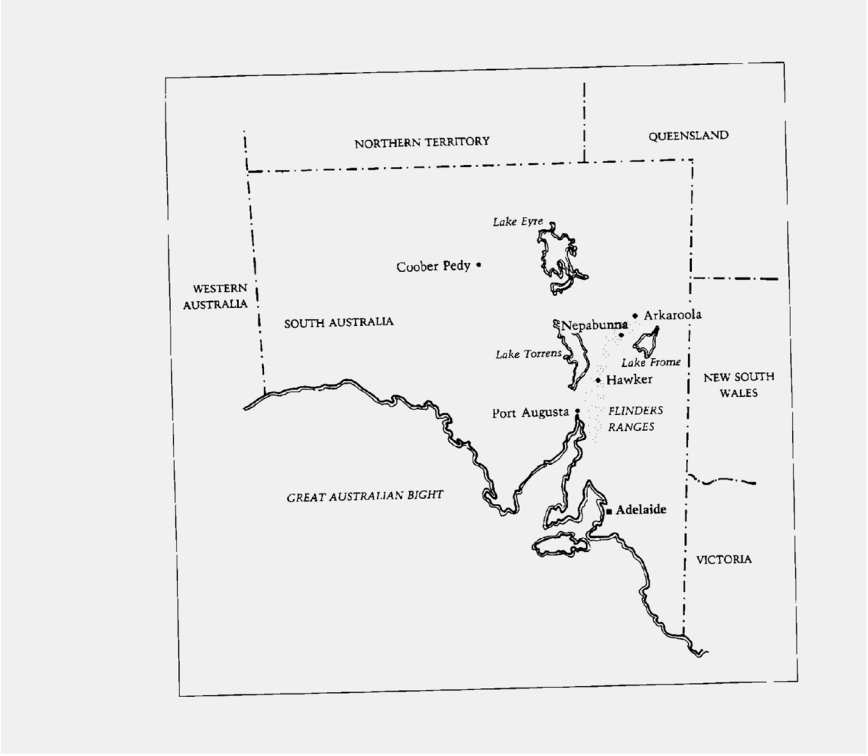
were excluded from the contemporary decision-making processes related to uranium and site development and continue to be subjected to intensive pressures imposed by government and industry. Cases include: the Beverley Uranium Mine in the Flinders Ranges region of South Australia during the 1990s, developed by proponent Heathgate Resources in collaboration with the South Australian government; the Federal Government's attempt between 1998 and 2004 to establish a national radioactive waste repository in South Australia near Woomera, which failed to gain the consent of the Kokatha, Kuyani, Barngarla and other Traditional Owner groups such as the Kupa Piti Kungka Tjuta—a senior Aboriginal women's council; the South Australian Nuclear Fuel Cycle Royal Commission in 2015–16 where a public engagement process led to a rejection of a proposed international, high-level nuclear waste repository at an unidentified site in regional South Australia; and the Federal Government's attempt since 2015 to establish a national radioactive waste repository (for lower-level wastes) and above-ground store (for long-lived, intermediate-level wastes) at Wallerbedina (known locally by Adnyamathanha and Kuyani as Pungka Pudanha), a pastoral property in South Australia's Flinders Ranges that sits adjacent to an Indigenous Protected Area (IPA) which was extensively surveyed and declared in 2014 by the Federal Government.

Other cases that are recalled for historical context include the Olympic Dam Uranium Mine in South Australia and the Ranger Uranium Mine in Northern Territory. In summary, these cases illustrate incredible and repeated (and often violent) pressures imposed by State and Federal Governments on the Indigenous peoples of central and northern Australia.

4.1. The Beverley uranium mine case study

Through the following case study of the Beverley Uranium Mine (Marsh, 2010), we show that the Commonwealth's native title legislation was used to disempower and dispossess Adnyamathanha Traditional Owners. The Beverley case study emerged in response to the colonial erasure of First Nations rights in Australian society; these include economic assimilation, lateral violence and resistance politics.

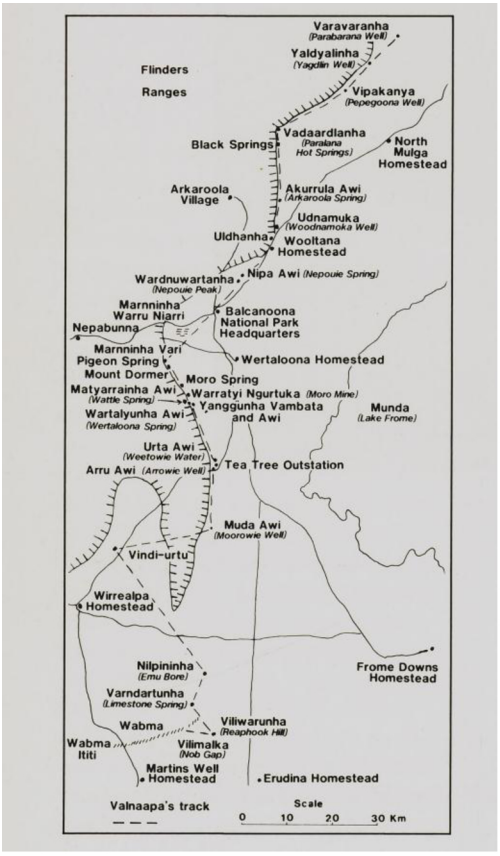
Governance within the Adnyamathanha community prior to colonisation in the late 1800s was based on *anggumathanha wimila* ('pre-contact governance') and *Yura muda* ('Adnyamathanha ways of knowing the world') over all matters including resources management, social order, and customary rights to land and resources. Their knowledge and connections to country date back at least 80,000 years or more. The descendants of these people are the portion of First Nations peoples who claim to be traditional owners.



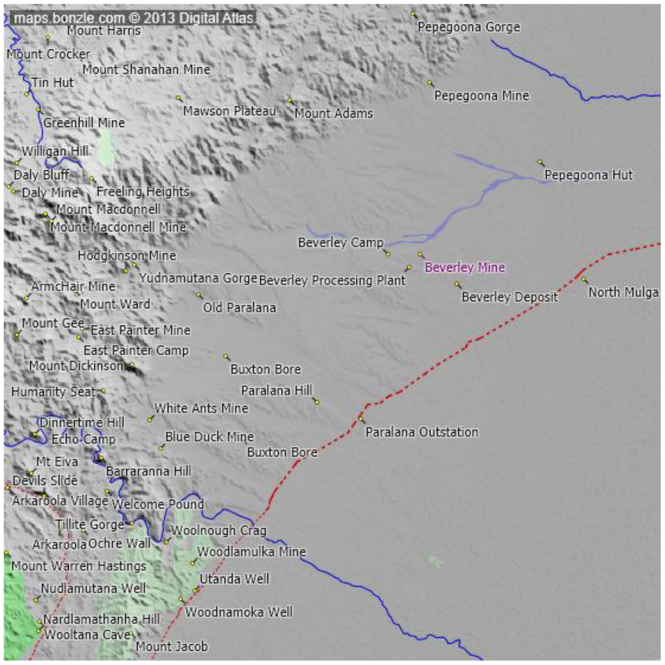
Location map of the Flinders Ranges region in South Australia, courtesy of 'Flinders Ranges Dreaming' (Tunbridge 1986)

The Beverley Mine site is located in a zone recognised by Adnyamathanha Traditional Owners as *anngurla yarta*. A geographical understanding of the site includes the region's cultural significance primarily contrived through Adnyamathanha knowledge of *Yura muda* and *Yura yarta* (Marsh, 2010). An Adnyamathanha cultural map helps define these understandings and is collectively held by a select group of Adnyamathanha Traditional Owners through oral traditions of shared knowledge and continuous occupation over hundreds of generations (see example below). These persons include those who identify themselves as Annggumathanha Law Adnyamathanha Elders (Marsh, 2010)

to denote their status as people who grew up according to 'camp law' rather than Western or Udnyu law.



Cultural map of Beverley mine area (Tunbridge 1986)



Physical geographical map of Beverley mine area(Digital Atlas 2003)

This case study focused on two units of analysis, one being the effectiveness of the government regulatory process known as the impact assessment (IA), the other being the effectiveness of community governance protocols for interacting with the IA process. Previous commentary specific to mining negotiations with Aboriginal Australians claimed that democratic theory and practice had been all but abandoned (Tatz, 1982) and that unless Aboriginal players were highly aware of this scenario the consequences were dire. Tatz predicted that unless strategies for dealing with issues relating to decision-making were enhanced it was likely that commencement from an inequitable position will simply continue to reinforce the colonial status quo of developers and Aboriginal peoples. Limited access to resources at grassroots levels is one of the key problematic areas for Aboriginal peoples and often this is amplified in the case of Traditional Owners in regional Australia.

4.1.1. Adnyamathanha significance of Beverley Mine area

Adnyamathanha man Kristian Coulthard worked as a ranger with National Parks; he shared his views on the importance of land in the Beverley area through his teachings from Elders about the creation and spiritual significance of caring for the environment:

This area has a number of Dreaming stories that relate to the cultural significance of the areas, like the Akurra up in Mainwater Pound. Akurra is the Rainbow Serpent … he came out of the water … at Yaki Awi—and he headed out … following Arkaroola Creek … out to Munda, which is Lake Frome, out to the east. He drank all the water in the lake … he crawled through the creeks and formed the gullies because he was really swollen. These animals that are significant to Aboriginal people, and the plants, really are from the area where these stories evolved. That's why the land is so special to the people. (Coulthard cited in Negus, 2003)

One Adnyamathanha Elder who spoke of the Beverley site shared his cultural understanding of the meaning of the land in a newspaper article. He is quoted as saying: the Dreamtime giant who came to South Australia from the east … stopped at Radium Hill and ate sap from the acacia trees. This made the giant ill and he vomited. He moved west and was ill again at the site we now call Honeymoon, and again at the eastern side of the vast, white, salty expanse of Lake Frome. The giant crossed the lake and vomited again at the area we now call Beverley, before dying in the Gammon Ranges. (Arthur Coulthard Snr cited in Jory, 1999)

Journalist Rex Jory acknowledges that 'Arthur (the Adnyamathanha man) believes the distinctive dome of Mount Painter is the top of the buried giant's head' (Jory, 1999). The story of a sick giant described by Arthur Coulthard is echoed in the knowledge recorded by other Adnyamathanha who drew attention to the cultural beliefs of Adnyamathanha during the EIA for Beverley Mine (FRAHCC, 1998).

The physical landscape is made up of a complex spiritual network that connects physical, social and spiritual dimensions. Mineral substances such as quartz, copper, gold, and talc are common features within many Adnyamathanha oral accounts (Tunbridge, 1986; Warrell, 1995; FRAHCC, 1998; Marsh, 1998) and are often central to the purpose and meaning of the knowledge being shared. Other examples of muda include cultural interpretations of green rocks referred to as *warratyi ngurtuka* ('mound of rotten emu meat') and *marnninha vari*

('creek of emu fat'), otherwise known as mineral deposits at an old copper mine site called Moro Mine (Tunbridge, 1986). These narratives provide reinforcement and reconstruction of an ancient and deeply spiritual connection between human and non-human beings and the environment.

Adnyamathanha stories of creation specifically include understandings of uranium ore and other mineral deposits which collectively form a fundamental aspect of the cultural significance attached to the area. For example, the greenish rock or uranium ore known within Yura muda represents vomit from a spiritual being, a godlike creator called Virdnimuru, who is said to have created the physical landscape 'up through the site of the Beverley Mine, and on to Ngumbabadanha or Mount Painter' (Tunbridge, n.d.). A pilot study of place name place in the Gammon Ranges National Park informed by Adnyamathanha Elders Annie Coulthard and Cliff Wilton was conducted some time during the early 1980s. Virdnimuru is said to have travelled on to Gill's Bluff near Lyndhurst where he died (Tunbridge, n.d.). The sickness experienced by Virdnimuru in conjunction with the prevailing winds characterise the region as *vasinyi yarta* or 'poisonous country' and this is regarded as highly significant (Marsh, 1998; Sutherland, 2009). This story warns people of the dangers they may encounter and the power of the land.

Adnyamathanha knowledge has been passed down through oral traditions and cultural practices of the area and reflects Adnyamathanha beliefs regarding the geographical features of the land. This includes how storylines were created and altered by spiritual icons such as Akurra, who continues to assert a presence by rumbling and shaking the ground (Tunbridge, 1986), known within Western science as seismic activity. Information shared by Adnyamathanha reiterates the long-standing interconnectedness between people and land in a way that cannot be derived from Udnyu epistemologies and ontologies and is often unrecognisable and consequently disregarded by the Western tradition of intellectual thought.

4.1.2. Procedural inequality in the Beverley case

The imposition of the British colonial land acquisition system of property ownership was based on the myth of terra nullius and upheld by Euro-centric governance structures. Post-contact leases held over the Adnyamathanha anngurla yarta region include the Beverley Mine Lease (formerly the Wooltana Pastoral Lease), Wertaloona Pastoral Leases and the Arkaroola Wilderness Sanctuary (formerly a pastoral lease). The rapid imposition of colonial land acquisition since the late 1800s means the lands where sovereignty was never ceded were now subject to exploitation through pastoral leases, exploration and mining leases, Aboriginal heritage assessments, and native title negotiations.

Over the past 25 years Adnyamathanha have increasingly sought advice from and solidarity with environmental non-government organisations (Green NGOs) including the Friends of the Earth, Australian Conservation Foundation and Conservation Council of South Australia. These NGOs act as environmental watchdogs for the general public and expressed a particular interest in the nuclear industry as part of a global movement for increased environmental justice.

In the provincial region of South Australia, the South Australian Minister for Aboriginal Affairs via the Aboriginal Affairs and Reconciliation Division, Department of Premier and Cabinet (AARD-DPC) was responsible for administering the Aboriginal engagement process regarding the significance and protection of sites as required under Aboriginal Heritage Act. The other institutional requirement for First Nations engagement was the Native Title Act, which offered the legal right for Adnyamathanha native title named applicants to negotiate exploration and mining agreements and royalty compensation for land use and loss of, or damage to, culturally significant sites.

At the request of many people from the Adnyamathanha community who were frustrated with the lack of an appropriate engagement procedure from both the proponent and the native title representative body, the Adnyamathanha Traditional Lands Association (ATLA), some Traditional Owners formed relationships with Green NGOs to work cooperatively in scrutinising the Beverley IA. Their main role included critiquing the public consultation process for development, challenging the secrecy of native title negotiations, gaining access to public information regarding the EIA, being involved in critical assessment of the Beverley IA statement from both environmental and social perspectives, and lobbying against government policy which allowed expansion of the nuclear industry in Australia.

The 'agreement-making' process within native title during the early 1990s was as a result of hasty government and industry responses to the successful Supreme Court case won by Eddie Mabo which granted the Murray Island people native title rights. By 1995 a small number of native title claims were registered, seeking to engage with the consent determination process under the Native Title Act 1993. This provided an opportunity for three Adnyamathanha native title claims to become registered by three named applicants on behalf of the Adnyamathanha community; each named applicant was approached by Beverley proponent Heathgate Resources to negotiate a native title exploration agreement similar to the generic draft provided to Adnyamathanha by the Aboriginal Legal Rights Movement 1999 (ALRM). Individually negotiated representative agreements were signed by each named applicant under a banner of confidentiality as stipulated by the mining proponent Heathgate Resources. This engagement process set a precedent that would later have a profound impact on the ability of the Adnyamathanha community to freely engage in an informed decision-making process regarding development of Beverley Uranium Mine. These agreements have never been disclosed to the Adnyamathanha community and never been interrogated for their validity under the Native Title Act and the negotiating process.

The ATLA was established to oversee native title in the late 1990s after these initial agreements were signed during the exploration phase. ATLA was later to become an incorporated Aboriginal corporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 to enable royalty distributions under the negotiated outcomes from Indigenous land use agreements. A wide range of Adnyamathanha family clusters, later known as 'core groups' in the ATLA Constitution (ATLA 2001), were encouraged to affiliate with ATLA. This new form of governance bore no resemblance to the wimila-style of Annggumathanha Law from pre-contact times.

Despite having this new corporation, decision-making powers were legally situated with the native title named applicants who held the right to negotiate and sign off on native title agreements. The native title named applicants held the legal power to negotiate compensation agreements and to facilitate site surveys as part of a demonstration of good faith according to Native Title Act requirements. To take the alternative of refusing to enter into negotiation was to risk being taken to the Environment, Resources & Development Court and face expulsion from the native title negotiating process. Rather than risk exclusion, entry into the negotiation process resulted in forced consent. This procedural inequality experienced by native title players not only alienated the named applicants from the other players in land use such as mining proponents, it also alienated the wider Adnyamathanha community.

By 2003 the realisation of governance under native title was showing serious signs of strain. In stark contrast to the constitutional rules of ATLA, many Elders experienced abuse, felt they were being left out and ignored, and were often subject to ridicule and physical abuse. The level of lateral violence was so great they began to distance themselves from ATLA meetings as a sign of respect for Anggumathanha Law and sought refuge by starting their own informal gatherings and raising their concerns directly with the National Native Title Tribunal (Marsh, 2010). The tribunal did not take any steps to address their concerns. As a group that operates independent of native title, the Elders continue to pursue their own interests which are more closely connected to heritage protection than to royalty compensation. Individuals from this group are instrumental in the current resistance movement that has evolved around the government proposals for

establishing nuclear waste facilities in South Australia.

The discussion on procedural inequality now turns to the mining company attached to the Beverley Mine known as Heathgate Resources and the role they played (Heathgate Resources Pty Ltd, 2007). This proponent evolved as a subsidiary junior company to a US-based nuclear company known as General Atomics from whom they purchased in 1990 the ore deposit known to exist on the Beverley site (Uranium Information Centre, 2007). Confidential engagement between the proponent and the initial native title named applicants claiming interest over the Beverley lease commenced during 1995, yet public consultation did not commence until 1997. The native title negotiations which resulted in exploration agreements were later used as political leverage during the EIA by Heathgate Resources in regard to mineral exploration and a bid for a commercial mining license (Heathgate Resources Pty Ltd, 1998). Agreement-making between native title named applicants and Heathgate Resources resulted in an arrangement where 10 percent of royalty entitlements were being reinvested by the proponent in the interests of the community, but without the free, prior and informed consent of the community. The gap between the proponent seeking legally binding confidential engagement and the beginning of a broad community consultation process was approximately two years.

The wider Adnyamathanha community did not have an opportunity to become involved until the Flinders Ranges Aboriginal Heritage Consultative Committee (FRAHCC), at the request of the Nepabunna Yura community and other concerned Yura, held a meeting at Balcanoona on 13th and 14th December 1997 (FRAHCC 1997). This organisation was a body of Adnyamathanha Yura who facilitated Traditional Owner consultation as required by the Aboriginal Heritage Act 1988 and had been in operation since 1988 when the legislation was first proclaimed. By the time the proponent was forced into agreeing to a public meeting with Adnyamathanha they had already negotiated native title exploration agreements and gained government approval for a field leaching operation or 'trial mine'.

Adnyamathanha Traditional Owners summarised the Beverley assessment and approval process as deeply problematic and, for many Adnyamathanha Yura, disempowering.

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. The negotiated consent for a native title mining agreement that was produced was reached 'under duress', according to public media statements made by ATLA claiming that Adnyamathanha had been forced into signing off (Marsh, 2010). Procedural inequality allowed the mining proponent Heathgate Resources to extract uranium in the absence of a community engagement process, a full IA, or a formal mining licence. Whilst this arrangement sparked controversy and public concern over the Beverley proposal, it did not in any way interfere with the licensing process or the proponent's ability to start extracting ore.

The lack of Adnyamathanha participation during the community consultation phase highlighted fundamental flaws in South Australia's regulatory system. Failed policy reform across Australia to bring greater uniformity across states and territories has led to the IA process remaining fragmented and highly diverse, and in some states, including South Australia, governance and assessment continues to lag behind best practice.

Assessment of previous cases reveals that the frameworks for community engagement and securing agreements with Aboriginal rights holders in South Australia are weak, piecemeal attempts to stifle sovereign recognition and facilitate commercial interests. Both State and Federal Governments have repeatedly demonstrated a willingness to override existing legislative protections in order to advance nuclear projects, and to utilise the Environment, Resources & Development Court to fulfil the native title negotiating process (Marsh, 2010).

Understanding and accepting Indigenous knowledge is not a common practice in Australia, is often excluded from academic writing, trivialised by governments in regulatory processes such as IA, and endorsed by industries seeking an efficient fast-tracked process of approval and licensing. This was openly declared to be the case with the Beverley Declaration of Environmental Factors (DEF) and the EIA (Marsh, 2010). The DEF did not include an assessment of the cultural values of the area or the actual ore body. This strategy was deemed to silence public debate according to the Select Panel of the Public Inquiry into Uranium 1997. The next section highlights a number of examples of state and Commonwealth laws supposedly intended to provide rights and protections to Aboriginal First Nations peoples and cultures being curtailed or negated in order to facilitate the development of radioactive waste repositories and uranium mines.

4.2. Radioactive waste repository debate: South Australia 1998–2004

From 1998–2004, the Federal Government attempted to establish a national radioactive waste dump (repository) near Woomera in South Australia.

In 2002, the Federal Government tried to use monetary incentives to appease Aboriginal opposition to a 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 from the Department of the Attorney-General, the Department of Finance and the Department of Education, Science and Training (Debelle, 2003). This attempt to 'buy off' Aboriginal was rejected and it was regarded as insulting.

In 2003, the Federal Government used the Lands Acquisition Act 1989 to seize land for the repository. The rights of Aboriginal people under the Commonwealth's native title legislation were extinguished with the stroke of a pen (McGauran, 2003). This took place with no forewarning and no consultation with Aboriginal people.

Aboriginal groups were coerced into signing 'heritage clearance agreements' consenting to test drilling of short-listed sites for the proposed repository in South Australia (Green, 2017). The Federal Government 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 so-called 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 Traditional Owner, told an Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) (2004) forum on February 25, 2004:

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. (ARPANSA 2004)

People were coerced into relinquishing their sovereign rights through a process after being advised that the drilling would take place with or without their consent. This process was later used by industry and government to declare that Aboriginal people consented to a waste repository, which they had not. Federal government politicians and bureaucrats repeatedly made reference to the surveys known as heritage clearance agreements, without noting that those agreements in no way amounted to consent to the repository. 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 (Green, 2017).

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 (Department of Education, Science and Training 2002). The document states: 'Tactics to reach Indigenous audiences will be informed by extensive consultations currently being undertaken … with Indigenous groups.' In other words, 'consultation' was used as a tactic to fine-tune the government's campaign to promote the waste repository and not as a component of a genuine, respectful decision-making process.

Leading the battle against the proposed repository were the Kupa Piti Kungka Tjuta, a council of senior Aboriginal women from northern South Australia (Irati Wanti, n.d.). Many of the Kungkas personally suffered the impacts of the British nuclear bomb tests at Maralinga and Emu Field in the 1950s. 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, the repository issue was causing the government political damage due to overwhelming public opposition in South Australia. The full bench of the Federal Court ruled that the Federal Government had illegally used urgency provisions in the Lands Acquisition Act 1989 in the case of *South Australia v Honourable Peter Slipper MP (2004)* lodged by the State of South Australia and Mark McKenzie, the applicant in a native title claim made on behalf of the Kuyani Traditional Owners. The Federal Government decided to abandon its plan to establish a national radioactive waste repository in South Australia.

On this occasion Aboriginal Traditional Owners prevailed in their campaign to stop the repository being established in South Australia. It is important to note that this was primarily due to the weight of public and political opposition, and the Federal Government's unwillingness to pursue a strongly contested project in the lead-up to the 2004 federal election. The Federal Court victory was significant, but the government could have chosen to once again use its power under the Lands Acquisition Act 1989 to acquire land for the repository, and the government could once again have extinguished native title rights and interests. The outcome was remarkable in the sense that there was a vast imbalance of power and resources between the Federal Government and Traditional Owners leading the campaign against the repository.

4.2.1. SA nuclear fuel cycle Royal Commission 2015–16

The South Australian Nuclear Fuel Cycle Royal Commission was established by the state Labor Government in 2015. The Royal Commission recommended that the state government pursue the option of establishing a nuclear waste import business and proposed importing vast amounts of intermediate- and high-level nuclear waste from around the world. The state government's 'consultation' process included the establishment of a Citizen's Jury which rejected the proposal for a nuclear waste import business. The proposal has since lapsed due to overwhelming public and political opposition (Green, 2017).

The Final Report of the Royal Commission asserted 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' (South Australian Nuclear Fuel Cycle Royal Commission, 2016, p.90). The Royal Commission (2016, p.128) arrived at its conclusion that a 'sophisticated foundation' existed for securing agreements with Aboriginal rights holders despite acknowledging that it had not analysed the issue of how best to proceed, stating that such an analysis was 'beyond the scope of the Commission.' Such issues were not beyond the scope of the Royal Commission's work; in fact the terms of reference specifically directed the Commission (2016, p.180) to consider potential impacts on 'regional, remote and Aboriginal communities' and to consider 'lessons learned from past … practices.'

Aboriginal people repeatedly expressed frustration with the SA 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). People were not satisfied with the way this Royal Commission has been conducted and stated in their submission: 'Yaiinidlha Udnyu ngawarla wanggaanggu, wanhanga Yura Ngawarla wanggaanggu?' [Always in English, where's the Yura Ngawarla our first language?] (cited in Green, 2017, p.39). When faced with the prospect of all 27 native title groups in South Australia emphatically stating they did not agree with the proposal the response from Commissioner Scarce was of a similar tone: 'Well maybe I am talking to the wrong people' (cited in Green, 2017, p.40).

Due to a variety of structural mechanisms, the Aboriginal populations most affected historically by uranium production have been excluded from the contemporary decision making processes related to uranium and site development. No Aboriginal people were employed by the Royal Commission or included on the Commission's Expert Advisory Committee creating an anomaly—the Commission drew its conclusions without conducting an analysis of frameworks for securing agreements with Aboriginal rights holders and in the absence of Aboriginal participation. Additionally, the emphasis on 'securing agreements' assumes that agreement-making is the primary objective, rather than negotiation of a community-centred approach which may or may not involve agreement to hosting a facility.

Indigenous commentary on environmental issues is also made invisible. Australian academic commentator on environmental matters and sustainable energy, Dr Mark Diesendorf raised concerns regarding industry and government support for an international repository on ethical grounds that were easily challenged and 'would not stand up to an ethical counter-argument and could encourage the growth of a dangerous, expensive, inflexible, technology that's slow to build and may become a significant CO2 emitter' (Diesendorf, 2016, p.146). He claims that 'dubious ethical foundations' had resulted in the proposal being 'unlikely to gain social consent from indigenous Australians or indeed the majority of all Australians' and that, if it were to succeed, it 'would lock future generations of Australians into an industry that is dangerous and very expensive' (Diesendorf, 2016, p.146). He is particularly scathing of the lack of attention by government and industry to genuine community engagement that goes beyond technical capacity and economic potential. These comments synchronise with the concerns and frustrations raised by Traditional Owners who consistently claim the process is flawed, however the concerns of Indigenous peoples is almost always limited to the realm of spiritual significance, and this is mirrored in the way that *arnngurla yarta* is crudely translated into English.

4.2.2. Pungka Pudanha Wallerbedina waste repository case 2015–18

Since 2015, the Federal Government has again been attempting to impose a national radioactive waste repository in South Australia (following failed attempts to establish a repository in South Australia from 1998 to 2004 and the Northern Territory from 2005 to 2014). In 2018, three sites are being considered following a short-listing process which began in 2015 and was run in tandem with the South Australian government's plan for a nuclear waste import business. One site is in the Flinders Ranges, 400 km north of Adelaide in South Australia, on a pastoral lease farming sheep and cattle that sits adjacent to an Indigenous Protected Area on the land of the Adnyamathanha Traditional Owners. The two other sites are on agricultural farming land near Kimba, on the land of the Barngarla Traditional Owners, on the Eyre Peninsula.

The Commonwealth legislation governing the process of establishing a national radioactive waste repository is the National Radioactive Waste Management Act 2012 (NRWMA). The legislation dispossesses and disempowers Traditional Owners in every way imaginable (Ngo, 2017). For example, the nomination of a site for a radioactive waste repository is valid even if Aboriginal owners were not consulted and did not give consent. The NRWMA has sections which

nullify State or Territory laws that protect archaeological or heritage values, including those which relate to Indigenous traditions. The Act curtails the application of Commonwealth laws including the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and the Native Title Act 1993 in the important site-selection stage. The Native Title Act 1993 is expressly overridden in relation to land acquisition for a radioactive waste repository.

The proposed repository site in the Flinders Ranges is adjacent to the Yappala Indigenous Protected Area (IPA). The Yappala IPA was proclaimed in 2014 based on extensive research (Australian Government, 2014) and in recognition of global principles associated with Indigenous heritage protection. A surface waterhole linked to groundwater is known locally as Pungka Pudanha, and according to Yura muda is a traditional women's site and healing place. This site is in the context of one of many archaeological and culturally significant sites in the area that Traditional Owners have registered with the South Australian Government (Scribe Archaeology 2015). Yappala Station resident and Adnyamathanha Traditional Owner Regina McKenzie says 'The IPA is right on the fence—there's a waterhole that is shared by both properties' (Murphy-Oates, 2016). Many women have visited the site and re-affirmed this claim on the basis of cultural knowledge transmitted over countless generations.

The Federal Government has said that 'no individual or group has a right of veto' over the proposed national repository (Australian Government 2016). 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' (Australian Government 2016).

The government has rejected calls for all Adnyamathanha Traditional Owners to be included in a community ballot that will inform the Federal Government's decision about whether to proceed with the radioactive waste repository at the Flinders Ranges site (Adnyamathanha Traditional Land Association, 2018). This is consistent with the assessment process in the Kimba region, which elicited a strong response through the legal system from Barngarla Traditional Owners who claim that the voting process was discriminatory under the Racial Discrimination Act 1975 (Campbell, 2018). Barngarla Traditional Owners sought and won an injunction in the South Australian Supreme Court, on the claim that all Traditional Owners have a right to participate in the community ballot based on their sovereign status. The Federal Government responded by postponing the ballots in both regions until the dispute is resolved legally (Campbell, 2018).

Spokespersons from government and industry who took part in a webinar panel (Australian Government, Department of Industry, Innovation and Science (DIIS, 2018b) a week before the court injunction repeatedly claimed that the social engagement process was 'community-centric' and 'went beyond' any previous attempts by government and industry to engage in an acceptable and thorough manner with community. The media release which followed continues to uphold a commitment to 'ensure the views of the community, including Traditional Owners, are heard' (Australian Government, Department of Industry, Innovation and Science (DIIS, 2018a). The court injunction won by Barngarla is evidence that the process used to date was failing Aboriginal Traditional Owners. This decision by government to exclude Barngarla as Traditional Owners from exercising their right to participate is another example of how the colonial erasure of sovereignty is perpetuated in Australia.

4.3. The erosion of indigenous rights by the uranium industry

As with radioactive waste repository proposals, legislation providing rights and protections has been curtailed or overridden at the behest of the uranium mining industry in Australia. This article provided detail on one particular case study—the Beverley Uranium Mine in South Australia.

One case that should have provided valuable lessons is the Olympic Dam Mine in South Australia, sometimes referred to by the name of the nearby township of Roxby Downs, where many workers reside when not on the actual mine site. The Olympic Dam (Roxby Downs) Mine is exempt from provisions of the South Australian Aboriginal Heritage Act 1988: the mine must partially comply with an old (1979) version of the act (subject to the qualification noted below). An article written by Sarah Wright, a researcher from the Mineral Policy Institute, highlighted the influences of industry, the marginalisation of Aboriginal peoples, and the lack of government integrity within this case (Wright, 1998). Wright used a legal framework to describe the events and analyse the claims made by some players. The article noted a bill or indenture passed in relation to this case which granted the mining company, Western Mining Corporation, exemption from the South Australian Aboriginal Heritage Act and CHM principles. This move set a significant precedent within the law relating to mining and CHM whereby the level of cooperation between industry and government demonstrated in the Roxby Downs Olympic Dam effectively bypassed Indigenous concerns and rights.

The Olympic Dam case is a clear example of where Indigenous rights were challenged and overridden and it demonstrates that this is part of a pattern of oppression. As the Nuclear Fuel Cycle Royal Commission (2016, p.128) noted in its final report (somewhat euphemistically) 'the predecessor to the Aboriginal Heritage Act, the Aboriginal Heritage Act 1979 (SA) applies with some qualification.' Given that the 1979 version of the act never received royal proclamation it is doubtful whether the current Olympic Dam proponent BHP must comply with the 1979 version of the act, let alone the proclaimed 1988 version.

Amendment to legislation is another area where Indigenous rights are overlooked. Government intervention in the case of the Western Mining Corporation resulted in an indenture over their mining lease at the Olympic Dam open cut mine. The Olympic Dam Mine's exemptions from provisions of the Aboriginal Heritage Act were enshrined in South Australian law when the South Australian Roxby Downs Indenture Act—the legislation governing operations at the mine-site—was amended in 2011. Traditional Owners were never consulted about the 2011 amendments. The government claimed that their series of attempts to amend the act were intended to make it more interactive with the native title legislation, a move which was met with trepidation by many Aboriginal people whose experience of native title was a reduced level of rights in heritage protection and environmental justice. In the South Australian Parliament on November 24, 2011, a government parliamentarian said in regard to the proposed amendments: 'BHP were satisfied with the current arrangements and insisted on the continuation of these arrangements, and the Government did not consult further than that' (Parliament of South Australia, 2011).

This process of amending legislation also featured with the Ranger Uranium Mine in the Northern Territory, a case that has been the epicentre of decades of contestation between mining company Energy Resources of Australia and the Federal Government on the one hand and Mirarr Traditional Owners on the other. Suffice to say this was one particularly crude example of a legislative amendment which significantly weakened the position of the Mirarr. Sub-section 40(6) of the Commonwealth Aboriginal Land Rights Act exempts the Ranger Mine from the act and thus removes the right of veto that Mirarr Traditional Owners would otherwise have enjoyed over the development of the mine (Gundjehmi Aboriginal Corporation (GAC) Research Project, n.d.). This again shows how governments willingly comply with the extractive industries through active erasure of Indigenous rights.

5. Findings and analysis

Examinations of engagement models based on centralised decision-making (Howitt, Crough et al. 1990; Lane, 2003) confirm Western domination and persistence in the commercial development process. Major development cases involving Aboriginal heritage issues that

preceded the Beverley case in South Australia collectively illustrate how government approval processes and developers dismiss Aboriginal heritage and dominate the outcomes of IA and land uses. Cases that have come after the Beverley mine show that little has changed to address the procedural inequalities surrounding Indigenous rights and commercial land uses.

Governments have repeatedly sought to use short-term monetary gain to engage with vulnerable populations and to silence the voices of concerns. For example, when the Federal Government was attempting to secure the support of Aboriginal Traditional Owners for a national radioactive waste dump in South Australia in 2003 by offering a small payment, Kokatha man 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' (Debelle, 2003). 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' (Debelle, 2003).

An analysis of evidence suggests that fast-tracking effectively denies Indigenous and community rights, and creates divisions among community interest groups, further limiting participation and informed decision-making. This sense of division and mistrust of the mining industry is historically steeped in previous Indigenous cultural ties to land having been severed or fundamentally and permanently altered. It is perpetuated through inequitable processes such as the use of fast-tracking associated with the original Beverley license and other cases noted in this paper. This suggests a persistent alignment with the traditional 'dig and deliver' attitude by the mining industry (Brereton, 2004, p.15). Decolonisation of procedures relating to resources management has not included a fundamental step of critically examining the way people *think* about decision making (Marsh, 2010). This lack of mindfulness inhibits discussion about the way that meanings are constructed according to different world views. Reflexive decolonisation of assumed privileges and normalities based on ethnocentric and Euro-centric views of the world is an area that could be better utilised in debates relating to the management of nuclear waste, as well as within resistance politics. This type of approach has the potential to decolonise the engagement process between Aboriginal people and commercial parties. However, corporate and government commitment to genuine community engagement is lagging behind the needs and rights expressed by First Nations peoples.

6. Discussion and conclusions

6.1. Resources and rights: resistance politics based on post-colonialism

Resistance politics is used in this context to construct a theoretical understanding of Euro-centric colonialism and its limitations in recognising First Nations sovereign rights. Australian Aboriginal rights to resources management through a post-colonial lens is couched in transformative theoretical understandings of how to engage in ways that recognise Aboriginal knowledge through a decolonising approach to ownership, responsibility and sovereignty.

In the case of the nuclear industry, the concept of development is determined and validated by the priorities of the extractive industry, the nuclear industry in particular, and government as they strive to pursue projects that focus primarily on profit. This includes a decision-making process that is centred on the assumption of natural resources being readily available for exploitation by corporations and governments. These ventures often marginalise Indigenous perspectives and interests as they are implemented in the absence of a decolonised understanding of resources management within commercial development.

The continuation of colonial attitudes toward Aboriginal people is clearly present in the intentions of government to dominate Australian land uses, particularly in the case of commercial land use associated with extractive industries. This imbalance is grounded in a history of colonial biases in Australian land uses since 1788 and is reinforced by the extinguishment of native title rights, and the use of extractive violence to desecrate or destroy Indigenous sites of significance.

An example of such bias is the adaptation of the terms 'clearance' and 'agreement' both of which are commonly used in the context of heritage and native title survey procedures. Both terms hold an assumed end purpose that empowers proponents and governments and at the same time suppresses Indigenous values and beliefs. For example 'work area clearance' as a conceptual as well as practical tool is openly borrowed from the mining industry, for the purpose of surveying sites set for exploration and mining. The adaptation of agreement-making from the native title sphere to facilitate heritage surveys under the 'heritage clearance agreements' process is likely to be another example of an assumed right to explore or mine.

Due to the legislative framework of native title and its subsequent policies, Aboriginal native title corporations representing the interests of Traditional Owners are forced into a political space of no alternative than to facilitate the continued erasure of First Nations peoples, cultures and sovereign rights. The native title named applicants were limited to having the legal power to negotiate compensation agreements and to facilitate site surveys as part of a demonstration of good faith according to Native Title Act requirements; the actual nature of these 'requirements' lean heavily toward a facilitation of business as usual for the mining industry. To take the alternative of refusing to enter into negotiation is to risk being taken to the Environment, Resources & Development (ERD) Court and to face expulsion from the native title negotiating process. The ERD process is used by industry to ensure Traditional Owner negotiations create minimal disruption to commercial interests, and to reiterate colonial mining rights over Indigenous sovereign rights.

7. Conclusions

The government and industry approach to environmental and cultural justice sits uneasily with the principle of free prior and informed consent enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UN General Assembly, 2007). The government approach lacks credibility based on the idea that consultation is somehow an equivalent and acceptable form of a consenting process. The extractive industries use strategies that are corporate-driven, well supported by governments, and widely practiced. Engagement protocols with First Nations peoples in Australia expose structural inequalities within the native title negotiating space. These principles are now extensively used in Australia by proponents to negotiate compensation of loss with Aboriginal and Torres Strait Islander peoples for the adverse impacts caused by exploration and mining. The reality for many Aboriginal people is a continuation of the erasure of human rights, and continued denial of the illegal claims made by the British in claiming sovereignty to lands already occupied. Indigenous occupancy of lands and waters was never ceded, and Traditional Owners are forced to continue living with damage and destruction of their country.

The denial of *Yura muda*, and all that it encompasses, reinforces colonial misunderstandings of Indigenous governance and social order, confines community engagement dialogue to cultural significance, and is used by industry and government to justify the continued refusal to recognise sovereign rights. This pattern of denial is systematically used to colonise the lands, peoples and resources of Australia. These beliefs and practices still underpin the attitudes, policies and practices within government and industry. First Nations peoples of Australia continue to argue against nuclear expansion on Aboriginal lands for a range of reasons including lack of due process, questionable economic viability, dismissal of environmental risk factors, denial of cultural significance, and disregard for Indigenous human rights.

To suggest that Aboriginal opposition rests purely with religious beliefs (and is therefore ineligible for debate) is ironic, inaccurate and racist (Green, 2018). The irony of such a claim is evident from the

history of colonial oppression enacted during the 1900s by the Australian government which enabled the cultural genocide of First Nations peoples across the Australian continent on the basis of sub-human status.

In this paper, we have noted numerous examples of State and Commonwealth laws, ostensibly designed to provide some rights and protections for Aboriginal First Nations, being curtailed or overridden to facilitate radioactive waste repository projects and uranium mines. For example, the Federal Government used the Commonwealth Lands Acquisition Act 1989 to seize land for a national radioactive waste repository in 2003 and native title rights and interests were extinguished. Another example is where Aboriginal groups were coerced into signing heritage clearance agreements consenting to test drilling of short-listed sites for the proposed repository in South Australia and their consent was repeatedly misrepresented by the Federal Government as amounting to Aboriginal consent for the repository.

We conclude by also claiming that the Commonwealth legislation governing the process of establishing a national radioactive waste repository, the National Radioactive Waste Management Act, dispossesses and disempowers Traditional Owners in various ways: For example, it curtails the application of Commonwealth laws including the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 as well as the Native Title Act 1993 and this latter act is expressly overridden in relation to land acquisition for a radioactive waste repository. An earlier example of proponents having such liberties is the Olympic Dam mine being exempt from provisions of the South Australian Aboriginal Heritage Act 1988 (it might or might not have to comply with some provisions of the 1979 version of the Act). Sub-section 40(6) of the Commonwealth Aboriginal Land Rights Act exempts the Ranger Uranium Mine in the Northern Territory from the act and thus removes the right of veto that Mirarr Traditional Owners would otherwise have enjoyed over the development of the mine. The case study concerning the Beverley Uranium Mine demonstrates how the IA process and native title negotiations were used to dispossess Adnyamathanha Traditional Owners of their sovereign rights to governance practices, cultural and economic resources, and their obligations to customary land rights.

The process of disempowerment used throughout these case examples illustrates continued erasure of native title rights at the expense of a continuation of colonial land use practices that prioritise government and industry rights. State and Commonwealth laws provide limited rights and protections, and such laws have been repeatedly curtailed or overridden to facilitate repository or uranium projects.

While these patterns clearly demonstrate gross power imbalances between Aboriginal First Nations on the one hand, and industry and governments on the other, it should be noted that resistance has been strong and numerous projects have been stopped. Examples include proposed national radioactive waste repositories in South Australia (1998–2004) and the Northern Territory (2005–2014), the defeated plan to establish a nuclear waste import business in South Australia, and proposed uranium mines such as Jabiluka and Angela Pamela in the Northern Territory.

Existing laws and legal challenges have sometimes been used to challenge and delay nuclear and uranium projects. Examples include the successful challenge in 2003 by the State of South Australia and a native title claimant against the Federal Government's acquisition of land for a national radioactive waste repository and a legal challenge against the nomination of a site in the Northern Territory for a national radioactive waste repository (the nomination was withdrawn in 2014, before the court case had concluded). The injunction won by Barngarla Traditional Owners regarding their exclusion from the community ballot at Kimba is one of the most recent examples at the time of drafting this paper.

Legal challenges have a place in resistance against nuclear and uranium projects, but community resistance outside of the legal system has been a more important and successful strategy to stop such projects. Case studies such as the Jabiluka and Angela Pamela uranium mines, failed attempts to impose a national radioactive waste repository in South Australia and the Northern Territory, and the defeated plan to establish a nuclear waste import business in South Australia, all reveal a common pattern. That pattern involves strong determined resistance by Aboriginal people, supported by civil society allies including environment groups, trade unions, church groups, public health groups and others.

Collaboration at the grassroots, as well as intellectual level, offers dignity and purpose to First Nations peoples and a process of cross-cultural reconciliation that offers the opportunity to build meaningful relationships. These processes of community engagement stand in stark contrast to the dubious government-led processes of consultation that typically result in community divisions and failed attempts to engage respectfully and meaningfully with First Nations peoples in Australia. At a national as well as local level, the nuclear-free Black-Green alliance is helping to forge a responsible and peaceful global citizenship through the assertion of Indigenous sovereign rights, environmental sustainability, and human rights.

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