THE DISPOSAL OF AUSTRALIA'S RADIOACTIVE WASTE ON TRADITIONAL ABORIGINAL LANDS IN THE NORTHERN TERRITORY

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INTRODUCTION

For the Australian Government, like many governments, the question of what to do with Australia's radioactive waste has remained an unresolved dilemma from the moment is began to be generated decades ago.

At the time of writing, the Australian Senate is now moving to pass the *National Radioactive Waste Management Bill* 2010 (NRWM Bill) which was introduced by the Labor Government in March 2010.[1] The resulting Act will continue a framework for targeting the disposal of Australia's current and future radioactive waste on traditional Aboriginal lands in the Northern Territory, albeit with a backup plan for using land in any other State or Territory if this approach fails.

The NRWM Bill essentially continues, under a new name and with minor alterations, an approach instigated by the Coalition Government and the Northern Land Council back in late 2005 through the provisions of the *Commonwealth Radioactive Waste Management Act* 2005 (CRWM Act).

The new legislation is said by the Labor Government to constitute the meeting of its election commitment to repeal the CRWM Act, and to continue a "voluntary" process and restore "procedural fairness" to the siting of radioactive waste on traditional Aboriginal lands.[2] As discussed in this article, such claims are hard to take seriously. The NRWM Bill in its current form is little more than a cut and paste of the CRWM Act, and retains its three most fundamental flaws:

- It targets Aboriginal land, thereby inevitably dividing Aboriginal communities;
- It is not a "voluntary" process, as it seriously undermines the principles of informed consent; and
- It is not "procedurally fair", ignores best-practice environmental management of radioactive waste, and ousts any form of real community consultation.

THE DILEMMA OF RADIOACTIVE WASTE

In the absence of a national pro-active radioactive waste management strategy, Australia has found itself generating an ever increasing stockpile of radioactive materials without any real plan or solution for dealing with its inherent risks. The most concerning material constitutes spent nuclear fuel rods from the Lucas Heights reactor near Sydney in New South Wales (and components of its old nuclear reactor and building), which are sent to Europe for re-processing but obliged to be taken back by Australia in the coming years for final disposal. Other waste includes contaminated soil from nuclear weapons testing at Maralinga, and other radioactive material used in medical, scientific and industrial processes.

Further, although not current Government policy, it is possible that Australia's inventory of radioactive materials will in the future include radioactive waste from domestic nuclear power plants and other nuclear facilities, as well as radioactive waste generated by other Nations.[3]

One of the key difficulties in the management of these materials is that the risk-profile they present to human health, wellbeing and the environment can be very difficult for stakeholders to conceptualize and deal with, particularly its extreme temporal nature. This has caused some surprising positions to be taken to try to convince Aboriginal communities to accept it on their land under the CRWM Act. These include that the disposal of radioactive waste

1 The *National Radioactive Waste Management Bill* 2010 was introduced in the Senate on 11 May 2010. It was earlier referred to the Senate Legal and Con stitutional Affairs Committee and an interim report was tabled on 11 May 2010 which supported the legislation with only minor changes.

2 The Honourable Martin Ferguson Am Mp, Media Release 23 February 2010 'Fairness Restored to Radioactive Waste Process'

3 Preamble (xi) of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, allows use of Australia's radioactive waste facility by other nations.

is some form of courageous and moral nationalistic duty[4], necessary to save lives, related to solving the issue of climate change[5], and even a benign activity without risk.[6] One of particular surprise has been that by the Australian Nuclear and Science Technology Association (ANSTO) itself, who quote a study claiming urban air pollution, obesity and smoking in European cities has similar dangerous health effects to known incidents of radiation, as some type of direct relevance to whether Aboriginal people in remote regions of the Northern Territory should accept radioactive waste being buried on their traditional lands.[7]

But uncontained, radioactive materials are without doubt a highly toxic and dangerous substance to humans and the environment, and remain so for some 100s to 1000s of years once generated. Further, the actual harm to the environment and humans that may result from radiation (eg cancer, birth defects and genetic mutation) is yet to be fully understood, and is by nature very difficult to detect, delayed for long periods and can be caused in combination with many other factors. Such insidious risk characteristics make indentifying harm, and drawing the lines of causation from the release of radiation into the environment to indentified harm, a potentially difficult exercise at any point in time. Both in law and policy, this undermines our ability to attribute responsibility and seek redress when problems do occur, and properly adapt our management strategies for radioactive waste going forward.

Despite this, some stakeholders argue that whist contained by technological solutions and properly managed, radioactive waste is safe with no significant deleterious impacts on humans and the surrounding environment.

Of course containment strategies are always fallible. This is especially so for those which must be carried out with commitment, diligence and precision for 1000s of years in places out of site and mind to the voting population. Radioactive waste may escape through many pathways, including natural processes (hydrological and geomorphologic), human incidents & error (transport, storage, re-packaging and re-handling incidents) or intentional intervention (criminal and terrorist activities), and most likely a combination of all of these factors. As Australia and the United State know from recent experience, activities which are inherently risky to the environment often get away with appearing as inert due to periods of proper containment, prompting the relaxation of standards and diligence, until eventually something devastating occurs like the offshore petroleum leaks from the Montara and Deepwater Horizon oil wells.

All in all, these characteristics of radioactive waste demand a highly precautionary approach, by ensuring that 3 key elements are satisfied:

1. That rigorous science and environmental assessment must play a pivotal role in siting the facility so as to reduce the risks as far as possible;
2. That there must be real community and landowner consultation and consent to adopting such insidious risks posed by radioactive waste; and
3. Ongoing strict compliance management, oversight and critical review must occur of operations.

THE INITIAL APPROACH – THE NATIONAL REPOSITORY PROJECT

The policy of consecutive Australian Governments up until 2005 was to find a site for a central repository for storage and disposal of radioactive waste. The site selection process looked across Australia for a suitable site, and generally followed key guidelines like those in the 1992 *Code of Practice for the Near-Surface Disposal of Radioactive Waste in Australia*.

Subject to criticism for concentrating on remote or central areas, and failing to deal with the issue of waste generation itself, the process culminated in the selection of a site near Woomera in South Australia. But on the back of a backlash of community and traditional owner opposition, the plan was defeated by the South Australian Government, who

4 See media release of NLC dated 5 August 2005, 21 October 2005, 27 September 2007, 27 September 2007 and 11 June 2008 http://news.brisbanetimes.com. au/breaking-news-national/nuclear-waste-dump-is-a-duty-ferguson-20100303-pj8c.html

5 NLC Media Release dated 24 October 2005

6 ABC Radio at http://www.abc.net.au/local/stories/2010/03/10/2842065.htm

7 Letter to Editor by ANSTO to Tennant & District Times dated 13 April 2007

were successful in an appeal to the Full Federal Court of Australia to have the compulsory acquisition of land undertaken by the Commonwealth to site the facility under the *Land Acquisition Act 1989* overturned.[8]

Arguably the approach, whilst attempting at least a broad science-based selection process, failed to ensure proper community ownership and consent to the facility, and pursued the flawed logic that radioactive waste must be stored in remote or central Australian areas.

THE CURRENT APPROACH – STORAGE ON TRADITIONAL ABORIGINAL LANDS IN THE NORTHERN TERRITORY

Whatever the arguments over the National Repository Project, the political outcome was clear. Its failure provided both the former Coalition Government, and the current Labor Government, the excuse to blame the States and throw inter-governmental consensus, community consultation and strategic environmental site selection processes out the window. Instead, they would focus on anywhere they could find a landowner that would be willing to accept a facility in return for cash, and the Commonwealth could override any legislated hurdles by the surrounding community.

The Commonwealth Radioactive Waste Management Act 2005

The initial solution posed by the Coalition Government was to use land for which it was already the landowner in the form of Department of Defense sites in the Northern Territory for the facility, a jurisdiction where it could prevent any community backlash imbedded in legislation due to the Constitutional weakness of the Territory. The *Commonwealth Radioactive Waste Management Bill* 2005 was placed into Parliament in late 2005, listing three sites on Commonwealth Defense Land and removing all Territory and some Commonwealth environmental, cultural heritage and planning laws which would prohibit, restrict or regulate the facility or transport to and from it.[9]

But in October 2005 as the Bill was passing through the Australian Parliament, the *Northern Land Council* (NLC) called for and secured an amendment to the Bill to allow Aboriginal Land in the Northern Territory to be acquired by the Commonwealth in perpetuity and used for a nuclear waste facility. The NLC publicly took the view the radioactive waste storage was safe. Although it also supported the removal of many environmental laws that may help ensure its safety to Traditional Owners and their land, such as pollution, environmental impact assessment and contaminated land laws. [10]

The NLC is a Commonwealth statutory body set up under the *Aboriginal Land Rights (Northern Territory) Act* (ALR (NT) Act) to help claim back and administer Aboriginal Land on behalf, and for the benefit, of aboriginal people with traditional and customary rights to the land (Traditional Owners). Whilst there are 4 Land Councils in the Northern Territory, the NLC was a key architect and vocal participant in promoting the storage of radioactive waste on Aboriginal Land. Indeed the announcement came after the NLC had met on numerous times with Australia's peak nuclear industry group who operates the Lucas Heights research reactor near Sydney, the Australian Nuclear Science and Technology Organization (ANSTO). At the time ANSTO was trying to convince the Australian Radioactive Protection and Nuclear Safety Authority (ARPANSA) to issue them a license for the operation of a new research reactor at Lucas Heights (the OPAL reactor) which would generate significant levels of radioactive waste. The license was applied for in 2004 and granted by APRANSA in July 2006. Finding a site for the disposal of waste was critical to ANSTO, as one of the most fundamental criteria for ARPANSA in deciding the license application was assurance of plans and progress towards the storage of the radioactive waste the new reactor would produce over its lifetime.[11]

With the amendments brought about by the NLC, the CRWM Act turned the focus of Australia's radioactive waste disposal dilemma squarely onto Aboriginal communities and traditional Aboriginal lands in the Northern Territory,

8 State of South Australia v Honourable Peter Slipper MP [2004] F CAFC 164

9 Fishers Ridge, Mount Everard and Harts Range , section 6, 13 and 14 of the CRWM Act and

10 The Northern Territory Water Act, Planning Act, Waste Management and Pollution Control Act, Environmental Assessment Act, and Marine Pollution Act for example.

11 See section 4.4.3 and 4.4.7 of Decision by the CEO of APRANSA on Application for a License to Operate the OPAL Reactor – Statement of Reasons – 14 July 2006

many of which had been granted back after long land claim battles by a generation of Aboriginal elders now largely gone. The CRWM Act set up a 3 stage process to achieve this:

1. **The Nomination Stage** - Land Councils could nominate any Aboriginal Land within their region.
2. **The Approval Stage** - The relevant Commonwealth Minister could approve a nomination, allowing any number of nominations to be approved so that they may be considered along with the 3 Defense sites.
3. **The Declaration Stage** - The Commonwealth Minister could undertake his or her own internal investigations into approved nominated sites, and make a final declaration amongst the approved nominated sites for a radioactive waste facility and an access road, which would have the effect of acquiring all property interests in that declared site in perpetuity.

The CRWM Act also included power for the Minister in his or her absolute discretion to return the land to Traditional Owners once a radioactive waste facility has been "abandoned" in accordance with the *Australian Radioactive Protection and Nuclear Safety Act* (APRANS Act).[12] Surprisingly, there are no express requirements under the CRWM Act or APRANS Act that the land must be remediated to its previous state and rendered safe to identified standards to allow it to be handed back for Aboriginal people to occupy. With the exclusion of NT contaminated land legislation, no specific contaminated land legislation at Commonwealth level, and an associated poor history of Commonwealth contaminated land management, it is quite a worrying oversight.

To prevent this process being thwarted in any way, the CRWM Act excluded all Territory environmental, cultural heritage and planning laws from the construction, operation and decommissioning of the facility and any other associated activities, and excluded Commonwealth EPBC Act from kicking in early so as remove any provisions for formal strategic environmental assessment to play a role in the selection of the site. The only regulations left applying to the facility, the *Commonwealth's Environmental Protection and Biodiversity Conservation Act* (EPBC Act) and *Australian Radioactive Protection and Nuclear Safety Act* (ARPNS Act) would not be utilized to select a site, but would be allowed to come later after the declaration decision had already been made. It was clear that the Commonwealth was just going to choose some Aboriginal Land offered by a Land Council, then worry about whether it stacked up on environmental, safety and community consultation grounds later on.

The exclusion of laws which restrict and regulate a facility goes far beyond what is required to circumvent laws which unreasonably prohibited a facility on political grounds.[13] The laws excluded sought to implement Australia's international obligations under the Rio Declaration and Convention on Biological Diversity,[14] and domestic obligations under the Intergovernmental Agreement on the Environment and National Strategy for Ecologically Sustainable Development (ESD). The broadscale exclusion of these laws to site a national radioactive waste facility can be described as nothing less than a breach of both our International and domestic commitments to ESD. Such exclusions also undermined fundamental rights contained in the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP) to the protection of their environment, health and wellbeing.

National Radioactive Waste Management Bill 2010

The life of the CRWM Act has produced four Senate Inquiries to date[15], and widespread criticism by all stakeholders on the issue besides the NLC and the Government of the day, including by Federal Labor when in opposition. The criticism focused in particular on the failure to obtain informed consent for the single nomination of Aboriginal Land that had been made in 2007 by the NLC at a place north of Tennant Creek. On the back of the October 2008 Senate Inquiry, the Senate Report recommended repeal of the CRWM Act in the first Parliamentary sittings of 2009. But as that time came and passed without a whimper from the Commonwealth Labor Government it became obvious that something was up. Nothing further came from the Government until March 2010, when the Commonwealth Minister for Resources Mr Martin Ferguson released the *National Radioactive Waste Management Bill 2010*.

12 Section 14A of the CRWM Act
13 Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004
14 See for example Chapter 22 of Agenda 21 of the Rio Declaration, and the Akew: Kon Guidelines under the Convention on Biological Diversity
15 2005, 2006, 2008 and 2010 [need titles]

The Bill removed from consideration three Defence sites in the Northern Territory, but continued the only existing nomination which had been made by the NLC on Aboriginal Land. The Bill also established a fall back plan for asking landowners in other States if siting of a facility on Aboriginal Land failed. For the single existing nomination the current Bill proposes to continue all the provisions of the CRWM Act discussed below which seek to protect it from any legitimate challenge. Otherwise the Bill was essentially a replication of the CRWM Act.

Like the CRWM Act, the Bill claims to support a "voluntary" nomination process. It also claims to restore "procedural fairness" to the Commonwealth Government's decisions to approve and declare a nominated site.

A "Voluntary" Nomination Process

The key controversy of the CRWM Act and NRWM Bill has been its to claim to be a "voluntary" process for Traditional Owners to offer their land to house a radioactive waste facility. This is essentially because under the Act their land is actually "volunteered" by a Land Council, who in the case of the NLC openly and actively supports a radioactive waste facility, not the Traditional Owners themselves.

Under the ALR(NT) Act, Aboriginal Land is granted to and held by an Aboriginal Land Trust for the benefit of its traditional owners as a group. It is a form of "communal freehold title" which is generally inalienable, and now covers nearly 50% of the Northern Territory land mass. To help support traditional owners to make decisions about their land, Land Councils were established as Commonwealth statutory bodies following the first Justice Woodward's Report in the late 1970s. Whilst they do not own Aboriginal Land, they are provided extraordinary powers to make decisions about the land on behalf of its traditional owners. The only checks on that power are the legal requirements for the Land Councils to consult with, and obtain the informed consent of, the traditional owners of the land (and other relevant Aboriginals) prior to making decision about it.[16] These requirements are subject to procedural fairness obligations and judicial review under the ADJR Act, [17] and overarching obligations to protect traditional owner's interests, express their views as to management of land, support their claims to be traditional owners, and assist them to protect sacred sites.[18]

But even in normal practice for land-use decisions like mining and pastoralism on Aboriginal Land, the claim that these formal legal requirements are a check on Land Council power is extremely difficult to sustain. Traditional Owners have no legal aid services in the Northern Territory to help them understand their rights to control their own land under the complex rules of the ALRNT Act, let alone services to assist them with the massive legal and financial resources required to take action against a Commonwealth statutory body staffed with a large team of lawyers when these requirements have been breached. In such circumstances it impossible to contemplate how people living in remote areas, who often have no phones, computers or transport, and who are likely to be under educated (in the non-aboriginal way) or read, write or speak English well (usually English is a third, fourth or fifth language), can ensure that Land Councils are following their wishes.

Instead of improving the enforceability of these requirements for the decision about a radioactive waste dump on Aboriginal Land, the CRWM Act, with the express support of the NLC, sought to remove or undermine them even further particularly through amendments secured in 2006 just before the single nomination was made by the NLC.[19]

Through a combination of statutory design features such as unfettered discretionary powers to make, approve and declare nominations, privatives clauses, express removal of procedural fairness obligations, and the express exclusion of the *Administrative Decisions (Judicial Review) Act (*ADJRA)[20], the CRWM Act attempted to undermine the ability of a nomination of Aboriginal Land by a Land Council to be invalidated by a Court for failure to obtain the consent of its Traditional Owners.

16 Section 23(3) of the *Aboriginal Land Rights (Northern Territory) Act* 1976
17 *Daisy Majar v Northern Land Council* 1991 FCA 209
18 Section 23(1) of the ALRNT Act
19 See *Commonwealth Radioactive Waste Managemet Legislation Amendment Bil*l 2006 and Senate Submissions and Hansard on the Senate Inquiry in 2006
20 The ADJRA has been re-instated for new nominations, but not existing decisions for the approved nomination, under the NRWM Bill

The NRWM Bill supported the continuation of all of these features for the existing nomination, and the worst of them for new nominations[21]. The 2010 Labor dominated Senate Inquiry defended this stance by adopting an erroneous submission by the NLC which claimed that such features were "consistent with" an existing provisions of the ALRNT Act[22], which protects an innocent party from the point at which they acquire a property interest in Aboriginal Land from failure by a Land Council to obtain informed consent for the assignment of the interest.[23]

It is difficult to see how anyone can claim that the NRWM Bill provisions which seek to protect the entire process from failure to obtain informed consent from the time a Land Council first offers Aboriginal Land, to be the same as provisions under the ALRNT Act which only protect the final transfer or surrender of land as to an innocent third party, which may not occur for many years from the time the original offer is made by a Land Council as negotiations and investigations into the land-use potential occur. It must also be kept in mind that Traditional Owners are restricteed from challenging a Land Council's failure to obtain informed consent until an actual substantive decision, such as to offer Aboriginal Land, is made.[24] If Traditional Owners are prevented from challenging decision both before and after an offer of Aboriginal Land is made for failure to obtain informed consent, it is hard to see how Land Councils can ever be accountable and the rule of law can apply.

Furthermore, the CRWM Act and NRWM Bill ensured that:

- Little, if no, information was available to Traditional Owners even about the basic details of the proposed radioactive waste facility at the time they were asked to put one on their land , let alone independent environmental assessment information[25] ; and
- There was no statutory mechanism to prevent their land being used for activities or purposes they were not informed about, and did not consent to.[26] For example the disposal, whether interim, temporary or permanent, of radioactive waste generated from new sources in the future. Because the Commonwealth was acquiring the land in perpetuity, rather than leasing it, there was ultimately nothing to preventing the Commonwealth from doing anything it wished on the land pursuant to its full property ownership and Constitutional immunities as priorities, policies, and Governments, changed.[27]

In effect, the Land Councils received full powers to nominate Aboriginal land to be acquired by the Commonwealth for the purposes of a nuclear waste facility, whilst completely undermining its accountability at law to the actual owners of the land.

Despite endorsing the UNDRIP to much fanfare and hope for a sea-change in indigenous relations in April 2009, the Labor Government has now introduced a law nearly a year after which flies squarely in its face, particularly with regard to Articles 18 and 29:

> Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions
>
> States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent

21 The ADJRA Act was restored for new nominations

22 NLC Senate Submission, and supplementary submission, dated 2010 and Hansard of Evidence

23 Section 19(6) of the ALRNT Act prevents the transfer or surrender of Aboriginal Land being, invalidated as against the person recieving the interest, for failure of the Land Council to obtain informed consent.

24 In the case of Alderson v Northern Land Council 67 FLR 1983 Muirhead J commented at 361 that Traditional Owners are restricted from challenging a decision or action by their Land Council, even if it is in breach of informed consent provisions, until a significant decision has been taken "which in itself may grant or deny an interest or which may define future rights or entitlements of those whose interest the Land Council has been created to assist and protect"

25 For example, for Mining on Aboriginal Land, a miner must provide detailed proposal for the mine and the environmental assessment process of mining is married up with traditional owners consent process so that traditional owners may have the benefit of information critical independent information generated.

26 For example for Mining on Aboriginal Land, if a miner undertakes mining which is not consistent with their original proposal consented to by Traditional Owners, the mineral tenure may be cancelled.

27 Such as the Territories power, Doctrine of Commonwealth immunity and inconsistency or laws provisions of the Australian Constitution.

"Procedural Fairness" in Decisions by the Commonwealth

Under the CRWM Act, no rights are provided to the public or Traditional Owners to participate in the approval or declaration decisions by the Commonwealth Minister whatsoever once a Land Council has offered land, with procedural fairness for these decisions, and ADJR Act review, expressly excluded by the Act.

The claim a restoration of "procedural fairness" through new provisions in the NRWM Bill which now allow a written submission to be made by Traditional Owners for the Commonwealth Minister's decisions is a complete misuse of the concept as would be understood by the common law for such a critical decision affecting freehold property rights, individual health and safety and cultural heritage.

For new nominations (not the existing one), the NRWM Bill provides one extremely limited input into the Commonwealth Minister decisions, and expressly provides that such is exhaustive of the content of procedural fairness.[28] It allows people who have a property right or interest in the land (ie Traditional Owners) , and no-one else, to make a written submission to the Minister on his or her decisions. Such a "right" is next to useless in the context of a law which does not:

- Require direct notification of Traditional Owners of the intended approval of their land for a radioactive waste dump. It merely requires a notice to be put in a newspaper on the off chance that people will see it in the Government notices section and understand what it means.[29]
- Require any actual information to be included in the notification, or put it in local Language, so that Traditional Owners would actually understand what it is even about, and be prompted to exercise their rights to make a submission. [30]
- Grant Traditional Owners any rights of access to information about the nomination, critical information supporting it, or information on which the Minister is relying upon to make a decision, such as anthropological material or environmental information.
- Provide any chance for Traditional Owners to be heard in a forum which is actually suited to their verbal methods of communication, such as in-person meetings or large consultations;
- Provide any criteria, standards or objectives[31] whatsoever about how the Minister is to make a decision, so that Traditional Owners have no idea how to address their submissions, and such submission may simply be ignored once read;
- Provide any requirement for a response to their submission, or automatic reasons for the final decision, so that Traditional Owners have no way of understanding how their submissions have been treated.[32]

In one final deceit, Bill sets up a "regional consultative committee" to consult broadly with the rest of the affected community. But such only occurs once a declaration has already been made, so the community consultation can address little more than the fact of a site already declared in their community without their consent or consultation.[33]

The situation is worse for the existing nomination under the CRWM Act, which was protected from even these limited submission rights, save for the final declaration decision.[34]

All in all it is quite clear that the new "procedural fairness" provisions are designed to do little more then give a Land Council, who has already nominated the land for it to be approved, an opportunity to make the obvious submission saying that they want it to be approved.

28 Section 9(7) and 17(5) of the NRWM Bill
29 Section 9(4) of the NRWM Bill
30 Section 9(5) of the NRWM Bill
31 The 2010 Senate Inquiry recommended that an objects clause be inserted, but made no findings that the objects or provisions of the Bill should address any substantive issues, such as environmental and informed consent concerns.
32 The Senate Committee has recommended that the minister be under an obligation to respond to written submissions.
33 Section 21 of the NRWM Bill. The 2010 Senate Inquiry recommended that this provision be mandatory, but did not recommend that such a committee be established prior to a selection of a site.
34 Schedule 2 of the NRWM Bill

The reality of the Commonwealth Government's claim to "restoring procedural fairness" can be seen by considering that non-Aboriginal people in urban areas are given more rights to be involved in decisions about the building of a fence by someone living in the next suburb, then Aboriginal people have to be involved in decisions about burying radioactive waste on their own land, containing sacred sites, Dreamings and their hope for a future.

CONCLUSION

The current NRWM Bill, if passed in its current form, simply misleads the public in its claim to be "voluntary" or to restore "procedural fairness". It quite specifically seeks to undermine the chances of a Traditional Owner preventing their Land Council from nominating land without their consent.

Furthermore, it continues the complete exclusion of appropriate strategic environmental assessment and ongoing rigorous regulation of an activity which by its nature requires constant vigilance and scrutiny for 100s to 1000s of years.

Legislation that allows for decisions to be made to acquire Aboriginal Land and site radioactive waste with absolute unfettered powers and discretion by both Land Councils and Commonwealth Ministers must set alarm bells ringing amongst the community, particularly those concerned with basic justice, the rule of law, and indigenous rights.

The selection of a site for the storage of Australia's nuclear waste could not be a more significant and serious issue, most obviously due to the health and environmental risks associated with radioactive material. The process by which the site is selected can only be one that is held to the highest standard of accountability, in order to manage and mitigate those fears and concerns held by both Traditional Owners and the wider Australian public. The process established by the NRWM Bill as it currently stands is not one such process.