

**SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL COMMITTEE INQUIRY
RE NATIONAL RADIOACTIVE WASTE MANAGEMENT BILL 2010, AND NOMINATION OF
MUCKATY STATION AS HOST SITE**

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People for Nuclear Disarmament (WA) began in 1982 as a Perth-based organisation to promote nuclear disarmament as an essential step towards general disarmament and world peace. It was originally formed as a coalition of individuals and peace, indigenous, professional, faith-based and trade union groups. Today it continues to focus on the abolition of nuclear weapons as part of a global culture of non-violence. Our organisation's concerns address the entire nuclear fuel chain as we understand the linkage between nuclear weapons, nuclear power, uranium mining and radioactive wastes.

In our goal to promote a culture of non-violence, we seek in this submission to stand up for the rights of the First People of this land in relation to the treatment of Australia's nuclear waste. Hence PND (WA) feels compelled to respond to the **National Radioactive Waste Management Bill 2010 (NRWMB 2010)** which we see as designed in part to override the deep cultural beliefs and other concerns of the majority of traditional owners of Muckaty Station near Tennant Creek in the Northern Territory. There are other rights that would be treated poorly in terms of certain existing NT, and Commonwealth laws should this Bill be enacted. The new Bill has to some extent the same coercive nature as the Act it is intended to displace.

We thank the Senate Legal and Constitutional Committee Inquiry for the opportunity to comment on this new Bill, and to ask questions about whether it would deal properly with the many shortcomings of the **Commonwealth Radioactive Waste Act 2005 (CRWMA 2005)** that it is intended to replace.

On February 24 this year when Resources and Energy Minister Martin Ferguson introduced to the Australian Parliament his **NRWMB 2010**, he claimed that this move honoured Labor's promise to repeal the Howard Government's CRWMA 2005. He stated (in a letter of 26 Feb 2010 to Judy Blyth) that his Bill "does not impose a radioactive waste management facility on a community in any State or Territory, but does recognise that the previously volunteered Ngapa land on Muckaty Station has the continuing support of the Ngapa clan and the Full Council of the Northern Land Council."

The Minister's media release (23 Feb 2010) stated the proposed legislation "provides proper process to finally establish a purpose-built facility for managing radioactive waste generated by Australia's medical, industrial, agricultural and research use of nuclear material" and would mean that a site could no longer be automatically imposed on a community in any State or Territory. He correctly stated that the three sites formerly considered on Defence land in the NT (under Howard) had been ruled out – and that the Bill requires the volunteering of a prospective site by landowners. He puts great store on the fact that Muckaty was voluntarily offered (by Amy Lauder, a Ngapa Traditional Owner who is supported by some others in that clan along with the Northern Land Council) – and has revealed that the Commonwealth entered into a **Site Nomination Deed** in relation to that land. However, his

statement that “Affected landowners and communities must be consulted” does not sit well with his history of relating to the **traditional owners (TOs)** of Muckaty Station. His preferred site would have to be on Muckaty – and indeed it is the only site under consideration at this time. His third point in the media release - that the Bill “restores procedural fairness rights that were stripped away by the Howard Government - has to be disputed, as does his fourth point, that the Bill “ensures that the selected site will go through full environmental, heritage and other approval processes.”

The Bill is crafted to enable the Commonwealth to accept the nomination of Ngapa land on Muckaty Station for the waste facility – and also for future nomination of Ngapa land by the NLC (if Ngapa TOs so wish.) The Ngapa clan itself is divided over the prospect of the dump, and is only one of five clans that have traditional ownership of Muckaty land. All those with a cultural stake there should be properly consulted. Complaints have come from TOs who oppose the dump that the NLC will not talk to them, but instead only to government officials. To such divisive tactics can be added the use of a secret anthropological report to further divide the Muckaty community.

Minister Ferguson’s media release emphasised the need to deal with radioactive wastes generated through medical procedures using radioisotopes produced by the research reactor at Lucas Heights. However the Medical Association for Prevention of War has explained why the reactor is not necessary to meet Australia’s nuclear medical needs. These can be otherwise sustained by imported and local isotope generation as happens already whenever Lucas Heights shuts down for maintenance. Australian medical prowess includes MRIs, advanced CT ultrasound and positron emission tomography and other non-reactor technology. Hence the moral pressure put on the Muckaty TOs and other Australians to accept a single national dump because of the generation of medical radioactive wastes is not genuine.

There are too many similarities between the new NRWMB 2010 and the repealed CRWMA 2005 for any sort of comfort. The following problems have been identified:

S.11 of the Bill overrides all state and territory laws that regulate or prohibit nuclear waste dumps.

S.12 of the Bill directly overrides the **Aboriginal and Torres Strait Islander Heritage Protection Act 1984** in a similar manner to the Howard-era Act. It also overrides the **Environment Protection and Biodiversity Conservation Act 1999** to prevent the Environment Minister from having any role in the site selection process – until *after* a site has been selected for the dump. Only then can Peter Garrett exercise his role in determining whether the environmental impact of the waste dump is significant. How much better it would be to apply that process at an earlier stage.

Both ss. 11 and 12 are exact copies of the comparable sections of the Howard-era Act, with the exception that Minister Ferguson’s overriding of state and territory laws is even wider in scope than under the CRWMA.

The majority of Muckaty TOs remain distressed by the familiar situation they continue to face, but are not going to give up their long battle to preserve their traditional country from becoming a storage place for Australian radioactive wastes. A Tennant Creek meeting on 3 March this year strongly confirmed this position. The outcome has been a call around the

nation to action as happened in the Noonkanbah struggle in WA back in 1979. How much better it would be if these people were treated with the dignity and respect that they deserve through a comprehensive community-wide consultation process – instead of a narrow channel of communication with the selected few from the Ngapa clan and the NLC.

It has to be faced that the **NRWMB 2010** as introduced by Martin Ferguson, Minister for Resources and Energy has a sad and sordidly divisive background. It needs to be assessed against this history which in its broad sense includes the treatment of Aboriginal people throughout this land during the British nuclear tests of the 1950s and '60s (and the supposed rehabilitation of those lands), the mining of uranium on indigenous traditional country and the saga of searching Australia for sites for disposal of radioactive wastes.

A proposed 1.5 square kilometre site in Muckaty is now the focus of this quest, it being the only place now being considered for a national radioactive waste facility for this country. The waste to be stored would come from 105 sites around Australia where it is currently stored, but the largest part of that would come from the Lucas Heights reactors south of Sydney. This would include waste from those reactors once it is finally reprocessed in Scotland and France and returned to Australia in 2015-2016. Tonnes of plutonium-contaminated waste buried in shallow unlined pits at the Maralinga nuclear test site in SA could also be transported to Muckaty if the facility is built there – against the wishes of the majority of TOs. This would all be possible under the **NRWMB** if it passed into Australian law.

The Bill's predecessor, the **CRWMA 2005** and its associated **Amendments 2006** arose after the Howard Government's unsuccessful attempts to build a national radioactive waste facility in SA). This parcel of legislation with its various coercive measures, would also have facilitated the building of such a facility in the NT, and was opposed by the NT Government at that time. The Amendments allowed the **Aboriginal Land Rights Act** to be overridden, hence informed consent of all affected people was not required, and site nominations from Land Councils would be valid even without consultation with or consent from traditional owners.

In 2007, Amy Lauder of the Ngapa clan (one of five clans in Muckaty country) declared that she was happy to nominate Muckaty as a site. The one-off \$12 million payment to her people would help them for generations, she thought, making good roads, schools, access to water and health care possible. Infrastructure like this is taken for granted by most Australians – but for the First People, to have such benefits, it seems some must trade off their country and culture. Amy was on the Northern Land Council (NLC) which proceeded with the nomination. Its CEO is appointed by the Government and it was easily influenced by federal government bureaucrats. While some in the Ngapa clan agreed with Amy, others did not, siding with a large number of TOs from the other Muckaty clans.

Julie Bishop, then Minister for Science accepted the NLC's nomination of Muckaty in September 2007 despite strong opposition from the TOs in the **Muckaty Land Trust**. Labor's Senator Carr reiterated Labor's intention, if it won government, to repeal the **CRWMA 2005** and to establish a consensual process of site selection and a scientific process to determine if a site was suitable.

As well as the TO's objections to the use of Muckaty, strong opposition continued from the NT Government, and from other people around Australia, appalled at the coercive methods being used over unwilling TOs. There were other concerns too – like the long transport

routes for such dangerous radioactive materials to this remote site, out-of-sight and too easily forgotten by the rest of Australia and so convenient that there would be little incentive to resolve the waste problem by minimising its production in the first place.

In March 2007, there had been a meeting of representatives of the five groups with rights to speak for Muckaty Station and surrounding country. All the TOs present were strongly opposed to the nomination of land for the dump, and made the following statement signed by 14 or 15 TOs: *“We request that the NLC organise and fund a meeting for all Muckaty TOs (approximately 400 people) to attend so that we can all talk openly and straight up. We want the meeting to be held at the proposed dump site. Invitations will be forwarded to a representative from the Central Land Council, a representative from Elliot McAdam’s office, local and national media and independent speakers we will nominate. We also invite all the full NLC members and request that NLC CEO Norman Fry and Chairman John Daly attend the meeting in person. Given the urgency of this national issue, we would like this meeting to take place in the next two months.... In the meantime we request that the NLC halt all negotiations with Muckaty TOs and the Commonwealth Government until this meeting has been held.”*

As the Federal Government had not held this requested public meeting to inform the community about what was going on, Nat Wasley from the Arid Lands Environment Centre in Alice Springs, responded to requests from the community to organise a forum in November 2007. This enabled Tennant Creek and district residents to learn more about the implications of hosting the dump and to discuss the proposal with other community members and with high profile nuclear industry researchers.

Among the speakers was famous Australian paediatrician, Dr Helen Caldicott who said, *“Storing radioactive waste at Muckaty would expose inhabitants and surrounding people to radioactive material in water and food. This would put them at risk of developing cancer and their kids at risk of developing congenital deformities, as well as exposing future generations to high level cancers and genetic disease. Under no circumstances must Australia allow the world’s radioactive waste to be stored in this country.”*

Ms Wasley found that most people in the community felt they had not been adequately consulted or informed about the proposal to use Muckaty land. Some reported to her that they had been told that the waste would only comprise hospital gloves and plastic bags.

The November 2007 meeting would have helped the TOs to understand more about the nature of radioactive wastes, what they mean for health and how they can damage the environment. Some have a half-life of 25,000 years – and remain dangerous for 250,000 years. The Ngapa were told that they could reclaim their 1.5 square kilometres of Muckaty land after a mere 200 years. Who was going to guard that waste for the following eons?

Famously, the CRWMA 2005 was described by ALP politicians when in Opposition as ‘draconian’, ‘sordid’, ‘arrogant’ and ‘profoundly shameful’.

Prior to the 2007 Federal election, a number of senior Labor Ministers and Senators (including Senator Trish Crossin who Chairs this Inquiry) pledged that upon achieving government, they would see to the repeal of the CRWMA. That group included Senator Carr, Shadow Minister for Industry, Innovation, Science and Research, and MP Warren Snowdon, Member for Lingiari and Shadow

Parliamentary Secretary for Northern Australia and Indigenous Affairs. Their joint statement committed Federal Labor to:

- Legislate to restore transparency, accountability and procedural fairness including the right of access to appeal mechanisms in any decisions in relation the siting of any nuclear waste facilities;
- Ensure that any proposal for the siting of a nuclear waste facility on Aboriginal Land in the Northern Territory would adhere to the requirements that exist under the Aboriginal Land Rights, Northern Territory Act (ALRA);
- Restore the balance and, pending contractual obligation, will not proceed with the establishment of a nuclear waste facility on or off Aboriginal land until the rights removed by the Howard government are restored and a proper and agreed site selection process is carried out; and
- Not arbitrarily impose a nuclear waste facility without agreement on any community, anywhere in Australia.

These humane and enlightened commitments became the ALP's Federal election platform in 2007 - but what signs have followed since Labor's election of a "consensual process of site selection" ?

In April 2008, at the ALP's conference in the NT, a resolution was passed : *"Conference understands the nomination of Muckaty as a potential radioactive dump site, made under CRWMA legislation, was **not made with the full and informed consent of all the traditional owners and affected people, and as such does not comply with the Aboriginal Land Rights Act. Conference calls for the Muckaty nomination to be repealed when the CRWMA legislation is overturned.**"*

While Minister Ferguson is indeed repealing the CRWMA 2005, his proposed replacement Bill is incompatible in essential matters with Labor's clearly expressed commitments. His Bill seems to be more a matter of recycling the old Act than making the real changes that proper process demands. The NT Government asked the Rudd Government to renounce any plans for a radioactive dump in the NT.

Proper process involves proper and comprehensive consultation – and this is something that Minister Ferguson seems to have ignored or avoided in the past. In October 2008, TOs from the Muckaty Land Trust went to Melbourne to participate in the **International Indigenous Solidarity Conference** which enthusiastically agreed to a resolution calling for the CRWMA 2005 to be repealed. The Muckaty TOs on that same trip went to Minister Martin Ferguson's office to personally invite him to visit Muckaty for face-to-face consultations and to show him why it is of such significance to them and to explain why the nuclear waste facility was incompatible with that. The invitation fell on deaf ears, underling the frustration felt by these TOs that they were neither being properly informed nor consulted by the Federal Government. This is part of the great sadness of this saga – that these First People of this land, despite Prime Minister Rudd's wonderful "Sorry speech" have not been treated with due dignity and respect.

In May 2009, 57 Muckaty TOs tried again to invite Minister Ferguson to their country. This time they signed a major statement begging the Minister (and also Environment Minister, Senator Garrett) to come to their country for a first hand experience that would explain their opposition to the siting of waste facility there. Of those 57 signatories, 25 were Ngapa TOs,

underlining again the division within that clan over this appallingly managed issue. Still Minister Ferguson failed to visit Muckaty and its TOs. The appeal by the 57 was presented in the Senate in October 2009 by Senator Scott Ludlam. There is no way that its strong appeal for respectful consultations with the Minister could have escaped Mr Ferguson's attention – or all the other appeals sent to him from stressed TOs over the long years that this issue has confronted them.

Stress, as the Public Health Association of Australia warned in its submission on the CRWMA some years ago, is very bad for health of those who are daily struggling uphill to stop the dump being built in their country. So much is at stake for these people from the Muckaty clans of Ngapa, Yapa Yapa, Wirntiku, Ngarrka and Milwayi. It is clear that Amy Lauder did not speak for them. They wanted her to attend a **March 3 meeting this year in Tennant Creek** where the whole issue was again to be discussed, hoping that she would speak before other speakers who opposed her position (Mark Lane, Dianne Stokes, Sammy Sambo) – but this did not happen. Over 100 people attended the Tennant Creek meeting unanimously calling for national action (similar to the Noonkanbah action in 1979 in WA) to demonstrate the depth of indigenous despair about the proposed use of Muckaty country for the dump. They are concerned about health and environmental implications and have cultural objections because they want to protect sacred tribal country.

On that same date, March 3, some of the pro-dump Ngapa people along with the NLC, met Minister Ferguson in Darwin. Presumably Amy Lauder was there too. Kim Hill, the NLC's chief negotiator has stated that the Ngapa clan would seek more Commonwealth funding as the site assessment progressed.

These two different meetings on March 3 again demonstrated deep divisions in the Muckaty community – just as the Central Land Council warned would be the case unless proper, inclusive, respectful consultations were pursued.

What does PND (WA) think should happen next?

1. The NRWMB 2010 should be redrafted to ensure it is compatible with Labor's policy as promised in the last Federal election. Australia should re-examine the whole question of whether a national radioactive waste dump is necessary and the best way to manage these wastes, and also address the issue of the suitability of such a remote storage sites as Muckaty. Secure above-ground storage as near as possible to where the waste is created should be considered as a means of minimising transport of this dangerous material and for monitoring and maintaining its safety once stored.
2. We should look at ways to minimise production of radioactive wastes. It is good that medical advances are moving beyond the need for radioisotopes. This progress undermines the moral argument that is used to convince communities to agree to host radioactive waste dumps.
3. Community acceptance, based on informed consent, is essential before a dump should be built anywhere.

4. The politics should be taken out of the process of site selection – except in the matter of Labor fulfilling its promise.
 5. *If* Muckaty is going to be the only option under consideration despite the above, then full, inclusive, transparent community consultation should take place involving all TOs with a cultural stake in Muckaty country. Tactics that have divided them must be removed from the process. The real implications of hosting a national radioactive waste facility must be officially and accurately explained to the TOs. There should be no coercion in this process.
 6. Regarding Minister Ferguson’s revelation that the Commonwealth entered into a **Site Nomination Deed** (with a limited selection of Ngapa TOs and the NLC), this needs to be revisited as it has not been based upon full consultation with all relevant TOs. The new Bill recognises the volunteer nomination of Muckaty, but not that this nomination arose from a minority of stakeholders. This gross unfairness and the signed contract need to be undone, and a reformed process (as per point 5) instigated by the Federal Government.
 7. A transparent, accountable, scientific process must assess the proposed site – including seismic evidence of instability. The guarding of the waste for as long as it is dangerous should be satisfactorily addressed. Recent earthquakes have raised further questions as to the safety of the Muckaty site.
 8. A proper appeal mechanism should be made available to those who feel unjustly treated by any decision to go ahead with building the waste facility. Their right to challenge nominations must be properly taken into account.
9. Should the Muckaty site be finally decided upon, international best scientific practice at managing radioactive waste must underpin its building and running. Issues of transporting nuclear materials to the site, secure storage at the site, and the safety of surrounding community must all be adequately addressed.

This submission has been prepared for PND (WA) by Committee Member Judy Blyth of 30 Troy Terrace, Daglish WA 6008.

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