

## Consultation, Constraints and Norms: The Case of Nuclear Waste

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*The objectives of public consultation can clash with other policy objectives, partly because the norms underpinning public consultation clash with other institutional norms within the policy process. This phenomenon is evident in the case of selecting a site for a low-level nuclear waste disposal facility in Australia. This case shows how the results of consultation processes are moulded by the process design, which in turn is constrained by a range of policy process norms to which governments adhere. The case confirms some recent critiques of participatory practices. It also suggests that reconciling potentially competing policy process norms will be an important exercise in institutional design if elected representatives wish to mitigate citizens' alienation from their governments.*

Community consultation is meant to be a touchstone of modern democracy. It is supposed to make government both more responsive to the community and more legitimate in the eyes of that community. Questions about the place of public participation in modern democracy have spawned a literature that spans politics, public administration and planning (Arnstein 1969; Dryzek 1990; Painter 1992; Habermas 1996; Steelman and Ascher 1997; Uhr 1998; Smith and Wales 2000; Wagle 2000; Walters *et al.* 2000; Young 2000; Keating *et al.* 2001; Young 2001). One of the reasons that this topic engenders debate is that there are governance norms that may work against public participation. How is the desire of governments to consult citizens both tempered by, and reconciled with, other policy process norms to which governments might adhere?

That there are norms and constraints that may limit public consultation is an idea seldom articulated beyond simplistic suggestions that governments dislike consultation because it slows policy implementation, increases costs, and might produce results not consistent with the preferences of governing elites. This paper therefore begins by outlining some of the

constraints and norms that cut across attempts to utilise civic engagement. The following section describes the problem of nuclear waste, particularly low-level waste, and the process followed in Australia to try and resolve the issues facing Australia's national and state governments in this area. I then turn to a critique of the role of public participation in the process, before addressing the question of how the desire for consultation interacts with other norms in the policy process, illustrating the issues using the nuclear waste case.

### The Constraints on Community Consultation

At least four phenomena work to constrain civic engagement in policy processes. First, there is the complexity of public consultation itself, and ambivalence toward how it can play an effective role in public sector management. The nature of public participation depends on the nature of the issue and the purpose of consultation (Walters *et al.* 2000:350). The costs and benefits of consultation need to be weighed against each other (Byrne and Davis 1998), and effective consultation processes are likely to be carefully

linked to specific outcomes (Bridgman and Davis 1998). It also seems clear that 'people's capacity to be involved in a participatory process is often pre-determined by the type of process itself' (Buchy and Race 2001:295). The design of consultation processes is thus critical, but must be mediated by the objectives governments are trying to achieve. Public consultation, inappropriately pursued, will not enhance policy coherence or policy legitimacy.

Second, the ability of public input to contribute to policy outcomes is increasingly constrained by multilateral commitments made by governments, and by the need to collaborate with other institutions or to devolve responsibilities (Wanna and Keating 2000). National policy sovereignty is attenuated by accession to international treaties and memberships of international networks, as well as through devolution, contracting out and marketisation. Government commitment to the norms underpinning these processes limits the capacity to develop policy responses to public pressure (Bauman 1998). Governments actively pursue such attenuation of sovereignty not only in support of domestic values, but also in order deliberately to limit the breadth of their responsibilities, as they struggle to maintain credibility in their capacity to govern.

In Australia, as in an increasing number of other countries, national policy sovereignty is constrained not only by international agreements and devolutionary practices. It is also deliberately attenuated by the rules and norms of federalism. Federalism imposes significant constraints upon community consultation, but not primarily through the division of powers, nor fiscal arrangements (the most-discussed features of Australian federalism). Rather, federal systems demand political bargains be struck between jurisdictions on many policy matters. This is particularly true in systems such as Australia's in which most powers are held concurrently by different levels of governments, rather than exclusively by either centre or region. The sensitive political calculus underpinning inter-governmental bargains in a federation may be easily upset by attempts to change the deals that are struck, making public consultation a high-risk activity. Commitment to the norms of federalism can thus constrain the state's ability to be responsive to civil society, particularly at the level of individual issues or decisions.

Third, in the specific cases of what are termed locally unwanted land uses, experience to date may encourage governments to site facilities in remote locations, simply to minimise exposure to consultation and controversy. Active local resistance to unwanted facilities drops very quickly with distance from proposed sites, and as a result some have suggested there will be increasing preference for remote sites on the part of governments that desire to avoid community conflict (Lober 1995:513). It is also suggested that regional remoteness and economic disadvantage or dislocation will be associated with increased willingness to host such facilities and that acceptance of hazardous materials facilities increases with experience of similar facilities (Gerrard 1994). The increasingly contentious politics of siting industries is a symptom of a growing concern with the distribution of 'bads' — of environmental burdens — in contrast to traditional concern with the distribution of goods and economic benefits. This shifting emphasis challenges conventional decision-making processes and politics. It also marks the emergence of NIMBY (not in my backyard) politics, which acts both as a force within community consultation, but also as a constraint upon it, as local communities clash with broader publics.

Fourth, the growing importance attached to risks produced by industrial society encourages increasing reliance on the scientific and technical management of those risks. The value of 'sound science' in the policy process is a norm with a long history in domestic and international policy processes, but it is also problematic (McCormick 1989; Doern and Reed 2000; Skogstad forthcoming). It creates an additional constraint limiting the capacity of governments to respond to the feedback they get from civic participation. The more they believe they must be guided by technical and scientific parameters, the less they feel able to react to community preferences that seem to differ from the expert advice they are getting. But this in turn tends to create tension between scientific and popular constructions of risks as science is pluralised (MacDonald 2000:163) and governments try to continue to anchor policy to traditional models of scientific knowledge (Holland and Kellow 2001). Scientific arguments get pitted against community opinion, limiting the impact of that opinion on the decisions that governments seek to ground

in science. At the same time, reliance on science can also be controversial, as the science of industrial modernity becomes more complex and scientific knowledge harder to acquire (Beck 1992; Schedler and Glastra 2001).

As will become clear, each of these norms or constraints is evident in the processes used in Australia to deal with policy and decision-making in the area of nuclear waste. Australia recently endeavoured to solve its main nuclear waste problem: the disposal of low-level nuclear waste. It is currently engaged in a process to site intermediate waste, and has rejected a proposal for high-level waste disposal in this country. This summary focuses on the low-level waste siting process. I have written about the high-level waste debate elsewhere (Holland 2002). Before describing and analysing the case, the next section briefly characterises the nuclear waste issue.

### Australia's Nuclear Waste

Nuclear waste can be categorised in different ways (Berkhout 1991:8). The distinction drawn in this paper is based on discrimination between treatment pathways and final management options. From this perspective, there are three types of radioactive waste. The first is high-level waste (HLW), which is either spent nuclear fuel, or if the fuel is reprocessed, HLW is a waste product of that treatment: though controversial, the only disposal option still countenanced for HLW is deep geological disposal (Carter 1987; Blowers *et al.* 1991:12; Schrader-Frechette 1993). Then there are intermediate-level wastes (ILW), which are by-products of reprocessing as well as including some wastes produced by nuclear reactor operation: long lived ILW must be stored or be destined for deep geological disposal, while short-lived ILW may be stored for long periods until its radioactivity has decayed to levels that allow shallow burial as a disposal strategy. The last category is low-level waste (LLW), which includes lightly contaminated materials associated with nuclear plant operations: laboratory equipment, clothing, and most of the construction waste produced as a result of nuclear plant decommissioning. These may be disposed of using shallow burial in drums at a dedicated site, or in some cases through burial in conventional landfills (Blowers *et al.* 1991:10).

Australia produces a small amount of nuclear waste compared to most OECD countries. The reason it generates little waste is that Australia, while exporting large quantities of uranium, does not generate nuclear power. The only nuclear reactor in Australia, at Lucas Heights near Sydney, is operated by the Australian Nuclear Science and Technology Organisation (ANSTO) and is used for experimental purposes and medical radioisotope production (ANSTO 2000). It is one of the major sources of existing nuclear waste, and by far the main producer of new waste.

ANSTO manages high-level nuclear material (the Lucas Heights reactor fuel rods),<sup>1</sup> intermediate level waste (particularly liquid waste produced through the production of molybdenum-99) and low level waste. ANSTO had around 5000 drums of LLW in storage in 2000 (ANSTO 1999, 2000). While ANSTO is, directly or indirectly, the source of almost all new radioactive waste in Australia, there are other sources of low-level waste, the most substantial being 2000 cubic metres of contaminated soil currently stored at Woomera, which originated in Victoria (BRS 1997:1).

### The LLW siting process

Both Commonwealth and State governments have responsibilities with respect to nuclear materials, and both would have to be involved in choosing locations for LLW storage or disposal. The dynamics of federalism thus provided the first layer of constraint on the policy process. A Commonwealth-State Consultative Committee on the management of radioactive waste was established in 1980, and it recommended that a 'national program be initiated to identify potentially suitable sites for a national near-surface radioactive waste repository in 1985' (DPIE 1995:17). The Australian Science and Technology Council also supported the creation of sites for low-level disposal in its 1984 report (ASTEC 1984). A pilot study into a Northern Territory site was initiated in 1988 and completed in 1989, but the Territory government subsequently indicated it had decided not to host a site (BRS 1997:2). Inter-governmental discussions about a *single* national nuclear waste repository were officially initiated in 1991 (NRIC 1992), though by that time Western Australia had decided to operate its own facility.

The technical studies for selecting a site for a LLW facility in Australia began in June 1992 (DPIE 1992; NRIC 1992). It was originally set out as a three-phase process that was to begin in mid-1992 and lead to a recommendation of a preferred site in 1994. The first phase involved developing a methodology for evaluating the suitability of sites, applying it at a national level, and releasing the results for public discussion (NRIC 1992). This involved the creation of a cutting edge decision-support system, a version of which continues to be used to support siting processes (Veitch 2000). The second phase involved describing the selection of a 'short list' of areas for more detailed investigation at a regional level (NRIC 1994). The third phase involved the analysis of the data and of public comment, leading to the selection of one preferred region for detailed assessment (BRS 1997). A number of sites were then chosen for on-the-ground hydrogeological assessment, culminating in several technical surveys (BRS 2001a, 2001b, 2001c).

At each stage of the process (in 1992, 1995 and 1997) a report was circulated for public comment. 1300 copies of the first report were circulated, eliciting 124 submissions (52 of them form letters); 1850 copies of the second report were circulated, eliciting 45 submissions; over 2000 copies of the third report were distributed eliciting 69 submissions. Reports were prepared in response to each phase of feedback (DPIE 1993, 1995; DISR 1999)

The criteria used by the National Resource Information Centre (NRIC) to construct the GIS-based decision support tool paralleled the site selection criteria set out in the National Health and Medical Research Council's *Code of Practice for the Near-Surface Disposal of Radioactive Waste in Australia* (NHMRC 1992), which was approved by the NHMRC in November 1992. The NHMRC's Radioactive Wastes Classification Panel prepared the Code. This comprised four people: two members of the Australian Radiation Laboratory, one member from ANSTO, and one from the West Australian Health Department. Despite the fairly technical focus of both the panel membership and the organisation under the auspices of which the Code was prepared, the Code ranges very widely in what it covers. It sets out criteria not only for the safe design and operation of a disposal site (which one might expect), but also for the

selection of the site and a range of regulatory and other considerations. The Code was the source of the criteria used in the assessment exercise undertaken by NRIC (NRIC 1992:3, 1994:3–4). The Code itself was based 'on international siting criteria' (DISR 1999:30) (though that document does not indicate what these are) and was not the subject of a formal public consultation process.

As with everything to do with the nuclear industries anywhere in the world, the originally envisaged time frame for the process was significantly over-run. The phase two discussion paper, originally meant to be released in late 1992, was not published until 1994, and the report on public comment on phase two was not released until 1995, by which time the most suitable site was already supposed to have been selected on the original timetable. During 1995, however, the federal government did move some LLW to interim storage in the Woomera Prohibited Area in outback South Australia (Minchin 2001) following a court order requiring it be moved from Lucas Heights (*Council of the Shire of Sutherland v ANSTO*. NSW Land and Environment Court No. 40215/91). This included contaminated soil from a former CSIRO research site at Fisherman's Bend in Victoria (Bureau of Resource Sciences 1997:1). The shipment came at an unfortunate time, having to be made in the middle of the process for choosing what would in fact be the final location for the material. It was intensely controversial, and criticised by the South Australian government (Anonymous 1995a, 1995b, 1995c, 1995d; Wotton, South Australia House of Assembly, 15 November 1994:96).

While South Australia was busy protesting about the imposition of this waste, however, one community — Mount Isa — had indicated an interest in hosting the LLW facility (Anonymous 1993, 1994), and this region was thus included in the phase two assessment process. A waste facility already existed in Western Australia and there were community suggestions it might be suitable as a national repository, while similar suggestions were made regarding the Maralinga region. This resulted in the inclusion of Jackson (Western Australia) and Maralinga (South Australia) regions in the regional assessment process (NRIC 1994:9). All these suggested regions were eliminated in the phase two process. It was not that there was evidence that

those regions were unsuitable for a site. Rather, most sites that were eliminated were ruled out on the basis of either missing information (particularly about hydrology) or the problems of providing transport infrastructure.

The phase two study indicated that all eight regions assessed in phase two 'are likely to contain highly suitable repository sites' (NRIC 1994:14). Nevertheless there was no recommendation for more detailed investigation of two or more locations, nor a call for expressions of interest from communities or government that lay within the eight regions. The study group recommended that one region be subjected to more detailed assessment, and that happened to be the region to which the LLW had been shipped from Lucas Heights. The criteria recommended by the study group as the basis on which to select the one preferred region were 'transport access, existing infrastructure, water quality and land ownership' (NRIC 1994:14).

In March 1995 the Australian site selection process was further complicated by the creation of a Senate Select Committee Inquiry into the Dangers of Radioactive Waste. The conservative coalition Opposition, Greens and Australian Democrats together formed a majority on that committee, which was chaired by a South Australian Liberal senator, Grant Chapman. When it reported in April 1996 it recommended that 'a national above ground storage facility be established which has the capacity to take low, intermediate and high level radioactive waste' (Australia. Senate. Select Committee on the Dangers of Radioactive Waste 1996:134). The Preamble to the Committee's report complained about the uncooperative reaction of the Department of Industry Science and Technology to the Inquiry (p.xvi), and the report highlighted some of the problems that had been raised with that Department's (and, before it, the DPIE's) approach to dealing with low-level waste (pp.131-2). The Inquiry's report thus recommended an approach to waste disposal that contradicted the government's policy at the time.

A federal election was held shortly after the release of the report, and Howard's conservative coalition government replaced the Labor government. Once in government, the coalition's response to the Committee's report was to argue that the Committee had failed to maintain the distinction between the different categories of

nuclear waste. As a result, they reasoned, the report misinterpreted the evidence available world wide about current and accepted practices for nuclear waste disposal (BRS 1997:3). They rejected the report's finding, maintaining instead that a shallow burial repository was required for low-level waste, and that intermediate long-lived waste should be housed above ground in a custom-built facility.

The phase three discussion paper, which had once been planned for release in 1994, did not come out until November 1997 (BRS 1997). The report on public comment on the third phase discussion paper was not released until June 1999 (DISR 1999).

Following a series of meetings with stakeholders in the region, and site visits by aboriginal groups, a group of sites were selected for further investigation (Minchin 2000). Test drilling for hydrogeological assessment of sites commenced in the middle of 2000. The drilling program was intended to characterise 18 sites, from which five would then be assessed in more detail, before choosing two or three locations for the most extensive test drilling program (BRS 2001a:2). In fact just 12 sites were chosen for stage one drilling, of which 11 were actually tested. What happened next was at once an endorsement and an indictment of consultation processes for this project. From the 11 sites drilled, five performed best against the selection criteria, warranting further investigation. However, '[a]fter further consideration of the heritage significance of the sites by Aboriginal groups, and consultation with other stakeholders, none of the sites were cleared for further drilling' (BRS 2001b:2). As a result, the plan of homing in on a final site was only partly successful. The original plan had been to go from 18 sites to five to two or three, with each set being a subset of sites investigated at the previous stage. Instead the investigation proceeded from 11 to five sites that were not amongst the original 11.

The result of the consultation process at the end of the stage one drilling was that five new locations were chosen for stage two investigation. Four of them, 10a, 14a, 40a, and 45a, were close to holes bored during the stage one investigation, while the fifth, site 52a, was a new choice. It is not clear how site 52a was chosen as a 'stand in' for site 33: while relatively close together when contrasted with the distance

to the other short-listed sites, locations 33 and 52a are nevertheless 10 kilometres apart (BRS 2001b:2). Part of the explanation however may be that without it, the only site to be investigated that was within the Woomera Prohibited Area would have been 10a, and nearby site 10 had already failed to be rated as amongst the better performing sites on the selection criteria. All of the drilling reports provide evidence of a preference that the final site be located within the Prohibited Area (BRS 2001a:9; 2001b:13; 2001c:12), and it possible that this criterion played an important role in affecting the final choice. The reason given is that the Prohibited Area gives greater security and control of the site. It may also have been related to the fact that LLW had already being housed in the Prohibited Area since being shipped there from Lucas Heights in 1995.

Of the five sites that were subject to stage two drilling, three were selected for environmental assessment: 40a, 45a and 52a, the last of which was announced as the preferred site in January 2001 (Minchin 2001). Site 52a is located on pastoral lease land in the Woomera Prohibited Area, while the other two locations are on pastoral leases to the east of the Woomera–Roxby Downs Road.

The project was identified for Environmental Impact Assessment under the *Environmental Protection and Biodiversity Conservation Act 1999* in May 2001. The EIS was to cover all three drilling sites that had been rated as highly suitable during hydrogeological assessment (BRS 2001c:2). Environmental NGOs criticised the Department of Industry Science and Resources, the project proponent, for preparing to receive tenders for construction of the facility before the draft EIS had been prepared. While the process to that point had been as innovative as it had been time consuming, the project approvals process looked set to fall into a familiar pattern of adversarial relations between industry and government, and environmental and indigenous groups.

### Setting the Bounds of Consultation?

At the start of this paper, it was argued that consultation processes can be constrained by many factors not least of which is the ambivalence of governments toward civic involvement in solving what are perceived as

complex policy questions. In the case of LLW, public consultation was deliberately limited to the siting decision (rather than extending to the underlying nuclear waste policy), as the government sought to keep the policy task focussed on delivering a particular outcome (a single preferred site that could be subject to environmental assessment). The desire to keep the process focussed in this way was probably a product of the controversial and divisive nature of nuclear issues in Australia. The party in government federally at the time the LLW process was set in train (Labor) was internally divided on policy in this area (Holland 2002). The conservatives also faced political problems, as the siting process caused conflict between South Australia, governed by conservatives, and the federal government (also conservative since 1996). In this environment few governments, State or federal, would have been relishing the prospect of giving community organisations and party factions a new platform from which to voice their views about nuclear policy.

The reaction of successive governments to these concerns was to try and confine the consultation process to site selection within a specific decision-making framework. This narrow focus did not reflect the concerns individuals and interest groups had about the issue. This is evident in the extent to which the public submissions, made in response to the various discussion papers, provided input that fell outside the scope of the process. The tight focus of the process is also evident in the poor response rate to the discussion papers. Excluding the form letters submitted in response to the first discussion paper, none of the documents used to elicit public input drew even 100 responses. Only one indigenous organisation (the Central Land Council) responded to the phase two discussion paper, which might be regarded as the stage at which it was most important to identify indigenous concerns (DPIE 1995:46). Other strategies of indigenous consultation were not attempted until after the single preferred site had been chosen. This was despite the fact that most regions of interest were in remote areas in which aboriginal lands, communities, and/or land claims existed (see, eg, Central Land Council Submission on Phase 2 report, September 1994), and despite the increasing importance of aboriginal title claims in the wake of the *Mabo* High Court decision. It was also despite knowing

that some aboriginal groups opposed siting the repository in their country. In December 1994, aboriginal women Emily Austin and Lois Brown had written to the Adelaide Advertiser expressing their concern about importing nuclear material to outback South Australia, saying 'How come we wonder, if [the waste] was so low grade, that they're going to all the trouble of moving it all this way'?

The government showed its determination to run the process to a particular predetermined plan in other ways. Most marked was the decision to only select one region for detailed investigation at the end of phase two. The experience of cases such as Yucca Mountain in the USA suggests that choosing only one site for detailed analysis is a high-risk strategy. The US Congress mandated the Yucca Mountain site in 1987 as the only site that would receive detailed assessment (Raeber 1989). After over a decade and a half, the site remains many years away from operation, but calls for it to be abandoned as unsuitable have been resisted (Loux 1990). The resistance by the American government agency responsible for the site (DOE) can in part be attributed to the fact that it is the only site where assessment is underway.<sup>2</sup> Abandoning it would set back the siting program by many years and cost billions of dollars, even though that may be the technically desirable option (North 1999). The Northern Territory Department of Health and Community Services was aware of the risks of selecting a single region and counselled against that course of action (NTDHACS submission, 28 September 1994). The federal government's willingness to home in on the Billa Kalina region, despite the widespread availability of potentially suitable sites in all eight regions identified in phase two, was justified on budgetary grounds, but it looked like a desire to site the waste where much of it was already located, and where the Commonwealth knew it already had established a high degree of jurisdictional control: the Woomera Prohibited Area.

Ironically, the government's concern about developing a credible policy response to the politically controversial nature of nuclear issues was a reason behind the emphasis on science and technical constraints in designing the LLW process. Because the 'public contentiousness' of the issue was important, they argued, they sought 'not to cover old ground' but to 'advance and promote debate on the issue by proposing

a *scientific* approach to the siting of a repository as a basis for public comment' (DPIE 1993:6, emphasis added).

The difficulties with this approach were evidently twofold. First, the scientific constraints left little room for community input actually to have a bearing on the process. Second, there was the question of what science would be included, and what excluded. The earlier government reports, written in response to the public comment, appear dominated by explanations of why the public were 'wrong' about various points and by appeals to science as the basis for rejecting community suggestions. In response to public suggestions, for example, the phase one report on public comment explains:

- Why it was not appropriate to consider the social and political aspects of the issues (p.6);
- Why surface storage of LLW is inappropriate (p.7)
- Why suggestions to have more than one site should be rejected (p.8)
- Perceptions that the material would be dangerous for thousands of years are incorrect (pp.10, 12)
- That it is wrong to consider spent fuel rods to be nuclear waste (p.12)
- That the chosen site should not be used to store waste from the Maralinga clean up (p.13)

And so forth. Relatively little attention was given to picking up public suggestions and giving them support, leaving the impression that the government was dismissing the feedback the process claimed to be eliciting. It seemed that a scientific approach was not easily reconciled with a preparedness to listen to public input. This approach remained in evidence through to phase three, but it was supplemented by appeals to authority and arguments that begged the questions being asked (Schrader-Frechette 1993). Some public comments met with the response that concerns had been dealt with because they were covered by one of the criterion used in the decision-support criteria and software. Others were addressed by promising that all decisions and implementation strategies would be consistent with international or domestic codes of practice, without entering into a discussion of the substance of the issues raised, or outlining what those codes contained.

The federal government demonstrated it was prepared to let its expert, science-based approach

dominate other considerations, and it was also prepared to essentially define science as excluding social science. The Assistant Secretary of the Commonwealth Environmental Protection Agency had worried that 'site selection procedures based on political or sociological factors may over-ride choices made on environmental grounds ... A decision made primarily on the basis of careful evaluation of environmental factors is necessary ...' (Phase 2 Submission, 28 September 1994). It is not clear what was meant by 'sociological factors', but he need not have been concerned. There were no systematic studies of local community attitudes to the facility at any stage, including when a single preferred region had been identified. While the government had at one point argued that 'public acceptance of the proposed repository will be an important factor in selecting a suitable site' (DPIE 1995:35), it is hard to reconcile this policy position with the design of the site selection process. The only community that volunteered to be included in the process was eliminated in phase two, while there was no search for volunteer host communities at any stage of the process despite the importance of voluntarism being well-recognised in the field of siting facilities (Kasperson *et al.* 1983; Blowers 1991:326; Gerrard 1994:178; Greber 1995:141; Inhaber 1998). It was also despite the fact that all regions identified at the end of phase one of the study had geologically, hydrologically, and climatically suitable sites available. During consultations, two state governments explicitly opposed the site being within their borders: New South Wales and South Australia. One of these ended up with the site while the other did not. Western Australia was willing to host a site under certain conditions, Queensland had not expressed explicit opposition, and a Northern Territory authority suggested that at least more than one region be considered, yet these jurisdictions were ruled out. In all, while the 'hard' science basis of the process was rigorous, neither social science nor community views appeared to figure significantly in the decision process.

### **Consultation and Competing Policy Process Norms**

In many ways, therefore, the design of the process deliberately pre-empted public concerns about the issue. This sort of strategy on the part

of the state is what led Arnstein and others to dismiss some mechanisms as manipulation of, or therapy for, the public, and thus as substitutes for 'genuine participation' (1969:217). But is it not the state's prerogative to set the terms of a policy process such as this? And are not critics like Arnstein unwilling to accept governments' policy-making responsibility implicit in the idea of representative democracy?

Purely on pragmatic grounds a case can be made to design consultation processes in ways that are sensitive to the terms of debate, and issues of concern, in the community, even if those are not the terms of debate preferred by the state. This is because communities can mobilise resources to try and impose on that process what they perceive as the appropriate issue definitions. Better to try and take account of those preferences from the outset than to find them being injected into, and undermining, a participatory strategy. There are at least two examples of communities and organised interests doing this in the LLW case. First there was the court action taken by the Sutherland Shire Council that forced the Commonwealth to move LLW away from Lucas Heights (to Woomera) in 1995. Second there was the exploitation by anti-nuclear interests of the adversarial and minor party politics of the Senate that resulted in the creation of the Senate Select Committee, and with it further delays to the site selection process. The economic costs alone of these interventions were probably greater than the costs the federal government would have incurred in running a more comprehensive consultation program. It is possible that these two 'interruptions' might not have occurred at all, had the process been designed differently from the outset. States thus may have an interest in effective consultation to minimise disruption to policy implementation.

The dilemma for governments is more fundamental however than merely one of cost and convenience. The dilemma is reconciling different concepts of what constitutes a good policy process. In the LLW case, at least four norms or objectives influenced the design of the process: compliance with nationally and internationally agreed standards, treaties and policy goals; having federally negotiated, constitutionally defensible processes; basing policy decisions on sound science; and consulting with affected parties and the public.

The challenge then becomes designing a process that somehow reconciles governments'

commitments to each of these objectives. In the LLW case it is arguable that 'sound science' and compliance with international standards were pursued only to the extent that they would support the search for a politically viable solution in a federal setting, rather than as independently desirable norms in their own right. Participatory objectives seemed not to be important, either in reaching a conclusion within the decision process, or in seeking to legitimate those decisions in the eyes of stakeholders and the broader public. The failure of the process to provide that legitimacy is suggested by the Labor opposition's assessment, during the 2001 federal election campaign, that attacking the LLW siting decision was a vote-winning stance.

Returning to the theme of Arnstein's critique, I would suggest the way in which the norms of federally negotiated politics drove the LLW process shows that participation is not something of which governments conduct more or less, driven merely by convenience or the respect they accord their citizens. Equally, public participation is not simply a matter of process design and the matching of participation strategies to participation objectives. Rather, public participation takes its place amongs potentially conflicting norms of the policy process. Commitment to some norms, such as the desirability of federally negotiated agreements, then acts as a constraint on the incorporation of other process norms, such as the desirability of community participation.

The description and analysis of the LLW case has demonstrated the way the adoption of some norms for the policy process acted to constrain the effectiveness of other norms, particularly the pursuit of public participation strategies. The question this opens up is of the future for public participation as one of several competing policy process norms. While I have argued that participation is just one feature of policy-making which governments value, the critique of the LLW process carries with it the implication that some attempts to reconcile competing norms will be less successful than others. Are particular configurations of the relationship between international commitments, scientific rigour, and public participation (and, in countries like Australia, federal negotiation and constitutional robustness) more stable than others? Are there key factors that might improve the fit between these norms, such as greater reliance on social scientific forms of knowledge

to increase the likely compatibility between the pursuit of both sound science and community participation? Or should we treat these norms as largely mutually exclusive: must the advancement of one necessitate the retreat of the others if there is to be policy coherence? Can greater commitment to international treaties fundamentally be achieved only at the expense of local autonomy? These questions are important. Currently, governments explicitly articulate in positive ways few of the norms I have described, but at the same time governments clearly design policy processes by privileging some norms at the expense of others, as shown by the LLW case. If citizens do not understand and accede to this ordering of norms (particularly the downgrading of one that seems to give them the most say — public participation), their anger about policy processes, and alienation from the politicians that choose them, will surely increase. This was a point made by Arnstein over 30 years ago which, despite the limitations of her approach to analysing participation, still stands.

## Notes

\* I would like to thank Tamsin Kerr for sparking my interest in this field, and the individuals who agreed to be interviewed for this project. Research on this project was completed while visiting the Political Science Program at ANU. The Commonwealth Department of Industry Science and Resources provided access to some materials relating to the LLW site selection process. Simon Veitch of the Bureau of Rural Sciences demonstrated the decision-support system used in the LLW process and provided other information and assistance. Thanks to Michael Howes, Genevieve Johnson, Ian Marsh, Ciaran O'Faircheallaigh, Marian Sawyer and participants in the public consultation workshop at APSA 2001 for feedback. The usual disclaimer applies.

1. This is not, according to DISR, high-level *waste*. The fuel rods will be reprocessed, and DISR regards the resultant material as classified as long-lived intermediate-level waste. This is on the grounds that it does not generate sufficient energy — high-level waste classification is to be confined to materials produced by reprocessing commercial reactor wastes.
2. There are other reasons for the intensity of resistance to the proposed site. Most citizens of Nevada, the state in which the site is located, are opposed to the project as has been the state government, and the constitutional question of

whether the state has the power to veto the site had not been resolved, at least as of 1993 (Schrader-Frechette, 1993:21).

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