

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Northern Land Council's evidence to the  
committee's inquiry into the provisions of  
the National Radioactive Waste Management  
Bill 2010

November 2011

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## MEMBERS OF THE COMMITTEE

### Members

Senator Patricia Crossin, **Chair**, ALP, NT

Senator Gary Humphries, **Deputy Chair**, LP, ACT

Senator Sue Boyce, LP, QLD

Senator Mark Furner, ALP, QLD

Senator Louise Pratt, ALP, WA

Senator Penny Wright, AG, SA

### Participating Member

Senator Scott Ludlam, AG, WA

### Secretariat

Ms Julie Dennett	Committee Secretary
Mr Owen Griffiths	Principal Research Officer
Ms Hannah Dibley	Administrative Officer
Ms Hanako Jones	Administrative Officer

Suite S1.61	Telephone: (02) 6277 3560
Parliament House	Fax: (02) 6277 5794
CANBERRA ACT 2600	Email: <a href="mailto:legcon.sen@aph.gov.au">legcon.sen@aph.gov.au</a>





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# REPORT TO THE SENATE

## Evidence received from the Northern Land Council in relation to the inquiry into the provisions of the National Radioactive Waste Management Bill 2010

### Background

1.1 On 25 February 2010, the Senate referred the provisions of the National Radioactive Waste Management Bill 2010 (Bill) to the Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 15 March 2010. This reporting date was later extended to 30 April 2010.<sup>1</sup> On 30 April 2010, the committee tabled an interim report which noted that the committee intended to table its final report on 7 May 2010.<sup>2</sup> On 7 May 2010, the committee tabled its final report in relation to the Bill.<sup>3</sup>

1.2 As part of the inquiry, the committee received evidence from the Northern Land Council (NLC) about consultations with relevant Indigenous traditional landowners regarding land at Muckaty Station in the Northern Territory, in relation to the nomination of that land as a potential site for the Commonwealth's proposed radioactive waste facility. The NLC provided evidence (in both its submission and during the public hearing on 30 March 2010) which indicated that only one family group had rights over the land nominated for the site.<sup>4</sup>

1.3 The evidence received by the committee concerning the Muckaty Station site nomination reflected evidence provided by the NLC in 2008 to the (then) Senate Environment, Communications and the Arts Committee's inquiry into the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008.<sup>5</sup>

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- 1 *Senate Hansard*, 25 February 2010, p. 1277. This extension followed a motion by Senator Scott Ludlam for a simultaneous referral of the Bill to the Senate Environment, Communications and the Arts Committee with a reporting date of 24 June 2010, *Senate Hansard*, 25 February 2010, p. 1243.
  - 2 Senate Legal and Constitutional Affairs Legislation Committee, *Interim Report: National Radioactive Waste Management Bill 2010 [Provisions]*, April 2010, available at [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/radioactivewaste/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/radioactivewaste/index.htm), (accessed 1 November 2011).
  - 3 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill 2010 [Provisions]*, May 2010, available at [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/radioactivewaste/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/radioactivewaste/index.htm), (accessed 1 November 2011).
  - 4 *Submission 230*, p. 4; Mr Ron Levy, NLC, *Committee Hansard*, 30 March 2010, p. 17.
  - 5 Senate Environment, Communications and the Arts Committee, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, December 2008, available at [http://www.aph.gov.au/Senate/committee/eca\\_ctte/radioactive\\_waste/index.htm](http://www.aph.gov.au/Senate/committee/eca_ctte/radioactive_waste/index.htm), (accessed 27 September 2011).

1.4 On 10 May 2011, Senator Scott Ludlam (Australian Greens, Western Australia) raised his concerns with the committee in relation to certain documents, sourced from the National Archives of Australia, which in his view 'revealed substantial inconsistencies' in the submission and evidence provided to the committee by the NLC in 2010.<sup>6</sup> Senator Ludlam was concerned that these inconsistencies were 'so great as to potentially constitute misleading the committee'. Accordingly, Senator Ludlam requested that the committee investigate:

- a) whether the committee was misled, to the extent that the NLC's submissions are contradicted by the evidence attached;
- b) whether the NLC *knowingly* misled the Committee;
- c) if so, whether a possible contempt has been committed in that regard; and
- d) whether the matter should therefore be raised with the President as a Matter of Privilege under standing order 81.<sup>7</sup>

1.5 The committee considered the matter on 12 May 2011, and resolved to write to the NLC to seek clarification regarding the evidence provided to the committee during its 2010 inquiry.<sup>8</sup> The NLC responded to the committee's request for clarification on 6 July 2011.<sup>9</sup> The committee considered the matter again on 15 September 2011 and resolved to prepare a report for the Senate in response to Senator Ludlam's concerns.

## Issues

1.6 The process of identifying an appropriate site for the disposal and storage of low and intermediate-level radioactive waste in Australia dates back to 1980.<sup>10</sup> On 7 December 2005, the Australian Government passed the *Commonwealth Radioactive Waste Management Act 2005*, to facilitate the establishment of a low-level radioactive waste facility in the Northern Territory. This legislation was later revised to allow

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6 Correspondence received from Senator Scott Ludlam dated 10 May 2011, attached at Appendix 1. The documents sourced from the National Archives of Australia are: Aboriginal Land Commissioner (ALC), *Re: Muckaty Pastoral Lease, Land Claim Number 135*, Transcript of Proceedings, 27 July 1993, p. 285; ALC, *Re: Muckaty Pastoral Lease, Land Claim Number 135*, Transcript of Proceedings, 28 July 1993, pp 325-327 and pp 332-339; ALC, *Muckaty Pastoral Lease Claim, Submissions on Behalf of the Claimants, Part 1 – Traditional Ownership and Traditional Attachment*, Northern Land Council, 1994, pp 35-36; Northern Land Council, *Anthropologist's report by Dr P. Sutton, Dr D. Nash and P. Morel*, Darwin, May 1994, pp 51-52.

7 Correspondence received from Senator Scott Ludlam dated 10 May 2011.

8 The committee's letter is attached at Appendix 2.

9 The NLC's response is attached at Appendix 3.

10 Matthew James and Ann Rann, 'Radioactive waste and spent nuclear fuel management in Australia', *Background paper*, 21 July 2011, p. 2, available at <http://www.aph.gov.au/Library/pubs/BN/sci/RadioActiveWaste.pdf>, (accessed 15 August 2011).

Indigenous Land Councils to nominate potential sites for a facility. In May 2007, the NLC, on behalf of Ngapa clan traditional owners, nominated an area 120 kilometres north of Tennant Creek on Muckaty Station in the Northern Territory. On 27 September 2007, the then Minister for Education, Science and Technology, the Hon Julie Bishop MP, accepted the nomination.

1.7 The provisions of the Bill<sup>11</sup> include the repeal and replacement of the *Commonwealth Radioactive Waste Management Act 2005*, and the restoration of some review and procedural fairness rights in the process of selecting a site for the proposed radioactive waste management facility. However, Schedule 2 of the Bill also includes a saving provision which means that, despite the repeal of the earlier legislation, the site at Muckaty Station will remain an approved site for a radioactive waste management facility.<sup>12</sup>

1.8 The question of whether all relevant traditional owners of Muckaty Station had been consulted about, and given their approval to, the Muckaty Station site nomination was 'a highly contested feature of submissions to the [committee's] inquiry' into the Bill.<sup>13</sup> In its submission to the inquiry, the NLC noted that it had 'supported the position of Ngapa traditional owners who overwhelmingly support the nomination of their country at Muckaty Station for the Commonwealth's radioactive waste facility'. On the issue of traditional ownership of the Muckaty Station site, the NLC commented:

Although objectors claim that the nomination is highly "contested", in fact it has not been disputed that the relevant Ngapa group (associated with the Lauder families) are the traditional Aboriginal owners of the nominated land.

As explained in the NLC's supplementary submission [to the Senate Environment, Communications and the Arts Committee inquiry in 2008] but ignored by objectors, there are other Ngapa groups which are responsible for other land. Under both Aboriginal tradition and the *Aboriginal Land Rights (Northern Territory) Act 1976* (and the current legislation) those Ngapa groups, although consulted, may only make decisions regarding their country.<sup>14</sup>

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11 The Bill lapsed at the end of the 42nd Parliament and was reintroduced on 21 October 2010 in the House of Representatives by the Minister for Resources, Energy and Tourism, the Hon Martin Ferguson MP. The reintroduced version of the Bill incorporates amendments recommended in the committee's majority report. This version of the Bill was passed by the House of Representatives on 22 February 2011 and is currently before the Senate.

12 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill 2010 [Provisions]*, May 2010, p. 9.

13 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill 2010 [Provisions]*, May 2010, p. 15.

14 *Submission 230*, pp 4-5.

1.9 At the public hearing on 30 March 2010, the issue of traditional ownership of the Muckaty Station site was also raised with the NLC. A NLC member and Ngapa traditional owner, told the committee:

I am a Ngapa traditional owner of Muckaty Station and I represent them today; I have got other traditional owners behind me. We have got custodians: our children, their children and their grandchildren and so on. We nominated our land in 2007. There are other groups in the land. We have five clan groups on Muckaty land itself, but at this time as Ngapa traditional owners we are just concentrating on our Ngapa site on Muckaty. Yes, the other clan groups have got rights to make a proposal, but it is our decision; it is our land. Ngapa is the main dreaming site on Muckaty itself. It is our decision and it is our land, so we nominated our land for the government's consideration.<sup>15</sup>

1.10 However, other perspectives on the issue of 'ownership' of the Muckaty Station site were also received in evidence and the disputed nature of this issue was reflected in the committee's conclusions:

A major area of contention in the present inquiry, and in the inquiry by the ECA committee [the Senate Environment, Communications and the Arts Committee] in 2008, is the extent to which all relevant traditional owners have been consulted over the nomination of Muckaty Station as a potential site for the waste facility. This issue also goes to the question of whether the consent to the Muckaty Station nomination was granted by traditional owners with the relevant authority to make decisions affecting, or to 'speak for', the land in question. The committee acknowledges the importance of these questions, and notes that the inquiry provided an opportunity for all stakeholders to put forward their views on these issues.

Despite this, the evidence received by the inquiry was not sufficient to allow the committee to reach a conclusion on these matters, which, fundamentally, must be determined by information which the committee does not have access to or is not competent to assess. In particular, the committee did not have access to the deed of agreement relating to the Muckaty Station nomination, or to anthropological reports relating to the question of traditional ownership of that country.

Further, the committee does not consider that it is its role to determine whether the consultative processes around the Muckaty Station nomination were adequate or whether the approval of traditional land owners has been adequately sought according to legal and traditional requirements. These disputes revolve around issues to do with Indigenous cultural practice and its interaction with the *Aboriginal Land Rights (Northern Territory) Act 1976*. The committee believes that ultimately these matters must be resolved in a legal forum or through a mechanism that is competent to resolve such disputes between groups of traditional owners.

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15 *Committee Hansard*, 30 March 2010, p. 15.

The committee notes that affected parties will have access to procedural fairness processes and to judicial review under the Bill, and there is provision for the establishment of regional consultative committees.<sup>16</sup>

1.11 On 9 May 2011, Maurice Blackburn Lawyers distributed a press release titled 'Fresh evidence boosts traditional owners legal challenge to Muckaty Station nuclear waste dump'.<sup>17</sup> The press release referred to National Archives of Australia documents 'unearthed' by Maurice Blackburn Lawyers which provided 'compelling new evidence that the Northern Land Council (NLC) did not correctly identify and obtain consent from the traditional owners of the land before the [Muckaty Station] site was nominated'. The press release quoted Maurice Blackburn Lawyers senior associate, Mr Martin Hyde:

The Muckaty Land Claim documents obtained from the National Archives show two things: first, that the nominated site is not exclusively owned by the Lauder family, as is claimed by the NLC and, secondly, that according to the NLC's own expert anthropological evidence tendered in the Muckaty Land Claim, all Ngapa land on Muckaty Station is owned in common by three Ngapa family subgroups and that no Ngapa land on Muckaty Station is owned by one family group. There are serious questions to be answered by the NLC in light of the information contained in these documents.<sup>18</sup>

1.12 In its response to the committee's request for clarification, the NLC commented:

In summary, the material referred to in the Chair's letter and the press release from Maurice Blackburn:

- (i) was considered by the NLC in the course of the nomination, along with other material, and had been referred to in earlier submissions by the NLC to Senate Committees;
- (ii) has been available to the public for many years; it is a mistake to think that it contains new or fresh evidence about traditional Aboriginal ownership of the nominated site, and as with the earlier land claim inquiry itself, it does not deal with that question directly;

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16 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill 2010 [Provisions]*, May 2010, pp 39-40.

17 Maurice Blackburn Lawyers, 'Fresh evidence boosts traditional owners legal challenge to Muckaty Station nuclear waste dump', *Press Release*, 9 May 2011, available at <http://www.mauriceblackburn.com.au/news/press-releases--announcements/2011/fresh-evidence-boosts-traditional-owners-legal-challenge-to-muckaty-station-nuclear-waste-dump.aspx>, (accessed 15 August 2011).

18 Maurice Blackburn Lawyers, 'Fresh evidence boosts traditional owners legal challenge to Muckaty Station nuclear waste dump', *Press Release*, 9 May 2011, available at <http://www.mauriceblackburn.com.au/news/press-releases--announcements/2011/fresh-evidence-boosts-traditional-owners-legal-challenge-to-muckaty-station-nuclear-waste-dump.aspx>, (accessed 15 August 2011).

- (iii) does not support the proposition that one Ngapa local descent group cannot be the traditional Aboriginal owners of an area of land on Muckaty Station (or elsewhere) associated with Ngapa Dreaming.<sup>19</sup>

1.13 Further, the NLC noted that a number of different and conflicting claims have been made in the Senate about the identity of the traditional owners of the nominated site:

With respect to those making these (contradictory) claims, the question of who are the traditional Aboriginal owners of any particular area is a complex one that requires consideration of a range of material. To fasten upon any particular piece of evidence in isolation, like a sentence in the 1993 claim book, is apt to mislead.<sup>20</sup>

## Conclusion

1.14 The committee recognises that this matter is currently the subject of legal proceedings before the Federal Court of Australia. This was also referred to in the NLC's response, which noted in that context that '[t]he convention of the Senate is to refrain from inquiring into matters currently before the courts'.<sup>21</sup> In the view of the committee, however, the current circumstances do *not* restrain the committee from examining and considering the issues raised by Senator Ludlam with respect to the NLC's evidence to the 2010 inquiry. The Senate's *sub judice* convention is a restriction which the Senate imposes on itself, and its committees, whereby debate on matters is avoided if it could involve a substantial danger of prejudice to proceedings before a court, unless there is a overriding requirement for the Senate to discuss matters of public interest.<sup>22</sup> The purpose of the convention is to prevent prejudice to proceedings before a court, and it does not necessarily prevent matters before a court being simultaneously considered by a Senate committee.

1.15 In any event, Senate committees have a general and ongoing role to protect the integrity of their processes. Under the Senate's resolutions, witnesses appearing before Senate committees must not give any evidence which they know to be false or misleading in a material particular, or which they do not believe on reasonable grounds to be true or substantially true in every material particular.<sup>23</sup> In some circumstances, an omission by a witness to provide relevant information to a Senate committee could raise questions about whether a committee has been misled or false evidence has been received. In the view of the committee, however, it is difficult to reach a definitive conclusion that that has occurred in this particular case.

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19 Northern Land Council, *Response to supplementary question on notice*, 6 July 2011, p. 3.

20 Northern Land Council, *Response to supplementary question on notice*, 6 July 2011, p. 5.

21 Northern Land Council, *Response to supplementary question on notice*, 6 July 2011, p. 1.

22 Harry Evans (ed), *Odgers' Australian Senate Practice*, 12<sup>th</sup> edition, 2008, p. 199.

23 Privilege Resolution 6(12)(c).



1.16 Importantly, the question of traditional ownership of the Muckaty Station site was not a focal point of the committee's inquiry into the Bill – in particular, the committee did not consider that it was its role to determine 'whether the approval of traditional land owners has been adequately sought according to legal and traditional requirements'.<sup>24</sup> The committee noted in its report that this issue 'must be determined by information which the committee does not have access to or is not competent to assess'.<sup>25</sup> While the committee's report acknowledged that it did not have access to 'anthropological reports relating to the question of traditional ownership',<sup>26</sup> the committee did not pursue those anthropological reports as part of the inquiry.

1.17 The documents referred to by Senator Ludlam may provide information relevant to the question of the identity of the traditional owners with the relevant authority to make decisions affecting, or to 'speak for', the land at the Muckaty Station site. However, these documents do not alter the committee's view, as expressed in its 2010 report, that conflicting views clearly exist regarding this issue and that 'ultimately these matters must be resolved in a legal forum or through a mechanism that is competent to resolve such disputes between groups of traditional owners'.<sup>27</sup> Accordingly, the committee cannot conclude that the evidence provided by the NLC misled its inquiry into the Bill or raises any matter of privilege for further consideration by the Senate.

**Senator Trish Crossin**  
**Chair**

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24 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill 2010 [Provisions]*, May 2010, p. 40.

25 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill 2010 [Provisions]*, May 2010, pp 39-40.

26 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill 2010 [Provisions]*, May 2010, p. 40.

27 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill 2010 [Provisions]*, May 2010, p. 40.



# DISSENTING REPORT BY THE AUSTRALIAN GREENS

1.1 The Australian Greens deeply regret that the Legal and Constitutional Affairs Committee has decided it 'cannot conclude that the evidence provided by the NLC misled its inquiry into the Bill or raises any matter of privilege for future consideration by the Senate'.

1.2 It is that the committee cannot or will not make a conclusion?

1.3 Had the Committee taken the time and opportunity to examine documents and seek expert advice on the legal questions at hand – either in camera or on the record - its conclusions might have been different. Had the Committee chosen to do so, it could have become qualified to make a determination, and thereby fulfil the mandate it set for itself to inquire into the legal and constitutional matters.

1.4 In not seeking the requisite information to allow it to properly fulfil its function, the Committee has decided to not decide.

## Background

1.5 In May 2010, after a rushed and pressured inquiry, the Legal and Constitutional Committee recommended that the Senate pass the National Radioactive Waste Management Bill.<sup>1</sup>

1.6 The Committee made its recommendation after limiting the focus of its Inquiry to, 'legal and constitutional matters, including issues relating to procedural fairness and the Bill's impacts on, and interaction with, state and territory legislation'.

1.7 The Committee recommended the Bill be passed acknowledging that it did not have access to key documents and information, in particular the deed of agreement relating to the nomination or to anthropological reports.

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1 Referred on Thursday 25 February 2010, the Committee was initially given a 15 March reporting deadline – 11 working days. That date was changed to 30 April after strong objections from the Greens. While the Committee's process was longer than the government initially intended, the short time frame for submissions was a limiting factor on all stakeholders putting forward their views. Despite this the Committee received 237 submissions that were overwhelmingly critical of the legislation, particularly the extent to which it retained one nomination, that of Muckaty, and shielded it from procedural fairness and access to judicial review. The Committee was repeatedly called to go to Tennant Creek and was unwilling to do so. Had it done so it would have helped to compensate for the fact that providing rights to Aboriginal people to be heard in written form only is prejudicial. The failure to visit Muckaty or hold a hearing in Tennant Creek questions the accuracy of claims about the process engaging all stakeholders.

1.8 The Committee was therefore forced to rely heavily on the testimony and assertions of those who did have access to those documents, the Northern Land Council (NLC).

1.9 The withheld NLC anthropology report is the basis upon which the NLC nomination of the Muckaty site rests. Apparently it assigns a particular portion of land to the Lauder clan of the Ngapa group, quite specifically. This is contrary to the findings of Justice Gray, the Land Commissioner, and his report of 18 March 1997 that Ngapa family groups 'share the same sites' and had 'commonality of land interests' on Muckaty Station.

1.10 The NLC is recognised in the May 2010 Committee report as the 'relevant representative body' and its evidence and submissions are quoted throughout. The Committee report includes NLC assertions that it had fulfilled its statutory requirement to comprehensively consult with Aboriginal Traditional Owners and that it had correctly determined the Lauder clan of the Ngapa group as the rightful owners of the Muckaty nomination.

1.11 These assertions pertain directly to the legitimacy of key provisions of the bill and issues relating to procedural fairness.

1.12 The Australian Greens do not believe these assertions are supportable, and that it is the job of this Committee to test these assertions.

1.13 Evidence taken through submissions and public hearings during the Committee's own Inquiries make it clear that the lands of Muckaty station are not carved up in the fashion the secret NLC anthropology report purports.

1.14 The basis upon which the Muckaty Land Trust was established clearly recognised overlapping and group responsibilities for this country.

1.15 The original finding of the Aboriginal Land Commission, was that there is joint and interconnected ownership between the five main groups where dreaming overlapped. This was a core reason why a single Land Trust was granted to a number of groups – Milwayi, Yapayapa, Ngarrka and perhaps the Winrtiku and Ngapa. The report explicitly stated that the site nominated for a nuclear waste repository was jointly owned by at least three of those five groups.

1.16 The documents that came to light in the National Archives on 9 May 2011 only reinforce this finding, despite the NLC dismissing this as merely a casebook. Those documents provide details about sacred places for ceremonial men's business, and detailed indications of shared ownership. They were not disclosed, explained or referenced.

1.17 If these facts contained therein are deemed irrelevant for the NLC, why have they not made better attempts to explain the discrepancy between the secret report written by Dr Peter Sutton, Dr David Nash and Petronella Morel (all current or previous NLC employees) and the prevailing opinion by every other source?

1.18 These matters are before the Federal Court for good reason. The case will no doubt draw attention to the fact that the leader of the group that supposedly has exclusive rights over the floodplain and earthquake zone of Muckaty was a member of the Full Council of the NLC at the time of the nomination, and her husband was also on the Full Council and the Executive Council.

1.19 I thank the Committee for responding to my letter that raised a question as to the extent that the NLC's submissions were contradictory to the evidence presented by eminent lawyers from the National Archive whether the NLC *knowingly* misled the Committee; if so, whether a possible contempt has been committed in that regard. I was concerned that the inconsistencies are so great as to potentially constitute the misleading of the Committee.

1.20 I continue to be concerned that the inconsistencies are so great as to potentially constitute the misleading of the Committee.

1.21 I also continue to find it a profound shock, as do many supporters of the Australian Labor Party that coercive attempts to dump radioactive waste out in 'terra nullius' did not end with the election of the Rudd Government, but have in fact picked up exactly where the former Government left off. While our leaders have changed, our Resources Minister has not.

1.22 I continue to recall that this government opened its first term with an apology and that if this legislation is allowed to proceed, it will close its second term owing another apology to Aboriginal Australians.

**Senator Scott Ludlam**

**Australian Greens**



## **APPENDIX 1**

**LETTER FROM SENATOR SCOTT LUDLAM  
TO SENATOR TRISH CROSSIN DATED 10 MAY 2011  
AND MUCKATY STATION DOCUMENTS SOURCED  
FROM THE NATIONAL ARCHIVES OF AUSTRALIA**







**SENATOR SCOTT LUDLAM**  
AUSTRALIAN GREENS  
SENATOR FOR WESTERN AUSTRALIA

Senator Trish Crossin  
Chair, Senate Legal and Constitutional Committee  
SG.37 Parliament House  
Canberra, ACT 2600

10 May 2011

Dear Senator Crossin,

I refer to you material that I believe is relevant to submissions and evidence provided to the Legal and Constitutional Committee Inquiry into the National Radioactive Waste Management Bill 2010.

I attach the documents sourced from the National Archive revealing substantial inconsistencies in submissions and evidence provided to the Committee by the Northern Land Council (NLC). I am concerned that the inconsistencies are so great as to potentially constitute the misleading of the Committee.

As you will recall, our Committee relied heavily on the testimony of NLC witnesses as their representatives had exclusive access to a 2007 anthropology report. The Committee relied on the assertions made by the NLC in their submission of 30 March 2010 and evidence provided 30 March 2010. Material at transcript L&C pages 15 – 17 are of particular relevance.

The Committee were not provided with the NLC's anthropology report, or the NLC's written submissions or transcripts of Evidence from the Muckaty Land Claim, including the documents recently found in the National Archive.

As you are aware, proceedings and documents from the 2010 Legal and Constitutional Committee Inquiry made reference to submissions and evidence provided to the 2008 Environment Communications and the Arts Committee Inquiry into the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008. The NLC's supplementary submission is relevant to this matter, as is their evidence in the transcript of 17 November 2008 ECA pages 14-19.

I request that the Committee investigate the matter, to determine:

- a) whether the committee was misled, to the extent that the NLC's submissions are contradicted by the evidence attached;
- b) whether the NLC *knowingly* misled the Committee;
- c) if so, whether a possible contempt has been committed in that regard; and
- d) whether the matter should therefore be raised with the President as a Matter of Privilege under standing order 81.

Sincerely

Senator Scott Ludlam



TRANSCRIPT  
OF PROCEEDINGS



AUSCRIPT

Brisbane  
Level 7  
294 Adelaide Street  
Brisbane QLD 4000  
PO Box 10420  
Adelaide Street  
Brisbane  
QLD 4000  
Phone (07) 221 3399  
Fax (07) 221 9546

Townsville  
Level 2  
Northtown Office  
Tower  
Flinders Mall  
Townsville QLD 4810  
GPO Box 1401  
Townsville QLD 4810  
Phone (077) 72 5762  
Fax (077) 72 3424

ABORIGINAL LAND COMMISSIONER

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JUSTICE P.R.A. GRAY

RE: MUCKATY PASTORAL LEASE  
LAND CLAIM NUMBER 135

AT VARIOUS SITES

9.38 AM, TUESDAY, 27 JULY 1993

Continued from 26.7.93

JEFFREY LAUDER: Over there.

MR HOWIE: On the west side. Righto. And what about Karakara, which is 51?

JEFFREY LAUDER: Over here.

5 MR HOWIE: You are pointing now pretty much to the south and to the east of south and whose place is that?

JEFFREY LAUDER: Japurla Japurla.

MR HOWIE: Japurla Japurla, so that's Jackson's mob too. Yes. Righto.

JEFFREY LAUDER: Warumungu.

10 MR HOWIE: Which was that one?

JEFFREY LAUDER: Warumungu.

DR NASH: Yes, it is not on the map.

JEFFREY LAUDER: Number 2.

MR HOWIE: It's number 2 bore.

15 JEFFREY LAUDER: One side.

MR HOWIE: One side, which side?

JEFFREY LAUDER: West side.

DR NASH: Did you say Muyurumantangi?

JEFFREY LAUDER: Yes.

20 MR HOWIE: And that place there, that is, who is that?

JEFFREY LAUDER: Japurla Japurla.

MR HOWIE: That's Jackson's mob too. Right. Japurla Japurla. And going down round this east side now.

25 JEFFREY LAUDER: Well, that tower over there, Muckaty tower at the turnoff.

**TRANSCRIPT  
OF PROCEEDINGS**



**AUSCRIPT**

**Brisbane**  
Level 7  
294 Adelaide Street  
Brisbane QLD 4000  
PO Box 10420  
Adelaide Street  
Brisbane  
QLD 4000  
Phone (07) 221 3399  
Fax (07) 221 9546

**Townsville**  
Level 2  
Northtown Office  
Tower  
Flinders Mall  
Townsville QLD 4810  
GPO Box 1401  
Townsville QLD 4810  
Phone (077) 72 5762  
Fax (077) 72 3424

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**ABORIGINAL LAND COMMISSIONER**

**JUSTICE P.R.A. GRAY**

**RE: MUCKATY PASTORAL LEASE  
LAND CLAIM NUMBER 135**

**AT VARIOUS SITES**

**11.00 AM, WEDNESDAY, 28 JULY 1993**

**Continued from 27.7.93**

AT KARAKARA AT 11.00 AM:

MR HOWIE: Your Honour, we're at site 51, which is a waterhole in a creek bed in an area that's lush with wattle, and fragrant with it too, and it's prolific with wildflowers, I'd say. I might just talk to Toprail first.  
5 We've got a group of people here which includes [REDACTED] Toprail, [REDACTED] Jackson, [REDACTED] Stokes, [REDACTED] Driver, [REDACTED] Riley and [REDACTED].

[REDACTED] TOPRAIL:

MR HOWIE: Now, Toprail, this place where we are here - what's the name for here?

10 [REDACTED] TOPRAIL: Karakara.

MR HOWIE: Karakara, which is 51. And who gave the name to this place?

[REDACTED] TOPRAIL: The Dreaming gave it.

MR HOWIE: The Dreaming did.

15 [REDACTED] TOPRAIL: Yes, Japurla Japurla.

MR HOWIE: That's the Japurla Japurla Dreaming.

[REDACTED] TOPRAIL: Yes.

MR HOWIE: All right. And is there any story for that Japurla Japurla here?

20 [REDACTED] TOPRAIL: I don't know much about the story, like. They were travelling this way.

MR HOWIE: Yes, all right. And a lot of that story for Japurla Japurla, that's men's business, is it?

[REDACTED] TOPRAIL: Yes, secret.

MR HOWIE: And secret, yes. And do those - the Dreaming, Japurla Japurla - did they leave anything here?

TOPRAIL: They leave underground.

MR HOWIE: They leave something under the ground.

5 TOPRAIL: There's a big hole here somewhere.

MR HOWIE: And what about this waterhole here?

TOPRAIL: Waterhole is same again - leave a spring, water. There's a spring inside, I think.

MR HOWIE: It's got a spring inside, and that's - that Dreaming left it.

10 TOPRAIL: Yes.

MR HOWIE: Well, which people are Kirta for this place?

TOPRAIL: Jackson, Stokes - maybe there's more young fellas.

15 MR HOWIE: All right. So you're saying Jackson and pointing to him with your nose, and Stokes - Stokes - you're pointing to him, all right. Now, I want you to tell the judge a little bit about here. Have you been travelling around this way?

TOPRAIL: I've been travelling once, going up that way - going up to Newcastle.

20 MR HOWIE: So you were going to Newcastle. And how old were you then?

TOPRAIL: Only be a piccaninny.

MR HOWIE: When you were a piccaninny. And how were you travelling?

TOPRAIL: Oh, foot walk.

25 MR HOWIE: Foot walk. Where were you coming from?

TOPRAIL: From Banka Banka.

MR HOWIE: From Banka Banka. And who were you with?

MR HUGHSTON: How come you're Kurtungurlu for so many people - so many groups? Why are you Kurtungurlu for so many groups?

██████████ TOPRAIL: Oh, well, I've got to be boss Kurtungurlu for another mob. It's like a job for them.

5 MR HUGHSTON: Has it got something to do with you having the knowledge?

██████████ TOPRAIL: Yes.

MR HUGHSTON: Okay. Thanks, Toprail.

10 MR HOWIE: Stay there, Toprail, and I'll get you to pass it back to ██████████ Driver.

██████████ DRIVER:

MR HOWIE: ██████████, is this an important place?

██████████ DRIVER: Yes.

15 MR HOWIE: And can you explain to the judge - tell him why this is an important place?

██████████ DRIVER: Ceremony time, you know, they use him business - big business.

MR HOWIE: All right. In ceremony time they use big business.

██████████ DRIVER: Yes.

20 MR HOWIE: Yes, keep going.

██████████ DRIVER: Because they've got important one from grandfather and from their daddy.

MR HOWIE: That's an important one from their grandfather and their daddy. And have people still got that business?

25 ██████████ DRIVER: They've got him, but they've got no family now, because they've been losing a lot of family, because the man - the big



bosses, you know, like Old Engineer. So been losing some family - that the family been dead for all the way along.

MR HOWIE: Now, what about for some man here? Is this important place for some man here?

5 [REDACTED] DRIVER: Yes.

MR HOWIE: Like this fella over here?

[REDACTED] DRIVER: Yes.

MR HOWIE: [REDACTED]

[REDACTED] DRIVER: Yes.

10 MR HOWIE: Why is it important for him?

[REDACTED] DRIVER: Well, he's with Jackson, [REDACTED], Toprail - all them, see.

MR HOWIE: Yes. You're saying Jackson, [REDACTED] and Toprail - it's important for them. What happened to [REDACTED] here?

15 [REDACTED] DRIVER: [REDACTED] got a young man.

MR HOWIE: He got a young man here, yes. Were you here when that happened?

[REDACTED] DRIVER: No, I was down back from Phillip Creek. I was going to follow him down here.

20 MR HOWIE: You were going to follow him.

[REDACTED] DRIVER: Yes.

MR HOWIE: And did you come to that for him?

[REDACTED] DRIVER: No. I been called back to Eldorado Mine.

MR HOWIE: Go back to Eldorado.

25 [REDACTED] DRIVER: Yes. See, I was a young fella, you know. I was frightened from the sun.

MR HOWIE: From the sun?

████████ DRIVER: Yes, too hot.

MR HOWIE: It was too hot.

████████ DRIVER: That's why I couldn't follow him.

MR HOWIE: So you went back.

5 █████████ DRIVER: Yes.

MR HOWIE: All right. Well, I'd better ask him about it, then.

████████████████████

MR HOWIE: █████████ why is this place important for you?

10 █████████ Because I get a young man here - just don't want to see it.

MR HOWIE: And you want to see it.

████████████████████: I don't want to see the place get hurt.

MR HOWIE: Oh, you don't want to see it. You don't want to see it get hurt, okay.

15 █████████ Because these are my - I used to be living here a little bit.

MR HOWIE: And you used to be living here.

████████████████████ That's right.

20 MR HOWIE: Righto. And this - was there water here when you were living here?

████████████████████ Oh, there was a spring all when we were living.

MR HOWIE: There was a spring. And whereabouts were you camped from here? Which side were you camping?

████████████████████: Well, I was young - a baby - grown kid.

MR HOWIE: And you were camping - you were pointing down to the southside, whatever you said.

[REDACTED]: Yes, southside. We used to camp there.

MR HOWIE: All right. And what other people were round then?

5 [REDACTED]: My father, every family, every group.

MR HOWIE: Was this a big place for them then?

[REDACTED]: Oh, it used to be a big place all the time before we got that job in there.

MR HOWIE: So that was before people got jobs.

10 [REDACTED]: Yes. We used to live like old kangaroo - same as kangaroo. Walking our own way.

MR HOWIE: So you were walking around. And what sort of tucker did you have?

[REDACTED]: Oh, yam all the way along here.

15 MR HOWIE: There's yam all the way along.

[REDACTED]: Yes, and that's where we eat the Miyaka - we call them Miyaka.

MR HOWIE: Miyaka. And what other tucker was here?

20 [REDACTED]: Oh, kangaroo, goanna. That's all, or somewhere else - not with a gun.

MR HOWIE: What did you catch them with, then?

[REDACTED]: Spear.

MR HOWIE: Spear, righto. So this is where you were made a young man. Have you got a word for that place, or can't you say that?

25 [REDACTED]: We can't say.

MR HOWIE: You can't say it. Why can't you say it?

[REDACTED]: Well, in Aboriginal culture I can't even say.  
Someone else can say.

MR HOWIE: Right. So that's, as you say, your Aboriginal culture.  
That's the law, is it?

5 [REDACTED]: That's the law. Or you can go to India or  
somewhere else if you're Indian or New Guinea - same thing to every one  
of us.

MR HOWIE: Is that right? Well, that's a bit of a Pandora's Box, I think,  
Willy. Okay, that's all I'll ask you, thank you.

10 [REDACTED]: Thank you.

[REDACTED] RILEY:

MR HOWIE: Angus, have you been around this country?

[REDACTED] RILEY: No, not on foot.

15 MR HOWIE: Not on foot. What about on somebody else's foot - like on  
a horse?

[REDACTED] RILEY: No. Yes, on a horse I ride here.

MR HOWIE: And what were you doing around here?

[REDACTED] RILEY: Mustering.

MR HOWIE: Mustering. Who were you working for then?

20 [REDACTED] RILEY: Alan Hagan.

MR HOWIE: For Alan Hagan. And who did you learn about this place  
from?

[REDACTED] RILEY: Same bloke.

MR HOWIE: That same bloke - that's that Jupurrula?

25 [REDACTED] RILEY: Yes.

MR HOWIE: ██████████ Graham's father.

██████████ RILEY: That's right.

MR HOWIE: Okay. And did you come mustering round here once, or plenty of times?

5 ██████████ RILEY: Oh, plenty of times.

MR HOWIE: Right. So you know this country through here.

██████████ RILEY: Yes.

MR HOWIE: Yes, that's all.

HIS HONOUR: Any questions, Mr Hughston?

10 MR HUGHSTON: No, thank you, your Honour.

██████████:

MR HOWIE: This is ██████████ Jackson, your Honour. Now, ██████████ do you know this place?

██████████ JACKSON: Only what my father told me.

15 MR HOWIE: And when was it that your father told you?

██████████ JACKSON: When I was a young man.

MR HOWIE: All right. And what did he tell you about this place?

██████████ JACKSON: He told me to this Dreaming.

MR HOWIE: And what Dreaming is that?

20 ██████████ JACKSON: Japurla Japurla.

MR HOWIE: And have you got that Dreaming?

██████████ JACKSON: Yes.

MR HOWIE: And who do you get it from?

████████ JACKSON: I get it from my dad.

MR HOWIE: From your dad. And what about this place here, is this part of that Dreaming?

5 █████████ JACKSON: Yes.

MR HOWIE: All right. Have you got the name for this place?

████████ JACKSON: No, I just want to know the name.

MR HOWIE: Yes, and what's that?

████████ JACKSON: This place - but I don't have name.

10 MR HOWIE: You haven't got the name.

████████ JACKSON: No. Karakara.

MR HOWIE: And you've got Toprail telling you that it's Karakara.

████████ JACKSON: Yes.

MR HOWIE: All right. And is this place important for you?

15 █████████ JACKSON: Important thing by law.

MR HOWIE: It's important by law. And why is that?

████████ JACKSON: Because my grandfather learned my father and he learned me, too - training. And I've got two young boys to train them.

MR HOWIE: Yes. And which two young fellas are those of yours?

20 █████████ JACKSON: Terry and Peter and Gregory.

MR HOWIE: Terry and Peter and Gregory - sounds like three.

████████ JACKSON: They've got to learn something.

MR HOWIE: Yes. And why do they have to learn that, ██████████

25 █████████ JACKSON: Because we've got to tell them - painting - tell them through Kurtungurlu.

MR HOWIE: All right.

[REDACTED] JACKSON: Kurtungurlu go away again.

MR HOWIE: And which Kurtungurlu is that?

[REDACTED] JACKSON: This one.

5 MR HOWIE: That's Toprail.

[REDACTED] JACKSON: And Jimmy Newcastle; [REDACTED].

MR HOWIE: [REDACTED] Newcastle and [REDACTED] - that's his brother.

[REDACTED] JACKSON: Yes. Paul Henderson.

10 MR HOWIE: And Paul Henderson, all right. Now, those sons of yours, have they been through the business?

[REDACTED] JACKSON: Only two.

MR HOWIE: The two older ones.

[REDACTED] JACKSON: Yes.

MR HOWIE: And where did that happen for them?

15 [REDACTED] JACKSON: I had one to Newcastle Waters and second time in Elliott - two times.

MR HOWIE: All right. And are they learning about that Japurla Japurla?

[REDACTED] JACKSON: They're learning sometimes. They've got to see their fathers first before they learn.

20 MR HOWIE: Right. And that means they've got to see you.

[REDACTED] JACKSON: Yes.

MR HOWIE: Righto, thank you.

25 MR HUGHSTON: [REDACTED], did you give evidence in that other land claim south of here before that Judge Toohey - that Warlmanpa, Warlpiri, and Mudburra Warumunga land claim?

[REDACTED] JACKSON: No.

[141]

ABORIGINAL LAND COMMISSIONER

MUCKATY PASTORAL LEASE LAND CLAIM

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SUBMISSIONS ON BEHALF OF THE CLAIMANTS  
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Part 1 - Traditional Ownership and Traditional Attachment

NORTHERN LAND COUNCIL MARCH 1994



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associated with the Ngapa group. The sites were considered to be shared by the two groups. (t.202-205) ██████████ Jackson gave evidence at Namarani. He explained that at the site one of the small boys of the dreaming was swallowed by a lizard. The site is a mixed Ngapa and Yapayapa place. ██████████ was cross-examined about the decision making roles of kirta and kurtungurlu. The effect of his answers was that both needed to be involved in the decision making. The dreaming lizard was camped at Walypita who travelled to Mungkamungka, which is also the shared country of the Ngapa and the Yapayapa groups. (t.226-235)

- (b) On a hill north of Wirrkirati Well Jeffrey Lauder pointed to Julypungali, Yapakurlangu, Latapa, as being Japurlajapurla belonging to ██████████ Jackson's group, which also shares the site Murlurrrparta, with the Ngarrka and Ngapa groups. Karakara and Muyurumantangi are also Japurlajapurla sites (t.281-285).
- (c) Karakara was visited. It is a water hole in a creek bed, that was fragrant with lush wattle and prolific with wildflowers. The dreaming is Japurlajapurla. The dreaming is associated with secret mens' ceremonies. ██████████ Jackson and ██████████ Stokes are the senior kirta for the place. ██████████ Riley and ██████████ mustered in the area. ██████████ Toprail regards himself as having the role of Kurtungurla. The responsibility to protect the site, or to make decisions about development, lies with ██████████ Jackson and ██████████ Stokes. ██████████ Toprail would also be involved. ██████████ Riley learnt

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about the place from Jupurrula. [REDACTED] Jackson was told of the place and of the dreaming by his father. The law concerning it, the Japurlajapurla dreaming, is important. He was trained in it by his father and grandfather, and he has the obligation to train his own sons Terry, Peter and Gregory. The two older ones have been initiated, and are learning. (t.326-341)

- (c) The site **Murlurrparta** is shared by the Ngarrka group and the Japurlajapurla group of [REDACTED] Jackson and [REDACTED] Stokes. (t.366-376)
- (d) **Latapa** is a Japurlajapurla site. It is the country of [REDACTED] Jackson and [REDACTED] Stokes and their group. [REDACTED] Jackson placed emphasis on the role of the kurtungurlu, saying that kirta are the bosses for the country, but kurtungurlu "is the leader". He gets the country from his father and grandfather, and passes it on to his sons and daughters. The kurtungurlu have the responsibility of looking after the site, of leading the kirta, of correcting them if they go wrong, and of training the sons in the ceremony. The Japurlajapurla dreaming travelled through the country. The children being painted and dancing. The ceremonies are still performed. Hughie was trained it by his father. Women cannot see it. (t.376-386)
- (e) The trig point towards the western boundary of the claim area is located among a series of Japurlajapurla sites, and in the vicinity of **Minyjala** and **Yapakurlangi**. [REDACTED] Jackson traced the travels of



ABORIGINAL LAND RIGHTS

LAND CLAIM: 135

M.F.I. No. \_\_\_\_\_

EXHIBIT No. 135-2

TENDERED BY: Mr. Howie

EXHIBIT PARTICULARS

Anthropologists Report

WITNESS: \_\_\_\_\_

Dr. P. Sutton

DATE: 24/1/93

Dr. Nash

Ms. Morel

Associate:

MUCKAT  
LAN

ANTHROPOLOGISTS' REPORT

BY

Dr. P. Sutton, Dr. D. Nash

&

P. Morel

NORTHERN LAND COUNCIL



DARWIN

MAY 1993

## LAND TENURE

family reproductive success, and individual talent, among those identified with (and as) those Dreamings. (See Sutton 1987 for a detailed discussion of this point.)

## SHARED INTERESTS AND GROUP STRUCTURE

There are four main forms of 'company' relationship between Aboriginal groups in the claim area.

The first is typified by the coincidence of the interests of Walanypirri and Kurrakurraja on a number of the same sites. There is no suggestion here of intimate structural integration of the two groups. Rather, there is a well-established recognition by the claimants generally that these two groups, whose kirta are associated with different subsection couples of the same patrimoiety, both have responsibility for Storm Bird business in the area. It is for this reason that senior spokespersons for the area identify the linguistic identities of such shared sites as 'Warlmanpa and Mudbura', for example.

While the members of groups associated with such Dreamings may well collaborate in ceremonial performances, secular decision-making and other ways of looking after the country, and may be defined (in context) as being of one country, they are not structurally of one group for present purposes.

The second form of company relationship is typified by the coincidence of Ngapa and Milwayi Dreamings here and there in the eastern part of the claim area. The Dreamings and their respective groups in this case belong to opposite patrimoieties and there is no suggestion of their structural integration simply because they hold overlapping country. They are company for the soil and water and vegetation rather than the Dreamings. (Notably, however, in such cases where the groups are of opposite patrimoieties there is usually a close kirta-kurtungurlu interdependency between the two, kirta of one being important kurtungurlu for kirta of the other, as is the case here.)

The third form of 'company' relationship is that exemplified by members of the two Yapayapa subgroups represented in this case. Here there is subsection patricouple agreement, a commonly held Dreaming, commonality of country at the most detailed level, and structural integration is high in spite of the absence of a common apical ancestor.

The fourth form of 'company' relationship is exemplified by the three subgroups of Rain Dreaming kirta-side claimants, who share the same sites in this area but some of whom have different subsection patricouples (they are of the same patrimoiety nevertheless). This is the Rain that comes from far distant Kurlunlu north-east to Purnarrapan (Renner Springs), passing through Muckaty. The commonality of land interests held by these three subgroups in this case has no clear genealogical basis in common descent from a recognised ancestor. While each subgroup's

## LAND TENURE

members overlap in interests on Muckaty, they have different emphases on country elsewhere. The Lauder branch, for example, identifies particularly with Pirrpirnparta (just south-west of Muckaty, location not recorded), the Anderson branch identifies heavily with the Renner Springs area, and the Foster branch identifies particularly with Jaramala (in the region of Kulpurlunu). All share primary spiritual responsibility for Ngapa sites on Muckaty.

A case that parallels that of Ngapa to a significant extent is that of Ngarrka, where there are three subgroups whose principal members have somewhat different interests in land other than that on the Ngarrka Dreaming track but whose interests coincide on that track in the Muckaty area. The personal histories of some senior members of these subgroups are undoubtedly vital to understanding how they come to bear and share primary responsibility for sites within the boundaries of Muckaty.



**APPENDIX 2**  
**LETTER FROM SENATOR TRISH CROSSIN**  
**TO MR KIM HILL DATED 20 MAY 2011**







**STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

20 May 2011

Mr Kim Hill  
Chief Executive Officer  
Northern Land Council  
GPO Box 1222  
Darwin NT 0801

Dear Mr Hill

**Inquiry into National Radioactive Waste Management Bill 2010**

I am writing to you regarding evidence you provided to the Senate Legal and Constitutional Affairs Legislation Committee during its 2010 inquiry into the National Radioactive Waste Management Bill 2010. The evidence related to consultation by the Northern Land Council (NLC) with relevant traditional land owners on Muckaty Station before nomination of that land as a potential site for the proposed radioactive waste facility.

The NLC provided evidence (in both its submission and during the public hearing on 30 March 2010) which indicated that only one family group owned the land. However, the committee notes that documents sourced from the National Archives of Australia appear to confirm that all Ngapa land on Muckaty Station was held in common by three Ngapa family groups, and that no Ngapa land on Muckaty Station was owned exclusively by any of the three family groups.

The committee considered this matter on 12 May 2011 and resolved to write to the NLC to seek clarification of the evidence it provided to the committee during the 2010 inquiry. The committee would be grateful for a response from the NLC by 8 June 2011.

Please contact the secretariat if you have any questions about this matter.

Yours sincerely

Senator Trish Crossin  
**Chair**



**APPENDIX 3**  
**RESPONSE FROM THE NORTHERN LAND COUNCIL**  
**DATED 6 JULY 2011**





Parliament of Australia

Senate

Legal and Constitutional Affairs Committee

National Radioactive Waste Management Bill 2010

Northern Land Council

Response to supplementary question on notice

6 July 2011

**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE**  
**NATIONAL RADIOACTIVE WASTE MANAGEMENT BILL 2010**  
**RESPONSE TO SUPPLEMENTARY QUESTION ON NOTICE**

**Introduction**

In a letter dated 20 May 2011 the Chair of the Committee sought from the Northern Land Council (NLC) “clarification of the evidence” it provided during the 2010 inquiry into the *National Radioactive Waste Management Bill 2010*. The letter states that documents held by the National Archives of Australia:

*... appear to confirm that all Ngapa land on Muckaty station was held in common by three Ngapa family groups, and that no Ngapa land on Muckaty station was owned exclusively by any of the three family groups.*

This is the same language that is used in a press release issued by Maurice Blackburn on 9 May 2011 titled “Fresh Evidence Boosts Traditional Owners Legal Challenge to Muckaty Station Nuclear Waste Dump.” Maurice Blackburn asserts that documents obtained from National Archives include:

*A report by three senior anthropologists commissioned by the NLC for the Muckaty land claim which confirmed that all Ngapa land on Muckaty station was held in common by the three Ngapa family groups and that no Ngapa land on Muckaty station was owned exclusively by any of the three family groups.*

**Federal Court proceeding**

The Committee may be aware that Maurice Blackburn acts for the Applicant in Federal Court proceedings in which a challenge is made to the nomination of the site on Muckaty station.

The Maurice Blackburn press release asserts that the report and other documents were “unearthed” by the Applicant’s legal team and provide “compelling new evidence” of alleged error in the nomination. As detailed below, there is nothing new in these documents. They have been available to the public for many years and they were examined by the NLC in the course of the nomination.

It is regrettable that claims of this kind are being made about a matter that is before the Federal Court. The convention of the Senate is to refrain from inquiring into matters before the courts should that carry the risk that the Senate might be seen as involved in a pre-judgment of the issues. The Committee appeared to acknowledge that in its May 2010 report when legal proceedings were being threatened (pars 3.118-3.119).

It is also regrettable that claims of this kind are being made when the parties to the Federal Court proceeding are engaged in mediation under Court order. That process involves the exchange of information between the parties in a confidential setting.

Nevertheless, in view of the statements made by some Senators (referred to further below), and the circumstance that the anthropology report is a public document, and has been available to the public for many years, the NLC is pleased to elaborate upon the evidence given to the committee in the 2010 inquiry. In doing so, however, it needs to be made clear that the NLC refrains from making any comment about the merits of the parties' respective positions in the Federal Court proceeding.

### **Summary of points**

In summary, the material referred to in the Chair's letter and the press release from Maurice Blackburn:

- (i) was considered by the NLC in the course of the nomination, along with other material, and had been referred to in earlier submissions by the NLC to Senate Committees;
- (ii) has been available to the public for many years; it is a mistake to think that it contains new or fresh evidence about traditional Aboriginal ownership of the nominated site, and as with the earlier land claim inquiry itself, it does not deal with that question directly;
- (iii) does not support the proposition that one Ngapa local descent group cannot be the traditional Aboriginal owners of an area of land on Muckaty Station (or elsewhere) associated with Ngapa Dreaming.

### **Earlier Senate submissions**

As the Chair's letter of 20 May 2011 mentions, on 30 March 2010 the NLC provided the Committee with a written submission. At page 2 of that submission, the NLC referred to and quoted an earlier written submission dated 4 November 2008 provided to the Senate Environment, Communications and the Arts committee in its inquiry on the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*. In that inquiry, the NLC provided a supplementary written submission dated 4 December 2008.

Part 2.3 of the 4 December 2008 submission is headed "Anthropological advice" and deals with the findings, and evidence before, the Aboriginal Land Commissioner in the earlier land claim inquiry, the *Warlmanpa (Muckaty Pastoral Lease) Land Claim* upon which the Commissioner reported in March 1997.

The material referred to in the 4 December 2008 submission includes the report mentioned in the Maurice Blackburn press release. The 4 December 2008 submission notes that the report gives an account of the Ngapa (rain) dreaming. The submission goes on to note that the relationship between three Ngapa groups may give rise to what the Commissioner termed as "overlapping responsibilities", but that each group constitutes a separate group of traditional Aboriginal owners in relation to that part of the Ngapa Dreaming track and associated land for which they have primary spiritual responsibility.

### **The earlier land claim**

The report mentioned in the Maurice Blackburn press release was prepared in May 1993 and presented to the Commissioner in the *Warlmanpa (Muckaty Pastoral Lease) Land Claim* in advance of the hearing of evidence by Aboriginal witnesses.

A report of this kind is commonly called a “claim book” because it sets out the claim and any views expressed by an anthropologist must be supported by evidence given by the Aboriginal witnesses about their traditions. After evidence from Aboriginal witnesses is given, the authors of the claim book will then give evidence commenting upon the Aboriginal evidence and will, if appropriate, make adjustments to what is in the claim book.

The claim book was prepared and presented to the Commissioner before the Aboriginal claimants gave evidence. Their evidence included evidence on different aspects of Ngapa Dreaming, and on hand over points from one Ngapa group (or branch) to another, which signify the existence of separate Dreaming and land interests among the groups and their members.

After that evidence was heard, one of the authors of the claim book gave oral evidence. The author commented that the Aboriginal evidence revealed that the Ngapa Dreaming had various transformations, such that different aspects of the Dreaming, involving different characters and stories, were associated with different Ngapa groups. He also gave evidence that information provided on sites, including sites associated with Ngapa Dreaming, required correction in the light of the evidence from the Aboriginal witnesses. The author emphasised that the systems of the Aboriginal claimant groupings involved were more subtle and complex, and that not all members of a grouping have all of the same dreamings and therefore do not have a direct interest in particular land.

The term “traditional Aboriginal owners” is defined by *the Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) in the following way:

*traditional Aboriginal owners, in relation to land, means a local descent group of Aboriginals who:*

- (a) *have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land;*
- (b) *are entitled by Aboriginal tradition to forage as of right over that land.*

Although, the three Ngapa groups are in a company relationship, and they share ceremonial responsibilities, that does not mean that all three groups together satisfy the statutory description in relation to any particular area of land. They are separate local descent groups with different primary responsibilities for different areas of country. The company relationship does not mean that one Ngapa group cannot be the traditional Aboriginal owners of an area of land on Muckaty Station (or elsewhere) associated with aspects of Ngapa Dreaming.

#### **Consideration of the earlier material**

The land under claim in the earlier inquiry was an area of about 221,704 hectares. The nominated site is about 225 hectares in size. The claim was made by seven claimant groupings, Ngapa, Yapayapa, Milwayi, Ngarrka, Wirtku, Kurakuraya and Walanypirri.



The land claim inquiry was not directed to the question of who are the traditional Aboriginal owners of any particular part of Muckaty Station. The evidence, and findings of the Commissioner, concerned whether the members of the various claimant groupings fell within the definition of traditional Aboriginal owners for any part of the whole of the land claimed.

The findings by the Commissioner, and the evidence before the Commissioner, including the claim book and the oral evidence, were considered by the NLC during the course of the nomination. That material was examined by anthropologists engaged by the NLC to investigate traditional Aboriginal affiliations with the country in which the nominated site is located. In addition to examining the findings of the Commissioner and the evidence before the Commissioner in the earlier land claim, including the 1993 claim book, they considered other material on Aboriginal interests in the area and conducted field research among Aboriginal groups and communities in relation to Muckaty Station and interviewed members of those groups and communities.

The other material included information obtained since the earlier land claim inquiry in the course of consultations on various projects on Muckaty Station where it became necessary, in administering the Land Trust, to ascertain traditional Aboriginal affiliations with particular parts of Muckaty Station. That included transactions in the vicinity of the nominated site and haulage road.

These considerations and processes were detailed in the earlier 4 December 2008 Senate Committee submission.

On the information available to the NLC, including the findings by the Commissioner, the evidence before the Commissioner, and information obtained since then, the NLC was satisfied that the right people had been consulted for the country concerned.

#### **Other matters**

A number of different and conflicting claims have been made in the Senate about who are the traditional owners of the nominated site. They are referred to in the attachment. On the NLC's reckoning, nine different positions have been put to the Senate.

With respect to those making these (contradictory) claims, the question of who are the traditional Aboriginal owners of any particular area is a complex one that requires consideration of a range of material. To fasten upon any particular piece of evidence in isolation, like a sentence in the 1993 claim book, is apt to mislead.

The NLC notes that on enactment of the new legislation, before the Minister can select a site for the facility, the Minister must invite and consider comments. Those who suggest that one or more of the different alternative positions, or some variations on those positions, more accurately reflects who are the traditional Aboriginal owners of the nominated site can put that to the Minister at that point.

#### **Conclusion**

The NLC trusts that this clarifies the matter. The documents in the National Archives, being the material before the Aboriginal Land Commissioner in the earlier land claim inquiry, were considered in the course of the nomination process, and the 1993 claim book was dealt with in earlier submissions to the Senate.

## ATTACHMENT

### VARIOUS CLAIMS TO SENATE ON TRADITIONAL ABORIGINAL OWNERSHIP OF NOMINATED SITE

The query in the letter dated 20 May 2011 from the Chair of the Committee that “documents sourced from the National Archives of Australia appear to confirm that all Ngapa land on Muckaty Station was held in common by three Ngapa family groups, and that no Ngapa land on Muckaty Station was owned exclusively by any of the three family groups” is similar to what was raised on 3 June 2011 by Senator Scott Ludlam at Senate Estimates,<sup>1</sup> and by Senator Ludlam and Senator Nick Xenophon in the Senate on 14 June 2011.<sup>2</sup>

In addition to claiming that the land nominated for consideration as the Commonwealth Radioactive Waste Management Facility is traditionally owned by three Ngapa groups in common, Senators Ludlam and Xenophon also claimed that a sacred site which is proximate to, but not within, the nominated land, is Yapayapa country - the apparent inference being that the nominated land is Yapayapa country.<sup>3</sup>

Senator Ludlam's claim was made despite evidence from Dianne Stokes to the Committee in Darwin on 12 April 2010 that her Yapayapa country “ends at the railway” being more than 50 km to the west of the nominated land,<sup>4</sup> advice which accords with the Aboriginal Land Commissioner's findings in the 1997 Warlmanpa (Muckaty Pastoral Lease) Land Claim.<sup>5</sup>

Senator Ludlam's claim was also made despite his tabling of a letter dated 21 March 2010 from Dianne Stokes and Mark Chungaloo on behalf of the Warramungu/Warlmanpa people which claimed that the nominated land is Milway[i] Country”, this being something which “Warlmanpa Elders always said”. Senator Ludlam tabled the letter in the Senate on 14 June 2011.<sup>6</sup>

Senator Ludlam tabled Ms Stokes and Mr Chungaloo's letter despite a letter to the Resources Minister in March 2011 from Mark Lane, the applicant in the Federal Court proceedings referred to above, which said that the sacred site which is proximate to the nominated site “is not Milwayi country.” Senator Rachel Siewert quoted from Mr Lane's letter in the Senate on 14 June 2011.<sup>7</sup>

Senator Siewert quoted from this letter despite also claiming that the Commissioner's “report clearly indicated that the nominated site was jointly owned by at least three to five groups”,<sup>8</sup> as did Senator Xenophon (referring to the “Ngapa, Milwayi, Wirntiku, Ngarrka and Yapa Yapa” groups).<sup>9</sup>

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<sup>1</sup> Senate Community Affairs Legislation Committee.

<sup>2</sup> Senate Hansard 14 June 2011 pp 13 and 15.

<sup>3</sup> Senate Community Affairs Legislation Committee 3 June 2011 p 28, Senator Ludlam. Senate Hansard 14 June 2011 p 15, Senator Xenophon.

<sup>4</sup> Senate Legal and Constitutional Affairs Committee, Darwin, 12 April 2010. Ms Stokes objects to the nomination.

<sup>5</sup> Muckaty Land Claim Report par 4.5.1. The Commissioner found that the site Taaru (20 kms to the north-west of the nominated site) “represents an approximate boundary” between the Ngapa and Yapayapa groups.

<sup>6</sup> Senate Hansard 14 June 2011 p 18.

<sup>7</sup> Senate Hansard 14 June 2011 p 9.

<sup>8</sup> Senate Hansard 14 June 2011 p 9.

This “five group” claim was also made in 2008 to the Senate Environment, Communications and the Arts Committee on behalf of objectors by Stephen Leonard of McCluskys Lawyers,<sup>10</sup> and Natalie Wasley of the Arid Lands Environment Centre/Beyond Nuclear Initiative.<sup>11</sup> Mr Leonard also filed a “List of Ngapa Sacred Sites” from the Muckaty Land Claim which listed a site said to be proximate to the nominated land as Ngapa,<sup>12</sup> referred to the Commissioner's 1997 report as finding that that site “is shared between Ngapa and Yapayapa”,<sup>13</sup> and referred to the Commissioner's 1997 report as finding that that sacred site is Yapayapa.<sup>14</sup>

This “five group” claim was made despite the Commissioner in fact finding that the traditional Aboriginal owners of Muckaty Station are comprised by seven groups (the aforementioned five, plus Kurrakurraja and Walanypirri), each group being “connected to part of the land claimed”.<sup>15</sup>

In total, since the nomination in 2007 nine different positions have been put by or on behalf of objectors as to the traditional ownership of the nominated site or proximate land. Four of these have been reiterated in the last month by Senators Ludlam, Siewert and Xenophon.

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<sup>9</sup> Senate Hansard 14 June 2011 p 14. Senator Xenophon referred only to a five group claim, not three groups.

<sup>10</sup> Senate Committee on Environment, Communications and the Arts Inquiry into the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008* submission 95 (p 1), and attachment 13 (letter McCluskys Lawyers to NLC dated 3 September 2008). Mr Leonard claimed that “[d]ecisions which concern this single land trust, must be made in full consultation with traditional owners of the land within the Muckaty Land Trust and with the Muckaty Aboriginal Corporation”, being the Ngapa, Milwayi, Wirntiku, Ngarrka and Yapayapa groups. The suggestion that persons or groups which are not traditional Aboriginal owners have decision making capacity in relation to the nominated site - or that all traditional owning groups encapsulated within the cadastral boundary of Muckaty Station, by some undisclosed process, must jointly make decisions for all land given it is a “shared single land trust”, has no legal or anthropological basis.

<sup>11</sup> Hansard Senate Committee on Environment, Communications and the Arts, 17 November 2008, p 25. Ms Wasley said “that a decision made about the Muckaty Land Trust needs to be done with all five family groups.”

<sup>12</sup> Senate Committee on Environment Communications and the Arts Inquiry into the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008* submission 95 attachment 4.

<sup>13</sup> Senate Committee on Environment, Communications and the Arts Inquiry into the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008* submission 95 attachment 13.

<sup>14</sup> Senate Committee on Environment, Communications and the Arts Inquiry into the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008* submission 95A.

<sup>15</sup> *Warlmanpa (Muckaty Pastoral Lease) Land Claim Report* pars 4.1, 4.12.

