
PROTECTING MANUWANGKU:

RADIOACTIVE WRONGS OR INDIGENOUS RIGHTS

by Natalie Wasley

THE PROPOSAL

In June 2005, the Australian government announced plans for a federal low and intermediate level radioactive waste dump in the Northern Territory ('NT').¹ Science Minister Brendan Nelson named three Department of Defence ('DOD') sites as potential locations; Harts Range, Fisher's Ridge and Mt Everard.² There was no consultation with Aboriginal Traditional Owners, their representative organisations, the wider community or the Northern Territory Government.

As a result, the *Commonwealth Radioactive Waste Management Act* ('CRWMA') was rushed through the federal Parliament in December 2005. This law allowed the federal government to override NT laws and rule out the requirement of consent from affected communities.³ The Australian Labor Party ('ALP'), then in Opposition, called the legislation 'sorry',⁴ 'arrogant'⁵ and 'sordid'⁶ and pledged to overturn the laws if elected.

The CRWMA was amended the following year to allow Aboriginal Land Councils or the NT government to nominate additional sites.⁷ The Northern Land Council ('NLC') nominated a site in the Muckaty Land Trust, 120km north of Tennant Creek in central Australia.⁸ Many Traditional Owners of the Land Trust spoke out against the plan and remain firmly opposed to the proposal today.

The NT dump plan follows an abandoned proposal to dump radioactive waste in South Australia ('SA'). The 'Irtati Wanti' campaign opposing the SA dump was driven by a council of Aboriginal Women Elders with strong support from the SA community and government.⁹ There is little doubt that the current plan is targeting the NT because as a territory it is politically weaker than a state.

Remote and desert areas are often undervalued. Politically marginal, they are vulnerable to being seen as sacrifice zones suitable to be used as dumping grounds.¹⁰ The decision to build Australia's first purpose built, national radioactive waste facility in the NT – 3500 km from where most of the radioactive waste is currently produced and stored and where the trained experts reside – is a clear

example of this thinking. The former Federal Science Minister Brendan Nelson highlighted this indifference when he announced the plan stating, "why on earth can't people in the middle of nowhere have low- level and intermediate level waste?"¹¹ His successor Julie Bishop said the proposed NT sites were "some distance from any form of civilisation,"¹² disregarding that one proposed site was only forty kilometers from Alice Springs, a major regional centre of 30 000 people.

The Muckaty nomination was made with the promise of \$12 million compensation for a small group identified by the NLC as the exclusive Traditional Owners of the site.¹³ The Traditional Owner who was the main proponent of the dump passed away in late 2011. At a Senate Inquiry she gave evidence:

As you have probably heard, the government do not have money for out-stations anymore... So we made a decision about this waste problem to get money to build up our outstations, to get money to go back to our land and have schooling, have employment, have health out on the land itself.¹⁴

The systematic stripping back of resources for small remote Indigenous communities is the current policy approach of both the NT and Federal governments.¹⁵ Such a context increases the pressure on people to consider accepting long-term and high impact projects, such as the waste dump, to maintain funding for outstations and smaller communities. Senior federal Labor politicians were indignant at the Muckaty dump deal. A May 2007 media statement declared, "Labor is not surprised, but profoundly disappointed by this decision. It seemed almost inevitable given the Howard Government's manoeuvrings, including a \$12 million 'package of benefits' to sweeten the deal."¹⁶

Human rights and faith organisations also questioned the deal. Their concerns are captured in a statement from Darwin's Nightcliff Uniting Church in the NT:

The proposal to do this in exchange for money is bad enough. But to bargain with [Traditional Owners] for money that is to be used to pay for essential services (like roads and housing, and providing educational [opportunities for] young people),

which should come from the same public revenues as they do for all other Australians, is a complete scam. This is both disrespectful of Aboriginal culture and spiritual practice, as also a shameful, immoral manoeuvre by short-term, results-oriented, political pragmatists.¹⁷

THE POLITICS

The ALP was elected in 2007 on a promise of overturning the CRWMA and establishing a consensual process of site selection, with community consultation and support central to the approach.¹⁸ Instead of honouring this commitment, Resources and Energy Minister Martin Ferguson has continued to advance the Muckaty plan and routinely refused to meet with the Traditional Owners of the Land Trust who are opposed to the site nomination. The Minister's proposed legislation, the National Radioactive Waste Management Bill 2010 ('NRWMB'),¹⁹ would remove the three DOD sites from consideration whilst preserving the Muckaty nomination as the only site to be further pursued for hosting the waste dump.²⁰ When introducing the new Bill the Minister said, "our new law will effectively have the same application as the previous government in respect of that area. In no way can we allow any state or territory government to get in the way of establishing a repository".²¹ In addition, the new Bill provides the Minister with the power to override any and all state/ territory laws which might in any way impede the nuclear waste dump plan.²²

Key environmental and Indigenous checks and balances have been circumvented in relation to the dump plan, with the *Environmental Protection and Biodiversity Conservation Act* (1999) and the *Aboriginal and Torres Strait Islander Heritage Protection Act* (1984) suspended during the site selection phase.²³ Moreover, there is a high level of secrecy surrounding the waste dump proposal. The contested deed of agreement enjoys commercial in confidence status and has not been subject to scrutiny or review. Details of the agreement allegedly signed by the Muckaty Land Trust have been suppressed. Even Traditional Owners are unable to scrutinise the documents. The NLC has consistently refused to release anthropological advice that determined whose consent was sought.²⁴ The NLC's failure to allow access to key documents or engage with critics of the dump plan has created further suspicion and resentment in the community.

The NRWMB makes clear that areas aside from the nominated site are likely to be impacted. Selection of a site effectively extinguishes any rights or interests, including Native Title rights, in the land nominated or any land "required for providing all weather road access to the

selected site".²⁵ Despite the difficulty in engaging with the federal process – the Minister has said that he will consult with the community after the site is selected – Traditional Owners remain committed to fighting this proposal until the threat of the dump is removed. The Muckaty site nomination is now the subject of a Federal Court action in relation to key issues of ownership, consultation and consent.²⁶

Mark Lane Jangala is a listed applicant in the federal court case²⁷, Jangala stated:

There was not a meeting in town consulting all of the Traditional Owners for the land, they just got the individual people they knew. The others, we were left out. We are going against it, we are fighting against it. We are going to challenge them in court then through our court- Aboriginal Law and culture with the dot paintings on our body. Both sides have law.²⁸

The contentious Muckaty deal was struck with one family, from one sub-group. The NLC identified this one group as having exclusive ownership rights over the Muckaty site. This has been an extremely contested and divisive process, with many Traditional Owners of the Land Trust rejecting the legitimacy of these exclusive rights. Multiple letters have been sent calling for all Traditional Owners of the Land Trust to be involved in the decision-making in order to best reflect the shared dreaming and responsibilities of seven groups.²⁹

CAMPAIGN ALLIANCES

Over the last six years a strong network has developed between the targeted communities and supporters around the country. A broad and growing range of individuals and organisations with an active interest in social justice, environmental protection and responsible public policy development have stood alongside and supported the community's ongoing struggle.

Trade unions are increasingly speaking out in support and building on long standing alliances with anti-nuclear and Aboriginal rights campaigns.³⁰ The community has consistently sought creative ways to take this story out of the NT and into the hearts and minds of people around the country and the world. Traditional Owners have travelled widely to tell their story and explain their deep-felt and ongoing spiritual connection to the land. The short film "Muckaty Voices"³¹ has been sent around Australia and the world to be screened at conferences and film festivals. Wherever the story is told, people have been consistently shocked at the lack of transparency and heavy-handed approach of successive Australian governments.

INTERNATIONAL STANDARDS

Clearly the management of extremely hazardous and long-lived toxic materials poses significant political and technical challenges. These are best addressed through open, robust and inclusive processes, not secrecy and exclusion. Successive governments in Australia have chosen a ‘Decide-Announce-Defend’ approach to radioactive waste management, thinking it to be an easy road. However, Australian and international experience shows that it is instead a long and winding road with plenty of dust, corrugations and obstacles. In 2006 Native American Ojibwe activist and commentator Winona LaDuke captured the short-sighted and racist approach used all too often around the world:

The greatest minds in the nuclear establishment have been searching for an answer to the radioactive waste problem for fifty years, and they’ve finally got one: haul it down a dirt road and dump it on an Indian reservation.³²

Sadly, the current Australian approach to radioactive waste management is reflective of this same thinking. It is greatly out of step with the many countries that accept, as recommended by the 2006 *UK Committee on Radioactive Waste Management Inquiry*, “It is not ethically acceptable for a society to impose to impose a radioactive waste facility on an unwilling community”.³³

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

The Australian government has entered into a number of conventions and treaties relevant to radioactive waste management and the use of Aboriginal Lands. The NRWMB is inconsistent with many of these responsibilities and obligations, including support given by the Labor government for the *United Nations Declaration on the Rights of Indigenous Peoples*. (‘UNDRIP’)

The UN General Assembly adopted the UNDRIP’ in September 2007.³⁴ At this time Australia was one of only four nations that did not support the text. Following the election of the federal Labor government, Australia made a formal statement in support of DRIP in April 2009.³⁵

The Declaration explicitly bans dumping of hazardous materials on Indigenous lands and territories without free, prior and informed consent.³⁶ Article 8 declares, “states are to provide effective mechanisms for prevention of, and redress for.... any action which has the aim or effect of dispossessing [Indigenous people] of their lands, territories and resources.”³⁷ The location of a radioactive waste facility may in effect dispossess Traditional Owners

of their lands and territories who are afraid to continue living near hazardous waste.

Article 20 outlines, “Indigenous people have the right... to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.”³⁸ Again, the location of a hazardous facility could inhibit the subsistence rights of Traditional Owners who live on or nearby Muckaty Land Trust.

Mr S. Sambo (deceased), a senior Muckaty man from the Milwayi group said

We use that land for men’s cultural ceremonies which came from our great grandfather. If they put a waste dump at Muckaty it betrays the next generation.³⁹

Article 25 states, “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”⁴⁰ There has been no consideration in the proposed dump legislation of how the waste dump may affect future generations and in particular future generations of Aboriginal people living around the site whose rights are affected. Traditional Owners opposed to the Muckaty dump plan have consistently spoken of their ongoing spiritual and cultural connection to the proposed dump site and surrounding region and expressed deep concern about land access for future generations.

Muckaty Traditional Owner Dianne Stokes, from the Yapa Yapa group clearly explains this connection.

Top to bottom we got bush tucker right through the country. Whoever is taking this waste dump into our country needs to come back and talk to the Traditional Owners. We’re not happy to have all of this stuff. We don’t want it, it’s not our spirit. Our spirit is our country, our country where our ancestors been born. Before towns, before hospitals, before cities. We want our country to be safe.⁴¹

With regard to the Muckaty site nomination, Traditional Owners surrounding the nominated site who share an interest in the Muckaty Land Trust should also be fully consulted. They may be negatively affected by the radioactive waste facility in the future, and their consent should be sought alongside the Traditional Owners upon whose lands the proposed area is said to be located. Negative consequences from implementation of the waste site may affect neighbouring land so severely that consent

from the owners of the surrounding land should for all practical purposes be deemed necessary and appropriate. In this regard the proposed Bill, which excludes other Traditional Owners from decision making in regards to the facility, conflicts with the requirement for prior and informed consent in the UNDRIP.⁴²

There are a number of clear deficiencies with the current Muckaty proposal and process, including ongoing contest regarding the consultation with and consent of Traditional Owners who are part of the Muckaty Land Trust. The lack of transparency surrounding the deed of agreement relating to nomination of the Muckaty site is a dark cloud hanging over the federal government's approach to radioactive waste management.

CONCLUSION

After more than six years of wrangling over the NT radioactive dump proposal there is still no site selected and community opposition to the plan is steadily building. The time and resources used trying to convince Traditional Owners and the wider public that the NT plan is both accepted and acceptable would have been better spent undertaking a comprehensive and independent inquiry into radioactive waste management. There is a pressing need to examine the range of management options for Australia's radioactive waste and to develop a less contentious and divisive approach. Surely the best scientific minds in Australia, aided by a robust process and input from key stakeholders, can find a more credible radioactive waste management option than dumping it in a shed on a remote cattle station almost 3500 km from where it was produced?

The Muckaty radioactive waste dump plan has caused great distress and heartache to the community. For many years Traditional Owners have awoken with a nuclear cloud hanging overhead. This cloud will only be lifted if the government breaks the pattern of short-term political thinking about the management of a very long-term and serious human and environmental problem.

In 2008 the federal Labor government offered a historic apology to the Stolen Generations⁴³. Despite the warranted acclaim for this apology, policies of dispossession and control live on through measures like the Northern Territory Intervention, the stripping of funding for homelands and the Muckaty radioactive waste dump proposal. The Manuwangu voices must be listened to, so there is not a need for an apology to future generations left with the lasting burden of a toxic legacy.

Natalie Wasley is the coordinator of the Beyond Nuclear Initiative. The author wishes to acknowledge and thank the Environmental Defenders Office NSW; Dave Sweeney, Australian Conservation Foundation and; Paddy Gibson, Jumbunna Indigenous House of Learning, UTS.

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Elders Knowing – Elders Showing, Children Listening – Children Learning

Winner, Mil-Pra Aboriginal Art Award, 2009
Nyree Reynolds

Acrylic on canvas
890mm x 650mm

The young teacher is listening ... in the wind she can hear the voices of the Elders. They are telling her the stories of their people ... she is given permission to pass them on to the children. Slowly the Knowledge is returning. Each Ancestor represents 10,000 years, the gap represents the Invasion.

