



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON ENVIRONMENT,
COMMUNICATIONS AND THE ARTS

Reference: Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008

FRIDAY, 28 NOVEMBER 2008

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**SENATE STANDING COMMITTEE ON
ENVIRONMENT, COMMUNICATIONS AND THE ARTS**

Friday, 28 November 2008

Members: Senator McEwen (*Chair*), Senators Birmingham, Boswell, Ludlam, Lundy, Pratt, Troeth and Wortley

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Mark Bishop, , Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ian Macdonald, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, , Trood and Xenophon

Senators in attendance: Senators Ludlam, Ian Macdonald, McEwen, Pratt and Troeth

Terms of reference for the inquiry:

To inquire into and report on: Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008

WITNESSES

DAVOREN, Mr Patrick, Manager, Radioactive Waste Management Section, Department of Resources, Energy and Tourism	38
DIMITROVSKI, Mr Lubi, Manager, Waste Operations, Australian Nuclear Science and Technology Organisation.....	8
HARRIES, Dr John, Past President, Australian Nuclear Association.....	18
JONES, Mr Stephen, Assistant Manager, Radioactive Waste Management Section, Fuels and Uranium Branch, Department of Resources, Energy and Tourism	38
McADAM, Mr Elliott, Private capacity	48
McINTOSH, Mr Steven, Senior Adviser, Government Liaison, Australian Nuclear Science and Technology Organisation.....	8
SMITH, Mr Bradley, Executive Director, Federation of Australian Scientific and Technological Societies.....	2
STUBBS, Ms Michaela, Nuclear Campaigner, Friends of the Earth	25
SWEENEY, Mr Dave, Campaigner, Australian Conservation Foundation.....	25
TAYLOR, Ms Marie, General Manager, Fuels and Uranium Branch, Department of Resources, Energy and Tourism	38

Committee met at 9.03 am

CHAIR (Senator McEwen)—I declare open this public hearing of the Senate Standing Committee on the Environment, Communications and the Arts in relation to its inquiry into the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008.

The committee's proceedings today will follow the program as circulated. These are public proceedings. The committee may also agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is to be taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. A witness called to answer a question for the first time should state their full name and the capacity in which they appear. Mobile phones should be switched off.

[9.05 am]

SMITH, Mr Bradley, Executive Director, Federation of Australian Scientific and Technological Societies

CHAIR—With those formalities over, I again welcome everybody here today and I welcome Mr Bradley Smith from the Federation of Australian Scientific and Technological Societies. Thanks very much for coming along today, Mr Smith. The committee has received your submission as submission No. 73. Do you wish to make any amendments or alterations to your submission?

Mr Smith—Thank you, Chair. I want to draw your attention to one typographical error.

CHAIR—Sure.

Mr Smith—Technecium-99 should have been technecium-99m. The half-life is somewhat different, six hours as opposed to 100,000 years or something, so I think in the interests of accuracy I would like that correction noted.

CHAIR—Okay. Thank you for bringing that to our attention. Do you wish to make a brief opening statement, Mr Smith, before we go to questions?

Mr Smith—Good morning, Senators. The use of radioactive materials is pervasive throughout Australia for industrial and medical purposes and has been for nearly 50 years. Radioactive materials have been used safely for industrial and medical purposes for that period. There is an obstinate fact with the use of the radioactive materials—waste is produced, and the waste needs to be dealt with.

FASTS has a strong view that we need a national facility where all radioactive waste can be safely stored and eventually disposed of. We are well aware that about 95 per cent of the radioactive waste in this country is produced by Commonwealth agencies, primarily ANSTO, but there is some residual waste from CSIRO research in the fifties and sixties and also small amounts from the Department of Defence.

The actual bill before you at the moment seeks to repeal the 2005 act. FASTS's view is that that act should be repealed when, and only when, a site is agreed upon, a construction schedule is announced and suitable replacement legislation is brought to bear. We believe there is some degree of urgency to proceeding to set up and establishing a radioactive waste facility. As you probably are all aware reprocessed fuel rods were to be returned to Australia from France and Scotland. In our understanding it is to be in 2015, but we believe others have said it is in 2011, 2012. You may want to clarify exactly what the date is, but the key point is that timeliness is an issue to when the facility is built.

The final comment I make is that Australia has responsibility to look after this waste. Whether you are antagonistic to or supportive of nuclear materials, the obstinate fact is that the waste is here and it needs to be dealt with in an orderly and safe manner.

CHAIR—Thank you very much, Mr Smith. You say that there should be a repository for radioactive waste. Can you give us a bit more information about why the societies believe the waste is hazardous and should be stored in a central facility?

Mr Smith—World's best practice suggests that a central facility is the optimal way to look after radioactive waste. There are a number of dimensions around safety issues. If your waste is scattered around the country in suboptimal conditions, accidents can occur. There are some notorious examples, notably Brazil, where waste radioactive materials were not handled correctly causing death. There are no instances of that in Australia but if you have it all over the place it is a security risk. It is also just good management of risk.

CHAIR—Okay. Also in your submission you say that radioactive waste may need proper shielding from the biosphere in an appropriately stable site. What exactly do you mean by 'proper shielding'?

Mr Smith—You might want to put this technical question also to other witnesses. I am not a scientist myself. Certainly for long-lived radioactive waste—such as radium, where you are talking half-lives of 1,600 years and of medium level—then the world's best practice is clearly that it needs proper shielding to prevent leakage into the environment.

Senator LUDLAM—Thanks for joining us this morning and thanks for your submission. The government is committed to a process for identifying suitable sites, such as you mentioned, for a radioactive waste facility that could be scientific, transparent, accountable, and fair, and allow access to an appeal mechanism. Does your organisation support such an approach?

Mr Smith—We have views on, if you like, the science and technology elements of that question, and there are broader questions which we are not competent to make a judgement on. But, in principle, yes.

Senator LUDLAM—Would confirming the site or sites under the current legislation meet those scientific criteria as far as you are concerned?

Mr Smith—If you have a rigorous assessment of the sites to look at the hydrological, geoseismic and other environmental dimensions to it and if the proper legal environments afford safe transport, then yes.

Senator LUDLAM—You would be aware, obviously, that the Commonwealth went through quite an extensive site selection process in the 1990s and that none of the four sites that are currently under consideration made it to the short list. Does that give you concern?

Mr Smith—I think we have just been given strong concern from the scientific community since 1979 when some of these issues started to percolate onto Commonwealth-state agencies.

Senator LUDLAM—Sorry, that is not quite the direction of the question. Of the four sites that are on the short list at the moment, none of those were short-listed when the Commonwealth did take the time to go through a fairly exhaustive scientific and geotechnical process.

Mr Smith—I understand that. The point I was leading to was that we are not saying that these four sites are optimal. The question is: will they be adequate? That will depend on the testing of them.

Senator LUDLAM—Okay, so suboptimal, but possibly inadequate.

Mr Smith—Yes.

Senator LUDLAM—Okay. That is interesting.

Mr Smith—I said possibly suboptimal, but the point is: will they pass the scientific tests for their adequacy?

Senator LUDLAM—Okay.

Mr Smith—We are yet to see the results of that testing.

Senator LUDLAM—As are we all. Your submission says that any site should be subject to stringent scientific examination, including seismic stability. A little bit of looking around on Geoscience Australia's website indicated that the Muckaty site, which has been short-listed, is quite highly seismically prone. Would that be a concern to you or your organisation?

Mr Smith—If the analysis of the site showed that it was seismically dangerous and that that created a risk profile which is unacceptable, then clearly that site should not go ahead. But I would make that comment about all sites.

Senator LUDLAM—Sure, okay. But were you aware that Muckaty in particular is quite seismically prone?

Mr Smith—No, I am not, and I am not competent to make that judgement myself.

Senator LUDLAM—Okay. Can you just tell us a little bit about your organisation? Your submission indicates that it is made up of 60 member organisations.

Mr Smith—Yes.

Senator LUDLAM—Can you tell us what sort of debate there was within FASTS to arrive at the position that you have arrived at and how you concluded that position?

Mr Smith—Yes. The primary debate actually occurred four years ago. There has been ongoing debate with members since the seventies about the need for radioactive waste facilities, so it is a general and ongoing conversation. There was specific discussion four years ago when the 2005 act came up. There was not substantial further discussion on this bill in terms of scientific dimensions because we believe that the scientific issues have remained the same for 25 years, in some respects. No, there was not further in-depth conversation on this particular bill that the Senate is looking at.

Senator LUDLAM—Okay. You mention in your submission on the first page that you note the concerns over the process by which the act that this bill would repeal came into operation. You note the concerns. Do you share any of those concerns?

Mr Smith—FASTS does not speak, and is not competent to speak, on issues to do with who is speaking with the Indigenous community. We can only speak for science and technology issues. While we are aware of those broader issues and that, if you like, the science and technology issues will under-determine the policy response, we will not speak, and would not presume to speak, on Indigenous issues.

Senator LUDLAM—Okay. Lastly, in reading your submission, I notice that you do not actually reference the need for a remote dump. You just say there should be a centralised facility that meets these other criteria. I just wonder if you could talk a little bit further about that. For example, should the scientific process establish that the safest place for long-term storage is where it is at the moment—the Lucas Heights facility—would that meet your organisation’s criteria?

Mr Smith—My understanding is that Lucas Heights would not meet the criteria. That is a question to put to ANSTO. I recall from the 2005 act discussion that that question came up about whether Lucas Heights is adequate for a long-term facility. There are always questions. There is a question about how close to the source should any facility be. As I said, there would be a view in the science community that these sites are not necessarily perfect. Perhaps some of the South Australian sites identified 10 years ago, setting aside the politics and other considerations, might have been better. But if the pragmatics are that these are the only viable sites and if they are adequate for scientific purposes, then that might be what we have to go with.

Senator LUDLAM—Okay. I guess I can disagree with you on the last point that these are the only viable sites.

Mr Smith—I am saying that that is so ‘if they are the only viable sites’.

Senator LUDLAM—Okay, I do beg your pardon. I will leave it there.

CHAIR—Mr Smith, I note your expression that FASTS ‘does not have a view where a facility should be situated other than any proposed site,’ et cetera. Do you believe that the Northern Territory is the only possible site for this, in view of, as you say, 30 years of discussion?

Mr Smith—It would appear to be that politically the pragmatics seem to be that that is the only viable site at the moment that I am aware of for a Commonwealth facility.

Senator TROETH—Right. And I would take it that it is the view of your organisation that you believe there should be a radioactive waste facility, provided it is situated in the proper place and subject to stringent quality control, and that that is your main concern.

Mr Smith—That is our overriding concern. We would argue, perhaps, that we should have something slightly differently to the Commonwealth act. We think there should be a national facility as distinct from a Commonwealth facility. What we mean by that is that if there is a national facility, we would urge states to also join the Commonwealth to put their materials there, given that 95 per cent, in volume terms, of the waste is Commonwealth produced. It makes sense then for the residual, which is controlled by the states and territories, to be in a Commonwealth facility, so we are arguing for a national facility.

Senator TROETH—That would mean probably that the states would need to repeal some of their legislation, which they put in place earlier—that there not be a waste facility in their state, would you think?

Mr Smith—If a state was to decide, once a Commonwealth facility is built, that it would also join with that, and that was what it took, then yes.

Senator TROETH—Okay. I note also that you have made the comment that transport of radioactive waste represents a very low risk to public health and the environment. Is that your belief?

Mr Smith—That is our belief. The evidence suggests that there are tens of thousands of transport movements each year in Australia of radioactive materials—millions around the world—and to the best of my knowledge there has been no serious accident from transporting those materials.

Senator PRATT—Mr Smith, I believe you said that on scientific grounds you believe the current sites are viable but that they might not be the best sites in the country. Is that what you were saying?

Mr Smith—No, FASTS does not have the information available to say whether those four sites are sites that would pass the scientific threshold. We are aware that there is analysis going on, but we have not seen that analysis so we make no claim on what the result of that analysis is. What we are saying more broadly is that, if you look at the last 30 years of discussion about a facility, there may have been other sites which could have been more appropriate, for a range of reasons.

Senator PRATT—So on what basis do you support the current sites under this process being viable?

Mr Smith—We have not supported the current sites. What we said is that there is a process to examine them. If any of those sites pass the sort of scientific tests that you would require—looking at seismic stability, where groundwater is, relationship to potable water, and those sorts of issues—then we would look at it. But to the best of my knowledge those results have not been made publicly available.

Senator PRATT—Yes, okay. You have also said that you are not prepared to comment on the community mandate as to whether from a community point of view those sites are viable.

Mr Smith—FASTS as an organisation has no competence and we would not presume to speak ever for the Indigenous peoples on that issue.

Senator PRATT—You have said, ‘repealing the Act in the absence of a firm decision on a site for a waste facility is unacceptable’.

Mr Smith—Yes.

Senator PRATT—Does that mean that you are implying that it is unacceptable unless an alternative site to, say, one of the four sites that is currently being—

Mr Smith—That is right. We are opposed to a situation where this gets repealed, and we are back to 1979 again, if you will—

Senator PRATT—Okay.

Mr Smith—and the process is to start again. As I said, there is a time constraint on this.

Senator PRATT—What if all four sites are viable on scientific grounds but none of them is viable on the social and community mandate grounds?

Mr Smith—The decision on a site is ultimately a political decision of government.

Senator PRATT—Okay. Does that not contradict your statement that you do not believe in repealing the act in the absence of an alternative site? You have already said that you are not prepared to judge those social and community factors. But you are purely making that statement—

Mr Smith—We are presenting the scientific—

Senator PRATT—based, ultimately, on one of those sites being judged scientifically viable.

Mr Smith—Yes.

Senator PRATT—So if it was found that it is not socially or culturally viable or that there is not a suitable community mandate for any of those sites, you would admit that you are not actually in a position to judge that issue.

Mr Smith—Well, we are not judging that issue. That is, as I said, a political decision by the government of the day. Our position is that we are putting the science and technology argument that there is an urgency to have a national facility.

Senator PRATT—Okay. So repealing the act in the absence of a firm decision for a waste facility is unacceptable on scientific grounds, but it might be acceptable on social and community and other grounds?

Mr Smith—That is your view of it. Our view is that anything that seriously delays the establishment of the facility is unacceptable.

Senator PRATT—Because the implication of that is that you believe that, even though you are not competent to judge them, we should be overriding those other social, cultural and community mandate factors in favour of the scientific resolution. If you are not prepared to accept that someone else needs to make that judgment about whether it is acceptable from a community point of view, you are actually arguing that the scientific factors should, for example, override the issue of whether land rights has been treated appropriately?

Mr Smith—The history of discussion about a facility since 1979 shows that all communities have reacted strongly, or there has been activism from communities. South Australia, three or four years ago, was a recent example. At some point a decision has to be made. I understand your argument. I am just saying that there is an obstinate fact here. We have radioactive waste. It is not stored on an optimal basis. We need a national facility or a commonwealth facility to do that. That means hard decisions have to be made.

Senator PRATT—You are arguing that at some point, because there will inevitably be community opposition to such a site, the scientific factors in terms of the demand for a site are going to have to override a community mandate to locate the site.

Mr Smith—Yes.

Senator PRATT—Thank you.

CHAIR—Mr Smith, clearly your members, you say, work in the public sector, universities and industry sectors.

Mr Smith—And industry, very broadly.

CHAIR—They work with the waste that is stored, for example, in universities?

Mr Smith—Some of them would, yes. Some of our members work at all levels of the radioactive levels. So there would be some people who work in radio-pharmaceuticals in medicine, some who are researchers in universities, and some are of course with ANSTO.

CHAIR—Okay. One of the things that the committee has heard is that waste that is stored—for example, in universities—is inappropriately stored. Can you give us any insights about what your members see in that working environment or what needs to be done?

Mr Smith—I am aware of that from discussions I had with universities four years ago. I revisited that then. The concern was that you could have some radioactive materials in the back of the cupboard, forgotten, and that four or five years later someone might inadvertently misuse them because of loss of corporate knowledge, incorrect labelling or other things. There is a concern that when you have even small amounts of waste material dotted around the country in hundreds of potential sites, you will get an accident through human error or filing, whatever the case may be. It is that sort of general concern which again is the reason why a central national facility is important.

CHAIR—And also perhaps from the perspective of your members. I take your point that some people say it is 2011 to, say, 2015 for the return of waste from overseas that we need to deal with somehow in Australia. Presumably your members would be involved in that, if there was to be a national waste repository? They would be involved in the commission and building of that. Do you have any sense of the time lines that would be necessary to have an adequate facility?

Mr Smith—I am sorry, I do not have the expertise to answer that.

CHAIR—Okay.

Mr Smith—I can take it on notice or there is other—

CHAIR—No, that is all right. We can ask other people. I thought you might have had a view on that. Are there any further questions, senators?

Senator LUDLAM—Is it the view of your organisation that the eventual, final resting place of really long-lived materials, such as the reprocessed spent fuel that is due to return, should be sited in a location that is as far from population centres as possible? Does that play a part?

Mr Smith—That would be one of the criteria you would look at in your selection criteria. My understanding was that for the previous committee, which looked at this in 2005, closeness to population was one of the criteria.

Senator LUDLAM—Okay. Why do you think that would be?

Mr Smith—I do not know the basis on which that particular criterion was put up at the time. It is clearly going to be a political dimension. That is a private view. Whether it has a political dimension, I could not answer that. I am happy to take it on notice.

Senator LUDLAM—Yes, that might be helpful, I am aware that you are not interested in commenting on the political dimension of things. I was actually more interested in the scientific or technical dimensions of why we might want to site such a facility as far away from population centres as possible.

Mr Smith—Yes. I will take that on notice.

Senator LUDLAM—I would appreciate that. The reason that has been cited overseas is that there is no form of engineered barrier that contains waste of this kind for the time periods required. Essentially, the reason we are looking at seismic stability, distance from groundwater movements, tectonic activity or faulting, or whatever, is that the material eventually will escape from whatever engineered containment you put it in.

Mr Smith—I am happy to take than on notice.

Senator LUDLAM—Okay. That is not a view that you have?

Mr Smith—You are asking a technical question which I am not competent to answer. I am not a scientist, but I am happy to come back to you on that one.

Senator LUDLAM—Okay. I would appreciate that. I believe that our reporting date is 18 December.

Mr Smith—I will get back to you in the next couple of days.

Senator LUDLAM—That would be appreciated.

Mr Smith—Yes.

CHAIR—Thank you very much, Mr Smith, and thank you for your submission and for taking the time to appear before the committee this morning. We appreciate it very much.

Mr Smith—My pleasure. Thank you, Chair.

[9.27 am]

DIMITROVSKI, Mr Lubi, Manager, Waste Operations, Australian Nuclear Science and Technology Organisation

McINTOSH, Mr Steven, Senior Adviser, Government Liaison, Australian Nuclear Science and Technology Organisation

CHAIR—I now welcome to the table officers from ANSTO, the Australian Nuclear Science and Technology Organisation. Mr Steven McIntosh and Mr Lubi Dimitrovski, thank you for coming along to talk to us today. I note that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. Gentlemen, the committee has received your submission as submission No. 5. Do you wish to make any amendments or alterations to your submission?

Mr McIntosh—No, Madam Chair.

CHAIR—Do you wish to make a brief opening statement before we go to questions?

Mr McIntosh—Thank you, Madam Chair. Activities involving radioactive material in medical treatment, industry, research and environmental studies deliver considerable benefits to all Australians. Those activities necessarily produce small amounts of radioactive waste. Any decision on the safe, long-term management of radioactive waste needs to recognise that indefinite storage of radioactive waste, particularly by small holders, is not consistent with international best practice. Evolving international best practice involves the provision of central disposal facilities or stores by government so that the risks of unwanted radioactive materials, particularly radioactive sources, becoming orphaned are minimised and burdens on future generations are minimised.

Two years ago the House of Representatives Standing Committee on Industry and Resources handed down a bipartisan report entitled *Australia's uranium—greenhouse friendly fuel for an energy hungry world*. In discussing the safety of radioactive waste management, the committee said:

The Committee concludes that the radioactive wastes which are produced at each stage of the nuclear fuel cycle have, since the inception of the civil nuclear power industry 50 years ago, been responsibly managed. There are proven technologies for the management of all types of radioactive waste. For example, worldwide, some 40 near-surface disposal facilities for LLW—

low-level waste—

and short-lived ILW—

intermediate-level waste—

have been operating safely for the past 35 years.

The report also said:

Claims that the generation of radioactive waste, its management and transportation pose unacceptable risks simply do not reflect the realities. ... The facts indicate that the radioactive wastes generated at the various stages of the nuclear fuel cycle continue to be safely and effectively managed.

ANSTO agrees with those conclusions.

Radioactive materials are transported around Australia and around the world every day for a variety of purposes. Some years ago we estimated that around 56,000 packages of radioactive material were moved on through our New South Wales roads every year. The transportation of radioactive materials has a remarkable safety record. Over several decades tens of millions of packages of radioactive material, including packages of radioactive waste, have been transported around the world each year. In all those transports there has never been an in-transit accident with serious human health, economic or environmental consequences attributable to the radioactive nature of the goods. Experience demonstrates that the risks associated with the transport of radioactive waste are much lower than are the risks associated with the transport of many other hazardous materials that are classified as dangerous goods. Thank you.

CHAIR—Thank you, Mr McIntosh. Mr Dimitrovski, do you have anything to add?

Mr Dimitrovski—No.

CHAIR—Thank you. Just before I go to other senators, can you clarify the issue of 2011 and 2015 in terms of waste that will be returned to Australia?

Mr McIntosh—Contractually, there is a window between those years wherein particular waste from Dounreay was to be returned. The waste from COGEMA in France was always going to be around 2015, but for the Dounreay waste there was a window. It now appears, because of issues at the Dounreay end, that it is more likely to be towards the back of that period than the front of that period, but contractually that window still exists.

CHAIR—Do you have a view about how long it would take to commission and construct a suitable facility to deal with that waste, but also with Australia's nuclear waste—the Commonwealth's in particular?

Mr McIntosh—It should not take too long. Certainly it would not take the seven years that we seem to have. The issue, though, is that under the contracts both with Dounreay and COGEMA, in the next year or so we have to begin making logistical arrangements for the return of the waste. Until you have at least a site to which they are going to be returned, and therefore some idea of what ports you would go through and what logistical arrangements you would make once the cargo has landed, it is very difficult to make those logistical arrangements. Even though the waste itself will not be returned for some years, we have a contractual obligation to have a site identified within the next one or two years.

CHAIR—But it could be returned to Lucas Heights?

Mr McIntosh—Certainly there is no technical reason why it could not. Governments of both political persuasions over the years have told the local community that it will not be, but that ultimately is a political decision.

CHAIR—And is the only option for Australia to return it to a facility in Australia, or contractually is there an alternative?

Mr McIntosh—No. We are clearly both under contract and under treaty level agreements with the United Kingdom and France. We are obliged to take the waste back in Australia.

CHAIR—So we could not outsource it somewhere else?

Mr McIntosh—The prospects of any other country agreeing to take it I think are vanishingly small. It is difficult enough, as we can see in this exercise, for states to agree to manage their own waste. Getting a state to agree to manage somebody else's waste in the long term is pie in the sky, frankly.

Senator TROETH—Political considerations aside, were you happy with the process that set about choosing sites in the Northern Territory up to this point?

Mr McIntosh—The policy process was something that ANSTO was not involved in.

Senator TROETH—Right.

Mr McIntosh—We cannot really comment upon that policy process. We understand, and I know that you say to leave politics aside, but politics frankly was the determining factor.

Senator TROETH—I realise that you would prefer not to comment on that. But in terms of safety, stringency, scientific criteria and so on, was ANSTO satisfied with that part of the process?

Mr McIntosh—There are a wide range of sites in Australia, as there are around the world, which would be suitable for such a facility. In fact, the majority of Australia would be suitable for such a facility. I understand that the department has commissioned an independent study of the suitable geology of the site. Geology really is the determining factor as to whether a site is suitable or not, as long as those processes are rigorous. Then they have to go through an EIS process and a licensing process under the ARPANS Act. I am confident that any site that comes out of that process will be suitable.

CHAIR—Going back to my questions about 2001 to 2015, you mentioned that window of opportunity. Is it possible that Australia could have foisted on it the date that the waste is going to be returned from Dounreay, or is it by agreement?

Mr McIntosh—To some extent it is. The contract was for a period from the time that the waste cementation plant was operational, which was always a bit of a moveable feast. I think it is operational now.

Mr Dimitrovski—It is operational now, yes.

Mr McIntosh—So only when the cementation plant became operational could then a date for return be set.

CHAIR—Is the date set by agreement, or can Dounreay say? You know, 2013 is coming your way.

Mr McIntosh—Within that, there is scope for agreement, but there is a deadline. We cannot push it back beyond 2015.

CHAIR—Okay.

Mr McIntosh—But there is scope for agreement within that. Certainly, if there was an issue and we were told now that a facility would be available at a particular site in 2013 or 2014, we could accommodate that within our arrangements with Dounreay.

CHAIR—In your submission you note that France, in particular, has close to the surface waste repositories and you mentioned also that in Hungary a repository was established early this year. Now, in my experience of those countries, they do not have a geology anything resembling Australia's. Presumably they do not have ancient geology that we have, but those countries are comfortable with storing waste.

Mr McIntosh—That is correct. And the requirements for high-level waste are more stringent, as Senator Ludlam suggested before, but for low level waste, they are not that difficult. There is a range of suitable geologies. In France they are put in clay, I believe. In Germany they are in salt. In other places they are in hard rock. In Spain they are in hard rock. There is a range of geologies which are suitable, but there are some geologies which are not. Limestone, for instance, would be an obvious geology which would be unsuitable and sandstone is another one where there has to be issues.

But there is a range of geologies which have to be suitable, and as long as you can find one of those geologies, that is all right. There is a rainfall issue. A repository in the United Kingdom or France certainly has rainfall challenges which would not exist in most of Australia. But you can deal with that with a bit of engineering, and that is been done successfully in those countries.

CHAIR—So then why does Australia mainly look at remote sites?

Mr McIntosh—I believe it is for political reasons, Senator.

Senator LUDLAM—Maybe we will just carry on that line of questioning. What would be the penalties to Australia if we did seek to renegotiate the return of the spent fuel from France and the United Kingdom?

Mr McIntosh—Well, as I say, we would find ourselves in breach of treaty obligations.

Senator LUDLAM—Okay, but I recognise that in 1999—this is just going to the agreement with France—we exchanged letters pursuant to the 1981 agreement that we signed between Australia and the French Republic concerning nuclear transfers. Surely those negotiations could be opened again without us being in breach.

Mr McIntosh—They could be.

Senator LUDLAM—Okay. So there is nothing legally preventing us from at least reopening negotiations on the return of that material?

Mr McIntosh—I suspect that, because of French domestic political reasons, we would not get very far. There is a low-level debate in France about accepting foreign spent fuel. The basis on which the parliament and the population have accepted that they will reprocess foreign spent fuel is on the basis of firm assurances that the resulting waste will be shipped back to the country concerned. For our waste, it is a very small quantity, but in terms of a precedent that would set for larger quantities of waste for other countries within Europe, the French would be very unlikely to entertain such a prospect.

Senator LUDLAM—Okay, thanks. You are the second witness today who has said that it is essentially politics that is determining the location of this site, rather than technical or scientific considerations. I have not often heard it expressed quite so bluntly.

Mr McIntosh—What I said was that it is politics determining the remote site. There is plenty of suitable geology closer to major cities.

Senator LUDLAM—Okay. Can we go perhaps to the geology then? Why are we seeking stable sites or the kind of characterisations that are made of what a suitable dump site is or is not? Why have we chosen those particular factors?

Mr McIntosh—You do not want to have a possibility of nuclides leaking into drinking water, for instance.

Senator LUDLAM—Yes, okay.

Mr McIntosh—That is the sort of thing that you would be concerned about, and that is the sort of geological issue you would look at.

Senator LUDLAM—All right. I am not sure whether you were up the back when I put this question to the federation earlier, but is it the case that we are looking for the stable geology and distance from groundwater sources and so and that there is no form of engineered containment that can hold this material for the time periods that are required?

Mr McIntosh—For low-level waste, it is not such an issue.

Senator LUDLAM—Yes, but for the long-lived, intermediate or high-level waste, it is?

Mr McIntosh—Yes.

Senator LUDLAM—Okay. Thanks. Is ANSTO a party to any contract between the Northern Land Council and the Muckaty Land Trust?

Mr McIntosh—No.

Senator LUDLAM—Are you aware of any Commonwealth agency that is a party to such a contract?

Mr McIntosh—I believe it was the old Department of Education, Science and Training. I presume that the contract was passed on to the Department of Resources, but you will need to ask them about that.

Senator LUDLAM—Okay, so that is passed from DEST to the Department of Resources.

Mr McIntosh—As I say, I presume that that was the case. The policy responsibility for waste management went to Resources after the election. I presume the contract also went as well but I have no firsthand knowledge of that.

Senator LUDLAM—Okay, thanks. Your submission states, and I think it is probably generally recognised, that ANSTO is the centre of expertise in Australia on nuclear science and technology. I think your submission explicitly says that ANSTO does have the capacity to safely manage the waste on site for years to come. So is there any technical reason why the material could not remain at Lucas Heights indefinitely? Could you just tell us about the kind of technical capacity constraints that you face?

Mr McIntosh—There are a couple of issues. One is simply the capacity constraints in that we have to build another shed, frankly, if we keep accumulating low-level waste indefinitely. But my concern is not so much ANSTO; it is the other sites that Mr Smith referred to. There are approximately 100 sites around Australia where radioactive waste is. In many cases it is disused sources that the owners would love to get rid of and thereby substantially reduce the number of those sites.

Senator LUDLAM—Yes.

Mr McIntosh—And those sites, particularly where it is only disused sources, the incentive for those people to make sure that those materials are safe and secure must be reduced from an operational site.

Senator LUDLAM—Isn't it the case though, and we will just stay with this for the moment, that even if we did centralise the sources and the other waste materials that come from those sites and took them to some place, these places—the hospitals, the engineering departments and so on—are still going to be continually producing?

Mr McIntosh—No, that is not the case. Certainly some will. You will not go down to one site, but you would have a significant reduction, and I am not sure exactly what it would be. For instance, until the 1990s, for external radiotherapy you used caesium sources.

Senator LUDLAM—Yes.

Mr McIntosh—And then in the 1990s in Australia—even though they are still used in a lot of developing countries—they were replaced by accelerators, which are radiation generators. Now those hospitals therefore are still hanging on to those caesium sources because they have nowhere to send them, but they are simply waste.

Senator LUDLAM—Yes.

Mr McIntosh—If they could get them off the site, then they would no longer have any waste on the site and no reason to get waste on to the site.

Senator LUDLAM—Yes.

Mr McIntosh—So they are significant, and there have also been a couple of instances in recent years of which I am aware where industrial sources were found thrown in the back of a cupboard in abandoned industrial facilities.

Senator LUDLAM—Yes.

Mr McIntosh—So there would be a significant reduction in the number of sites holding waste if there were a centralised facility.

Senator LUDLAM—That is helpful. Can you turn to the question of the spent fuel or the reprocessed material that is to be returned from overseas. What would be the constraints on ANSTO should that material be returned to Lucas Heights rather than to a remote dump? What would you need to provide on-site?

Mr McIntosh—We would have to build a facility similar in nature to the proposed store for the Commonwealth facility.

Senator LUDLAM—Is there anything technical preventing that from occurring, leaving politics to one side?

Mr McIntosh—No.

Senator LUDLAM—Has ANSTO or any other agency ever done a full assessment of what that would look like?

Mr McIntosh—No. There has been a full assessment done of what it would look like at the Commonwealth site, and presumably it would look the same, but we have not done any planning for such an action on-site because we have been told by government—and at the end of the day we are directed by government—that this waste will not be returning to our site. Why would we waste resources planning for something we have been told will not happen?

Senator LUDLAM—It will not happen. So in your understanding the Commonwealth has never undertaken an examination of whether the material should remain where it is? We have just jumped straight to, 'It's going to be a remote site, so don't even worry about it.'

Mr McIntosh—No. The rationale has always been the provision of a centralised site.

Senator LUDLAM—Lucas Heights would be centralised.

Mr McIntosh—Well, you see, it is—

Senator LUDLAM—I mean whether it is remote or not.

Mr McIntosh—The ANSTO Act prevents us from taking waste which did not originate from our activities, and in the last couple of years there were small amendments to that which widen the scope of that slightly.

Senator LUDLAM—Yes.

Mr McIntosh—But we are certainly not in a position, under current legislation, to become the national waste facility. That goes against the ANSTO Act itself. It goes against the ANSTO Act in two regards: it explicitly states that ANSTO shall not become the national waste facility and it states that we can only accept waste from a limited class of waste.

Senator LUDLAM—Commonwealth sites or state waste? Can you accept waste—

Mr McIntosh—We could take Commonwealth waste under the amendment that was passed a couple of years ago, but we could not take state waste.

Senator LUDLAM—That is the kind of facility that is in question at the moment. Lastly, I would like to touch on the issue of transportation, because you were quite explicit in your submission and again in your opening statement. You said:

... there has never been an in-transit accident with serious human health, economic or environmental consequences attributable to the radioactive nature of the goods.

That is a very strong statement. Are you aware of the UK National Radiological Protection Board report which cited 38 accidents involving the movement of radioactive materials by rail, road and air in the UK just during 2000 compared with the 19 in 1990, which included a derailment, a road crash, a theft and a series of instances where radiation packages were faulty, mislaid or were damaged? Have you come across that report before?

Mr McIntosh—I have not come across that report, but it is consistent with what I said. There have undoubtedly been cases where trucks have crashed and damage has been caused because it was a truck. But what I said was ‘attributable to the radioactive nature of the contents’.

Senator LUDLAM—I recognise that, but you are not familiar with that particular report?

Mr McIntosh—I am not familiar with that particular report, but this conclusion was drawn from an International Atomic Energy Agency conference on the transport of radioactive material in 2003. Countries with strong antinuclear stances like New Zealand and Ireland are very comfortable putting their names to that statement. In fact, there was a resolution passed at the annual general conference of International Atomic Energy Agency every year, which is sponsored by New Zealand, which right upfront talks about the exemplary safety record of transport of radioactive material.

Senator LUDLAM—The what safety record?

Mr McIntosh—The exemplary safety record of transport of radioactive material.

Senator LUDLAM—I would argue that the statistics I just put to you are hardly exemplary. In 10 of the instances containers were contaminated in excess of safe limits. How is that in any way exemplary? That is just one year in one country.

Mr McIntosh—If you compare it with the transport of virtually anything—petrol—

Mr Dimitrovski—Dangerous goods.

Mr McIntosh—chemicals, LPG—people die as a result of the nature of the cargo. People do not die as a result of the fact that a container has activity on it which is slightly above the prescribed limit. People just go and clean it up.

Senator LUDLAM—So I can take from those comments that ANSTO has no significant concerns at all about the transportation aspects of movements of radioactive waste.

Mr McIntosh—As long as that transport is done in accordance with the international and national standards, we do not have that concern.

Mr Dimitrovski—I just wanted to add that we have had eight shipments of spent fuel in the past 30 years. We have one pending, which is our last HIFAR shipment. It has been very well planned, with no incidents—all packed, all within guidelines. I add also the fact that we transport medical isotopes every day from ANSTO in a way to save lives. We are not considering that. That is a transport package. Also, radioisotopes are much more severe and active than a waste package would be, because we are talking about a waste package. We are talking of medical isotopes going from all the hospitals. What is the difference between transporting those compared to waste? Waste is so much safer.

Senator LUDLAM—Really? Reprocessed spent fuel is safer than transporting medical isotopes around urban areas?

Mr Dimitrovski—Spent fuel is the safest transport you can imagine. The cask is engineer designed. There is a transport plan. There is a process. We have never lost a cask, a spent fuel shipment or a mode in the history of movements across from Europe to Japan back to the US. There have been no incidents at all. It is safe—very safe.

Senator LUDLAM—It is extraordinary. I will leave it there.

Senator PRATT—I am interested in some of the things you have said about Lucas Heights and how it clearly does not have a mandate to become a national waste facility. I would imagine that those parameters have been set because there is some community concern about the level of nuclear waste there somehow intensifying or having a greater density.

Mr McIntosh—It stems back to the early 1990s, when the then management of ANSTO agreed with CSIRO to accept a large volume of lightly contaminated soil from a site in Melbourne. That material was trucked to Sydney. Sutherland council then took an action in the New South Wales Land and Environment Court for an order that it be removed from the site. They prevailed in that action, and then the political solution that was adopted was the amendments to the act that I have described. That CSIRO waste is now sitting in aircraft hangers out at Woomera and has been for the past 15 years.

Senator PRATT—Clearly, it takes ongoing expertise and human intervention over many thousands of years to make sure that a particular site stays safe and is monitored.

Mr McIntosh—With a low-level waste site, the idea is that we are talking 200 or 300 years. We are not talking thousands of years for a low-level waste site.

Senator PRATT—In that sense, in terms of the different kinds of storage that you have currently got at Lucas Heights, you have a range of different nuclear activities taking place there, from storage through to the production of isotopes. Could you give us a brief overview of that?

Mr McIntosh—I guess in terms of waste storage there are—

Senator PRATT—I suppose I would like an overview, a brief description of the activity, and, I suppose of the life of that particular activity in terms of when it is likely to become safe, if that makes sense.

Mr McIntosh—The operation of the reactor generates particular waste and the other major source of radioactive waste on-site is the processing of radiopharmaceuticals. There are a range of other activities which take place on-site, but they generate very small amounts of waste. If we concentrate on those two, radioisotopes are very short lived. The whole point is that they are injected into the body and that they decay away within a few days.

With regard to the generation of waste, the longest lived isotopes are those which arise from the operation of the reactor, but the quantities are very small and again most of those are contained in the spent fuel and will eventually be contained in the reprocessed waste that comes back. There are certain things that are activated which become also intermediate-level waste, like the control arms for the reactor will become activated and become waste.

Senator PRATT—Say there were a plan to shut down Lucas Heights and you were to say that all the waste is going to go elsewhere; what would be the residual level of radiation in terms of needing to contain that site?

Mr McIntosh—The Lucas Heights site?

Senator PRATT—Yes. Is it minimal, or is most of the radiation associated with the waste? The issue I am trying to get my head around is whether Lucas Heights is going to be a nuclear site for many thousands of years or 300 years. I do not know the technical answer to that. I do not necessarily understand why you would look for sites elsewhere that have shorter term storage requirements, because it would seem logical to me that if you are going to centralise your nuclear storage and nuclear activity, you would focus that on one site in order to keep the maximum expertise and safety focus around that place.

Mr McIntosh—Lucas Heights could be dismantled and totally cleaned up. It would take you 15 years, I guess. We are looking at dismantling HIFAR in about 10 years and that is the major residual source of activity. You could clear the site within about 20 years and return it basically to greenfield.

Apart from that, the other problem with the concept of using Lucas Heights as a national site is that, because of the geology of Lucas Heights, it is not suitable for disposal because it is on a porous sandstone. You are saying that you were going to store all the waste indefinitely, which clearly transfers the burden of managing those wastes to future generations, whereas the idea of disposing of the low-level waste is that, apart from some ongoing surveillance and monitoring of the site, you have basically removed that burden from future generations, which is consistent with international best practice.

CHAIR—Mr McIntosh, you mentioned a word I did not quite hear. I think you said leachates from stored waste getting into water supply is an issue that we need to consider.

Mr McIntosh—Depending upon where you constructed your repository.

CHAIR—Yes, okay. So if those things get into the water supply, what are the implications for people who either drink or use that water?

Mr McIntosh—It would depend at what concentrations it got in. Radiation and radioactivity is present in the environment all around us. It is present in very low quantities in the water that you drink. So it would really depend on what additional level of activity got into the drinking water on top of what is already there. I cannot make a judgement as to what that is likely to be and, therefore, what the health implications are likely to be.

CHAIR—But say, for example, there were leachate arising from the spent fuel rods that might be coming back from overseas or something, which is sort of high-level waste. Are we talking about cancer, or people's hair falling out, or what level of risk?

Mr McIntosh—If there were a significant increase in the radiation that people encountered from whatever level, the accepted safety approach is that there is a statistical likelihood of an increase in cancers. Now, it is

very difficult to actually detect that in real life; it has been hard enough to detect it around Chernobyl where the numbers have been huge. With regard to the numbers around a low-level waste facility, I doubt you would ever see a difference, frankly, in cancer rates. But, because of the conservative approach that is taken to radiation protection, you would assume there would be an additional case or two in a population of thousands.

CHAIR—Okay. With regard to the radioisotopes you produce at Lucas Heights, other witnesses in this inquiry have said that Australia does not need to produce them at all and that we could just import them from overseas, and indeed we do import some anyway. If none were produced in this country and they were all imported, would there still be waste arising from radioisotopes that we need to deal with?

Mr McIntosh—There would be some. There would be significantly less. However, I would caution that that view expressed by other witnesses runs completely contrary to what is happening internationally. There is growing alarm internationally that the supply of molybdenum99 in particular is dependent upon a number of aging reactors which are having increasing problems. It is anticipated that within about five years there will be a global shortage, a significant global shortage, of molybdenum99 because those reactors are going out of service, and those that are in service are encountering increasing difficulties just because of the aging factors of staying up.

The reactor in Canada was closed down for a significant period recently. The reactor in the Netherlands has been closed for a significant period recently. The importance of OPAL for Australian nuclear medicine supply has become very evident over the last year or so.

CHAIR—Okay. If the bill that we are considering today repeals the existing act—and that is the extent of the bill that we are considering today—in ANSTO's opinion, if this bill were successful in the parliament, what would be the result? What legislation would then be in place to govern what we do with nuclear waste in Australia?

Mr McIntosh—None. We would be back to the situation we were in before 1992 when Minister Crean, in agreement with all the states and territories, launched the process of searching for a site for a national facility. At a time when the rest of the world has moved forward on the development of centralised facilities and the concerns about the dispersal of the holding of radioactive waste have increased, for us to go backwards would clearly make us a laughing-stock internationally.

CHAIR—Just practically, for example, would it mean, if the Federal Act were repealed, that the Northern Territory could determine to have a nuclear waste facility?

Mr McIntosh—Indeed, it could.

CHAIR—Subject to?

Mr McIntosh—Subject to political processes. I might add that the question was raised earlier about what happens if every community objects. I am aware that there have been some communities in Australia which have said that they would be happy to volunteer, but we have a federal system of government and the state governments have said, 'No, you won't'. So we have a situation where it does not matter if a local community is interested or not. The state or territory government concerned has determined for political reasons to prevent that. So, overseas there have been volunteer communities which have volunteered to host sites, but they have not had these federal units in between them and the nomination process. They have been free to go ahead and that is how a number of facilities overseas have been sited.

CHAIR—All right; thank you. Are there any further questions?

Senator LUDLAM—How many high-level radioactive waste dumps are there currently in operation around the world?

Mr McIntosh—There is a facility in the United States called the Waste Isolation Pilot Plant, which accepts transuranic waste; what in the US is called transuranic wastes but what in Australian usage, or normal international usage, would generally be classified as long-lived intermediate-level waste. That has been operating since the 1990s. That is the only one that is in operation at the moment.

Senator LUDLAM—So, the answer for high-level waste dumps then is none?

Mr McIntosh—That is correct. We do not have any high-level waste, so it is not—

Senator LUDLAM—No, I was asking on planet Earth. You said that the rest of the world has moved forward. You made it sound like Australia has been left behind, but actually there are none in operation anywhere in the world.

Mr McIntosh—No, moved forward in relation to the disposal of low-level waste and the creation of central storage facilities for intermediate-level waste.

Senator LUDLAM—Okay. Can I just clarify a couple of things that Senator Pratt raised? For a couple of different categories of waste that were concerned within Australia, for the low-level materials, the gloves, the exit signs, the sources and so on, how long does that category of waste need some form of active maintenance, surveillance or oversight?

Mr McIntosh—For the half lives of the material, you would put in a low-level waste facility such that it would be back at background levels, even if you dug it up after a couple of hundred years.

Senator LUDLAM—So 200 or 300 years or so. What about the sort of activated materials you mentioned before, like the bits and pieces in the reactor core in the buildings and so on?

Mr McIntosh—It depends upon the half-life of the nuclide concerned. We suspect that a lot of the material which is currently in our intermediate-level waste holdings has in fact decayed to such a state that it could be put in a low-level waste repository now. The relationship between how active something is and its half-life is more often inverse than the other way round. Material which was intermediate-level waste when it was removed from a reactor may well decay very quickly and reach low-level waste and even exemption level within a relatively short time. The amount of true long-lived intermediate-level waste that we have will mostly be the reprocessing wastes.

Senator LUDLAM—For how long does that material need to be actively safeguarded?

Mr McIntosh—It needs to be isolated from the environment for—well, you are talking thousands of years.

Senator LUDLAM—Thousands, or tens of thousands?

Mr McIntosh—Possibly.

Senator LUDLAM—And when you say ‘isolated’, presumably that means somebody keeping an eye on it to make sure it is staying isolated.

Mr McIntosh—Not necessarily. Clearly the international consensus is that it is possible to dispose of it in a deep geological formation.

Senator LUDLAM—Such that no single site has opened in the 60 years that we have been producing this material.

Mr McIntosh—That owes more to politics than the technical field, does it not? There is a clear technical consensus that that is possible and you can look at experts at the International Atomic Energy Agency and the OECD Nuclear Energy Agency. That is certainly possible. Politics has prevented that happening so far. Certainly Finland has identified a site.

Mr Dimitrovski—Yes.

Mr McIntosh—Sweden has identified two or three alternative sites.

Senator LUDLAM—People keep coming back to politics, but to me that diminishes the value of the scientific work that is done that runs entirely counter to the fact that we can contain this material. Yucca Mountain was not licensed because they could not prove that the material would stay isolated for a period of 10,000 years.

Mr McIntosh—That is not correct. The Yucca Mountain licence was applied for only in the last couple of months. The licence assessment process will take some years. At some stage there will be a decision on whether the Yucca Mountain is suitable or not. But to say that Yucca Mountain has been judged to be unsuitable is clearly not the case. The decision has not been taken.

Senator LUDLAM—I will let it go. Finally, because I think we are out of time, Lucas Heights was down for 341 days between April 2007 and September 2008. What did we do for radioisotopes during that period?

Mr McIntosh—We imported. We had occasional disruptions—in supply when people could not be provided with radioisotopes.

Mr Dimitrovski—Very risky.

Mr McIntosh—We were able to rely upon a good relationship with the South Africans, but the South African Safari reactor is around 45 years old. Clearly being able to rely on the South Africans for much longer is not a tenable state of affairs. We have been lucky.

Senator LUDLAM—While we have you here, could you give us an update on your progress towards repairing. I understand there are some cracks internally in the reactor that is causing light water to leak into heavy water. Can you give us an update of your progress in putting that back together?

Mr McIntosh—The seepage sites were clamped during the last scheduled shutdown. I have not seen the numbers yet to see how effective that has been. At the same time, our people went to Argentina to discuss permanent solutions because the clamping will hopefully reduce the seepage rate, but it will not eliminate it. I have not heard the results of those discussions so I will have to take that on notice.

Senator LUDLAM—Are you anticipating the potential of more shutdowns and closures in the short term?

Mr McIntosh—I would not have thought so. We have just started irradiating targets from molybdenum production. If we assume that the seepage stays at its rate before the clamps were applied, the worst case scenario is that we have to do more frequent heavy water changes than we had planned to do anyway. Even if it was perfect, we would have replaced the heavy water once every 10 years during operation of the plant.

Senator LUDLAM—But nowhere to place that?

Mr McIntosh—It would have to be more frequent than that if the seepage is not addressed.

CHAIR—Mr McIntosh, I have one more question about the radioisotopes. You state in your submission that at present levels of usage, every Australian will need a radioisotope for medical purposes during their lifetime. Other witnesses in this inquiry have said that radioisotopes are old technology—I am paraphrasing them—and we should be moving away from that. Can you let us know what those radioisotopes are used for now—what medical purposes and whether or not you agree with the opinion that that is old technology and we should be moving forward?

Mr McIntosh—At the end of the day, whether it is old technology or new technology, whether it is suitable technology is decided by the doctors. It is not decided by us. We do not force people to use radioisotopes. The demand is out there. The demand continues to grow. The demand for radiopharmaceuticals in Australia increases by about six or seven per cent a year, so clearly the doctors do not feel that it is being replaced by other technologies; otherwise, that would be reflected in the demand for our product.

Radioisotopes are mainly used in diagnosis of various cancers, heart disease, neurodegenerative disease, which is becoming an increasingly important issue in Australia. An early diagnosis of those diseases is crucial to survival rates. Nuclear medicine is essential. Doctors—not us—decide it is an essential part of their armoury for dealing with those sort of diseases, and we cannot see that changing in the short or medium term. A small percentage of radioisotopes are used for treatment of cancers. There is an yttrium compound which is used for the treatment of liver cancer, and liver cancer is normally fatal. If you can treat it, it makes a big difference. Iodine-131 is used for the treatment of thyroid cancer. You can cut the thyroid out instead but the use of radiotherapy is a much less invasive procedure for the body for the long term.

CHAIR—Thank you, Mr Dimitrovski and Mr McIntosh, for your submission and for taking the time to appear before the committee this morning. We appreciate it.

Mr McIntosh—Can I clarify whether I ended up taking a question on notice from you, Senator?

Senator LUDLAM—You have taken a couple.

Mr McIntosh—Right. Thank you.

[10.14 am]

HARRIES, Dr John, Past President, Australian Nuclear Association

CHAIR—I welcome Dr Harries from the Australian Nuclear Association. Thank you very much for coming along to talk to us today. The committee has received your submission as submission No. 18. Do you wish to make any amendments or alterations to your submission?

Dr Harries—No, I will leave it the way it is.

CHAIR—Thank you. Would you like to make a brief opening statement before we go to questions?

Dr Harries—Yes, I would.

CHAIR—Please do so.

Dr Harries—The Australian Nuclear Association is an independent, scientific institution made up of individuals drawn from professions, business, government and universities with an interest in nuclear, scientific and technical topics. The Australian Nuclear Association opposes this bill to repeal the 2005 act. Australia needs a Commonwealth radioactive waste management facility, and this bill, if passed, would stop the present process without giving any alternative or options for future systems for managing this waste.

Radioactive waste already exists at many Commonwealth sites. This waste has been generated over many years from a wide range of beneficial uses for radioactivity and long-term radiation. A single facility for the long-term management of radioactive waste and more Commonwealth facilities should be established. It would be preferable if this facility could also accept radioactive waste from the territories and states, but that is perhaps another issue.

Things have happened under the 2005 act. Sites are being investigated, including the site volunteered by the Northern Land Council, and a project is underway to develop a proposal for a facility. Now, at this stage it is only for developing a proposal, which is going to then be assessed. Once there is a detailed proposal, the facility can be assessed for environmental, safety and social impact, and can go through the full process.

Under the 2005 act, the actual facility would still be subject to approval and licensing under the Australian Radiation Protection and Nuclear Safety Agency, and also require an EIS approval under, I guess, the Environment Protection and Biodiversity Conservation Act.

As extensive national and international experience demonstrates, the long-term management and the safety of radioactive waste can be assured if facilities for storage and disposal are properly sited, constructed, operated and regulated. The transport of radioactive waste occurs regularly under internationally agreed regulations and agreements, I guess, from ANSTO and some of those bodies. The waste destined for this facility would be solid, stable and readily and safely transportable.

Australia has only approximately 4,000 cubic metres of non-mining radioactive waste—there is more mining radioactive waste, but that is another issue—which is much less than the amounts in many other countries. More than 80 near-surface disposal facilities for low-level radioactive waste have been built around the world. Many are designed for over 500,000 cubic metres; for example, Drigg in the UK and Centre de l'Aube in France have capacities of over a million cubic metres, and these are in routine operation, day in, day out.

The purpose of the 2008 bill appears to be to stop scientific investigation of the four sites in the Northern Territory, challenge the volunteer process and derail development of a proposal for a radioactive waste management facility. We feel that site investigations that have been already underway for several years should be allowed to be completed and a full proposal to be developed. Otherwise, we are arguing about perceptions about what this facility might be and what its safety case might be.

The Australian Nuclear Association recommends that the 2008 bill not be passed so that the sites being investigated can be characterised and a clear proposal established and prepared for proper scientific, environmental and social impact assessment. Thank you.

Senator LUDLAM—Thanks for coming in this morning. From my reading of the submission you do not explicitly argue for a remote waste facility. You just asked for a centralised store. Is that a correct reading?

Dr Harries—As the previous process has been going since 1992, we are now at the point at which the accepted site selection criteria for a repository or for disposal facilities in Australia seems to be a remote one. There is an advantage of being away from a population centre. Being remote and in a desert area eases some of the engineering concerns.

Senator LUDLAM—Can you describe what those are? What are the engineering concerns that are eased by its being a remote site?

Dr Harries—If one is going to have a disposal site, there is a lot less groundwater infiltration, and it is easier to design a facility for disposal in a remote site.

Senator LUDLAM—Sorry, I am not sure what you mean. Groundwater does not occur based on remoteness from population centres.

Dr Harries—The infiltration to groundwater does.

Senator LUDLAM—Can you explain that?

Dr Harries—In a lot of desert sites, the amount of net infiltration is quite low.

Senator LUDLAM—Okay. I am sorry, carry on. What else would require that we just assume that it should be a remote site, from an engineering or scientific point of view?

Dr Harries—One wants to have a site that is not going to be developed for urban development, where the land is available, where it is relatively easy to transport waste.

Senator LUDLAM—Okay. In terms of urban development, it is about keeping it away from population centres?

Dr Harries—Keeping it away from population centres.

Senator LUDLAM—Why is that?

Dr Harries—With any hazardous waste facility, and radioactive waste is a hazardous material, it is easier to have it further away so that the safety case can be made in a more clear way.

Senator LUDLAM—Are you concerned that it is not being stored safely in Sydney at the moment?

Dr Harries—I think it is being stored safely.

Senator LUDLAM—I am sorry?

Dr Harries—It is being stored safely in Sydney as far as I am aware.

Senator LUDLAM—I am just not sure whether there is a contradiction there or not. It is safe in Australia's largest urban area, or it is not?

Dr Harries—It can be safe in the largest urban area, but if one is generating a new facility which will take waste from a large number of sites, then having it in a remote location is an advantage.

Senator LUDLAM—But essentially, most people are in agreement that while the bits and pieces and the sources from a large number of sites are of concern and should be safely managed, the solution that we are trying to find here is for the reprocessed material—the very long-lived material from one site, which is Lucas Heights.

Dr Harries—You have to include these other sites, because there are CSIRO sites and Defence sites and a whole lot of different ones.

Senator LUDLAM—But essentially the problem we are trying to solve here is what to do with spent fuel in the form that it returns in from overseas. Subsidiary to that is the material coming from other sites.

Dr Harries—The spent fuel might be giving a time line to it, but it is one factor in the whole facility. It is going to deal with intermediate-level waste, low-level waste, spent sources, radium waste.

Senator LUDLAM—Okay. You mentioned ease of transportation earlier as well with regard to a remote site. Surely the easiest transportation is to not transport it and to leave it where it is rather than transporting it.

Dr Harries—You will have to transport it somewhere.

Senator LUDLAM—There is a difference between returning it to the point of origin or not exporting it initially and transporting it thousands of kilometres to a remote site. The transport costs—

Dr Harries—I should have said that the ease of transport is that one wants it to be actually transportable. I am not saying that one wants it close in.

Senator LUDLAM—You probably heard the question that I put to the others earlier. Is it the case or is it your understanding that the reason we are trying to put it in such a remote site is that there is not a form of engineered containment that can hold this material for the time periods that are in question?

Dr Harries—I believe there are engineered solutions that will hold the material, but one needs a facility which is going to have the long-term management organised.

Senator LUDLAM—Okay.

Dr Harries—Are you talking about the low-level waste? The spent fuel?

Senator LUDLAM—No, I am not. I am talking about the spent fuel and the reprocessed material.

Dr Harries—The reprocessed material from the spent fuel?

Senator LUDLAM—Yes. I will put the question to you again: My understanding is that there is no form of engineered containment that has yet been invented or tested that can contain the very long-lived material. That is the reason why we are insisting on taking it as far away from population centres as is possible.

Dr Harries—I disagree. I believe there are engineering solutions to contain this material for the time frames one is talking about when really one is talking first of all for a storage period of hundreds of years with presumably at some point the suggestion that it will be disposed of.

Senator LUDLAM—What is the difference between storage and disposal in your view?

Dr Harries—Disposal is putting this material into some geological intermediate-level waste repository.

Senator LUDLAM—Like a deep dump.

Dr Harries—Deep.

Senator LUDLAM—Okay. So the proposal on your understanding is to just hold it for a couple of hundred years and then bury it permanently.

Dr Harries—Store it for a couple of hundred years.

Senator LUDLAM—And that would be at the same site—say, one of the first sites?

Dr Harries—No, it would not necessarily be at the same site.

Senator LUDLAM—It would not, necessarily?

Dr Harries—No.

Senator LUDLAM—What is the advantage of taking it somewhere remote for the first two or three hundred years, rather than leaving it close to the centres of nuclear expertise?

Dr Harries—I think it is better. There is certainly an advantage if we have a national facility which deals with radioactive waste; that is where the expertise would end up.

Senator LUDLAM—Is it your expectation that when the material is moved to Muckaty or wherever it is proposed by the Commonwealth, then a large part of the ANSTO stuff, for example, would be removing to that remote site?

Dr Harries—I thought the facility that is being proposed is to take all of the low-level radioactive waste from Commonwealth facilities.

Senator LUDLAM—Low-level waste but also—

Dr Harries—Low level and the longer-lived waste.

Senator LUDLAM—The longer-term waste material.

Dr Harries—Yes.

Senator LUDLAM—But it is your understanding that there would be a large number of staff who would be there in a monitoring capacity?

Dr Harries—There will be enough staff to keep the process running.

Senator LUDLAM—Okay. Because our understanding always was that that was not the case; that it would not be a staffed facility.

Dr Harries—Well, you would have to ask—

CHAIR—I do not think any decision has been made, Senator Ludlam.

Senator LUDLAM—Okay. I shall probably leave it there for the moment, thanks, Chair.

Senator TROETH—Dr Harries, up to the point at which the decision was made to repeal the 2005 bill, had you been happy with the scientific processes and the way in which a possible selection of sites had been made by the then government?

Dr Harries—Not being involved, it is a bit hard to say that. But my understanding is that these sites were known, selected, but then were going to be characterised and, at the present time, they are being characterised. At the end of this characterisation we will be able to say, ‘Are these sites suitable? Is their geology suitable for the facility?’

Senator TROETH—Yes. But, from your reading of it?

Dr Harries—From my reading of it, the problem was that the previous process stopped after 17 years to find a suitable site.

Senator TROETH—Correct.

Dr Harries—These are potentially suitable sites. But, until they have been characterised, I do not think I can really say whether they are or not.

Senator TROETH—No, but obviously, from what you are saying, the necessity for an ultimate decision to be made is paramount in this process?

Dr Harries—Yes.

Senator TROETH—Thank you.

Senator PRATT—Dr Harries, you made some statements about safety, population centres and risk.

Dr Harries—Yes.

Senator PRATT—Could you explain that in a little bit more detail for me?

Dr Harries—Well, it is really going back. You know, any of these facilities that are selected as sites have selection criteria, and they include being away from a population centre, being in an area of land which is not likely to be used.

Senator PRATT—Okay. On what basis? Why is it important to be away from a population centre?

Dr Harries—Well, there is a potential for this facility to have some disposal of low-level waste at that site.

Senator PRATT—I am sorry, why does it need to be away from a population centre? What are the risk factors associated with that?

Dr Harries—Because that means that that site cannot be moved. A simple storage site can be moved. It can be in transportable containers and you can relocate your storage facility. If there is any disposal involved, it cannot be relocated, because that is the site.

Senator PRATT—What does that have to do with risk and population centres?

Dr Harries—One does not want a population centre to overgrow the area. It is all part of the safety aspect.

Senator PRATT—Is that because there are particular risk factors attached to it? What is the safety argument?

Dr Harries—The safety argument is that one does a safety case for a facility like this, and one looks at different potential things that might go wrong. If things go wrong, then you want to be able to control it.

Senator PRATT—Okay. What kinds of things are you talking about when you talk about micro level?

Dr Harries—I guess there is failure of the concrete, failure of the material, failure of the containment, the weather conditions, and some factor you have not thought about.

Senator PRATT—Thank you.

Dr Harries—But in general they will be easily contained. You will have a safety case that will say what might go wrong and you have an emergency response which says, ‘If this happens, this is what we’ll do.’

Senator PRATT—I can understand in that sense the argument for why you would not want them near big population centres, but to my mind that also raises the issue of, for example, the Indigenous communities that live reasonably close to some of these sites.

Dr Harries—Yes.

Senator PRATT—Their health status has historically been quite marginalised, and we are not particularly good at monitoring. We do not have a particularly good record at monitoring and supporting Indigenous

communities, looking at their health and what kind of risk factors are attached to them. To my mind there are some real issues with pretending that putting it out there is out of sight out of mind to the extent that you can mitigate those kinds of problems. Historically that is not something that our society has been particularly good at.

Dr Harries—Society has to be able to stop it happening. There is supposed to be a boundary and beyond that boundary there is supposed to be no impact.

Senator PRATT—All right. You are arguing that basically you would not have any population near that site, so there is no scope for going around that.

Dr Harries—No. Internationally, a lot of these facilities are very much closer to populations than we are considering in Australia.

Senator PRATT—Yes, I understand that.

Dr Harries—These facilities can be engineered. It requires more monitoring in a closer system.

Senator PRATT—You are saying it requires more monitoring close to the population centres?

Dr Harries—Yes, if it is close to the population centres.

Senator PRATT—But surely if there is anyone there, if there are populations out there—and there are—it will require as much monitoring out there as it does close to a population centre.

Dr Harries—It all depends how big the buffer zone is perhaps. How close is the population? Is the population 10 metres away, 100 metres or a kilometre?

Senator PRATT—How do we keep traditional owners out? Is it just a small barbed wire fence? What is the kind of barrier? How do we militate against the people living around a remote site being subject to the same risks as a city site?

Dr Harries—This is why we need a detailed proposal. We are discussing this in hypotheticals. We really need a detailed proposal and this process that is underway will give us a detailed proposal, and you can then address your questions to whether that design provides the level of protection that you want.

Senator PRATT—Okay. It is just that I need to critique this because the argument is being put in favour of a remote site, saying it is away from population centres. That is the argument that has been put to me today. I need to be able to counter that by looking at the alternative scenarios whereby we are arguing about remote sites here, because that is what is at stake under this current act, if it is not repealed. Those very much are the questions that we need to discuss.

Dr Harries—I think we have gone through a process over the past 20 years or so in which one has been forced by various factors to go more and more remote.

Senator PRATT—Which means that we now need to consider the factors affecting those remote communities directly.

CHAIR—Senator Troeth, do you need to finish off your questions?

Senator TROETH—No, I am fine, thank you.

CHAIR—We are scheduled to go to a tea break, but I will allow Senator Macdonald to ask a question before we do so.

Senator IAN MACDONALD—Dr Harries, I am sorry—I was watching you on television but was walking around when you commenced giving evidence. What is your discipline?

Dr Harries—I am a physicist.

Senator IAN MACDONALD—And you are currently employed by?

Dr Harries—I was employed by ANSTO until 2004 and then I retired. I was in environmental science.

Senator IAN MACDONALD—I have never visited the facility in Sydney. Is it constrained by buildings that have grown up around it?

Dr Harries—I think you should have asked the questions of ANSTO.

Senator IAN MACDONALD—Yes, I am sorry, but I was not here when ANSTO gave evidence. You know this facility; you have worked there?

Dr Harries—Yes.

Senator IAN MACDONALD—Is one of the reasons why you need it in a more remote place that you have a bigger area to work with? Is that it?

Dr Harries—Certainly a bigger area makes a difference. It is a big advantage.

Senator IAN MACDONALD—There is no capacity in the existing facility to expand it or to create buffer zones any more than there are. You are fairly well landlocked, as I understand it.

Dr Harries—Can I redirect that question?

CHAIR—We had to canvass this issue with ANSTO, Senator Macdonald.

Senator IAN MACDONALD—Okay. Forget it. You were indicating to my colleague that this process had been going for to a period of time to find the correct site.

Dr Harries—Yes.

Senator IAN MACDONALD—This bill will stop that process, as you understand it.

Dr Harries—Yes.

Senator IAN MACDONALD—What will replace the process? Are you aware of that?

Dr Harries—Nothing has been proposed to replace the process. I think we go in with a blank piece of paper.

Senator IAN MACDONALD—I think you and other witnesses have indicated the use of radioactive materials over a long period of time for health and other services.

Dr Harries—Yes.

Senator IAN MACDONALD—What is the relationship between where we ultimately store it and our continuing use of this material. Can we keep using it forever and storing it where it currently is?

Dr Harries—I think it is more problematic as time goes on, but it can be done if you put the resources into it.

Senator IAN MACDONALD—Yes, but do ‘resources’ also require space?

Dr Harries—Resources require space. It also requires accommodating for lots of uses of radioisotopes and sources around the country in different places of radioactivity.

Senator IAN MACDONALD—Yes.

Dr Harries—We need to not have organisations and industry end up with things in their bottom drawer that they have forgotten about.

Senator IAN MACDONALD—Are you familiar with the proposals to bring waste that has been sent overseas back to Australia?

Dr Harries—I am a bit aware, but that is perhaps an ANSTO thing again.

Senator IAN MACDONALD—That is an ANSTO thing. All right. Your organisation, I see from your material, is in the business of putting out factual information about the use of nuclear resources.

Dr Harries—We try to.

Senator IAN MACDONALD—And your members are all highly qualified scientists in one discipline or another; is that correct?

Dr Harries—A lot of them are, but there are a range of other people as well, even lawyers.

Senator IAN MACDONALD—What sort of other people?

Dr Harries—There are a few. There are lawyers and there are engineers. I mean there are different people who do not have a background in nuclear science.

Senator IAN MACDONALD—Right, but your purpose is to find a safe way of using and dealing with nuclear materials?

Dr Harries—I guess we are dealing with a whole range of nuclear issues that come up that we speak on. We have members who speak on the radio and respond to questions about nuclear issues, be they the reactors, be they nuclear power, be they radioactive waste.

Senator IAN MACDONALD—When was your organisation formed?

Dr Harries—Where?

Senator IAN MACDONALD—When.

Dr Harries—When? About 1992.

Senator IAN MACDONALD—Was there something that caused a group of qualified scientists to get together to form this association?

Dr Harries—I think it was just a general interest.

Senator IAN MACDONALD—Have you been concerned about the lack of real understanding, a lot of ill-informed scare tactics, about the use of nuclear science? Is that something that your association is concerned about?

Dr Harries—I guess we are concerned about the lack of understanding, but we would like to become part of the debate. We recognise there are a whole range of views out there on nuclear issues, but we would like to be able to also put out information from people who know about radioactivity and radiation, and nuclear power.

Senator IAN MACDONALD—And you are part of a wider, global grouping, I see.

Dr Harries—Yes.

Senator IAN MACDONALD—Do you share the same ideas as the World Nuclear Association, and the same goals?

Dr Harries—Well, I guess we are similar, but we are separate.

Senator IAN MACDONALD—Okay. When does your association consider it has been successful? I mean, what is the ultimate your association would strive for?

Dr Harries—I do not know. I am not quite sure.

Senator IAN MACDONALD—Would it be that everyone in Australia was well and accurately informed about nuclear material and usages?

Dr Harries—We have contributed to that but we would like people to have a balanced view and to make their own decisions.

Senator IAN MACDONALD—Okay. Thanks very much then, Dr Harries.

CHAIR—Thank you. If there are no further questions, senators, we will break for tea now and return at a quarter to 11.

Proceedings suspended from 10.38 am to 10.49 am

SWEENEY, Mr Dave, Campaigner, Australian Conservation Foundation**STUBBS, Ms Michaela, Nuclear Campaigner, Friends of the Earth**

CHAIR—We will resume the hearing. I now welcome Mr Dave Sweeney, from the Australian Conservation Foundation, and Ms Michaela Stubbs, from the Friends of the Earth. Thank you for coming along to talk to us today. The committee has received your submissions as submission Nos 85 and 74, respectively. Do either of you wish to make any amendments or alterations to your submissions?

Mr Sweeney—No.

Ms Stubbs—No.

CHAIR—Thank you. Would either or both of you like to make an opening statement before we go to questions?

Ms Stubbs—Firstly, I would like to acknowledge that we are gathered on Ngunawal country and to pay my respects to the traditional owners and ancestors of this land. Friends of the Earth is a non-government, not-for-profit organisation that has been committed to environmental sustainability and social justice. We have been researching, educating and been actively engaged on nuclear issues in Australia for the last 30 years, and we have been involved in the nuclear waste dump debate over the last decade and have worked extensively with affected communities during this time.

During that process we have spoken with many stakeholders. We have held public forums and have hosted speaking tours of traditional owners from communities directly impacted by the proposals. We have been involved in convening the Australia Nuclear Free Alliance meetings and have conducted a nuclear-free waste project to discuss the issue surrounding government proposals for radioactive waste management with communities along potential transport routes.

We would really like to point out that this is not an issue that is isolated to one particular affected community but is of deep concern to many Australians. During that initial nuclear-free waste tour, which regarded a South Australian waste dump proposal, 16 out of the 18 councils along that proposed transport route passed resolutions opposing the transport of waste through their communities and many of them have reaffirmed that commitment since the most recent proposal has been announced.

There is widespread support not only for the repeal of the Commonwealth Radioactive Waste Management Act but also for a dedication from many sectors of the community to ensure that the complex issues of management of Australia's nuclear waste are handled in a democratic way that holds public health and environmental safety at its heart and is not driven by the political expediency that has characterised the handling of this issue today.

Our concerns with handling of radioactive waste management have been that the whole process over time has been deeply flawed. We saw that after failing to impose a nuclear waste dump in Australia there was a broken promise from the Howard government not to impose a waste dump on the Northern Territory in 2005 with the announcement of three sites in the Northern Territory to be considered for a Commonwealth radioactive waste management facility. This was then only going to be for Commonwealth radioactive waste, leaving states and territories to continue managing their own waste.

The Commonwealth Radioactive Waste Management Act 2005 was then pushed through parliament and overriding Northern Territory laws prohibiting transport and storage of waste. A raft of environmental and cultural protection, public health and safety laws also went out the window. The amendments that were passed in the following year, 2006, overrode the Aboriginal Land Rights Acts procedure requiring informed consent from all affected community groups.

Some of our major concerns with the Commonwealth Radioactive Waste Management Act and the amendments are that they explicitly remove all rights to procedural fairness. They remove the rights of appeal under the Administrative Decisions (Judicial Review) Act. They allow the imposition of a nuclear waste dump in the absence of any consultation with or consent from Aboriginal traditional owners. They override the Aboriginal Land Rights Act and in doing so remove the consultation requirements of that act. They prevent the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 from having effect during investigation of potential dump sites. They exclude the Native Title Act 1993 from operating at all. They override the Northern Territory laws prohibiting transport and storage of nuclear waste. They do away with a raft of environmental,

public health and safety protections. For example, the act overrides the Environmental Protection and Biodiversity Act 1999 in relation to selecting a nuclear waste dump site.

The mechanism for the site nominations and selection is protected from legal challenge by providing for absolute discretion by the minister. Also under this amended process the Muckaty Station was nominated by the Northern Land Council, and this ignored strong and public opposition from a number of traditional owners from the 18 months from what was a rumour to the reality of the nomination. In relation to that Muckaty nomination, of serious concern with the Commonwealth Radioactive Waste Management Act is that it allows the Northern Land Council to offer a site without informed consent and consultation. This means that the Commonwealth Radioactive Waste Management Act allows a land council to act in a manner which we believe is inconsistent with their stated role and responsibility.

We have met with many of the traditional owners from the Muckaty Station site. I know that this inquiry has heard from them also. I note also that the Northern Territory Labor conference in April this year a resolution was adopted saying that the conference understands the nomination of the Muckaty as a potential radioactive dump site, made under the Commonwealth Radioactive Waste Management Act, was not made with full and informed consent of all traditional owners and affected people. As such it does not comply with the Aboriginal Land Rights Act. The conference called for the Muckaty nomination to be repealed when the Commonwealth Radioactive Waste Management legislation is overturned.

I make the point here that Indigenous communities around the world suffer most directly the impacts of nuclear developments. This is the case in Australia also. We know that because we have worked closely with Indigenous communities affected by nuclear developments over the last 30 years. What we term 'radioactive racism' takes many forms. A lot of those have been the hallmarks of Howard's dealing with the radioactive waste management issue—tactics such as misinformation and inappropriate presentation of the information, bullying and bribery, and divide and rule tactics whereby they set up rival groups within communities to dispute agreements over whether developments should go ahead.

I also point out that a lot of these sites are the sites of the most impoverished communities in Australia. They should not have to consider inappropriate developments as a means to access basic resources that most Australians take for granted, such as access to health services, education, employment, housing and infrastructure. That is just an unacceptable situation. These should be provided by government. Communities should not have to decide until these have been provided. I wish to cite remarks of the President of the Australian Nuclear-free Alliance, Arabanna elder, Kevin Buzzacott, and this quote sums up what Indigenous communities face. He said:

You boast about your community consultation, but we know how our people have been manipulated, bribed, tricked and contracts signed under duress without even a reasonable translation into our own language. This sets up a terrible division amongst us all over your greed and these development issues. We have seen how the mining companies set up rival land councils to counter the claims of the rightful authority for the country ... This has caused so much tension in communities that we are living in a pressure cooker situation. Lives are being lost ... There needs to be a moratorium on the nuclear industry until this mess is sorted out.

I will try to make an effort to be brief. I just want to point out that before the election, Mr Rudd assured us that he would honour all his election promises. But over the last year since Minister Ferguson's handling of the nuclear waste management issue and in particular the Commonwealth Radioactive Waste Management Act's failure to do that, the minister's comments and handling of the matter indicate that in his opinion honouring these election promises should be under consideration. This shows a complete lack of respect for the traditional owners and for everybody who put faith in the commitments that Labor made before the election.

You will all be familiar with the resolutions that were made at the national conference. In the preamble to that, it talks about how the Howard government has ridden roughshod over the rights of all Territorians, Indigenous and non-Indigenous, and that the waste dump plan is profoundly flawed, is not a measured or responsible approach and does not enjoy scientific, procedural or community credibility. These comments characterise the many public statements that Labor ministers have made condemning that act and the Howard government's approach. I will not go into the commitments that they have made because I know you will be all aware of those, but we really welcomed those positive resolutions that were made at the national conference last year. Everybody was really looking forward to those coming into play once Labor had been elected.

Yet since the election and the consequential handing of the waste management issue to Minister Martin Ferguson's portfolio, he has been every bit as secretive as his coalition predecessors on this issue. His handling of this issue is in breach of those ALP pre-election commitments and has been contrary to the resolve

announced by Prime Minister Rudd—that Labor would be ‘righting the wrongs of the past, and so moving forward with confidence to the future’, that was set out in his landmark apology in February this year. In that historic apology, Rudd also said that, ‘This parliament resolves that the injustices of the past must never, never happen again’, and he laid claim to ‘a future where we embrace the possibility of new solutions to enduring problems where old approaches have failed’.

It is essential that Labor takes this opportunity to implement their pre-election commitments on radioactive waste management and also to undertake a new process in this regard. We know that ANSTO has stated their ability and willingness to handle the waste until such time as a decision about its best handling can be made, and this means that there is no excuse not to initiate a public inquiry that considers, firstly, waste production and the application of waste minimisation principles and proper net benefits analyses and, secondly, a thorough assessment of all options for the management of radioactive waste.

I have a whole lot of references to international best practices showing that the handling of this significant and complex issue should be approached in a very different manner to that which has been conducted to date here. I believe that from here the approach must come into line with international best practice scenarios. One example is the UK committee.

CHAIR—Ms Stubbs, I do not want to hurry you, but we do have to move on.

Ms Stubbs—No worries. I will conclude by saying that the Friends of the Earth is calling for immediate repeal of the Commonwealth Radioactive Waste Management Act and immediate scrapping of all four currently proposed nuclear waste dump sites under consideration; a comprehensive and inclusive public inquiry into the transport, storage and long-term management of Australia’s nuclear waste; and a moratorium on the production of nuclear waste until such time as these issues are resolved.

Mr Sweeney—Just briefly, I represent the Australian Conservation Foundation on the national nuclear campaign of the Australian Conservation Foundation. ACF has had a long history of involvement in this issue. We were actively engaged in opposing the imposition of a federal radioactive waste dump in South Australia and were successful in the community campaign that saw that proposal unfortunately not be reconsidered but relocated and moved to the Northern Territory.

Radioactive waste management is a key concern for ACF as a national organisation. It is one we will continue to follow and actively engage with. We believe this legislation is heavy-handed and expedient and it is not an appropriate legislative basis for a responsible national radioactive waste management regime. We believe that the repeal of the legislation was a very clear government election promise and it is a key test of the government’s credibility on this matter and on the wider matter of honouring election promises.

We understand and accept that all four nominated sites currently under consideration in the Northern Territory are actively contested. The legislation was an attempt or a mechanism to secure a site. It has not done so. In fact, we would argue that it has seriously damaged the key preconditions for effective radioactive waste management, which are community confidence and procedural credibility. We believe the repeal of this legislation immediately and unconditionally is a pivotal first step to a measured and effective response and a measured and effective development for a responsible radioactive waste management strategy in this country.

ACF, as some will know, has been in the trenches over this issue. If we need to, we will stay there; but we would happily and by far would rather climb out of the trench and sit at a table. This inquiry offers the opportunity to be a circuit breaker and to provide that table. We can move away from a decade of imposition and effective inaction to a period of dialogue, open and responsible policy development, and the adoption of responsible guardianship in radioactive waste management techniques and for our shared radioactive legacy. We have now the opportunity, the options, the time and the alternative capacity. It is really important. ACF welcomes this committee’s consideration.

Just to put it in its context to committee members. When we in this room are all dead and gone—I emphasise, when we are all dead and gone—this material will still be alive. It will still pose an environmental and human health hazard. We have the opportunity and we have the responsibility to get it right for the mature and effective management of radioactive waste in this country. ACF welcomes being part of it.

CHAIR—Thank you, Mr Sweeney. Can I just clarify that this bill that we are contemplating repeals the current act. If that happened and there was no substitute legislation, what is your understanding of what legislation would apply to the establishment of a radioactive waste management facility in Australia, for example? It could be that, as I understand it, either the Western Australia government or the Northern Territory

government could of their own volition establish a facility subject to legislative processes. Is that acceptable to the ACF?

Mr Sweeney—What is acceptable to the ACF is a measured approach, Senator. The Commonwealth Radioactive Waste Management Act has been around less than three years. The sky did not fall in on our heads before that time. The repeal of this legislation fundamentally would not change the landscape of the legal framework for radioactive waste management in Australia. What it would do is remove one specific instrument that is aimed at producing one specific site or one specific facility. This is not the overarching policy architecture of responsible radioactive waste management. There is other legislation that deals with radioactive waste issues in this country that would remain in effect; obviously the ARPANSA Act, the ANSTO Act, and the subsequent amendments; and the NPT safeguards and amendments act.

There is a range of legislation that would not in any way be impacted by this flawed legislation, the Commonwealth Radioactive Waste Management Act being withdrawn. What we would say is that there needs to be a broad, inclusive and national approach to a long-running national problem. The legislative arrangements should reflect the ability to do that. We would say that the current legislative arrangements that are represented in this particular piece of legislation are not consistent with international best practice and have no place in a responsible regime.

CHAIR—When you are talking about ‘this particular piece of legislation’, you mean the act?

Mr Sweeney—I am sorry, I am referring to the existing dump laws—the Commonwealth Radioactive Waste Management Act—not the bill to repeal it.

CHAIR—Okay, thank you. Just before I invite Senator Troeth to ask questions, is it the position of the ACF that you support the view that Australia needs to construct a radioactive waste disposal facility?

Mr Sweeney—It is the position of the ACF that we support the responsible management of radioactive material and radioactive waste. We believe that what has happened to date is that one option for doing that, which is a centralised remote facility, has been adopted for policy or bureaucratic reasons, and it has been pushed through. It then has been accepted by policy makers and implementers that it is some sort of article of faith; that the best way to manage radioactive waste is a centralised store in a remote area.

We have this conflicting situation where we hear that this material is safe enough to produce in Sydney but not safe enough to store in Sydney. We hear that it needs to be remote because of safety issues but, on the other hand, do not worry about the safety of it—the green groups and others have overplayed their hand on this and it is scaremongering. What we are saying is that there needs to be a responsible approach. It needs to be a measured approach. The best way to do that is to put all the options on the table.

We have not come here today to try to sell a one-size-fits-all method for radioactive waste management; we have come here today to say, ‘What would be the best possible policy outcome for Australia’s future as a result of this process in which we are now engaged? We require a pathway forward that rebuilds community confidence, scientific credibility and procedural integrity and that empowers an independent public inquiry to look at the full range of options—from waste minimisation options to on-site storage and remote facility options. The full range should be canvassed. We have had a decision on one option and a monomaniacal desire and application to push through that option. It is time to pull back and to consider the range.

CHAIR—Thank you very much.

Senator TROETH—Given the decision at which the former government arrived to initiate the process, that rather gives the lie to your description of a decade of inaction. By the time the 2005 bill was passed a scientific process was in place. Despite what you would say, there was consultation and a site assessment process was initiated. That was the culmination of a 30-year attempt by both sides of government to get to the decision-making process. You do not necessarily agree that there should be a radioactive waste management facility somewhere in this country. Are you talking about a range of opportunities to manage radioactive waste?

Mr Sweeney—That is so in the context that I accept that radioactive waste facilities currently exist in this country. We are not talking in the abstract here. Facilities that manage radioactive waste exist today. I am saying: let us not focus on one sole potential future facility. Let us look at a range of things—past, present and future options, or past practices, present reality and future options.

Senator TROETH—I think you also mentioned that what had been done so far does not measure up to international best practice. In your view what is international best practice?

Mr Sweeney—There are a range of models on international best practice and there are more inclusive ways forward. That question reflects where we need to get to. There are international models such as the Committee on Radioactive Waste Management in the United Kingdom. Interestingly, that has the same acronym as the piece of legislation we are discussing, but it takes a different approach. There are the International Atomic Energy Agency conventions and protocols, and the OECD Nuclear Energy Agency conventions and guidelines. There are a lot of models around the world about community engagement processes for the siting of hazardous or noxious industries.

Those lessons could be applied in a model that was developed here, Senator. The driving and underlying principles are important. The ACF is concerned about the fact that those principles are missing from this heavy-handed legislative instrument—that is, the Commonwealth Radioactive Waste Management Act. They are the principles of transparency, robust and independent scientific testing, independent checks and balances of the concept of community volunteerism, engagement, and the free flow of information. Those things are missing from an approach based on the legislative position of removing procedural recourse, rights of appeal, and administrative review, and they are missing when we have situations where there are nominations and those nominations are commercial-in-confidence. Basic information—such as who was there, when were the meetings, who was involved and what was the story—is commercial-in-confidence and cannot be presented in a public realm. That is not consistent with international best practice.

Senator TROETH—You have spoken about the lack of consultation. Why then did the Northern Land Council nominate the sites, or site, that they nominated?

Mr Sweeney—I cannot speak for the Northern Land Council and I have a hard time getting inside the minds of members of the Northern Land Council in relation to this matter. I think it must have been a combination of circumstances. I think that combination of circumstances would have included their reading of the political wind at the time. I think the NLC perhaps wanted to show that they were a representative body that one could deal with that could face the tough decisions. I am not sure. However, I am sure that the nomination they have put forward, through a process that is highly questionable and profoundly contested, will not stand the test. It will not be an effective nomination. It only got through on the coattails of some quite draconian legislation. I am not sure why they did it. However, I am sure about where it will go from here—it will go into conflict and contest. Those are things that we do not need for building a responsible approach to radioactive waste management.

Senator TROETH—On page 5 of your submission you refer to Labor's—that is, the present government's—lack of defining and differential action on this issue. I presume you have made approaches to Minister Ferguson on this issue?

Mr Sweeney—Yes.

Senator TROETH—What has been the outcome of that? First, what were the approaches that you made?

Mr Sweeney—Since the election we have made extensive representations to governments on this matter. As I said in my introductory statement, this is a matter of active and continuing importance to the ACF, so we have been pursuing it. Are you interested specifically in Minister Ferguson?

Senator TROETH—No. Minister Ferguson is the minister responsible for this issue. Part of your role as an organisation is to make approaches to the responsible government.

Mr Sweeney—Yes.

Senator TROETH—To start with I want to know what form those approaches took.

Mr Sweeney—Those approaches have taken a written form—in the form of either two or three letters to Minister Ferguson—and they have taken a personal form in the form of representations and meetings with his office.

Senator TROETH—Have you met with the minister himself?

Mr Sweeney—I have not met with the minister himself. We have requested meetings with the minister and we have met with the minister's senior advisers.

Senator TROETH—You have met with a senior adviser in his office in relation to this issue?

Mr Sweeney—In relation to that issue in this place.

Senator TROETH—What was the outcome of that meeting?

Mr Sweeney—Senator, to use Minister Ferguson's preferred word in relation to his public positioning on this, it would be 'piecemeal'. The words that we and everyone else hear in relation to our letters are, 'We will not be responding in a piecemeal fashion.' I think it would be fair to say that the response of the office was that they listened, they asked some questions, they were non-committal, they did not provide any further information on the status or the process and they were defensive and guarded.

I think they acknowledged that a clear and cogent set of concerns were put forward, but walking out from those meetings or on reading the returned correspondence there was not a sense of, 'Let us move forward in a spirit of good faith to find a dialogue.' You mentioned an interesting point, Senator, which I think is germane to this in some ways. Obviously there was an election in November last year, which saw a change of government.

There was a portfolio allocation in December last year and that saw a change of portfolio responsibility. Prior to that time you mentioned there had been a considerable long-running period of attention to this issue by the Commonwealth government and, as you would be aware, it has always been housed in the science department.

Senator TROETH—That is correct. I chaired the hearings on the original bill.

Mr Sweeney—Indeed, and I spoke before that bill.

Senator TROETH—Yes, you did.

Mr Sweeney—And those concerns continue. We say that it would be better housed in science and resources. If this is an issue about scientific credibility, base it in a portfolio where there is science. We further argue that it should be based in a multiportfolio approach. It cuts across Indigenous affairs, science and the environment. We do not think it is appropriate that this issue, which is complex and has resonance for a number of stakeholders, should necessarily be placed in a portfolio that is very outcomes focused, and the minister of that portfolio is the most pro-nuclear and robust member of the government in advancing his position.

Senator TROETH—How many meetings did you have altogether with Minister Ferguson's office?

Mr Sweeney—I believe that there were two meetings—one in Melbourne and one in Canberra.

Senator TROETH—When was the last meeting?

Mr Sweeney—I would need to check my diary to confirm when the last meeting was. If you are after specific dates I am happy to provide them. The last one would have been in late September 2008.

Senator TROETH—Some two to three months ago?

Mr Sweeney—Probably six to eight weeks ago.

Senator TROETH—Since then there has been no further contact by you or by the minister on this issue?

Mr Sweeney—No, not directly.

Ms Stubbs—In June this year a combined letter from 11 national environmental and public health organisations was sent to Martin Ferguson regarding the Commonwealth Radioactive Waste Management Act. There has still been no response from him on that matter.

Senator TROETH—Was there any acknowledgement of the letter?

Ms Stubbs—No, it was not even acknowledged.

Senator TROETH—You have heard nothing on that basis?

Ms Stubbs—No.

Mr Sweeney—Senator, on at least two occasions delegations of traditional owners have attempted to meet with the minister and those attempts have been unsuccessful.

Senator TROETH—They have not had a meeting at all?

Mr Sweeney—No.

CHAIR—Which groups of traditional owners? Can you identify them?

Mr Sweeney—Yes. Many of those who were representing the concerns of the Muckaty community at your hearing in Alice Springs. There was Dianne Stokes, Mitch and others, Madam Chair. I would need to get back to you on the details.

CHAIR—I just wanted to clarify which groups you were talking about.

Mr Sweeney—Okay.

Senator TROETH—What will be your next approach? Obviously this is an issue about which the organisation feels very strongly. Are you planning to make more approaches to the minister?

Mr Sweeney—We see this committee's deliberations as a key aspect in advancing this issue. The ACF is not in the business of playing party politics or targeting individual ministers; that is not what we do. We try to advance—

Senator TROETH—I spoke about Mr Ferguson because, as I said, he is the responsible minister. Have you written to the Prime Minister?

Mr Sweeney—Yes, we have written to the Prime Minister.

Senator TROETH—And what has been the result?

Mr Sweeney—The Prime Minister's response echoed the response of Minister Ferguson, and it looked like it had been drafted. Most of the written responses from the government on this issue would use words such as 'piecemeal', 'under review', 'still under consideration', and 'fullness of time'.

Senator TROETH—What exactly did they describe as piecemeal?

Mr Sweeney—'We will not have a piecemeal response. We are not doing a piecemeal response. We are considering this issue.'

Senator TROETH—Do they want to have a coordinated response?

Mr Sweeney—One would assume that. One lives in hope that there would be a degree of coordination, and one hopes that they would take forward and give effect to their national platform, their election promise, the national conference resolution, and the clear position expressed by the Northern Territory Labor Party in its resolution and by the Northern Territory Chief Minister. We have also been in contact with a number of federal ministers and players and our people are in no doubt about our position on this. Senator, for your information, we have been in contact with the Northern Territory government whose position obviously is to strongly oppose this. They are very supportive of the immediate and unconditional repeal of this bill.

Senator TROETH—Given what came out of all those meetings, you would have expected a better response than what you have had?

Mr Sweeney—Yes, that is a fair comment. We do not believe that it takes 368 days to repeal a heavy-handed piece of legislation that is not working when you promised that you would do it. In answer to your question, we would be hoping from here that the deliberations of this committee served as a circuit breaker and a focus on this process. Let us be generous: it is this government's first year, there is a lot on its plate, it is busy, there are difficult times, and there is a global financial crisis et cetera. There are many things but let us focus on this, get it sorted, and start a platform for addressing the responsible management of waste. Hopefully, your deliberations will be an important part of that.

Senator TROETH—Thank you.

Senator LUDLAM—Mr Sweeney, you said that this issue was under active consideration by the ACF. How long have you been following or working on the issue of radioactive waste management in Australia?

Mr Sweeney—For at least 12 years.

Senator LUDLAM—Since the election what would you characterise as the major differences in approach to this issue that the current government has taken as compared to the previous government?

Mr Sweeney—Unfortunately, Senator, in substance the approach is much the same. I suppose it could be characterised by saying that there was a decade of division under the former government and there has been a year of secrecy under this government. We welcomed the position that the Labor Party took to the election and we welcomed and looked forward to its implementation. It is a profound disappointment to the ACF—I know that it is a great and daily disappointment to people in those affected areas—that it has not moved forward. I suppose there is a sense that the action minister has an approach that is not inclusive or free flowing with information. If the minister cannot deliver on a clear government promise we hope that the government can deliver on that promise and adopt an approach that recognises the gravity of this issue and the stalemate that we are currently facing.

Senator LUDLAM—It was put to us earlier today that the government could well be in a position of nominating a site, whether it is Muckaty or one of the others, that that would then have to go through the full suite of environmental approval processes and so on, and that the consultation would happen at that end. Is that a view with which you would agree?

Mr Sweeney—If you asked a builder, ‘What is an important thing in building a house’ he or she would say, ‘Get the slab right.’ If we do not get it right from the start I think we will be doing poly filler: fixing the cracks, and painting over it for time immemorial. There has to be a high level of community consent. That is not just an ACF feel-good issue, and that is not a stalling tactic from a group of ideological anti-nuclear people. That is the common and effective operating experience and wisdom internationally with the management of radioactive waste. A project must enjoy a high level of community consent and social licence in order to be effective.

The ACF wants radioactive waste management in Australia to be effective. Therefore, we need a process that will deliver a high level of community confidence and social licence. If we avoid that, play clever or expedient politics, try to do a deal that nominates a site, then say it is all okay because we brought in acts on which we had pushed the pause button whilst nominating a site, we will bring in some sorts of options.

That fundamental flaw will profoundly compromise the way in which we approach radioactive waste management. We would be strongly opposed to such an approach. We would like to see this legislation repealed and we would like to see the four sites under consideration in the Northern Territory, including Muckaty, removed from consideration at the same time.

Senator LUDLAM—You have been working on this issue with a number of Indigenous groups around the country. I suppose that the proposed sites have changed over the time that you have both been working on it. Are both your organisations involved to a degree in the Australian Nuclear Free Alliance, from whom we heard last week?

Ms Stubbs—Yes, that is right. Friends of the Earth have been acting as the secretariat for the Australian Nuclear Free Alliance and have been involved in organising those meetings over a number of years.

Senator LUDLAM—From your point of view, what have been the impacts at this stage on the communities that have been targeted for these sites?

Ms Stubbs—It has been extremely stressful for people who are often living under a lot of pressure anyway. When Howard made the announcements about these waste dump sites some of the people in the affected communities found out through reading it in the newspapers or hearing those announcements on the news. I would like to point out that that approach has been continued by Minister Ferguson since the handling of this issue has been moved to his portfolio. He fails to respond to people’s invitations for him to come and sit down with them in country and talk about this issue. I think there is a great generosity of spirit by the people in these communities who are saying: ‘Come and talk to us face to face. Come to our country. We want to show you what it is like out here and talk about our concerns.’

He has failed to do that. People find out about any announcements that have been made regarding progression, timelines, or government considerations of the issue, through reading an article in a newspaper. That is a totally unacceptable way of going about things. It does not take a big stretch of the imagination to establish how these people have been feeling. They thought that, once Labor was returned to government, all their pre-election commitments to repeal this act and scrap those waste dump sites would happen a year later. There has still been no word about what is happening. People are living in fear. They are concerned, obviously because of the lack of information that they have been given about the nature of the facility and the risks associated with it.

They also know that the Commonwealth Radioactive Waste Management Act overrides important rights protections. It impinges on their rights and responsibility to care for country, which again gets back to the lack of public consultation. As we said, a whole range of international reports and inquiries have shown that public confidence and consultation are essential as a first step towards establishing a responsible, comprehensive and long-term waste management plan. This has been recognised by the Parliament of New South Wales Joint Select Committee on Transport and Storage of Nuclear Waste, which reported in 2003. They said:

The most dominant theme before the Committee, both in the submissions and evidence, was the failure to consult and provide information about the proposals. Not all the complaints rejected the proposal outright but wanted to be effectively consulted and reliably informed. Local councils and peak organisations were particularly disturbed by this lack of consultation.

This is really at the heart of what communities living in the areas of these proposed sites are experiencing.

CHAIR—Thank you, Ms Stubbs. If a site met the scientific criteria that you outlined and it was supported by an identifiable and appropriate group of traditional owners, would the Friends of the Earth support the establishment of a nuclear waste facility in Australia?

Ms Stubbs—We are saying that we need to go back to the beginning and look at the range of options that are available. The repeal bill—the legislation that we are considering today—is intent on undoing that. Obviously we support people’s rights to decide what developments are appropriate for their country. But the government has not gone through that process. As I said in my opening statement, communities are not in a position to make a decision. The communities that are considering these developments have come from a position of thinking, ‘This might be what we have to consider in order to gain access to those basic resources and infrastructure.’

CHAIR—Let us assume that all those things had been dealt with: the communities had been provided with resources, there had been extensive and adequate consultation, and a scientific process determined that a centralised nuclear waste facility was the most appropriate way for Australia to deal with its nuclear waste. Would the Friends of the Earth support it?

Mr Sweeney—The perspective from which we are coming is to move away from a postcode and move into a process. You are referring to all those conditions emerging. When that is put forward in a theoretical construct to a Senate inquiry it is then difficult to give an answer that might be seen later as indicating a policy position for a group that has a range of other stakeholders and internal processes et cetera. If those things were merged following an open and public investigation and inquiry into available options it would be a real question. From the tone of the conversation here today that would give non-government organisations an indication, but we are not pre-empting anything.

CHAIR—Okay.

Senator IAN MACDONALD—Mr Sweeney, does the ACF accept that one site in Australia would be better than 100 sites dotted around the country?

Mr Sweeney—Not necessarily, Senator. With the exception of historical legacy sites—some old Department of Defence sites and a couple of hospital sites—the majority of sites that still store and use waste now would store and use waste if there were a facility, remote or otherwise.

Senator IAN MACDONALD—Do you think that is okay?

Mr Sweeney—No, we think that is how it is.

Senator IAN MACDONALD—If you were running the country would you have them around the country in 100 sites, or would there be one site?

Mr Sweeney—If I were running the country the first thing I would do in relation to radioactive waste is adopt a policy of waste minimisation—a fundamental ecological principle of reduction at source—embrace non-nuclear alternatives at every option, and then stop making the stuff.

Senator IAN MACDONALD—Okay, good.

Mr Sweeney—That is the first thing I would do. Second, in a joint process with federal and state agencies, which generally tend to be health departments, I would review the existing waste and build a clear national picture of what it was, where it was and how it was stored. I would ensure that there was an ability to upgrade those existing interim storage facilities. In parallel with that would be a process that restored community confidence, procedural integrity and scientific credibility. You would have such a process and you would have a discussion about what is best. I would not start from the point where I said, ‘Where is the best place on the map for a dump?’

Senator IAN MACDONALD—I am not asking where it should be located. I am asking, ‘Is the ACF of the view that one site or a couple of sites would be better than having 100 dotted across the country?’ Maybe they do not have a view?

Mr Sweeney—No, the ACF does not have that view. The ACF has the view that there needs to be responsible radioactive waste management and there are a variety of ways in which that can be realised.

Senator IAN MACDONALD—I accept that, but what is responsible radioactive waste? Is it having it in the fewest possible sites, or 100 sites spread across the country? In the view of the ACF is one better than the other?

Mr Sweeney—Obviously, the smaller the material footprint the better.

Senator IAN MACDONALD—In common language that means the smaller the number of repositories the better. Is that right?

Mr Sweeney—It is better to have a managed approach.

Senator IAN MACDONALD—We all know that.

Mr Sweeney—I would like to take a step sideways and look at this question. The question almost presupposes that if there were one single site, or perhaps two sites, there would be no need for other sites. That would be the case if we did not use nuclear medicine or nuclear material in our institutions and universities. I am sorry to keep making this point but I think it is important. As long as we do those things—the ACF is not hostile to nuclear medicine—and as long as we use those things we will continue to require other sites.

Senator IAN MACDONALD—I accept that. Surely you will always need a number of sites immediately for longer term storage. You will still have intermediate or short-term storages, wherever they are used.

Mr Sweeney—Yes.

Senator IAN MACDONALD—Does the ACF accept that we would be better managing it if we had them in fewer sites—one, two or three centrally sited and properly managed around Australia? Is that the view of the ACF?

Mr Sweeney—The ACF is opposed to nuclear proliferation. In that sense that would also be facility proliferation.

Senator IAN MACDONALD—I asked a very simple question: Do you agree that it is better to have a smaller number—one, two or three central sites—storing this material somewhere in Australia, or do you believe it is better to have 100 sites dotted around the country? I think you are saying that it is better to have a smaller number of sites that are centrally located and properly managed.

Mr Sweeney—There are some sites now.

Ms Stubbs—I wish to comment on our position on the best way to deal with different waste material. I point out that the Commonwealth radioactive waste management facility that we are discussing today is only about Commonwealth-generated waste and not those that are stored. That has to be part of a wide-ranging public inquiry.

Senator IAN MACDONALD—Thank you, Ms Stubbs, but that is not the question that I asked. I have heard you say all this. Thank you very much, but you do not need to repeat it for me.

Ms Stubbs—Okay.

Senator IAN MACDONALD—I am interested in your view. Is it better to have them stored in 100 sites around the country, accepting that that is the reality, or do you think it would be better stored in one or two centrally located and properly managed sites in Australia? I know that you do not like it, but it is there.

Ms Stubbs—No. I am just saying—

Senator IAN MACDONALD—That is my question.

Ms Stubbs—Please listen to my answer. My answer is that in order to find out the best way to manage that, whether it is maintaining those sites or numerous sites or having a centralised one—

Senator IAN MACDONALD—Ms Stubbs, thank you, but we are here to ask questions. I would like—

Ms Stubbs—Please let me finish.

CHAIR—Senator Macdonald, let the witness finish. We need to move on.

Ms Stubbs—We need to compile an inventory of radioactive waste.

Senator IAN MACDONALD—Madam Chair, I am not interested in this. This is not what I asked.

CHAIR—Let the witness finish.

Ms Stubbs—From 1998 to 2004 the attempts by the Department of Education, Science and Training to determine an inventory during the South Australia dump saga were only partially successful. That is partly because of the incompetence of DEST in dealing with that issue, and partly because some of the state and territory governments—

Senator IAN MACDONALD—That is not the question I am asking. It is all very interesting, but that is not the question I am asking.

Ms Stubbs—We do not even know the information at the site.

Senator IAN MACDONALD—Thank you, but that was not my question. You are here to answer our questions. You have already given your spiel and you did it without interruption. I do not want to hear it again. If you have an answer to my question please give it. If you do not, I will go back to questioning Mr Sweeney. I do not want to be rude but we have heard your propaganda and we do not want to hear it again—or at least I do not.

CHAIR—Order, Senator Macdonald!

Senator IAN MACDONALD—Mr Sweeney, you called for a wide public inquiry.

Mr Sweeney—Yes.

Senator IAN MACDONALD—If there was a wide public inquiry the ACF would make a submission.

Mr Sweeney—Yes.

Senator IAN MACDONALD—You would not be making a submission such as the one you made today stating, ‘We need a wide public inquiry’ because we would have the wide public inquiry. What would the ACF’s submission be to this wide public inquiry? For example, would you talk about one or two sites? Would you talk about building them in the middle of Sydney or in some more remote location? Would you talk about putting them under the sea, or whatever? What would your submission state? If the process about which you complain was fixed and we were having this open public inquiry what would your submission be?

Mr Sweeney—That is a very good question. I welcome the political space to be able to answer it. There is the old saying, ‘When you are up to your armpits in water with alligators snapping at your back it is hard to remember that your original intention was to drain the swamp.’ Ecologically, it might not be that sound, but when you are caught up in the moment it is difficult to see the bigger picture. For a decade we have been caught up in a moment which has been unrelenting, unpleasant and ineffective.

Senator IAN MACDONALD—After a decade you do not have a view. Is that what you are saying?

Mr Sweeney—After a decade we still have the very real option of Aboriginal people in the Northern Territory having a dump imposed in their country against their will.

Senator IAN MACDONALD—What would you propose?

Mr Sweeney—With the resources that we have we have devoted ourselves and we will continue to devote ourselves to an active defence against such an imposition. When we have some clear space we will use the organisation’s considerable resources and contacts here and internationally to engage in a process. We are not developing—

Senator IAN MACDONALD—I am assuming that the process is now as you want it. What are you putting forward?

Mr Sweeney—I do not share your assumption, but I wish I did. I wish your assumption was the reality.

Senator IAN MACDONALD—I am asking you a hypothetical question. Assuming that the process was exactly as you want it, what would be your submission to the process?

Mr Sweeney—That is a hypothetical question whereas we are dealing with reality.

Senator IAN MACDONALD—You do not have any idea what to suggest?

CHAIR—Senator Macdonald, we need to move on. Do you have one last question?

Senator IAN MACDONALD—I am waiting for an answer to my question.

Mr Sweeney—I am not trying to fudge an answer; I am saying that these are complex issues that we would bring to a proper—

Senator IAN MACDONALD—Mr Sweeney, let us say that I accept you are the experts and I want to know, as a government, what is the solution. I am asking you what is the solution but you are saying that you are still thinking about it.

Mr Sweeney—I am saying that I am not presenting myself as an expert on nuclear waste; I am presenting myself as a representative of a national group that is actively involved in a process that has been flawed and it is looking to implement a better process.

Senator IAN MACDONALD—When we get the correct process what will you tell us? How will we fix the problem?

Mr Sweeney—Senator, the process is the platform for delivering the product. Do not ask for the product before we have the process and the platform, or else we will have another circular discussion.

Senator IAN MACDONALD—Thank you for your answer; it has been very useful.

Senator PRATT—Mr Sweeney, I am trying to connect some of your comments. When you were asked why you wanted an urgent repeal of this legislation you seemed to be concerned about the fact that the current sites might have some kind of standing in future deliberations and that even though the repeal might proceed we were somehow trying to gain capital out of that process. Could you explain that to us?

Mr Sweeney—There are two explanations for that, Senator. The first is second guessing why the repeal has not already happened, because it would have seemed pretty straightforward. The second is the NLC submission and presentation. The NLC consistently maintained that when government enacts its policy and repeals the Commonwealth Radioactive Waste Management Act the Muckaty site should stand. The NLC's principal legal officer, who has been deeply involved in this process, maintains that he believes that is the way it should happen. We do not support that. Clearly, we are aware of the concerns of many people in Muckaty who will be affected and who have relationships to that country. We say that all four should be knocked off and we should have a clean start. Hopefully we can begin a genuine process—not just use clever words and semantics—to deliver so that in a year's time I can have a conversation with Senator Macdonald that gives him more comfort than our last conversation did.

Senator PRATT—Hypothetically, if the repeal proceeds and we have a clean start, the Ngapa people could still nominate their site. However, the advantage you would have is that the whole of the Muckaty community would be able to participate in an appeals process and their native title rights, for example, would be restored. What is a level playing field? Does that still imply that we are trying to gain some sort of momentum after the previous legislation?

Mr Sweeney—The important part of the circuit breaker would be the repeal of this legislation. Let us take that as said because it is a government promise. We would not then inherit or assume the process underpinning existing legislation. An expert independent public inquiry would be pivotal. We would not say: 'We went to South Australia and had no luck there so we went to the Northern Territory and had no luck there. Let us turn it into a bidding war between marginalised Aboriginal people, or increasingly underresourced and underserved remote area towns to host this material.' Let us not do that. Let us look at the range of options open to us because there are many. Today I welcomed and was interested to hear Steve McIntosh, the ANSTO representative, say that there was no legal impediment to a whole range of options that have not yet been explored. No-one has requested the agencies to explore them. We are saying: 'Let us explore. Let us take one step back, move away from postcode, move into process and achieve a responsible outcome.'

Senator PRATT—I am trying to get to the bottom of Senator Macdonald's question. Surely the good management of dispersed sites would be preferable to a central site that overrode native title and to which a number of process abuses were attached. On the other hand, a centralised site that has been a result of a good process might be better than a diversity of sites that are poorly managed. Surely that is the kind of proposition we are trying to make our way through?

Mr Sweeney—Yes. We would say that that series of options is what would emerge in an inquiry when things can be put up and tested, not just assumed and defended. I am not sure whether it is that difficult to understand from our perspective. This is an issue of intense controversy. Governments have used slender majorities to push through legislation, which fundamentally is undemocratic, to try to deliver on a result. It has been characterised by broken promises and bad policy. We need to move away from that. We cannot take the heat out of radioactive material but we can take the heat out of the discourse about how to manage radioactive material. That is what we would like to see.

Ms Stubbs—Can I just add to that point? Obviously we want to apply certain principles in assessing the best way to deal with those—whether they are diverse or centralised. A lot of them are to do with minimising the risks associated with transportation and the fact that it encourages waste minimisation practices to store it on-site. We must facilitate best monitoring and best management of any issues relating to remediation problems.

CHAIR—One last question, Senator Ludlam, and then we have to wind up.

Senator LUDLAM—What about a process that was scientific, transparent, accountable and fair that allowed access to appeal mechanisms?

Ms Stubbs—It sounds pretty good.

Mr Sweeney—That is the existing Labor policy position, and that is infinitely better than where we are, but it is not as good as where we could be or where we need to be. It is still predicated on the fact that a remote central dump is the best approach. What we want to see happen in this country is responsible radioactive waste management. What consistently is happening on the part of policymakers and policy implementers is a desire to find a dump. A dump—a remote central facility—is one of a range that spans from legitimate to illegitimate ways of managing radioactive material. It is only one. Is there some sort of Holy Grail status to this remote area dump? It is one of a range of things. In this country we need a process that delivers and explores the full range of options. When that happens there will be a much greater intellectual, scientific and community basis on which to make a decision and advance it.

Senator LUDLAM—Thank you.

CHAIR—Thank you very much. If there are no further questions, thank you very much Ms Stubbs and Mr Sweeney for your submissions to the inquiry and for taking the time to appear before us today on behalf of your organisations. We appreciate it very much.

Mr Sweeney—Thank you, Madam Chair, for the opportunity. In closing I refer to the nuclear medicine question because I know that it is a related and important issue for consideration. I would like to table the executive summary of a report from the Medical Association for Prevention of War, the principal finding of which is as follows:

The new reactor at Lucas Heights in Sydney is not required for medical purposes.

CHAIR—I think they have already appeared before the committee. The Northern Territory chapter has done so. We are happy to accept that tabled document.

Ms Stubbs—Can I also table the findings of the inquiry?

CHAIR—We will seek a resolution from the committee later about those.

Mr Sweeney—Thank you very much for the time and opportunity today.

[11.52 am]

DAVOREN, Mr Patrick, Manager, Radioactive Waste Management Section, Department of Resources, Energy and Tourism

JONES, Mr Stephen, Assistant Manager, Radioactive Waste Management Section, Fuels and Uranium Branch, Department of Resources, Energy and Tourism

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CHAIR—Welcome. Thank you for coming along today. I note that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. Does anybody wish to make an opening statement before we go to questions?

Ms Taylor—No, thank you, Senator.

CHAIR—Thank you very much. Could somebody explain what would be the department's view if the bill before the inquiry today, which is to repeal the act, was successful in the Parliament? What legislation would then apply to the establishment of a nuclear waste facility in Australia?

Mr Davoren—Various legislation would apply, Senator. In relation to sites in the Northern Territory, the prohibition bill that the Northern Territory has would apply. If sites in other jurisdictions were contemplated there is also prohibition legislation in those jurisdictions. So far as the Commonwealth is concerned, there are relevant Commonwealth acts, such as the Environment Protection and Biodiversity Conservation Act 1999, or EPBC Act, and the Australian Radiation Protection and Nuclear Safety Act, or ARPANS Act, which would apply.

CHAIR—How does the ARPANS Act apply?

Mr Davoren—The ARPANS Act has licensing-making powers. It also applies a code of practice for transport, so it could issue transport licences. But in relation to a facility for the management of radioactive waste, one would require a siting licence from ARPANSA and one would also require a construction licence and an operating licence.

CHAIR—How are the EPBC Act processes initiated?

Mr Davoren—Under the EPBC Act a nuclear action is required to be assessed. We would expect, for example, were a Commonwealth facility to proceed, that it would require consideration under the EPBC Act. It would require the preparation of an environmental impact statement and a decision by the environment minister.

CHAIR—Is that regardless of which state or territory?

Mr Davoren—Yes, if it was a Commonwealth action.

CHAIR—What would be the legal effect of the passage of the bill that we are considering today on the consideration process of sites currently nominated under existing legislation?

Mr Davoren—In my opinion, there would be no basis for consideration of those sites. I do not have a detailed legal view on that, but that is my opinion.

CHAIR—Thank you. Why do some of the provisions in the current act apply only to the Northern Territory and not to the Commonwealth generally?

Mr Davoren—It is clear that the current act was developed to provide a legislative basis for operations by the previous government relating to the three defence sites that were identified in 2005 and the site that was subsequently volunteered by traditional owners in the Tennant Creek region in 2007.

CHAIR—The act as it stands is in its current form to accommodate the nomination of that particular site?

Mr Davoren—Yes, it has a definite Northern Territory focus.

Senator LUDLAM—Did you work on this issue in the period of the former government?

Mr Davoren—For some time, Senator, but not continuously.

Senator LUDLAM—When was your first involvement in the radioactive waste management issue?

Mr Davoren—My first involvement in the radioactive waste management issue was in the late 1970s, Senator, but I am glad to say that I have done various things in between.

Senator LUDLAM—How would you characterise the different approaches? You and your department are being asked to follow through with policy implementation. What are the key differences between the policies of the former government and the current government?

Ms Taylor—Senator, we cannot answer that question because this current government has not decided what is its policy approach to this issue.

Senator LUDLAM—It has; I have it here in writing.

Ms Taylor—Pardon?

Senator LUDLAM—It has indeed decided on the policy; I have it in writing and I could provide it to you.

Ms Taylor—It certainly was one of its election commitments but it has not yet made a decision on how to determine its strategy for the radioactive waste issue.

Senator LUDLAM—Okay. So you have not been instructed any differently from the instructions that you were given by your former minister?

Ms Taylor—We have instructions to prepare work on strategies. As you know, work on the technical assessment of the four sites is under way. We are in the process of undertaking a peer review of that work, but that work has not been completed.

Senator LUDLAM—Okay. A couple of weeks ago I brought up this matter at the estimates committee hearings and I think that work had only just begun. Can you give us an update of how the peer review process is coming along?

Ms Taylor—Yes, Senator. That work has commenced and we would expect a report on 11 December.

Senator LUDLAM—Thank you. What would be your role once that report was delivered?

Ms Taylor—Basically, the peer review is considering the Parsons-Brinckerhoff report. We will address any issues raised by the peer review relating to the Parsons-Brinckerhoff report and then move to finalise that report.

Senator LUDLAM—Okay. Presumably at some point you were asked to provide input. That will go to your minister and you will then wait for a public announcement?

Ms Taylor—Correct.

Senator LUDLAM—Are you engaged in the characterisation or investigation of any other sites apart from those four?

Ms Taylor—Not at this stage.

Senator LUDLAM—Is it correct to say that, essentially, in relation to your mandate and your role, there has not been a significant shift since the election? You have just continued the work that you were undertaking prior to the election?

Ms Taylor—The contract that was commenced under the former government has continued.

Senator LUDLAM—The contract with whom?

Ms Taylor—With Parsons-Brinckerhoff.

Senator LUDLAM—Okay, fine. Can you tell us about another contract—a contract between the Northern Land Council, the Commonwealth and the Muckaty Aboriginal Land Trust? Is that something with which you are familiar?

Mr Davoren—The site nomination deed was concluded in June 2007. The parties to that are the Muckaty Aboriginal Land Trust, which was established to hold Aboriginal land in the region, the Northern Land Council and the Commonwealth. Basically, it sets out the agreement that was reached by the previous government and those other parties concerning the volunteer site.

Senator LUDLAM—Who were the signatories to that contract on behalf of the Muckaty Aboriginal Land Trust?

Mr Davoren—I do not recall, Senator. I could provide that information.

Senator LUDLAM—Are you able to table that contract for us?

Mr Davoren—The Northern Land Council regards this as a confidential agreement, Senator.

Senator LUDLAM—Are you able to table the contract in confidence, not for release by the committee?

Mr Davoren—We would have to take that question on notice, Senator.

Senator LUDLAM—I would appreciate that. So it is a contract with which you are familiar. When was it signed?

Mr Davoren—As I mentioned, it was signed in June 2007.

Senator LUDLAM—Who were the signatories on behalf of the Commonwealth?

Mr Davoren—My former manager was the signatory.

Senator LUDLAM—Who was that?

Mr Davoren—From memory, it was Jessie Borthwick from the Department of Education, Science and Training.

Senator LUDLAM—If there is any correction I presume you would let us know?

Mr Davoren—Yes.

Senator LUDLAM—I might leave it there for the moment, thank you.

Senator IAN MACDONALD—I am not sure whether the witness should take that question on notice. Documents that are signed on behalf of the Commonwealth are signed on behalf of the Commonwealth and it is irrelevant who the individual officer was. I do not think it is appropriate for the department to submit an answer to that question.

CHAIR—If that is the answer with which the department comes back, I am sure that will be the answer, Senator Macdonald.

Senator IAN MACDONALD—I am suggesting that the committee should not ask for it. But anyhow, I am sure that departmental officials are able to look after themselves without me helping them.

Senator TROETH—I have a couple of questions relating to the consultation program, let us say up to the passing of the bill of the former government. I am guessing, but I think much of the consultation with local people would have been done between 2003 and 2005, or something to that effect. You can correct me. Mr Davoren, could you give me some idea of the number of consultations that were undertaken by the Northern Territory department relating to the siting and the eventual choice of site over that period?

Mr Davoren—Three sites on defence land were selected by the previous government. Those sites were decided after a review of Commonwealth landholdings. You will recall that there had been a long-running process, commencing in 1992—

Senator TROETH—Yes, I am aware of that.

Mr Davoren—to identify a preferred repository site for a new surface disposal facility for low-level radioactive waste. That was initiated by Mr Crean, the then Minister for Primary Industries and Energy. That process came up with a site at Woomera. That matter was contested because of the process used by the Commonwealth to acquire it from the South Australian government. In July 2004, faced with these legal obstacles, the former Prime Minister announced that the Commonwealth would establish a process for the management of only Commonwealth radioactive waste, leaving the states and territories to make their own arrangements for managing radioactive waste, subject to the proviso that these arrangements were in accordance with Australia's international obligations for managing radioactive waste.

There was then a review of Commonwealth landholdings and we are looking at a landholding that would be suitable for siting an above-ground store for intermediate-level radioactive waste, because it was considered that the Commonwealth's holdings of intermediate-level radioactive waste was so small that it would not warrant the expense of establishing a deep disposal facility. That is what is required internationally for the disposal of that sort of material. The other part of the facility was a near-surface disposal facility for low-level radioactive waste, of which there are over 100 such facilities internationally. In fact, a facility of that type is currently operating at Mt Walton East in Western Australia.

Following that process the Commonwealth government announced the three defence sites in July 2005. Immediately after that was announced the land councils with jurisdictions including those sites were advised the day of the announcement. So I am a little surprised to hear that some Aborigines—I presume in the Central Land Council jurisdiction—read it in the newspaper, because it is a statutory duty of that land council to inform their stakeholders of what is going on. The department then proceeded with consultations from July 2005 to the end of that year and we covered people near the two southern sites—at Harts Range and Mt Everard.

We held a meeting with traditional landholders near Mt Everard that was organised by the CLC. We visited the landholder association at Katherine to discuss the Fishers Ridge site. We held a meeting with traditional owners on that land; we held public meetings in Alice Springs and in Darwin; and we also held consultations with both land councils. The meeting with the Northern Land Council, which I think was about August 2005, led to an invitation to attend their full council meeting in October 2005. At that meeting we made a presentation. We certainly were not there to solicit sites; we were there to provide information. At that stage we became aware that there may be interest from the Northern Land Council in a volunteer site from one or two communities within their jurisdiction.

Senator TROETH—Obviously you would have considered whether or not there had been a full consultation process.

Mr Davoren—There had been, but you have difficulties dealing with remote communities and the land councils have a challenge. I am not making light of the difficulties that they have.

Senator TROETH—No, I understand that. Thank you very much.

Senator PRATT—What did you do to ensure that the Northern Land Council fulfilled its duties under the act relating to the acceptance of that nomination?

Mr Davoren—As you mentioned, there were requirements under the act. We got legal advice on the information that they provided to us. Because we are not normally active in assessing anthropological reports and things like that, we also got formal advice from the Office of Indigenous Policy Coordination.

Senator PRATT—What did that advice tell you?

Mr Davoren—Taken in total, that advice was that the Northern Land Council had met the obligations under the act.

Senator PRATT—Do the obligations under the act override the normal native title processes? Is that nomination appealable from other participants in that same region? I do not understand how it can be a nomination if it has not been through the usual native title processes.

Mr Davoren—Under the act it is a statutory process, Senator. The act sets out the conditions that have to be satisfied. The advice that was provided was that these conditions were satisfied.

Senator PRATT—What were those conditions?

Mr Davoren—The conditions were that the correct landholders be identified. Part of the assessment included—

Senator PRATT—How can correct landholders be identified if the nomination is not appealable? How do you establish who are the correct landholders? Surely one way of doing that is by having a right of appeal so there is a process by which that can be tested? If there is no right of appeal you need to be sure that the correct landholders were identified. That has been contested in that a greater diversity of landholders should have been consulted and included. On what do you base your argument that the correct landholders were identified?

Mr Davoren—On the Aboriginal Land Rights (Northern Territory) Act 1976, and similar provisions in the Commonwealth Radioactive Waste Management Act, which define ownership of land as those who have primary spiritual responsibility for the land. That was assessed in a detailed anthropological study.

Senator PRATT—Is that the anthropological study that no-one else has seen? Who was the arbiter who decided on who had primary spiritual connection to that land? Who finally arbitrated in relation to that matter? Was it the anthropologists or was it the land council?

Mr Davoren—I do not believe that the primary responsibility for that land is contested, Senator.

Senator PRATT—It has been contested in evidence before this committee.

Mr Davoren—No, I do not think it has been contested.

Senator PRATT—There is no right to contest it under this act, which is the problem. But within community debate and before evidence in this committee it has been highly contested. Because there is no right of appeal, as there usually would be, you can conveniently say it has not been contested because there is no opportunity to contest it.

Mr Davoren—From my examination of the evidence, people from other clans at Muckaty station did not want the facility anywhere on Muckaty station. It is clear to me—

Senator PRATT—What if there were people from within the Ngapa clan?

Senator IAN MACDONALD—Could the witness be allowed to finish his answer? On three occasions he has been cut off midstream.

Senator PRATT—With respect, I am listening to the answers, I am getting the information, and I am responding when I am satisfied with the information that I have received. I am sorry if it appears as though I am cutting you off.

Mr Davoren—It does not to me, Senator.

Senator PRATT—The dialogue is happening, so it is okay.

Mr Davoren—I think we must go back to the primary spiritual responsibility for the land. I do not believe that is contested. There are groups on Muckaty station who have traditional interests but they are not the primary ones. After visiting the site on a number of occasions I have not heard people from other clans say that the Ngapa clan are not the landowners. They are saying that they do not like it on the whole area of Muckaty station and they are also saying that they have some areas of spiritual interest to them on that land. But the legal situation goes right back to primary spiritual responsibility of the land. This provision is applied many times every year to every activity in which some Aboriginal group wants to get involved when they have to establish that they are the people who speak for the land.

CHAIR—Is the decision contestable?

Mr Davoren—It can be.

CHAIR—Under what?

Mr Davoren—Normally, people can—

CHAIR—With the act in place?

Mr Davoren—Under this act I am not sure; I do not think it can be. But under other acts it has been and in cases of other developments it has been.

CHAIR—We understand that, but under the Commonwealth Radioactive Waste Management Act the decision is not contestable. Is that correct?

Mr Davoren—I do not believe it is, but I point out that I do not think anyone has contested the ownership of that land.

Senator PRATT—They do not have a right to contest it, do they, because it has been publicly contested before this committee.

Mr Davoren—Have you had someone before you who said that they were the owners of the land? I do not think you have.

Senator PRATT—We have had people before this inquiry who have said that, under the normal native title processes in the Land Rights Act, they would have had a right to participate in that consultation and to sign off on any agreement. Under this act they argue that they were denied that opportunity. Under normal circumstances they would have had the opportunity to appeal that decision. As we do not know which traditional owners signed off on this agreement—the agreement has been signed but it is confidential—to my mind it is highly problematic. There is a lack of transparency and we do not know whether the right people signed off the proposal and the nomination. Anyway that was a comment, so I will now be quiet.

CHAIR—Yes, it was. Are there any further questions?

Senator IAN MACDONALD—Yes. Mr Davoren, thank you very much for your evidence. I am a little surprised to hear it because this morning we heard evidence that the department was incompetent, which I do not accept, that you had not conducted any consultation, and that you had not looked into this whole question for long.

CHAIR—With respect, Senator Macdonald, there were no allegations about the department. But anyway, continue.

Senator IAN MACDONALD—There were, but I do not accept them anyhow. Following up on Senator Troeth's question, you have had extensive consultations over a 20-year period?

Mr Davoren—Referring to the last process, Senator, which I really think is what we are talking about, it goes back to July 2005. In relation to the Woomera siting process, which was rendered somewhat irrelevant by the South Australian government, extensive consultations took place at the 50 sites in the Woomera region that were considered. I think four or five traditional owner groups were involved in that.

Senator IAN MACDONALD—Did the department commence looking at this question of the storage of waste material in 1992 or 1972?

Mr Davoren—I think the department commenced looking at improved management arrangements for radioactive waste in the late 1970s when the Commonwealth and state health ministers raised with the Fraser government the problem that they were facing of fairly indiscriminate disposal of radioactive materials at landfills. That triggered the Federal government's agreement to a national process. Over the next decade that process resulted in the development of a few codes of practice. One of those codes of practice related to the disposal of the waste by the user. There are lots of low-level radioactive wastes in hospitals and laboratories. Considering their low activity the appropriate method of disposal is into drains. But you have to have the level below that which is acceptable and above that which it is not acceptable.

That code of practice established those sorts of things. Then there was a code of practice for near-surface disposal of radioactive waste. From that discussion a siting process was initiated when all states and territories agreed to look at land within their jurisdiction for the establishment of a low-level near-surface disposal facility. As it got to the sharp end of that process and land was considered, the states started to get nervous about it and gradually withdrew from the process. The Northern Territory remained in it, and in the late 1980s a feasibility study was done for a low-level disposal facility in the territory.

Senator IAN MACDONALD—From what you have just been telling us the answer to my question is that this has been looked at very closely over a long period?

Mr Davoren—Essentially this is the third process. When the Howard government came into power in 1996 it continued the Crean process, and that was ended in 2004.

Senator IAN MACDONALD—Earlier I was asking other witnesses, but is it generally accepted that having one, two or three centrally located and well-managed storage facilities is better than having 100 or so storage facilities dotted across the Australian landscape?

Mr Davoren—I think it is, Senator. That is starting to be reflected in the international standards documentation. Usually there is no issue with the management of this sort of material at a lot of dispersal facilities. But when things go wrong with some of these materials they can go badly wrong. I think the experience at Goiania in Brazil is widely known in the radioactive waste management community. A powerful medical radioactive source ended up on a garbage dump. Some man tried to salvage it—I think it was an intense caesium source—and, as a result, half a dozen people were killed, including some children, a village was seriously contaminated, and a whole lot of other people were sick.

That is what happens if anything goes wrong. The best situation is one where, instead of things staying at a facility for a long time, there is a general movement of material towards a disposal facility—or a management facility in the case of intermediate-level radioactive waste.

Pretty soon after the sources have been disused it is important that they are put into a form that is suitable for storage or disposal. In the Commonwealth we have over 30 sites. It is pretty simple to work these out. At every place that you have a Commonwealth Scientific and Industrial Research Organisation laboratory you have radioactive materials. At lots of places where you have a defence facility you have radioactive materials. We have the major site at ANSTO and also the facility at ARPANSA. There are over 100 sites where reasonable amounts of this material are probably being stored in other jurisdictions.

Senator IAN MACDONALD—Would it follow, logically, that if you had one, two, or a small number of bigger sites, they would have all the properly trained and well-trained personnel and facilities as opposed to the local hospital because it would have a small usage? They would have people that knew what they were doing. But the level of expertise and the level of management expertise would not be as good as if there was a centrally located one. Does that follow?

Mr Davoren—I think it is self-evident, Senator.

Senator IAN MACDONALD—Thank you very much, Mr Davoren.

CHAIR—I am not a lawyer, so I will put this in simple terms. In many legislative areas the Commonwealth can just override the states and impose Commonwealth legislation on them, for example, in the area of industrial relations or something like that. Why can that not happen in the management of nuclear waste?

Mr Davoren—I agree that it has not been done and Australia has international obligations. So far as I am aware I do not think that any government has done so.

CHAIR—We have international obligations but we can still impose on a territory of the Commonwealth, Commonwealth legislation to establish a waste management facility.

Senator IAN MACDONALD—Yes, that is correct.

CHAIR—How do those international obligations apply? Obviously they do not apply across the whole of the nation.

Mr Davoren—We have the joint convention on the safety of radioactive waste management and the safety of spent fuel management. Generally, the states comply with that and provide information on their holdings to our international meetings. The Commonwealth has not attempted to introduce any legislation to impose those obligations. I do not know why they have not.

Senator IAN MACDONALD—I assume the fact that the South Australian government threatened High Court action to prevent the Woomera facility suggests that there was, at least in the minds of members of the South Australian government, some inability of the Commonwealth to override the states. Would that be a fair assumption in response to the chairman's question?

Mr Davoren—I think that has to be seen in a particular legal context, that is, in relation to the Land Acquisition Act. Under the Land Acquisition Act the Commonwealth was going to acquire that site at Woomera, but there was something of a loophole in the legislation, that is, the Commonwealth could not acquire a public park. I think it is fair to say that the Commonwealth got nervous about that. Because there was a political stand-off in South Australia they were worried about how a particular vote was going to go with making this a public park, so the Commonwealth used the expedited acquisition provisions of the Land Acquisition Act and there were several court processes. The Commonwealth won the first time, the South Australian government won the second time, and the Commonwealth did not take it any further. I notice that the Land Acquisition Act was not amended to remove that provision. That would have been a way of addressing the problem later.

Senator IAN MACDONALD—Madam Chair, in response to your question which, with respect, I think is a good one, could this department get a note from the Attorney-General's Department in answer to the chairman's question?

CHAIR—I am just curious. If there is no Commonwealth head of power that we can use to establish Commonwealth legislation that overrides state legislation, which as I understand it is what happened in the industrial relations sector, for example—

Mr Davoren—We will take that question on notice, Senator.

CHAIR—One of the reasons I asked that question was that people have said that previous proposals for a facility were centred on the Northern Territory because the Northern Territory could not bite back, if you like, but the states can. What is the legal or constitutional basis for that?

Mr Davoren—Could we take that question on notice?

CHAIR—Yes, certainly; take that question on notice.

Senator LUDLAM—I would like to return to a couple of matters that we were discussing earlier. I refer to the contract that was mentioned at the beginning of your evidence between the Muckaty Aboriginal Land Trust, the Northern Land Council and the Commonwealth. To what does that contract commit the various parties?

Mr Davoren—In previous estimates committee hearings we described the broad content of the agreement.

Senator LUDLAM—I have not asked about the contract at estimates committee hearings.

Mr Davoren—Yes, I know. I think that question was asked at the Education, Science and Workplace Relations Committee a year or so ago. It defines the site that was nominated and the access road to the site. It

also defines the schedule of payments. I think I mentioned to you at the last estimates committee hearing that the amount of money involved was \$11 million. This agreement specifies the schedule for making those payments. I think there was an initial payment of \$200,000 and further payments are then tied to project milestones.

Senator LUDLAM—What is the next milestone?

Mr Davoren—I think the next milestone is the site being declared as the selected site.

CHAIR—I believe that is the case.

Mr Davoren—There is \$2 million payment at that stage. Then there are \$250,000 payments every six months until the amount is paid out or, for some other reason, the Commonwealth decides not to proceed with the project. I think the circumstances that were contemplated there were a failure to pass some regulatory hurdle further down the track. Broadly, that is it. It covers other things such as cultural heritage training for people who might go onto the lands, and environmental protection measures, and it also commits the Commonwealth to rehabilitating the site.

Senator LUDLAM—After it is no longer required?

Mr Davoren—Certainly.

Senator LUDLAM—What are the obligations on the land trust?

Mr Davoren—I cannot recall any of those, Senator.

Senator LUDLAM—You have taken on notice our question requesting a copy of the contract.

Mr Davoren—Yes. I think we could describe those in general terms.

Senator LUDLAM—The committee asked for a copy of the contract itself.

Mr Davoren—I see.

Senator IAN MACDONALD—You indicated that one of the parties to the contract said that it was a commercial-in-confidence document?

Mr Davoren—I think they described it as confidential.

Senator LUDLAM—I am happy for that to be provided to the committee as a confidential document.

Senator IAN MACDONALD—I am not—

Ms Taylor—Can we take that question on notice, Senator?

Senator IAN MACDONALD—Yes, I think you would want to get some advice on that. Coming to the committee as a confidential document does not mean that it will not be tabled or looked at in the chamber.

Ms Taylor—The NLC has requested that that contract remain confidential, so I would like to take that question on notice.

Senator LUDLAM—I was not asking you to provide it to the public, and nor would the committee. Can we return to the matter of the anthropological report on which the whole Muckaty nomination seems to rest? Is that something that you have seen?

Mr Davoren—I have seen it.

Senator LUDLAM—Is that something that you could provide to the committee, either confidentially or otherwise?

Mr Davoren—Extreme sensitivities relating to sacred sites issues were identified by the anthropologists.

Senator LUDLAM—That is often the case with these sorts of documents but it does not go to the question.

Mr Davoren—That is right. I think we would have to take that question on notice. Some of the more confidential information that I have come across in this project is the affiliation of some of those sites. I think we would have to take a long hard look at that and we would take NLC advice.

Senator LUDLAM—You would take NLC advice? According to evidence that we heard last week, the entire Muckaty nomination rests on the evidence in that report, which no-one has seen, apart from the Northern Land Council and your department.

Mr Davoren—And the Office of Indigenous Policy Coordination, or the OIPC.

Senator LUDLAM—You mentioned that before. I think you would understand why there is a degree of concern amongst other traditional owners who were left out of that process that the evidence on which the nomination is based is confidential and has not been seen by other parties.

CHAIR—That is your opinion.

Senator LUDLAM—That is indeed my opinion so I will leave that matter there. I refer to some of the material you presented earlier relating to the obligations of the land council or the parties nominating a site. You mentioned that there was a necessity under the act—I do not expect you to have a copy of it in front of you—to consult, in particular on matters relating to sacred sites. If you have a copy of the act I am referring to section 3B—rules about nominations. In particular, there is an explicit reference in paragraph g(iii) to consent as it is determined under the Aboriginal Land Rights Act. I presume that is what you were referring to earlier, that the appropriate processes be followed? Are we in the right place?

Mr Davoren—Yes.

Senator LUDLAM—Are you aware that section 3C then states:

Failure to comply with anything in that subsection does not affect the validity of an approval.

In other words, you do not have to undertake any of those things and it would not affect the validity of a nomination.

Mr Davoren—That is what it says, Senator, but there were particular circumstances relating to Minister Bishop's consideration, and that was that in her second reading speech she said she would not be approving the nomination unless, in her opinion, the traditional landowners, as a group, had consented. She said that there was no suggestion that she would be relying on 3C.

Senator LUDLAM—Mr Davoren, her opinion might be one thing but the law, as it is written, states that none of the processes under the Aboriginal Land Rights Act or any of the other processes in part 3B of the current act that I am attempting to repeal needed to be adhered to.

Mr Davoren—I have already agreed to that proposition, Senator.

Senator LUDLAM—Okay. Have we had any statement from the current minister that you are aware of that he would not be resting on section 3C?

Mr Davoren—None that I am aware of.

Senator LUDLAM—I suspect that goes to the heart of why there is so much, apart from the fact that there are no appeal rights, because the act explicitly states:

There are no appeal avenues for other parties. The normal processes which would be adhered to under the Land Rights Act do not apply to nominations of radioactive waste dumps under this act.

Is that your understanding?

Mr Davoren—I agree with what you said about the application of 3C.

Senator LUDLAM—Thank you. I have no further questions.

CHAIR—I refer to the contract that the previous government entered into with the Muckaty Aboriginal Land Trust, which has milestones in it. If the current legislation was repealed what would be the status of that contract?

Mr Davoren—I would have thought that it would have been rendered irrelevant, Senator, because there would be no process through which the project could be expedited.

Senator IAN MACDONALD—Could you obtain some legal advice on that? I imagine that if I was the Northern Land Council and I had signed up to many millions of dollars I would expect the deed agreement to be honoured.

Mr Davoren—I think they have said as much in their evidence, Senator.

Senator IAN MACDONALD—I did not see that, but you are suggesting that that is not correct?

Mr Davoren—They would expect it to be honoured; I would agree with that.

Senator IAN MACDONALD—But what is your view?

Mr Davoren—It would be difficult to progress the project, Senator. I mention that the first milestone is the decisions by government and government agencies that would not be made. I would not have thought that the payments would be made.

Senator IAN MACDONALD—Was the first payment only on the first milestone?

Mr Davoren—There was a payment once the nomination was accepted, but the next nomination is the declaration of the selected site. That would not happen because there would be legislation under which it could be declared.

Senator IAN MACDONALD—Remind me what the first payment was.

Mr Davoren—The first payment happened pursuant to Minister Bishop's acceptance of the nomination.

Senator IAN MACDONALD—How much was it though?

Mr Davoren—It was \$200,000.

Senator IAN MACDONALD—Is that all that has been paid so far?

Mr Davoren—That is right.

Senator PRATT—To whom was it paid?

Mr Davoren—It was paid to the Northern Land Council and then to the traditional Muckaty traditional owners of that land.

Senator PRATT—I am still a bit unclear. I assume it was the same people who signed the contract. Are you able to tell us who those people are? Could you take that question on notice?

Mr Davoren—We can, but it is probably a question that should more appropriately have been addressed to the Northern Land Council, Senator.

CHAIR—Yes, That is right; it was.

Senator IAN MACDONALD—As a department have you sought legal advice on the status of that agreement should this bill be passed?

Mr Davoren—Broadly, we know what the status will be, Senator. I do not think we have sought a legal opinion on it.

Ms Taylor—Not specifically, no.

Senator IAN MACDONALD—Thank you.

CHAIR—I would like to clarify one issue. When I originally asked you the question I referred to the agreement between the former government and the Muckaty Aboriginal Land Trust. You said that the money was paid to the Northern Land Council. Was the agreement with the Muckaty Aboriginal Land Trust or with the Northern Land Council?

Mr Davoren—There were three parties—the land trust, the Northern Land Council and the Commonwealth.

CHAIR—Three parties to the contract that we are talking about?

Mr Davoren—Yes.

CHAIR—Okay, that is fine. As there are no further questions, I thank the officers of the department for appearing before us today.

McADAM, Mr Elliott, Private capacity

Evidence was taken via teleconference—

CHAIR—Thank you very much, Mr McAdam, for joining us today.

Mr McAdam—Thank you very much, and good morning to all.

CHAIR—Good morning. Would you like to make a brief opening statement before we go to questions?

Mr McAdam—Yes. I will be very brief. Obviously I do not have a written statement but I want to convey to the committee my concerns in respect to the whole process. I have always said that I believe the process has been flawed and secretive. Not all traditional owners have been consulted or approached in relation to this whole exercise. For the past two and a half to three years it has been a matter of concern for the Muckaty Indigenous community. Obviously, because of the secretive process, people feel as though they have been left out and there has been a denial of natural justice. As I said, I believe that the whole thing has been flawed to the extent that deals were done without proper consultation with all the appropriate people.

If the issue is important enough in a national context the existing Commonwealth Radioactive Waste Management Act should be repealed and the whole process recommenced. All stakeholders should be involved in it. There is one group to which I would like to refer. Obviously, the traditional owners are a key element in this process. The Muckaty Aboriginal Land Trust has a viable and vibrant pastoral industry which prides itself on marketing clean and green products. I know that numerous pastoral companies throughout the region are also concerned about this exercise as they were never consulted.

Those are main points that I wish to make. I have never witnessed or experienced such prolonged or sustained opposition to this project, in particular, from the traditional owners. I am referring to Dianne Stokes, Mr Bennett, his daughter Marlene, Bindi Martin, Mr Sambo and Janet Thompson. I have never experienced such sustained opposition to this whole exercise. Clearly, the reason for that is that all the members of the Muckaty Aboriginal Land Trust have not been involved in this exercise.

CHAIR—Thank you, Mr McAdam. I should have asked you before you made your opening statement to clarify your relationship to the traditional owners. In what capacity are you appearing before the committee today?

Mr McAdam—Obviously I am appearing before the committee today as a private citizen. In the past I was the member for Barkley in the Northern Territory Legislative Assembly. My relationship with the traditional owners is a constituent-member relationship. Obviously, through extended family, members of the group could be described as family members.

CHAIR—Thank you.

Senator PRATT—Mr McAdam, I would like to take you back to your submission in your capacity as the member for Barkley to this Senate Employment, Workplace Relations and Education Committee inquiry into the Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006. You might recall in that submission that you raised concerns about current provisions. You said that a number of criteria had to be met if the land council decided to make a nomination. You also talked about overriding those criteria. At that time you raised significant concerns about land rights and the Native Title Act. Subsequently, a site was nominated, this legislation is now in operation, and we are talking about its repeal. Do your original concerns still apply?

Mr McAdam—I do not have access to that submission at this point in time, but my concerns would be the same. First, I am convinced that proper consultation has not occurred. Second, I believe that the NLC did it for reasons other than the interests of the traditional owners. I believe that the establishment of a site in the territory was concocted by the previous government and the NLC. There is no doubt about the fact that the whole process is flawed. I am only just beginning to understand that no contract was in place with the Muckaty Land Trust for all those positions in the NLC.

I now understand that the contract is in place. If that is the case, clearly the NLC has not consulted with all the traditional owners—all those people attached to the Muckaty Land Trust. They have always said that they talked to the Ngapa people, which is fine and appropriate. But because of the prolonged and sustained opposition from the NLC it is now clear why there is opposition from some of the traditional owners. They have now said, 'There is a contract with the Muckaty Land Trust' but they acknowledge that they have spoken to only 20, 30 or 40 people. They have not spoken to all members of the land trust.

Senator PRATT—You referred to a number of people as traditional owners within the Muckaty Land Trust. Earlier today we heard from departmental officials who told us how the nomination was based on those who, anthropologically, should be identified as the traditional owners. They are the ones who have the right to nominate a site. Apparently, we do not know who those people are, other than that they are attached to the Ngapa clan. How do we know whether or not the traditional owners were consulted?

Mr McAdam—If the contract between the Muckaty Land Trust, the NLC and the other party was signed, obviously there has been no consultation with all members of the Muckaty Land Trust. The NLC acknowledges that they only consulted with some members—those attached to the Ngapa group. But there is also a linkage with other traditional owners in that country. Within itself that is a very telling thing. I do not have any expertise in the area of anthropological evidence, but I am aware of the view that the NLC sought some other form of anthropological advice in respect to the group in that area. I argue that other anthropologists could give you contrary advice in the context of who they should have consulted.

Senator PRATT—Thank you, Mr McAdam.

Senator LUDLAM—Thank you, Mr McAdam, for joining us. Have you been approached directly by traditional owners with concerns about the consultation process and the nomination that followed?

Mr McAdam—Absolutely. As I said, it has been sustained and prolonged. I have been approached by the traditional owners—the people to whom I referred earlier in this exercise. It has been prolonged and it has been constant. My office was used by traditional owners to try to get answers from the NLC, from the previous government and from the present government. My contact with traditional owners has been long and sustained. As I said, I am surprised about the depth of the sustained opposition to this whole exercise.

Senator LUDLAM—Did you meet with or make approaches to the Northern Land Council to express those concerns directly?

Mr McAdam—I can be very open, honest and frank. I drafted letters on behalf of the traditional owners relating to their issue with the NLC. In that context I met with the NLC on one occasion in my office in Parliament House when a whole host of issues were discussed and the Muckaty issue was brought up. John Daley would have been at the meeting at that point in time, but I am not too sure whether Ron Levy was there. I asked a question about its status and effectively they again said that no nomination had occurred, that it was in confidence, et cetera. Norman Fry made it very clear to me that it was about money. He intimated to me with a hand signal and also by voice that it had something to do with money.

Senator LUDLAM—Could you be a little clearer about what that means—that the nomination was just about money?

Mr McAdam—Let me put it this way: as I have said, I asked about the status of the Muckaty land claim as it is in my electorate. I think I recall John Daley saying to me that the nomination had not occurred et cetera. As a parting shot, Norman Fry effectively said to me, ‘It’s all about money. It’s about money.’ He gave a hand signal to show that it was all about money.

Senator LUDLAM—Have some of the people that you mentioned before left their former positions at the Northern Land Council? Obviously, since those meetings there has also been a change of government. Would you be able to tell us about any differences that you have noticed in the process? How has it run since then?

Mr McAdam—I am not too sure what you mean by that. The NLC has a new executive director. I do not think that the NLC council have changed their position in respect of the nomination of the Muckaty site. Clearly, I think there are some real issues, and that is why it is important for the act to be repealed. I believe that all the proposed sites—the Muckaty site and the three others—should be withdrawn, rescinded or whatever. The agreement should not stick. Let’s begin the whole process in an open and transparent way. Let’s involve all members of the community. Obviously it is an issue of national interest, so it is important to get it right. The process must be open and transparent. I do not think it matters what the NLC thinks. The issue is bigger than just an Indigenous issue. This is an issue for all Territorians.

CHAIR—Mr McAdam, can you tell the committee whether you support the establishment of a nuclear waste facility in Australia?

Mr McAdam—Yes. I think I said that before. Obviously there must be some sort of repository or facility. I do not think anyone can argue about that. I am arguing about the process that was undertaken. It was secretive. Legislation was forced on the Northern Territory government, contrary to legislation that was passed in 2004. This whole exercise has been flawed. If we are going to do it, let’s do it right. Let’s involve everyone in it.

Let's not jackboot people into decisions without them being fully aware. Everyone should be fully involved in it.

CHAIR—Mr McAdam, as there are no further questions, thank you very much for taking the time to appear before the committee—that is, to speak to us via telephone. We appreciate it very much.

Mr McAdam—Thank you very much for your time. As I said, the most important thing is to repeal the legislation and to get the whole process right. Let's be open and transparent.

CHAIR—Thank you very much. That concludes the hearing for today and, indeed, the hearings for this inquiry. Is it the wish of the committee that the tabled documents be accepted as evidence? There being no objection, it is so ordered. That being the end of proceedings for today, I thank all the witnesses for appearing before the committee and I thank Hansard and the secretariat for their support.

Committee adjourned at 12.45 pm