



22 June 2020

Sam Chard  
General Manager  
National Radioactive Waste Taskforce  
Northern Australia and Major Projects Division  
Department of Industry, Science, Energy and Resources  
GPO Box 9839  
CANBERRA ACT 2061

Dear Ms Chard

**Barngarla Determination Aboriginal Corporation RNTBC ICN 8603 (BDAC)**


We note the approach from yourself and the legal representatives for the Department of Industry, Science, Energy and Resources (**Department**) to our lawyers last week to arrange a telephone discussion in relation to the proposed National Radioactive Waste Management Facility (**NRWMF**). We have also seen your email of 19 June 2020 indicating that the purpose of the discussion is to discuss the following:

- an agreement with the Government, which may include an economic plan;
- engagement to deliver a funded cultural heritage assessment and management program; and
- delivery of a funded cultural awareness training program throughout the site assessment and construction phases of the facility to departmental staff, contractors, committee members and the Kimba community.

As you would likely be aware the Parliamentary Joint Committee on Human Rights (**Human Rights Committee**) has confirmed, in their Human Rights Scrutiny Report – Report 4 of April 2020, that the proposal to place a NRWMF at Napandee is a violation of the Barngarla People's Human Rights. This is clearly the case, given just some of the matters below:

- Firstly, the Barngarla People were refused the right to vote at all on the NRWMF due to the technicality that our native title land is not rateable;
- The Minister relied entirely on the Kimba community ballot result, notwithstanding it excluded all Barngarla Native Title Holders from the ballot, to justify locating the site at Napandee;
- Because the Barngarla People were denied the right to vote, members of BDAC were forced to hold their own ballot and it returned a unanimous "no" vote on the issue of community support for the location of the NRWMF;
- The Minister entirely ignored the Barngarla community's ballot; and
- Those terrible failures in process would have been subject to judicial oversight had the Minister made a declaration under section 14 of the existing *National Radioactive Waste Management Act 2012* (Cth). However, being fully aware of this, the Minister is now seeking to remove the Barngarla People's legal rights to judicial review by using Parliament to legislate the location directly.

We as Barngarla are a highly economically engaged group. We have, amongst our ranks, the first ever Aboriginal Rhodes Scholar, an Aboriginal art gallery owner, and nominees of the Indigenous Business Awards. Many of our members work full time in the resources industry, building industry, education and academia, and Defence. This employment was a fact which was used to deprive them of their voting rights at Kimba, as they work mostly in Whyalla, Port Augusta and Port Lincoln.



At present, BDAC are finalising negotiations with benefits to Barngarla People which are greater than the entire community support package proposed by *the National Radioactive Waste Management Amendment (Site Specification, Community Fund and Other Measures) Bill 2020*. BDAC maintain share ownership of one of the upcoming port developments with many farmers from Kimba, as well as large stakes in multiple solar projects. Our members do not seek the Department's hand-outs or benefits, and further we will not take them from a Government which has systematically violated our Australian legal rights, and more broadly our Human Rights.

The systematic racist behaviour by your Government is a stain on the collective consciousness of this country. No amount of money will wash away the violation of our rights which have been carried out by your Minister and for that reason we **do not** seek to make arrangements for the opportunity to discuss funding with the Department.

In respect of Aboriginal heritage, we have been attempting to get access to the nominated site properties for years to undertake a full review. We were denied access previously to the Napandee and Lyndhurst sites, and deliberately. This meant, of course, that a proper heritage assessment was not made in advance of the site selection by the Government for the proposed location of the NRWMF. If access is now available, we request you advise us in writing immediately. We will then arrange our own review with Dr Gorrington. However, please note, Dr Gorrington cannot presently travel to South Australia as she cannot return to her native Queensland at this time. Therefore any heritage assessment work will have to wait until the issue of State borders is more stable.

It remains shocking and saddening that in the 21<sup>st</sup> Century, First Nations people would have to fight for the right to vote in Australia and that the Federal Government would deliberately remove judicial oversight of its actions in circumstances where the Human Rights Committee, a bipartisan committee no less, has considered the process to locate the NRWMF flawed. However, even if there is no racial equality or accountability of Government action today, we can hope that this unfortunate matter provides a lesson for those in power tomorrow. The Barngarla People accept that even if this does not rescue us from the violation of our rights made by this Government, hopefully it will act as a historical record for future generations to learn, and not repeat these mistakes or perpetuate these injustices.

We make clear, that we will not be attending any teleconferences or meetings with Department, and we instruct our lawyers not to do so either. Given the deliberate and repeated violations of the Barngarla People's legal rights, any matter regarding the NRWMF should be recorded in writing with adequate detail rather than progressed by informal discussion over the telephone. This does not mean we will not respond to the Department, it just means all matters should be communicated in writing. Accordingly, we require a written overview of the matters raised in your email of 19 June 2020.

Your email indicates that the Government wants "*to form a long term relationship with the Barngarla community based on mutual respect*". This is clearly an insincere statement given the complete violation of our rights to date. We would ask that the Department reflect – even for a moment – on what it is like for us as First Nations people of the Kimba area, to be denied the right to vote on a nuclear waste facility and then have our own Country's Government try to legislate, after the event, to remove all the legal rights we have to ensure judicial oversight via judicial review.

We all have a responsibility to maintain and preserve Human Rights standards. Given the findings of the Human Rights Committee, we would respectfully ask that you to reflect on your involvement in these matters.

Sincerely,  
Barngarla Determination Aboriginal Corporation RNTBC