

## Josephite S.A. Reconciliation Circle

on *Kurna Land...*

Solidarity, Justice, Advocacy, Reconciliation

### The Secretary

Senate Standing Economics Legislation Committee of Inquiry

National Radioactive Waste Management Amendment Bill 2020

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**1. Introduction and Summary** The Josephite SA Reconciliation Circle is an advocacy group based in Adelaide. A number of our members have many decades of involvement with Aboriginal peoples in South Australia and elsewhere and a long time involvement and concern for environmental matters. Under the leadership of our mentor and Chairperson, the late Kurna/Narrunga Elder Dr Alitya Wallara Rigney, and together with other Aboriginal South Australians, as a group of Josephite, Carmelite Sisters and Associates we have worked together as a social justice group for 16 years regarding political structures, environmental concerns and cross-cultural awareness.

Our members begin our submission to this Inquiry with reference to the Object of the Act noting the significance of the words and phrases - *controlled*; and *safely and securely managed*:

#### **Object of Act**

- (1) *The object of this Act is to ensure that controlled material is safely and securely managed by providing for:*
  - (a) *the specification of a site for a radioactive waste management facility; and*
  - (b) *the establishment and operation of such a facility on the site specified.*
- (2) *By ensuring that controlled material is safely and securely managed, this Act, among other things, gives effect to certain obligations that Australia has as a party to the Joint Convention, in particular, Australia's obligations under Chapters 3 and 4 of the Joint Convention.*

The Josephite SA Reconciliation Circle submits that the only way long-lived intermediate radioactive waste can be '**controlled**' and '**safely and securely managed**' in Australia is for it to presently remain in the federal facility at Lucas Heights where the nuclear experts are and where the necessary safety measures and skilled personnel are at optimum levels. We question the sense, the expense and the risks of transporting long lived intermediate nuclear waste (LLILW) from where it is temporarily housed at Lucas Heights with the nuclear experts, 1700 kilometres across the country to be temporarily stored in a regional, yet to be built, facility. We submit that this proposal is the antithesis of safe and secure management. Given that most of Australia's intermediate level nuclear waste comes from Lucas Heights we believe that it should be kept there, at least until a final disposal solution is established. Short term proposals for the storage of Australia's nuclear waste will leave insoluble problems for present and future generations. There are no present plans for its permanent disposal.

We support in the meantime an independent scientific inquiry of experts to decide the safe next step to contain the LLILW nuclear waste component of this proposed project.

Submission headings as requested: 1. Introduction and Summary, 2. Traditional Owners, 3. Current Plan fails to represent International Best Practice, 4. The Nuclear Medicine debate wrongly used to justify the need for a NRWM Facility, 5 Kimba as an international grain farming area, 6. The Restrictive Voting Area, 7. The Flawed Consultation processes, 8. The Need for Consultation in the chosen Port and along Transport routes, 9 State legislation to be overridden. 10. Conclusion. 11. Recommendations.

**2. Traditional Owners.** Importantly, the proposed NRWM Facility presents an unacceptable threat to impose nuclear waste against the express will of the Barngarla People, compromising their Indigenous rights and interests. The broad Australian community has an obligation to respect and to protect Aboriginal rights and interests. This must be reflected in the Senate Inquiry's considerations, Report and Findings. In addition to their express opposition, the Barngarla People's heritage, Song Lines & Story Lines, are protected by the *SA Aboriginal Heritage Act 1988* as Indigenous cultural values.

Shamefully, the federal government has decided to move ahead despite the unanimous opposition of the Barngarla Traditional Owners, native titleholders over the area. Excluded from the Kimba ballot last year, Barngarla people engaged the Australian Election Company to conduct a confidential postal ballot. Not a single Barngarla Traditional Owner voted in favour of the dump. The Barngarla initiated a legal action protesting their exclusion. 'We took action because our human rights have been overlooked. We feel ignored on our traditional lands and unheard and unrecognised by the Kimba Council,' said Mr Jason Bilney, chairperson of the Barngarlaarlarla Determination Aboriginal Corporation. Mr Bilney said the land and waterways held storylines with significant connections to Barngarla people.<sup>1</sup>

With the Barngarla appeal recently denied, Josephite SA Reconciliation Circle members join the Barngarla to wonder at the standing human rights legislation has in our nation when such rights can be so easily be legislated away without redress. As Barngarla Traditional Owner Jeanne Miller laments, Aboriginal people with no voting power are put back 50 years, 'again classed as flora and fauna.'<sup>2</sup> If the results of the two ballots are combined, the overall level of support falls to just 43.8% of eligible voters (452/824 for the government-initiated ballot, and 0/209 for the Barngarla ballot) – well short of the government's benchmark of 65% for 'broad community support'.<sup>3</sup>

We agree that the Federal Minister holds a draconian discretion under the *National Radioactive Waste Management Act 2012* (NRWM Act) to over-ride both Federal and State Aboriginal Heritage Acts. Sections 12 & 13 of the NRWM Act state that: "*the significance of land in the traditions of Indigenous people ... has no effect to the extent that it would regulate, hinder or prevent*" actions that are authorised by Section 11 *Selecting the site for a facility*.<sup>4</sup>

The present Bill calls on the Senate to vote to instigate these wide ranging Federal powers to override Indigenous people's traditions, rights and interests, as set out in and protected by any State law: **On the contrary** Federal claims to "*not impose a facility on an unwilling community*"<sup>5</sup> should exclude sites where the Native Title representative body opposes siting of nuclear waste facilities on their traditional lands. We call on Inquiry members and after that our Australian Senators to refuse to take such action 'authorised' by overriding human rights. We agree that such is unacceptable in a modern era.

In this entire situation we put to the Inquiry Pope Francis's words as particularly apt: '*It is essential to show special care for Indigenous communities and their cultural traditions. They are not merely one minority among others but should be the principal dialogue partners...When they remain on their land, they themselves care for it best. Nevertheless in various parts of the world, pressure is being put on them to abandon their homelands to make room for agricultural or mining projects which are undertaken without regard for the degradation of nature and culture.*' Pope Francis *Laudato Si*<sup>6</sup>

### **3. Current Plan fails to represent International Best Practice**

The NRWM Facility plan for "*indefinite storage*" of ANSTO nuclear fuel wastes and Intermediate Level Wastes is not consistent with longstanding advice of the regulator ARPANSA, Radiation Health & Safety Advisory Council and of the Nuclear Safety Committee (NSC) on International Best Practice (p.16). We note also that the Nuclear Safety Committee (NSC) has advised (2013) that **dual handling transport for interim storage** as named in our Introduction above "*does not represent International Best Practice*" and "*also has implications for security*" and for safety.<sup>7</sup>

The nuclear regulator ARPANSA states these wastes require radiation shielding, safe handling and security, and isolation from people and from the environment for over 10,000 years.

We note that the Bill amends the Act to specify SA as a nuclear waste state and Napandee near Kimba as an above-ground *interim* Nuclear Waste Store. However for the past four years no other states have been under consideration for the deposition of Australia's most toxic material. From the original 26 nominated sites, the final three selected were all from South Australia. Surely a political rather than a scientific decision.

As SA environmentalist David Noonan is clear: 'In 2015 ANSTO purpose-built an "Interim Waste Store" (IWS) at Lucas Heights with a conservative design operating life of 40 years to take reprocessed nuclear fuel waste shipments from both France and the UK. The IWS received the French waste in Dec 2015 and can take the UK waste due in 2020's. The regulator ARPANSA has said it expects *separate* Licence Applications for the above ground Nuclear Store and for the Low-Level Waste Disposal Facility.'<sup>8</sup>

The "National Radioactive Waste Management Facility" (NRWMF) is really **two dumps in one** with a Low-Level radioactive waste disposal site (including wastes that require isolation for up to 300 years) which is also primarily over 95% for Federal gov. wastes.

The above ground Nuclear Store is primarily over 95 % for Federal nuclear wastes. While a detailed plan for the less toxic low level waste has been submitted, it is astonishing to our members that the federal government and its department officials have shown and continue to show scant regard for these safety and security values in practice by the startling **failure to provide any planned facility design for the deposit of the far more dangerous LLILW**. We wonder if all Members and Senators voting on the Bill realise that this is the case.

Legislation names as **indefinite ("for approx. 100 years") above ground Nuclear Waste Store** that is to be imposed on to SA. It is a main thrust of our submission - to regularly transport 1700 kms and then simply store the nuclear waste, toxic for 10,000 years, above ground in a yet to be designed facility in regional SA - that this 'plan' is unconscionable and must change. Waniwa Lucy Lester *Yankunyjatjara* Elder brings attention to Intergenerational justice: *Do we have the right to condemn future generations to poisoning the land?*<sup>9</sup>

**4. The Nuclear Medicine debate wrongly used to justify the need for a NRWM Facility** As time has gone on in this process, federal government officials and representatives have increasingly ramped up the government's nuclear medicine defence for the NRWM Facility.

Our submission therefore quotes from the following medical experts exposing this defence:

1)Dr Bill Williams, Medical Association for the Prevention of War "As health organisations, we are appalled that access to nuclear medical procedures is being used to justify the proposed nuclear waste dump. Most waste from these procedures break down quickly and can be safely disposed of either on site or locally."<sup>10</sup>

2)Nuclear Radiologist Dr Peter Karamoskos. "Linking the need for a centralized radioactive waste storage facility with the production of isotopes for nuclear medicine is misleading. The production of radioactive isotopes for nuclear medicine comprises a small percentage of the output of research reactors. The majority of the waste that is produced in these facilities occurs regardless of the nuclear medicine isotope production."<sup>10</sup>

3) Dr Susi Andersson GP Hawker Flinders Ranges SA (November 2019) 'Misinformation and misunderstanding about the most dangerous intermediate level nuclear waste (LLILW) destined for the proposed NRWMF (National Radioactive Waste Management Facility) continues. The use of nuclear medicine in hospitals does not produce any nuclear waste that will go to a NRWMF. The 'Australian Radioactive Waste Management Framework' shows that at January 2018 the volumes of ILW to be stored at a NRWMF to be 1771 m3. Of this just 13m3 (less than 1%) comes from 'Industry, hospitals, universities', in all states and territories. Little if any LLILW is stored in hospitals...The use of nuclear medicine produces only low level waste which sits a while then goes to the usual (non radioactive) waste streams. The manufacture of nuclear medicine produces LLILW and LLW (Low level waste ) but that happens and stays at Lucas Heights. **X-rays and CTs produce no radioactive waste**. The 'heads' of radiotherapy devices will

be radioactive waste but the modern ones need to be returned to the manufacturer when obsolete and all manufacturers are overseas.<sup>11</sup>

**5 Kimba as an international grain farming area.** Kimba farming land is an important part of South Australia's just 4.5 per cent agricultural cropping land. This flawed Federal government process has seriously divided and damaged the Kimba agricultural and town community and presents a reputational and material impact risk to their livelihood and community cohesion.

\*Kimba farmer James Shepherdson names the long term implications of the one off federal government promise of payment: 'Farmers are under scrutiny and at the beck and call of buyers and brokers, and to risk what is an \$80m income for this district every 12 months, for a one-off \$20m payment, that's absurd. The people in favour (of the facility being built), I can see it from their point of view, they want financial prosperity for the town and area, but to risk it all just for a bit of prosperity is madness.

"Seeing as this is the entire nation's waste, and we all share the responsibility of nuclear medicine, why shouldn't it be a national decision?"<sup>12</sup>

\*Farmer Peter Woolford, President of *No Radioactive Waste Dump on Agricultural Land in Kimba or SA* summarises the seriousness of the local divisive campaign: 'if you want to know what intimidation is, you stand between people and money.'<sup>13</sup>

\*Tom Harris who has been farming in Kimba for over 50 years has named with some distress the current doubt by insurance agents regarding his insurance viability because of its proximity of his farm to the nuclear storage site; this may jeopardise his sons' succession.<sup>13</sup>

\*Barry Wakelin, the retired Coalition federal member, is another of the farmers fiercely opposing the plan and the danger to the Kimba international grain markets. In the face of groundwater, transport and serious, hugely long-term safety risks, Wakelin insists, 'This is a national issue, not something that a regional community should be left to deal with.'<sup>14</sup>

**6. The Restrictive Voting Area** The final deciding Kimba vote was confined to a restricted area from the central Kimba Council. As well as the Barngala people being excluded many farmers were also. James Shepherdson notes, 'We've got people who are closer to the site than the township of Kimba is, but aren't in the council boundary, who did not get a vote.'<sup>16</sup> One farming couple opposed to the facility were denied a vote even though just a road separates their farm from the proposed site

On December 5<sup>th</sup> 2019 farmer Terry Schmucker outlined the historical process which eventuated in such a restricted vote: 'Both nominated sites near Kimba are closer to the council boundary than the Kimba township or the centre of the district. I live at Cootra which shares councils. Our farm is 8 km from the waste site and I did get a vote but my immediate neighbors don't. If the 50 km radius was applied at Kimba like it is at Hawker the vote would fail at these waste sites. Our neighborhood is split in half by the vote here. Volunteers from our neighbourhood that are members of the local fire service attend incidents around the waste dump site area and yet most didn't get a vote. We have already been through this once already where everyone was on equal terms. The minister at the time has already ruled there was not broad community support. However the landholder that nominated his land the first time then renominated a different part of his farm and his friends and family within the Kimba council moved for a vote of only the council area. The community funding has now been restricted to the Kimba council area only. Because of this people are looking at the large inducement not the radioactive waste issues.'<sup>17</sup>

Explaining the wideranging effect on markets of association by location to the NRWMF, Tom Harris declares 'At the least, the entire Eyre Peninsula should have been consulted. It's not only the grain exports, you've got to realise there's the fishing industry at Port Lincoln, there's oysters out of Cowell. The Eyre Peninsula is isolated, but it's a very healthy, productive area for South Australia and creates a lot of wealth. A lot more wealth than any waste dump could ever provide for SA.'<sup>18</sup>

**7. The Flawed Consultation process.** Much has been made of the fact by government personnel that there were 'years of consultations' with the stakeholders in the Kimba locality. Unfortunately as our

members are only too aware from knowledge of the years of dissatisfaction experienced by locals in both proposed SA regions opposed to the project, the consultations were, in fact, only in the form of information about already decided government plans with a determined resistance to hear considered and factual genuine objections from those opposed.

Our Josephite SA Reconciliation Circle in fact had personal experience of this approach. Following our letters of concern about the whole issue to the then Minister, a meeting was convened by Minister Canavan with our own members and two members of the relevant government department. A consistent line of dismissal of our informed comments and objections by members was the pattern of the meeting. As one member recalled, 'I remembered the emphasis seemed to be on avoiding or stalling replies to our comments and questions. I also remember one man actually speaking over us when we made comments. I thought then it was a "political" meeting to find out more about us and with attempts to influence us to withdraw our objections.'<sup>19</sup>

**8. The Need for Consultation in the chosen Port and along Transport routes** 1) In July 2018 the Federal government within their departmental documentation named Whyalla or Port Pirie as required nuclear waste ports facing decades of shipments of ANSTO reprocessed nuclear fuel waste imports to SA: **Two shipments of nuclear fuel waste in 130 tonne TN-18 casks are intended in the first 2 years of operations** including a shipment of reprocessed nuclear fuel wastes from UK in the early 2020's and a shipment from Lucas Heights, then multiple future shipments direct from France.<sup>20</sup>

The affected Eyre Peninsula, Whyalla and transport route communities have been denied a say on these Federal plans and now face potential serious reputational risks and material impacts. The Whyalla City Council states there has had no advice from Federal or SA governments on use of the Port. Whyalla is targeted for nuclear waste shipments and should have a right to refuse untenable plans.

**2) Some 100 x B-Double truckloads (see p.179 Government documents) of Intermediate Level Wastes (LLILW) are also to be trucked into SA, primarily from Lucas Heights, in the first four years of Nuclear Store operations in SA.**<sup>21</sup> That there has been no consultation at all to those communities along the transport routes mean that Federal government processes are a direct breach of advice from the Nuclear Safety Committee. In a letter to ARPANSA CEO Dr Carl-Magnus Larsson (Nov 2016), Nuclear Safety Committee Chair Dr Tamie Weaver stressed the *"ongoing requirement to clearly and effectively engage all stakeholders, including those along transport routes...such engagement "is essential"*.<sup>22</sup>

**State Rights Overridden** The proposed nuclear waste facility is illegal under South Australia's Nuclear Waste Facility (Prohibition) Act, introduced by the SA Liberal Government in the year 2000 and strengthened by the SA Labor Government in 2002. The federal government is expected to take the draconian and unacceptable step of using regulations to specifically override the SA Nuclear Waste Facility (Prohibition) Act. South Australians are opposed to the proposed nuclear waste facility: a 2015 survey found just 15.7% support for a nuclear waste dump, and a 2018 survey found that those who strongly agreed with stopping the dump outnumbered those who strongly disagreed by a factor of three (41:14).

**Conclusion** The first three months of the current year 2020 have proved beyond all doubt that the future of the planet and its peoples is in unprecedented crises. In this scenario our members, many of whom have spent a lifetime in the education of young people declare It is unconscionable that the present federal government by proposing an interim storage above ground facility in country South Australia should be passing the responsibility and bestowing high risk down the road for next generations to deal with. Now is the time for a genuinely safe plan for Australia's long term intermediate nuclear waste. The time for cavalier action in the face of real evidence and human and environmentally linked risk is over.

**This is a project full of huge risks in an unprecedented time of enormous risks. It must not go ahead.**

#### **Recommendation**

1. The Senate Economics Legislation Committee should recommend the withdrawal or rejection of the National Radioactive Waste Management Amendment Bill 2020 and repeal of the National Radioactive Waste Management Amendment Act.

### Alternative Recommendations

1 The Committee should assess the compatibility of the Act, the Bill and the proposed nuclear waste facility with the UN Declaration on the Rights of Indigenous Peoples, in particular the principle of free, prior and informed consent.

2. Given that the government has consistently failed to provide any logical justification for double-handling of intermediate-level waste, the Committee should recommend that intermediate-level waste stored at ANSTO's Lucas Heights site should remain there until a long-term solution is realised.

3. The Committee should recommend that the Bill is withdrawn, and the federal government's nuclear waste agenda put on hold, until such time as public opinion among other relevant stakeholders is determined (including state-wide opinion in SA; and opinion along potential transport corridors).

Thank you for receiving and heeding our Submission

Michele Madigan for *the Josephite SA Reconciliation Circle*

25<sup>th</sup> March 2020

### Footnotes as requested

1. Jason Bilney Chair BDAC Sarah Martin *The Guardian* 26<sup>th</sup> February 2020
2. Jeanne Miller video link : <https://vimeo.com/382855709>
3. Kim Mavromatis general email 6/2/20
4. NRWM Act Section 12 and 13 and Section 11
5. Frequent saying of former Minister Canavan quoted in notes and audios of various consultations eg Hawker SA, Kimba SA Quoted in M Madigan Eureka Street *Marchers Unite against federal nuclear dump* 27/8/2018
6. Pope Francis *Laudato Si* An Encyclical Letter on Ecology and Climate 2015
7. Nuclear Safety Committee International Best Practice p 16 2013
8. David Noonan Briefing document email 27/2/20
9. Waniwa Lucy Lester, Josephite SA Reconciliation Circle meeting convened with Department representatives. Bethany, St Joseph's Convent Kensington SA 2018
10. Bill Williams and Dr Peter K Friends of the Earth [Friends of the Earth Nuclear medicine and the proposed national radioactive waste dump](#)
11. Dr Susi Andersson email to Michele Madigan Quoted in 23<sup>rd</sup> November 2019 Responses to *Farmers and Traditional Owners decry SA nuclear vote* 20<sup>th</sup> November Eureka Street
12. James Shepherdson *Stock Journal* February 6, 2020
13. Peter Woolford Speech at Kimba SA Rally Feb 2nd 2020 M Madigan notes
14. Tom Harris Speech at Kimba SA Rally Feb 2nd 2020 M Madigan notes
15. Barry Wakelin Speech at Kimba SA Rally Feb 2nd 2020 M Madigan notes
16. James Shepherdson *Stock Journal* February 6, 2020
17. Terry Schmucker, December 5, 2019 Written Response to M Madigan Eureka Street article *Farmers and Traditional Owners decry SA nuclear vote* November 20<sup>th</sup> 2019
18. Tom Harris as above
19. Josephite SA Reconciliation Circle member email 20/2/20 in preparation for Circle submission
20. Department of Industry, Innovation and Science Government 18 page Information document researched by David Noonan
21. David Noonan Briefing document <https://nuclear.foe.org.au/wp-content/uploads/Transport-Napandee-Nuclear-Store-targets-Whyalla-Port-Feb2020.pdf>
22. NSC Chairperson Dr Tamie Weaver Letter to Dr Carl- Magnus Larsson CEO ARPANSA November 2016