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## **Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (JSCATSIA) Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia**

**October 2022**

The Australian Conservation Foundation Inc (ACF) is a leading national advocate for the environment. ACF is strictly non-partisan and we are proud of our political independence.

We work to protect, restore, celebrate and sustain Australia's environment through research, consultation, education, partnerships and advocacy.

ACF acknowledges that First Nations Peoples of Australia hold unique knowledge and rights inherited from their ancestors and Country and have cared for this country since time immemorial.

We recognise that sovereignty was never ceded and that colonisation continues to adversely impact on First Nations Peoples.

We respect First Nations authority to speak for and sustained leadership in caring for Country and support their rights to continue to do so.

We recognise that rightful recognition of and genuine reconciliation with First Nations Peoples is fundamental to protecting nature in Australia.

As Australia's national environmental organisation, we support the rights of First Nations Peoples, and actions that uphold these rights.

We support First Nations as they strive for self-determination and support First Nations-led campaigns that protect Country and seek win-win outcomes for our environment and for the rights, wellbeing and advancement of First Nations Peoples.

ACF acknowledges the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the deep importance of the guiding principle of Free, Prior and Informed Consent.

Respect for FPIC and wider First Nation recognition and rights is increasingly reflected across ACF's broad suite of policy and advocacy work, however the focus of this brief submission is



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a snapshot of radioactive waste management as a contemporary and clear example of federal non-compliance with FPIC and the UN DRIP.

### **Radioactive waste management and DRIP:**

ACF has been actively engaged in policy and advocacy work around radioactive waste management issues for decades and have worked closely with affected First Nation communities, especially in South Australia and the Northern Territory.

This policy arena has been characterized by division and clear lack of trust, consensus or a responsible and lasting outcome that enjoys broad social license.

Current federal moves to advance the proposed National Radioactive Waste Management Facility (NRWMF) near Kimba on SA's Eyre Peninsula continues this deficient approach.

Article 29 the UN DRIP requires that: ***"States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent"***.

The Barngarla people, the Traditional Owners and Native Title holders of the affected region, have consistently opposed any siting of the planned federal waste facility on their land.

This clear opposition has been ignored and attempted to be by-passed in the current move to advance the NRWMF.

An initial community ballot to assess community opinion adopted exclusionary engagement criteria that restricted voting to ratepayers in the Kimba District Council region.

All other land-users and stakeholders, most notably the Barngarla, were not eligible to participate or vote. A separate and independent community ballot commissioned by the Barngarla Determination Aboriginal Corporation demonstrated unanimous opposition to the waste plan.

ACF maintains that in 2022 it is not consistent with either contemporary community expectation or international best practice to exclude First Nations people from such a contested and inter-generational land use decision.

ACF further notes that amendments the enabling legislation for this proposed project were stalled for a year due to concerns over the lack of legal recourse and procedural review.

The right to independent legal recourse is a fundamental principle of our democracy and should not be jettisoned without compelling reasons – especially on an issue with such significant long-term implications and impacts as radioactive waste.



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Ultimately advocacy efforts saw this right re-inserted in the National Radioactive Waste Management Act but this should not have required such effort, nor be restricted to procedural, as opposed to merit based, considerations.

The fact that Aboriginal people have felt it necessary to seek multiple Court interventions to have their voices heard illustrates the deficiencies of the current federal process.

The failure to act in accordance with the clear expectation of the UN DRIP in relation to the siting of Australia's first dedicated national radioactive waste facility highlights a lack of both respect and responsibility and is not an acceptable approach to a complicated and contested policy issue.

ACF would be happy to speak to this submission or provide any further material to assist with the Committee's consideration.

ACF strongly urges that the principles of FPIC guide future federal consideration of this policy arena.