

# Chapter 3

## Indigenous support

3.1 According to the Department of Industry, Innovation and Science (DIIS), it is committed to providing every member of the community, including indigenous members, with the opportunity to speak with the department and be consulted about the site selection process. The same information and opportunities are provided to all members of the relevant communities, whether the community is Indigenous or not.<sup>1</sup>

3.2 DIIS maintains that it continues to work closely with the local traditional owners on the NRWMF project and the government has committed that it will preserve, protect and minimise the impact on indigenous heritage and cultural aspects of the land.<sup>2</sup>

3.3 In relation to the Wallerberdina Station site (Hawker), DIIS indicated that a Heritage Working Group has been established which includes representatives of the Adnyamathanha Traditional Lands Association RNTBC (ATLA) and the Viliwarinha Yura Aboriginal Corporation (VYAC):

The department is engaging with representatives from both corporations as both have members who can speak to the cultural heritage value of the land and the potential impact of the Facility on cultural, environmental and social values. Traditional owners, who have been authorised by the boards of ATLA and VYAC, are working with the department to conduct an Aboriginal Cultural Heritage Assessment of the Wallerberdina Station.<sup>3</sup>

3.4 A number of Aboriginal people have also been selected to participate in the Barndioota Consultative Committee and the Economic Working Group.<sup>4</sup>

3.5 In relation to Kimba, there has been less Indigenous engagement by DIIS:

The department has also sought to consult with representatives of the Barngarla People, who hold native title in an area near the Kimba sites. These discussions are ongoing but will provide for the views of the Barngarla to be made into the process as well as identifying, protecting and minimising impact on any significant culture and heritage at the nominated sites. The department is looking to create a 'Barngarla Heritage Consultative Committee' with a role similar to that of the Heritage Working Group at Wallerberdina Station.<sup>5</sup>

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1 Department of Industry, Innovation and Science, *Submission 40*, p. 11.

2 Department of Industry, Innovation and Science, *Submission 40*, p. 5.

3 Department of Industry, Innovation and Science, *Submission 40*, p. 11.

4 Department of Industry, Innovation and Science, *Submission 40*, p. 12.

5 Department of Industry, Innovation and Science, *Submission 40*, p. 12.

## Stakeholder comments

3.6 Indigenous stakeholders expressed cultural and heritage links to the different geographical areas associated with the proposed sites. As with most aspects of the selection process, there were mixed views regarding whether Indigenous engagement had been appropriate depending on whether stakeholders were for or against a NRWMF in their community.

### *Hawker*

3.7 ATLA is the peak body for all matters relating to land, culture, heritage, language and native title for Adnyamathanha people.<sup>6</sup> The proposed NRWMF near Hawker is located on Adnyamathanha land and is opposed by ATLA:

Indigenous support does not exist we have made that very clear from day one and we continue to oppose this waste dump at this site...As with any situation, there are one or two Adnyamathanha who are supporting this dump but the vast majority remain totally opposed to the dump and ATLA as the representative body has always been totally opposed.<sup>7</sup>

3.8 While ATLA is the native title body for the proposed site, the VYAC is another Adnyamathanha body with cultural and heritage links to the site at Wallerberdina. The VYAC consists of decedents of the late Mr Malcolm [Snr] and Mrs Ruth McKenzie, and many of its members are also members of ATLA.

3.9 Within the VYAC, members hold diametrically opposed views in relation to the siting of a NRWMF near Hawker. This has been reflected in how support for a NRWMF has changed over time. In 2016, the YVAC ran a public campaign opposing the siting of a facility near Hawker. By May 2017, however, the then Chair of the VYAC, Ms Dawn Likouresis, stated:

The majority of our community would like the facility to go ahead. The VYAC members have room for their own opinions and at a recent special meeting VYAC held a ballot for the project and 85% of members who voted were in favour.<sup>8</sup>

3.10 Representatives from the YVAC have put forward arguments both for and against a NRWMF to the inquiry. Proponents for a NRWMF emphasised the economic and employment opportunities for Indigenous people. For example, Mr Malcolm McKenzie stated that:

What's going to happen here this year is a great opportunity for Aboriginal people, for Adnyamathanha people—having a job and input into things. We know the status of Aboriginal people around Australia now, a lot of them haven't got jobs, a lot of them haven't got training but through this process

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6 Adnyamathanha Traditional Lands Association, *Submission 42*, [p. 1].

7 Adnyamathanha Traditional Lands Association, *Submission 42*, [p. 4].

8 National Radioactive Waste Management Facility, 'VYAC leader outlines position', 26 May 2017, <http://www.radioactivewaste.gov.au/news/vyac-leader-outlines-position> (accessed 28 June 2018).

we're going to be working with the government to build that capacity of Aboriginal people to contribute to work. This is not going to destroy culture; it'll enhance it.<sup>9</sup>

3.11 Similarly, Ms Angelina Stuart commented that:

Thinking about my grandkids and great grandkids, I want to see development on the land, so that they can return to the land and surrounding areas, and so they can come back and get opportunities of employment. They need to be able to come back to the land.<sup>10</sup>

3.12 Mr Bruce Wilson from DIIS drew the committee's attention to a comment from Ms Deidre McKenzie, current Chair of the VYAC:

...who describes what a positive experience it was for over 30 members of her community to work with AECOM and the department to support the assessment work being undertaken on the site. In her words, it has been a life-changing experience for several of the younger Adnyamathanha.<sup>11</sup>

3.13 Opponents to a NRWFMF cited concerns about such a facility affecting sites of cultural heritage. Indeed, ATLA asserts that this has already happened during the initial heritage assessment process.<sup>12</sup>

3.14 ATLA's concerns about the storage of radioactive waste currently held at Woomera have not been allayed by the government's reluctance to allow anyone to visit that storage facility:

We've been invited to go and look at the Lucas Heights site, but why go all the way to Lucas Heights? Have you got waste over there at Woomera that we can go and visit? Why don't they take us there? Why wouldn't they be happy to take us to Woomera and show us how well they look after this waste?<sup>13</sup>

3.15 In relation to the consultation process, ATLA contended that:

ATLA was not contacted until phase 2 of the Wallerberdina proposal. We were ignored by the government for quite some time. So we were not even a part of the process for the first two "advancement stages". ATLA is the RNTBC and the ARA and we were ignored so clearly the government does not respect us as Traditional Owners! ATLA was disgusted and frustrated by the arrogance of the government to completely ignore us as the Traditional Owners...<sup>14</sup>

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9 Malcolm McKenzie, *Committee Hansard*, 6 July 2018, p. 13.

10 Angelina Stuart, *Submission 112*, [p. 1].

11 Bruce Wilson, Department of Industry, Innovation and Science, *Committee Hansard*, 2 August 2018, p. 25.

12 Adnyamathanha Traditional Lands Association, *Supplementary Submission 42.2*, p. 2.

13 Vince Coulthard, Adnyamathanha Traditional Lands Association, *Committee Hansard*, 6 July 2018, p. 38.

14 Adnyamathanha Traditional Lands Association, *Submission 42*, [p. 4].

3.16 ATLA also noted that, once DIIS determined native title was extinguished, the department considered that it have to consult with the traditional owners about heritage matters:

They keep on making the point that the native title process has been extinguished—or native title has been extinguished.<sup>15</sup>

3.17 While an Indigenous Land Council is not the nominator for either of the sites, Section 5 of Part 2 of the *National Radioactive Waste Management Act 2012* provides the intent to examine claims and impacts of indigenous heritage in that it states:

(2) A nomination must:

...

- (e) if there is a sacred site within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* on or near the land—contain evidence that the persons for whom the site is sacred or is otherwise of significance are satisfied that there is no substantial risk of damage to or interference with the sacred site as a result of the nomination or subsequent action under this Act;

3.18 ATLA claims that the external heritage consultants, RPS, engaged by DIIS to undertake the heritage assessment process were not independent and did not appropriately consult with those indigenous people with the relevant knowledge about cultural heritage:

In the first meeting of the heritage assessment process when they went there, it went through a process of appointing the heritage survey and the assessment crowd, the specialists. They've ignored our representatives. Our people had some real issues about who they were appointing, because this person or this company—well, initially the process was that it would be totally independent. Someone would be selected who hadn't worked with any one of the people in our group, either Viliwarinha or the ATLA representatives or even ANSTO. It would be someone totally independent. But that wasn't the case, because RPS has been involved with and worked for the government previously and also worked with some members who were sitting on the panel, so it wasn't totally independent. That's why ATLA pulled out. It was flawed from day dot. ATLA didn't want to be part of a flawed process.<sup>16</sup>

3.19 Ms Regina McKenzie highlighted that ATLA thought that they would be able to choose who did the heritage assessment, given they were already working with a group of professionals to undertake a cultural assessment of the area for storylines and other significant heritage reports.<sup>17</sup>

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15 Vince Coulthard, Adnyamathanha Traditional Lands Association, *Committee Hansard*, 6 July 2018, p. 38.

16 Vince Coulthard, Adnyamathanha Traditional Lands Association, *Committee Hansard*, 6 July 2018, p. 37.

17 Regina McKenzie, *Committee Hansard*, 6 July 2018, p. 15.

3.20 However, Mr Malcolm McKenzie gave a different opinion regarding the opportunities afforded to ATLA through the heritage assessment:

We did that heritage assessment site test out there. Viliwarinha Yura was invited to attend that process and so was ATLA. Viliwarinha Yura went through that process—went through the monitoring process. ATLA decided not to participate in that heritage assessment...When they say they weren't invited, from my understanding, Minister Canavan asked them to meet him so they could discuss this opportunity. They declined to take those opportunities.<sup>18</sup>

3.21 Ms Angelina Stuart described her experience with the DIIS cultural heritage assessment process:

On this land, this site at Wallerberdina, I've been out there with the heritage assessment with RPS. I know where they walked, and where the site is, and there are no visuals sites on the ground, I didn't see anything. Any little cuttings would be from people passing through. It's a lie to say the stories and lore of the land would disappear if a facility was built on Wallerberdina.<sup>19</sup>

3.22 Ms Regina McKenzie submitted that the Aboriginal cultural heritage investigations at Barndioota were not undertaken in accordance with the government's best practice requirements:

...this failure to adhere, recognise or use the Commonwealth best practice guidelines has led the DIIS to:

- Consult with inappropriate Aboriginal people who do not hold cultural information for Barndioota, and
- Completely ignore the significant cultural/gender restrictions associated with the NRWMFP area, and
- Alienate relevant culturally appropriate people from participating in the NRWMFP assessment, and
- Not have access to vitally important cultural information associated with the NRWMFP area.<sup>20</sup>

3.23 Further, it was argued that the government had not followed *The Burra Charter*, a document that sets the standard of practice for conservation and management of places of cultural significance.<sup>21</sup>

3.24 In a supplementary submission, ATLA noted that other Indigenous groups should also have their views heard:

ATLA has over 800 members. Viliwarinha has 81 Adnyamathanha members and is a core group of ATLA. All Viliwarinha members are

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18 Malcom McKenzie, *Committee Hansard*, 6 July 2018, p. 13.

19 Angelina Stuart, *Submission 112*, [p. 1].

20 Regina McKenzie, *Submission 107*, [p. 2].

21 Regina McKenzie, *Committee Hansard*, 6 July 2018, p. 16.

eligible to be ATLA members. Viliwarinha is a neighbouring group to the proposed site and their views should be taken into account in this process; however, other neighbouring groups, all of whom are core groups of ATLA, such as Untied Yuras in Hawker, the Milyarakana and Wonika Yuras have not been properly consulted and their views must also be taken into account.<sup>22</sup>

3.25 Ms Regina McKenzie went on to outline the impact of the consultation process more broadly:

...it has caused significant mental health issues within our broader Aboriginal community and continuing lateral violence within our immediate family. The NRWFP Aboriginal consultation process has left me feeling ostracised within my own family and I find myself constantly witnessing aggressive, misogynistic and culturally inappropriate behaviour from a select few who have been validated through the DIIS Aboriginal cultural heritage assessment process.<sup>23</sup>

3.26 Ms Regina McKenzie summarised the views of many of her peers in relation to the selection process:

We've always had the rough end of the pineapple. It's not fair that Aboriginal people today live on this land and we have no voice and no say. Our culture is disrespected and it's twisted.<sup>24</sup>

3.27 Claims regarding the assessment of cultural heritage at the nominated site near Hawker were contested by Mr Bruce Wilson from DIIS noting that the Department had finally developed and released its long awaited heritage and cultural assessment of the Wallerberdina site:

In relation to the proposed hundred-hectare site Wallerberdina Station, there continues to be claims that it is on or near or would harm the registered cultural sites of Hookina Spring and Hookina waterhole. These claims continue to cause considerable distress in the Adnyamathanha community, and they are simply not true. As shown on the footage in a video on the proposed site, available on our website, the hundred-hectare area under consideration is some 12 kilometres from Hookina Spring and around eight kilometres from Hookina waterhole. There can be no way this facility would impact either of those sites, nor would we allow it to do so. Moreover, we have now released a heritage and cultural assessment of the proposed site, which indicates, based on the information supplied by the community members who were consulted, that there are no significant heritage or cultural sites that may be impacted by the facility. This report was undertaken by independent heritage consultants, RPS, who had many

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22 Adnyamathanha Traditional Lands Association, *Supplementary Submission 42.2*, p. 4.

23 Regina McKenzie, *Submission 107*, [p. 2].

24 Regina McKenzie, *Committee Hansard*, 6 July 2018, p. 13.

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conversations with a range of men and women elders and other members of the Adnyamathanha community.<sup>25</sup>

### **Kimba**

3.28 The Barnjarla Determination Aboriginal Corporation (BDAC) is the prescribed body corporate for the Barnjarla native title holders which encompass the two nominated sites near Kimba. The BDAC noted that:

Although native title over the actual sites is extinguished, the Barnjarla people still have heritage rights under the South Australian Aboriginal Heritage Act.<sup>26</sup>

3.29 However, the BDAC also commented that:

There is a peculiarity of the South Australian Aboriginal Heritage Act which you may not be aware of. There is a process where sites can be registered, but that's quite an expensive process. It can cost up to \$10,000 to \$20,000 for native title holders to register a site, and for that reason most sites are not registered. So in fact the overwhelming majority of sites which have heritage and cultural significance to Indigenous people are not registered in South Australia, but that doesn't mean that they're not recognised, that they're not identified or that they're not well known.<sup>27</sup>

3.30 The BDAC does not consider that engagement by DIIS has been adequate:

BDAC believes that community consultation in relation to the site selection process for a National Radioactive Waste Management Facility (NRWMF) has been patently inadequate, bordering on non-existent. We hold this view given the lack of contact by the Federal Government and the Department of Industry, Innovation and Science (the Department) from the outset.<sup>28</sup>

3.31 The BDAC submitted that it made initial contact with DIIS in April 2017; three months after the Lyndhurst and Napandee sites were nominated. Since this time, the BDAC notes that it has constructively and professionally engaged with over ten companies and government agencies. The BDAC considers that the core difference between these interactions and its interactions with DIIS is 'that the Department has not meaningfully engaged with Barnjarla'.<sup>29</sup>

3.32 Further, the BDAC contested the assertion by DIIS that there were no Aboriginal heritage issues in the area. Despite repeated correspondence to the Minister and DIIS, the BDAC asserts that it has not received a satisfactory response to issues that it has raised regarding heritage concerns as traditional owners:

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25 Bruce Wilson, Department of Industry, Innovation and Science, *Committee Hansard*, 2 August 2018, p. 25.

26 Johanna Churchill, Norman Waterhouse Lawyers, *Committee Hansard*, 5 July 2018, p. 16.

27 Johanna Churchill, Norman Waterhouse Lawyers, *Committee Hansard*, 5 July 2018, p. 16.

28 Barnjarla Determination Aboriginal Corporation, *Submission 56*, [p. 1].

29 Barnjarla Determination Aboriginal Corporation, *Answers to questions on notice*, 5 July 2018, (received 27 July 2018), p. 2.

Most concerning, apart from the Department not having made contact with the Aboriginal traditional owners or native title holders for the area, was the Department's assertion that there were no Aboriginal heritage issues in the area surrounding Lyndhurst and Napandee. This assertion was made without any consultation with these traditional owners. Further, Barnjarla have repeatedly asked, on three separate occasions, for the Department to provide the basis of this assertion, which the Department has failed to do.<sup>30</sup>

3.33 Since then, DIIS has published a clarifying public statement in an update to the March 2017 Newsletter:

In relation to the two nominated sites at Kimba, there are no heritage sites registered, and we are committed to establishing whether there are any unregistered sites.<sup>31</sup>

3.34 Overall, the BDAC concludes that:

...there has been no appropriate consultation process. The approaches made by BDAC have been rebuffed by a combination of meaningless pro forma correspondence, bureaucratic tangents, and obfuscation, which has resulted in a contrived consultation process completely lacking in transparency.<sup>32</sup>

3.35 At the Canberra hearing on 2 August 2018, Mr Bruce Wilson from DIIS commented that:

In relation to the Aboriginal heritage sites in Kimba, I would like to clarify that the department is committed to working and engaging with the Barnjarla people. While the numerous community forums and information sessions the department has run have been open to the Barnjarla people, it is fair to say that direct engagement has been very limited, particularly given that few of the Barnjarla now live in the immediate vicinity of Kimba. In saying that, we acknowledge this does not in any way diminish their connection to the country as the traditional owners. Given this, and at the direction of the Barnjarla Determination Aboriginal Corporation, we have engaged with their community through their legal representatives, and that has undoubtedly slowed the engagement process. However, the department has undertaken and released a desktop heritage assessment which confirmed there is no registered heritage on either site. We obviously need to do deeper on-site assessment, and we are committed to working with the Barnjarla community in this process...While we have not made as much progress as we would like to have at this point, it will not stop us ensuring that any heritage which is identified at the site is appropriately managed and protected.<sup>33</sup>

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30 Barnjarla Determination Aboriginal Corporation, *Submission 56*, [pp. 2–3].

31 Barnjarla Determination Aboriginal Corporation, *Answers to questions on notice*, 5 July 2018, (received 27 July 2018), [p. 26].

32 Barnjarla Determination Aboriginal Corporation, *Submission 56*, [p. 3].

33 Bruce Wilson, Department of Industry, Innovation and Science, *Committee Hansard*, 2 August 2018, p. 25.



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***Committee view***

3.36 It would appear that identifying and assessing indigenous cultural and heritage at the nominated sites has been a complex and difficult task for DIIS. Recognising this, there would seem to be areas within the DIIS Indigenous engagement strategy and execution which may not have conformed to best practice.

3.37 In regards to Hawker, the conflicting stance of members of the Viliwarinha Yura Aboriginal Corporation (and by extension ATLA) would have complicated DIIS's efforts to undertake the Indigenous cultural and heritage assessment for the site near Hawker. Nonetheless, the committee considers that without the full involvement of those Indigenous stakeholders with relevant cultural and heritage knowledge, it is unlikely that the Indigenous cultural and heritage survey is comprehensive.

3.38 In regards to Kimba, the adversarial nature of the correspondence between the BDAC and DIIS has not assisted in the timely resolution of an Aboriginal heritage assessment for the nominated sites. While communication between DIIS and representatives of the BDAC has improved since April 2018, the Aboriginal heritage assessment issue remains unresolved. This is unfortunate as there appears to have been adequate time from the acceptance of additional site nominations until now for the BDAC and DIIS to work constructively towards completing the Aboriginal heritage assessment.

3.39 The committee believes that the Minister should intensify and expedite efforts to fully engage with the Indigenous stakeholders near Kimba and Hawker so that comprehensive heritage assessments for all nominated sites can be completed.

**Recommendation 2**

**3.40 The committee recommends that the Minister intensify and expedite efforts to fully engage with the Indigenous stakeholders near Kimba and Hawker so that comprehensive heritage assessments for all nominated sites can be completed.**

