

## **Dissenting Report from the Australian Greens**

1.1 The Australian Greens believe the site selection process is fundamentally flawed. There has been a consistently stated commitment by the Minister to respect the views of the communities relevant to the process by not proceeding without "broad community support", ensuring that the absence of such shall serve as an effective veto. However, the Minister has refused to explain what he would consider to be sufficiently "broad", ensuring that any number can be considered sufficient, or insufficient, and ultimately disenfranchising affected communities in the name of ministerial 'discretion'.

1.2 Jobs figures have been floated and inflated. Traditional owners have been cherry-picked or ignored altogether. Sites have been nominated by absentee landowners with no direct tie to the community on which the site selection process is being inflicted. And this process is simply unnecessary. It does nothing to address the need for long-term intermediate level storage, consistent with international best practice. It avoids amending the relevant Act by spending millions of dollars on a divisive and unnecessary process that is being pushed through to align with the electoral cycle instead of the science.

1.3 ARPANSA Chief Regulatory Officer Mr Jim Scott has told the Committee that Lucas Heights cannot offer long-term storage of low-level waste under the ANSTO Act. He argues that this requires the identification of a long-term disposal facility.

1.4 Low-level waste is set to be disposed at the NRWMF, consistent with international best practice regarding low-level waste management. However, intermediate level waste is also set for long-term storage at the NRWMF. This is not consistent with international best practice which supports medium to deep burial disposal of intermediate level waste.

1.5 The challenge of finding another site to store radioactive waste is one entirely created by the ANSTO Act not allowing Lucas Heights to serve as such a site. An amendment to the Act would at least allow for extended interim storage while a long-term intermediate level waste disposal pathway is investigated, as consistent with international best practice.

1.6 The Committee notes that the communities of Hawker and Kimba have been "significantly impacted" by the ongoing selection process. Community members have avoided discussing the issue for fear of retribution, and friendships have been lost. The process has been divisive.

1.7 It is disappointing then that the nature of "broad community support" has remained undefined throughout the process. The Minister has insisted that no site will proceed without broad community support, but refused to indicate a threshold at which point support is considered sufficiently broad to proceed. As a result, the community is at a loss as to what threshold needs to be met or avoided, and considerable uncertainty remains entrenched.

## "Broad community support"

1.8 The Minister has broad discretion to make decisions with regard to 'broad community support'; he has previously indicated that he will not proceed with a site without it. The concept is not defined within the *National Radioactive Waste Management Act 2012*, nor is it stated that such support is required. Rather, the term is left to the Minister's discretion.

1.9 According to DIIS:

The Minister has committed that the Facility will not be placed in an unwilling host community or, in other words, a community in which it does not enjoy broad support (noting that no individual or group has a right of veto). Community support is an important but by no means the only factor that the Minister will consider in taking forward a nomination and selecting a site.<sup>1</sup>

1.10 These two concepts, taken together, appear to imply that a site will not proceed without broad community support, but that even if the condition of there being broad community support is met, there is no guarantee that such a site will be selected.

1.11 As such the condition is of vital importance. It is concerning that it remains undefined and impossible to determine. It is not open to scrutiny and remains wholly at the Minister's discretion. It is incredible that the Minister would have the right to decide what does and does not constitute broad community support, instead of the community itself. It is even more remarkable that the Minister would be able to define it only after all other stakeholders within the community have made their feelings known. In no way should the goal posts be so flexible.

1.12 As noted by No Radioactive Waste in Kimba or SA:

The definition of broad community support has been inconsistent throughout the entire process, with differences occurring both over time and between sites. Despite a strong focus on its need, no definitive definition of 'broad community support' has been given, allowing the Minister to effectively 'move the goal posts' at whim.<sup>2</sup>

1.13 DIIS argues that "any threshold" for broad community support "would be arbitrary in nature". The Department has suggested that "setting a mandated threshold would...potentially disenfranchise minority elements of the community or result in a minority group having an automatic veto or dictating power of the majority".<sup>3</sup>

1.14 If the Department is considered with reducing arbitrariness in the decision-making process, then one can think of few more effective ways to do so than establishing a threshold before the process commences. Without a clear threshold established prior to the commencement of the site selection process, the

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1 Department of Industry, Innovation and Science, *Submission 40*, p. 10.

2 No Radioactive Waste in Kimba or SA, *Submission 46*, p. 2.

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

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decision-making power of the Minister is wholly arbitrary. It is nonsensical to say that we must accept an arbitrary decision-making process as a means to avoid arbitrary decision-making processes. Surely the only relevant test is whether a decision increases or reduces arbitrary factors.

1.15 The argument that establishing a threshold would potentially "disenfranchise minority elements of the community" or give minority groups "an automatic veto or dictating power over the majority" is one against considering broad community support at all. It was the Minister who elevated the consideration of "broad" community support. This implies a threshold higher than 50 per cent. With this in mind, it is a condition introduced by the Minister himself that the views of the simple majority are insufficient.

1.16 Furthermore, it is unclear how any person or persons can be disenfranchised by having their views considered in the context of a broader community with similar standing on an issue or issues. We do not consider a person who votes for an unsuccessful election candidate to have been disenfranchised in or by the process. In this context, no minority element is disenfranchised from there being a threshold to determine what does and does not constitute "broad majority support" any more than a minority element is disenfranchised in an election when the party for whom it votes fails to win a majority in the House of Representatives. We dispute this characterisation.

1.17 The Committee's view—that the community sentiment vote "is only one contributing factor to assessing community support"—ignores the relative privilege this factor enjoys compared with other factors. Indeed, the Minister's previous commitments to not proceed without broad community support, give this factor precedence above all others. In effect, this consideration represents a potential veto on the site selection process. As such, it deserves to be clarified. Indeed, it must be clarified as a matter of utmost urgency.

1.18 The view of the committee, that "it is important for a Minister to have some discretion", is not disputed. The Minister is entitled to discretion where it is appropriate. Ministers do not have the discretion to force radioactive waste dumps onto unsupportive communities. He is welcome to use his discretion, which he enjoys as a function of his role in the Government, to mandate a threshold. To do otherwise is to abuse his ministerial discretion.

1.19 It is possible for the extent of ministerial discretion to be excessive. There is a risk that decisions—the ramifications of which will persist for centuries—are being made within the pressures of a single election cycle. Furthermore, ministerial discretion must be informed by a consistent set of principles, lest it fall prey to the particular whims of the Minister of the day. To this point, we note that there have been five Ministers for Resources since 2014.

### **Voting process**

1.20 A critical question regarding the ballot being conducted by the Australian Electoral Commission is who should fall within the definition of 'community', for the purposes of determining broad community support. The ballot is being used to

measure community support using a limited and narrow scope of community. This scope ignores the significant relationship that exists between traditional owners and the land. Similarly, radioactive waste sited in any location in South Australia must be transported to that location in order to be stored long-term. Communities around and along the transport route for this radioactive waste have not been included in the scope of the ballot despite having clear interest in how it proceeds.

1.21 The Adnyamathanha Traditional Lands Association (ATLA) has disputed the decision by DIIS to exclude traditional owners of the site near Hawker who live outside 50km from the proposed site from the ballot surveying community sentiment, arguing:

You just can't limit Adnyamathanha people to just the few Adnyamathanha people who live in this area. It's got to incorporate and capture all Adnyamathanha people.<sup>4</sup>

1.22 The Adnyamathanha people have a demonstrable interest in the process of site selection. It is disappointing that DIIS has opted that they do not meet the Department's definition of community. Arguments such as those by Robyn Stewart and Councillor Dean Johnson, (that those living outside the geographic boundaries of each nominated site may not have the necessary level of information to make an informed decision) sets a remarkably high bar to participation that, if sustained, would make this ballot the least democratic of its kind in any exercise in Australian history. We do not limit the right to vote to only those able to demonstrate they know what they're voting on; nor should we. What's more, there is every possibility that people living outside the geographic boundaries of each site have a more than workable knowledge of the issues contested.

### **Wider community views**

1.23 Observations from Malcolm McKenzie, that uranium mining at the Beverley Mine has not negatively "shut down" the tourism industry of Arkaroola, are important as a means to demonstrate the need for effective legislative protections to ensure the survival of environmental asset, such as those introduced by the South Australian State Government in 2011. It should not be taken for granted that tourism will be unaffected in its absence.

1.24 Indeed, as noted by submissions from Greg Bannon and Dr Susan Anderson, it is impossible to rule out an impact on the attractiveness of the Flinders Ranges as a tourism destination. If the presence of a radioactive waste dump causes only one in twenty potential tourists to think twice about visiting the area, the annual impact is \$21.3m and 95 direct jobs lost.<sup>5</sup> The effect of this lost economic activity would thoroughly swamp any positive effect arising from the presence of the radioactive waste dump.

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4 Tony Clark, Adnyamathanha Traditional Lands Association, *Committee Hansard*, 6 July 2018, p. 43.

5 Dr Susan Andersson, *Committee Hansard*, 6 July 2018, p. 29.

1.25 The committee has taken a view that the final site of any radioactive waste dump is a matter for regional economies to consider. This ignores the fact that the radioactive waste management facility is designed to store national radioactive waste. The impact of the decision is to be felt nationally; stakeholders are not simply confined to any one local government area.

1.26 Furthermore, it is condescending and inaccurate to suggest that community concerns around the impact of a radioactive waste dump on agriculture and tourism perceptions of safety and attractiveness are unfounded. This site will house intermediate level waste for an unspecified period of time. Intermediate level waste requires shielding to be safely contained. It is wrong to say that there are no legitimate safety concerns around this proposal. Workers in Lucas Heights have been exposed to potentially dangerous levels of radiation as a result of accidents in the last twelve months. These workers deal with dangerous materials. The committee is incorrect to suggest otherwise.

### **Indigenous support**

1.27 We dispute the position of DIIS that it continues to work closely with local traditional owners. The process to date has already inflicted significant adverse impacts on the community and site itself. ATLA, rightly recognised by this committee as the peak body for all matters relating to land, culture, heritage, language and native title for Adnyamathanha people, has withdrawn from cooperating with the site selection process. It remains deeply unhappy with how the process has been managed to date.

1.28 Indigenous consultation in Kimba has been almost non-existent. The overwhelming majority of indigenous people present between the two Hawker and Kimba hearings have been against the proposals. It is misleading to characterise the nearly uniform opposition as "mixed views".

1.29 There are clear deficiencies in the degree of Indigenous consultation in the site selection process to date. In the absence of consent from Native Title representative bodies that cover the proposed sites, there is no mandate for the process to continue.

### **Financial compensation and incentives to communities**

1.30 Considering the inevitable social and economic upheaval produced by this contentious site selection process, there is a clear issue with allowing sites to be nominated by absentee landlords with no ties to the local community. Nonetheless this is exactly what has occurred at the proposed site at Wallerberdina Station in the Flinders Ranges. The site owner stands to receive a financial gain of around four times the land's value, while the community in which the site is situated bears the impacts. The prospect that one former politician with a clear track record of advocating for nuclear waste disposal in South Australia may financially benefit from this site selection process should be galling; it is correct that this perception risks "further politicising an already contentious process".

1.31 Regarding the prospect of 45 jobs, the community does not have the capacity to provide the jobs this site is anticipated to generate. There are only 53 unemployed

people in the Flinders Ranges statistical area where Wallerberdina Station is stationed. Of these, approximately 20 have a TAFE or university qualification.

1.32 There are 47 unemployed people in the Kimba - Cleve - Franklin Harbour statistical area where the Napandee and Lyndhurst sites are based. Of these, about 21 have a TAFE or university qualification.

1.33 DIIS estimates that 26 jobs will be supported by on-the-job training not requiring previous expertise, with the other 19 jobs requiring either TAFE or University qualifications. DIIS says there will be "no fly-in, fly-out jobs".

1.34 If the local labour force cannot absorb these jobs, they will be filled by people from outside the community. This is a statistical necessity. This does not appear to have been communicated to anybody in the community, a large proportion of which remain convinced that the promise of 45 jobs will be a boon to the local economy.

1.35 Further, the net impact on jobs will be modest at best, once job losses at Lucas Heights are taken into consideration.

### **Double handling**

1.36 This process necessitates the double-handling of intermediate level radioactive waste, as the NRWMF is only intended to serve as a temporary holding site until waste is transported to its final more permanent disposal site, which is yet to be identified.

1.37 This double-handling is not consistent with international best practice in the disposal of intermediate level waste. Nonetheless, it is inevitable if the current practice proceeds unamended. Alternatives should be canvassed, including the suspension of the site selection process until a permanent disposal site can be identified.

### **Transport**

1.38 It is imperative that all stakeholders within transport corridors should be consulted. The presence of a radioactive waste dump in South Australia will require Port Lincoln, Whyalla or Port Pirie to serve as nuclear waste ports. As a result, these communities will necessarily be involved in the handling and transportation of dangerous nuclear waste. They have a stake in the decision-making process because they will bear some of the risk of such an outcome.

1.39 Every community impacted by the potential thoroughfare of nuclear waste have an interest in ensuring that their fate is not determined by another community without any consultation or cooperation. While ANSTO has been at pains to ensure that low-level waste can be transported safely, it is not a decision for ANSTO to make in isolation. Communities should be fully informed of the relevant costs and benefits, throughout the transport chain, and offered the opportunity to have their say on the proposal.

**Recommendation 1**

**1.40 The Australian Greens believe the Federal Government has no mandate to situate a radioactive waste management facility in South Australia. It has mismanaged the site selection process, fallen short of international best practice and failed to secure the consent of traditional owners. For these reasons the Australian Greens recommend that the site selection process does not proceed further.**

**Senator Sarah Hanson-Young**

**Senator for South Australia**

