

**SUBMISSION TO THE SENATE INQUIRY INTO THE COMMONWEALTH
RADIOACTIVE WASTE MANAGEMENT (REPEAL AND CONSEQUENTIAL
AMENDMENT) BILL 2008**

**ON BEHALF OF MUCKATY ELDERS AND TRADITIONAL OWNERS OPPOSED TO
THE NOMINATION OF A SITE WITHIN THE MUCKATY LAND TRUST FOR A
RADIOACTIVE WASTE FACILITY¹**

NOVEMBER 2008

“If they put a waste dump at Muckaty it betrays the next generation”

**Sammy Sambo Jungarrayi
Milwayi Senior Elder**

The Muckaty Land Trust – A Shared Single Land Trust

Many members of the small Indigenous community at Muckaty have deep concerns over and are strongly opposed to the proposed Commonwealth radioactive waste facility (“the proposed facility”) on their land. This desert community half way between Alice Springs and Darwin which straddles the boundary between the Central and Northern Land Councils² (see **Attachment 1**) is made up of five family groups:

1. The Ngarrka;
2. The Milwayi;
3. The Ngapa;
4. The Yapayapa; and
5. The Wirntiku.

This submission is on behalf of senior members of all five family groups with rights to speak for the Land Trust. The access route to and the specific site of the proposed facility is on land which is shared amongst all five communities.

The Muckaty Land Trust (“the land trust”) which was recommended by the Aboriginal Land Commissioner on 18 March 1997³ (**Attachment 2**) found that there was sufficient overlap between and links between the subject groups including affiliations through shared dreaming and shared areas of land to justify the establishment of one single land trust⁴. In this context, we note

¹ The list of Muckaty Traditional Owners who have been referred to in correspondence and are said to be opposed to the proposed Radioactive Waste Facility can be found at **Schedule 1** herewith. It has been suggested that up to 80% of the community oppose the proposed facility however no formal vote has yet been taken despite repeated requests for an open and inclusive decision making process;

² The Boundary of the Northern Land Council and the Central Land Council according to Ms Dianne Stokes, a senior Muckaty woman, cuts directly through the dreaming of some Traditional Owners. It has been suggested by some in the area for at least 10 years that the Central Land Council boundary be moved slightly north to enable the area to be within only the boundary of the Central Land Council;

³ Report and Recommendation of the Aboriginal Land Commissioner RE: Warlmanpa (Muckaty Pastoral Lease) Land Claim No 135 dated 18 March 1997 (“18 March 1997 Land Commissioners report”);

⁴ 18 March 1997 Land Commissioners Report at page 68;

that most, if not all the recognised dreaming sites within the land trust in the area where the proposed waste facility is to be located are shared dreaming sites.

You will note from the plan marked as **Attachment 3** that sites, Murunju-Mantangi (66), Karakara (51), Lungkarta (50), Karntawarrlki (74), and an unnamed site (109) are in the immediate vicinity of the site for the proposed facility.

According to the 1997 Land Commissioners Report:

1. Murunju-Mantangi⁵ (66) is recognised as a Yapayapa site⁶;
2. Karakara⁷ (51) is recognised as a Yapayapa site⁸;
3. Lungkarta (50) is recognised as a Ngarrka site⁹;
4. Karntawarralki (74) is recognised as a Milwayi site¹⁰; and
5. the unnamed site (109) is recognised as a Ngarrka site¹¹.

This matter has had an unfortunate, divisive and lengthy history and in the context of reconciliation and the recent federal government apology for past mistreatment of Indigenous people of this land and the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on the Indigenous community throughout Australia,¹² this issue must be resolved with full regard to the deep concerns held by many Indigenous people over this project.

The Commonwealth Radioactive Waste Management Act 2005 must be repealed

The *Commonwealth Radioactive Waste Management Act 2005* ("the Act") was passed by federal parliament under the previous Government, overriding State or Territory laws¹³. The legislation prevents the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* from having effect during investigation of potential dump sites¹⁴, and it excludes the *Native Title Act 1993* from operating at all¹⁵. The operation of the *Administrative Decision (Judicial Review) Act 1977* has also been prevented¹⁶ so too is Procedural Fairness (Natural Justice)¹⁷.

The Act also overrides the usual *Aboriginal Land Rights Act* procedures requiring the informed consent from all affected people and groups. Site nominations from Land Councils remain valid

⁵ See also list of Ngapa Sacred Sites prepared by people in the area provided as **Attachment 4** which shows Murunju-Mantangi as being a Ngapa Sacred Site however no such recognition is given in the 1997 Land Commissioners Report;

⁶ 18 March 1997 Land Commissioners Report at page 43;

⁷ See also list of Ngapa Sacred Sites prepared by people in the area provided as **Attachment 4** which shows Karakara as being a Ngapa Sacred Site however no such recognition is given in the 1997 Land Commissioners Report;

⁸ 18 March 1997 Land Commissioners Report at page 43;

⁹ 18 March 1997 Land Commissioners Report at page 41;

¹⁰ 18 March 1997 Land Commissioners Report at page 40;

¹¹ 18 March 1997 Land Commissioners Report at page 41;

¹² The Honourable Prime Minister Kevin Rudd, 12 February 2008;

¹³ S 5(1), 13 & 14F of the Act;

¹⁴ S 6(1)(a) of the Act;

¹⁵ S 9 & 10 of the Act;

¹⁶ S (3)(za) Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*;

¹⁷ Ss 3D & 8 of the Act;

even in the absence of consultation with and consent from Traditional Owners¹⁸. In other words, the views and wishes of Aboriginal Traditional Owners Australia wide are ineffective and are systematically undermined whilst this Act is in force. It must be repealed.

To deliberately take so many rights away from a historically mistreated people is a potential serious international Indigenous human rights issue. This legislation is draconian and inconsistent with the spirit of reconciliation.

The Act is also inconsistent with provisions of the Declaration on Rights of Indigenous Peoples¹⁹ – a non-binding text - as adopted by the overwhelming majority of the United Nations General Assembly on 13 September 2007 (**Attachment 5**). It should be noted that Australia was 1 of 4 (Australia, New Zealand, the US and Canada) out of 158 countries (143 in favour, 11 abstentions) to vote against the Draft Declaration on the Rights of Indigenous People in part on the basis that the:

“Government had long expressed its dissatisfaction with the references to self-determination in the text.”²⁰

Lack of Consultation with Muckaty Traditional Owners

Despite the oppressive nature of the legislation, many²¹ Muckaty Traditional Owners have voiced their opposition to the proposed facility, even before the formal Nomination of the site.

In or about June 2006 an apparent leak gave rise to a front page article in the Northern Territory News²² that Muckaty had been chosen for the proposed facility. Although the allegations were denied²³ by both the previous Government and the Northern Land Council, the site was subsequently Nominated by the Northern Land Council in May 2007 and the previous federal Government accepted the Nomination on 24 September 2007²⁴.

¹⁸ S 3C(6) of the Act;

¹⁹ For example see Article 8(2)(b) of the Declaration on Rights of Indigenous People which states that “States shall provide effective mechanisms for prevention of and redress for any action which has the aim or effect of dispossessing them of their lands, territories or resources”. Land is required to be acquired for the purpose of the proposed facility thereby dispossessing Indigenous people of their land yet the Act prevents any avenue for review with a particular focus on legislation governing Indigenous Rights and hence does not provide an effective mechanism of prevention and redress for an action which has the aim and effect of dispossessing a group of Indigenous people of their land.

²⁰ <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>;

²¹ At least 47 members of the community have been included in correspondence opposing the facility on land within the Muckaty Land Trust. See Schedule 1 herewith;

²² [http://www.newstext.com.au/support/db.asp?doc=NTN-20060624-1-001-1017854V11@NTN-METRO-2006-2003&k2docdate=24/06/2006&querytext=\(muckaty\)+%3CAND%3E+\(PUB=NTN\)+%3CAND%3E+\(\(SDate%3E=11/5/2003\)\)&Auth=1&site=ALL&Pick=ONE&dtype=4&v=1](http://www.newstext.com.au/support/db.asp?doc=NTN-20060624-1-001-1017854V11@NTN-METRO-2006-2003&k2docdate=24/06/2006&querytext=(muckaty)+%3CAND%3E+(PUB=NTN)+%3CAND%3E+((SDate%3E=11/5/2003))&Auth=1&site=ALL&Pick=ONE&dtype=4&v=1);

²³ [http://www.newstext.com.au/support/db.asp?doc=NTN-20060625-1-004-1016765V7@NTN-METRO-2006-2003&k2docdate=25/06/2006&querytext=\(muckaty\)+%3CAND%3E+\(PUB=NTN\)+%3CAND%3E+\(\(SDate%3E=11/5/2003\)\)&Auth=1&site=ALL&Pick=ONE&dtype=4&v=1](http://www.newstext.com.au/support/db.asp?doc=NTN-20060625-1-004-1016765V7@NTN-METRO-2006-2003&k2docdate=25/06/2006&querytext=(muckaty)+%3CAND%3E+(PUB=NTN)+%3CAND%3E+((SDate%3E=11/5/2003))&Auth=1&site=ALL&Pick=ONE&dtype=4&v=1);

²⁴ Published in the Cth Government Gazette on Friday 28 September 2007;

At a meeting in December 2006 at the Northern Land Council office in Darwin, Dianne Stokes, a Traditional Owner and Muckaty Elder was told by Norman Fry Chief Executive of the Northern Land Council that the land would not be nominated without Traditional Owner consent.

On 1 December 2006, 6 Traditional Owners wrote to the Chairman of the Northern Land Council, Mr John Daly informing that Land Council that they were strongly opposed to the nomination of any site on Muckaty (**Attachment 6**). We are informed that many of the Muckaty Traditional Owners became aware of the proposal by word of mouth and through newspapers and that many people were initially under a misapprehension that the proposal was for a 'rubbish dump'.

On 21 February 2007, 17 Traditional Owners, representatives of each of the 5 Groups, wrote to the Honourable Julie Bishop, the then Federal Science Minister, the Northern Land Council and the Central Land Council advising that they did not want the Federal Government negotiating with the Northern Land Council about the proposal. Concerns were also raised about the lack of consultation with the entire Muckaty community (**Attachment 7**). It became widely understood that discussions and negotiations between the Federal Government and the Northern Land Council were subject to a confidentiality regime that prevented all Traditional Owners and affected Aboriginal people from gaining an understanding of the nature of the justifications behind the planning and Nomination process. A response to this letter was received on 8 March 2007 informing the concerned Traditional Owners that no Nomination had been received and that consultation with Traditional Owners would be 'expected'.

On 24 February 2007 it was incorrectly reported in the NT News that "the Northern Land Council is legally obliged to carry out consultations about nominating a site for a nuclear waste facility²⁵." It should be noted that consultation and consent of Traditional Owners is not mandated under the Act. The provisions of the CRWMA are considerably weaker than those under the *Aboriginal Land Rights Act* and allow for site nominations from Land Councils to remain valid even in the absence of consultation with and consent from Traditional Owners²⁶.

On 1 March 2007, 14 Traditional Owners wrote to the NLC requesting that a meeting to be held at the proposed location of the facility be organised with all (approximately 400) Muckaty Traditional Owners within the next 2 months (**Attachment 8**). This letter again requested that the NLC halt all negotiations in relation to the proposed facility pending the outcome of this meeting.

On or around 5 March 2007, a meeting was arranged by the NLC on very short (2 days) notice, to occur over a period of 2 days on 7 and 8 March 2007. Only a small number of Traditional Owners were provided with Notice of this meeting. Many people who ought to have been entitled to attend were not provided with Notice, nor were proper transport arrangements made. Many in attendance do not speak English as their first language and interpreters were not provided.

On 6 March 2007 Senators Carr and Crossin and MP Snowden released a media statement entitled "Government's Waste Dump Fiasco" committing a Labour Government to:

²⁵ [http://www.newstext.com.au/support/db.asp?doc=NTN-20070224-1-004-1088234V16@NTN-METRO-2009-2007&k2docdate=24/02/2007&querytext=\(muckaty\)+%3CAND%3E+\(PUB=NTN\)+%3CAND%3E+\(\(SDate%3E=11/5/2006\)\)&Auth=1&site=ALL&Pick=ONE&dtype=4&v=1;](http://www.newstext.com.au/support/db.asp?doc=NTN-20070224-1-004-1088234V16@NTN-METRO-2009-2007&k2docdate=24/02/2007&querytext=(muckaty)+%3CAND%3E+(PUB=NTN)+%3CAND%3E+((SDate%3E=11/5/2006))&Auth=1&site=ALL&Pick=ONE&dtype=4&v=1;)

²⁶ S 3C(6) of the Act;

1. legislate to restore transparency, accountability and procedural fairness including the right of access to appeal mechanisms in any decision in relation to the siting of any nuclear waste facilities;
2. ensure any proposal for the siting of a nuclear waste facility on Aboriginal Land in the Northern Territory adheres to the requirements that exist under the Aboriginal Land Rights (Northern Territory) Act; and
3. restore the balance and pending contractual (sic) obligation and will not proceed with the establishment of a nuclear waste facility on or off Aboriginal land until the rights removed by the Howard government are restored and a proper and agreed site selection process is carried out. Labor will not arbitrarily impose a nuclear waste facility without agreement on any community, anywhere in Australia.

On 26 May 2007 it was reported in the Northern Territory News that:

“MUCKATY Station near Tennant Creek has been nominated by the Northern Land Council (NLC) as the site for the national nuclear waste facility.

NLC chairman John Daly said yesterday the nomination was ratified by the full land council meeting at Gulkula, near Nhulunbuy.

The announcement was welcomed by the Federal Government but drew condemnation from environmentalists and NT Government ministers.

*Mr Daly said agreement had been reached with the **Ngapa traditional owners**, who would receive \$12million _ an \$11million charitable trust and \$1million of education scholarships.”*

(emphasis added)

Many Indigenous people with interests and standing in the Muckaty region have stated their desire to be part of any decision over a radioactive waste facility however it is understood that the Nomination process discussions and negotiations have occurred mostly between one of the Ngapa families represented by Mrs Amy Lauder. Mrs Lauder is well known in the area and is on the Governing Council of the Muckaty Aboriginal Corporation. Mrs Lauder is also on the Full Council of the Northern Land Council and is married to Mr Jeffrey Dixon who is on the Executive Council of the Northern Land Council. Concerns have been expressed within the community about these relationships and potential conflicts of interest. It is understood that payments arising from the Nomination of the Muckaty site have been made only to some members of the Ngapa community. In this context it must be remembered that the land trust is a shared land trust and the site of the proposed facility is on land within close proximity of sacred sites shared by the groups (see **Attachment 3**). Notwithstanding, the NLC have justified the nomination on the basis that it has been done as part of an ‘agreement’ with Ngapa Traditional Owners only²⁷.

The repeal of this Nomination of the Muckaty site, which has occurred in questionable circumstances and does not enjoy community support, must follow the repeal of the Act, which

²⁷ NT News Edition 1 -SAT 26 MAY 2007, Page 001, Owners agree to waste facility By BEN LANGFORD;

has been part of the ALP policy platform for some time. The political tension surrounding this facility and this legislation has also contributed to the confusion and division in the Muckaty community.

On 27 September 2007 the Honourable Kim Carr stated:

“Labour is committed to repealing the Commonwealth Radioactive Waste Management Act and establishing a consensual process of site selection. Labour’s process will look to agreed scientific grounds for determining suitability. Community consultation and support will be central to our approach.”

In April 2008 the Northern Territory ALP adopted the following resolution:

“Conference understands the nomination of Muckaty as a potential radioactive dump site, made under the CRWMA legislation, was not made with the full and informed consent of all Traditional Owners and affected people and as such does not comply with the Aboriginal Land Rights Act (ALRA). Conference calls for the Muckaty nomination to also be repealed when the CRWMA legislation is overturned.”

On 22 April 2008 a letter was sent from 14 Traditional Owners to Martin Ferguson, and copied to the Prime Minister Kevin Rudd, Peter Garrett, Trish Crossin, Warren Snowden, Jenny Macklin, NT Chief Minister Paul Henderson, Elliot McAdam, Len Kiely and NLC Chairman, Mr Wali Wunungmurra (“the 22 April 2008 letter”) (**Attachment 9**).

This letter:

1. opposed the proposed facility and the proposed associated haulage road on land within the Muckaty Land Trust;
2. asserted that the NLC had not engaged in a proper consultation process;
3. expressed concern that negotiations had only occurred with some Ngapa people and not representative Traditional Owners for all 5 groups; and
4. expressed concern that proper and adequate consultation had not occurred with representatives of each of the 5 groups in circumstances where the recognised Land Trust is a shared land trust between the 5 groups.

A further letter was sent on behalf of 12 Traditional Owners on 30 May 2008 to Warren Snowden and Trish Crossin and copied to Prime Minister Kevin Rudd, Peter Garrett, Martin Ferguson, Jenny Macklin, Nicola Roxon, Paul Henderson, Len Kiely, Kim Carr and the Northern Land Council Chairman, Mr Wali Wunungmurra. (**Attachment 10**). This letter referred to election promises that had been made assuring the people at Muckaty that there would be no waste facility on their land and requesting that there is full consultation with all Muckaty people. To date, there has been no response to this letter.

On 22 July 2008 a letter was received by Ms Dianne Stokes from the office of the Minister for Resources and Energy Martin Ferguson in response to the 22 April 2008 letter (**Attachment 11**). This letter informed Ms Stokes of the following matters:

1. that the Minister had been informed by the NLC that all traditional owners had been provided the opportunity to express their views about the proposed facility;
2. that the Nomination was on Ngapa land;
3. that representative of all groups were present at meetings; and
4. that no decision had been made concerning Muckaty land.

On 30 July 2008 Ms Dianne Stokes sent a further letter (**Attachment 12**) to Minister Ferguson which informed the Minister that:

1. the NLC did not provide opportunity for consultation to all Muckaty Traditional Owners including pointing out that Traditional Owners have not been able to attend certain meetings;
2. Traditional Owners, including Ngapa Traditional Owners oppose the proposed facility;
3. decisions concerning the Land Trust must be made by all Traditional Owners on the basis that the Land Trust is shared.

To date, no response has been received to the letter sent to Minister Ferguson on 30 July 2008.

On 3 September 2008, McCluskys Lawyers sent a letter to the NLC and Minister Jenny Macklin on behalf of 16 Traditional Owners from all five groups raising the concerns of the Traditional Owner groups and seeking the provision of information concerning the proposed facility (**Attachment 13**). To date, there has been no response to this letter.

On the basis of the above, concerns justifiably remain as to the level and adequacy of the consultation process that has occurred and which is required under Rule 3B(1)(g) of the Act. The procedural integrity and purpose of such a consultation process should be questioned however in circumstances where failure to comply with subsection 3B(1) does not affect the validity of an approval²⁸. This legislation renders a consultation process afforded to Indigenous People as a means of exercising their Rights as Indigenous Australians meaningless in a deliberate and targeted way.

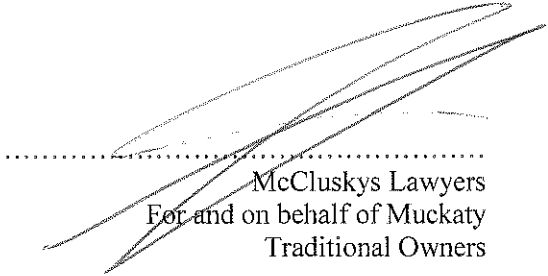
The Muckaty Traditional Owners who are entitled to speak for the Land Trust and who are opposed to this facility welcome this Senate Inquiry and this opportunity to convey how deeply unhappy many people are with this process and with the proposed radioactive waste facility. They continue to oppose this plan and will actively assert their rights to determine land use decisions on their Estate.

Accordingly they seek:

1. the urgent and unconditional repeal of the *Commonwealth Radioactive Waste Management Act 2005*;

²⁸ S 3C(6) of the Act;

2. the full repeal of the Nomination of the Muckaty Land Trust dated 24 September 2007 and the removal of this country from consideration as a potential federal radioactive waste facility site;
3. an end to any meetings or negotiations between the federal government or federal agencies and the Northern Land Council about the Muckaty site;
4. public access to all documentation pertaining to meetings or negotiations between the federal government or federal agencies and the Northern Land Council about the Muckaty site that have occurred to date;
5. a full public Inquiry into the management of nuclear and radioactive waste in Australia and respect for Traditional Owners rights and interests in this area;
6. the implementation of ALP National Platform commitments relating to radioactive waste management in Australia ensuring an open and consultative process with appropriate avenues for review and which is consistent with current legislation which protects the rights of all Aboriginal people.



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McCluskys Lawyers
For and on behalf of Muckaty
Traditional Owners

SCHEDULE 1

**LIST OF NAMES OF TRADITIONAL OWNERS MENTIONED IN
CORRESPONDENCE OPPOSING THE PROPOSED RADIOACTIVE WASTE
FACILITY ON LAND WITHIN THE MUCKATY LAND TRUST**

Gladys Brown
Bindi Martin
William Graham
Penny Nangala Smith
Dianne Stokes
Lorna Fejo
May Foster
Dick Foster
Belinda Manfong
Dwayne Foster
Sammy Sambo
Brian Williams
Beverly Williams
Janet Thompson
Jill Foster
Bobby Thompson
Jeannie Sambo
Doris Kelly
Ronald Morrison
Michael Williams
Rosie Williams
Wendy Brown
Sylvania Brown
Mervyn Brown
Glen Brown
Lance Brown
Damien Brown
Beryl Brown
Miranda Brown
Kirsten Brown
Eve Brewster
Jeremias Haines
Bernadine Kelly
Pamela Brown
Mark Brown
Agnes Brown
Eunice Lane
V Brodie
Gwen Brown

Beasley Anderson
Anne Anderson
Bunny Bennett
Pieta Laughton
Louie Martin
Susan Nelson
Penelope Phillips
Ruth Phillips