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Environment, Communications and the Arts Committee

Commonwealth Radioactive Waste Management (Repeal and Consequential  
Amendment) Bill 2008

Northern Land Council

Supplementary submission and response to questions on notice

4 December 2008

## SENATE ENVIRONMENT, COMMUNICATIONS AND THE ARTS COMMITTEE

### COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT (REPEAL AND CONSEQUENTIAL AMENDMENT) BILL 2008

#### SUPPLEMENTARY SUBMISSION AND RESPONSE TO QUESTIONS ON NOTICE

## 1. INTRODUCTION

The Northern Land Council's (NLC's) written submission dated 4 November 2008 emphasised that repealing the *Commonwealth Radioactive Waste Management Act 2005* (the Act) would not have a neutral effect, since NT legislation<sup>1</sup> which prohibits the establishment of a radioactive waste facility or repository would again be in force. This is the unstated purpose of the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*.

Before the Senate Committee some witnesses incorrectly claimed – without reference to the statutory scheme or anthropological advice - that the NLC's consultations for the nomination of a repository site on Muckaty Station had not been properly conducted. The NLC responded to these claims during oral submissions on 17 November 2008. Further information in rebuttal is contained in this supplementary submission.

Two questions were raised on notice during the NLC's submissions, namely:

- (i) as to the dates of consultation meetings and the number of attendees;<sup>2</sup>
- (ii) as to the number of people in the Ngapa traditional owning group.<sup>3</sup>

Responses to these questions are included in the body of the supplementary submission.

## 2. NLC'S CONSULTATIONS AND ANTHROPOLOGICAL ADVICE

### 2.1 Explanatory comment

The NLC's nomination of a site on Muckaty Station for consideration as a Commonwealth repository was based on comprehensive consultations during 2006 and 2007 and anthropological advice as to the identity of the traditional Aboriginal owners and their consent. In accordance with s 3B(1) of the Act the NLC provided a detailed anthropological report to the Minister then responsible for that statute. The authors of the report were Mr Robert Graham, Dr Brendan Corrigan and Mr Kim Barber. Each has substantial experience as an anthropologist in the Northern Territory (and elsewhere), having respectively received graduate qualifications in 1982, 1993 and 1982, and in the case of Dr Corrigan postgraduate qualifications in 2007.

Mr Graham is currently the NLC's anthropology branch manager, and has conducted considerable anthropological research in the general region of Muckaty Station, including in relation to Amadeus to Darwin gas pipeline in 1996, the Alice Springs to Darwin railway in 1998, the Federal Court native title hearing regarding Newcastle Waters Station in 2006, and the nomination of a site for

<sup>1</sup> *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004*.

<sup>2</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 16.

<sup>3</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 18.

consideration as a radioactive waste repository on Muckaty Station in 2006 and 2007. Dr Corrigan also has conducted considerable anthropological research regarding Muckaty Station, particularly in the context of a 2004 agreement regarding the Bootu Creek manganese mine located to the east on the Banka Banka pastoral lease and an associated lease for a haulage road along the southern boundary of Muckaty Station to transport ore to the railway. The site nominated for consideration as a radioactive waste repository is located immediately to the north of the haulage road, and Dr Corrigan conducted research specifically in relation to the nomination in 2006 and 2007. Mr Barber was the NLC's anthropology branch manager at the time of the nomination, has substantial experience over 25 years in the Northern Territory, the Kimberley, Pilbara and Goldfields in Western Australia, and supervised the conduct of research in relation to the nomination and attended all consultation meetings.

The report includes significant information regarding sacred sites and matters of cultural sensitivity to Aboriginal people, and was provided to the Minister on the basis that it and such culturally sensitive information would not be published. For that reason the report cannot be provided to the Senate Committee. However, to assist the Committee, relevant information is provided below. This information establishes that the NLC properly, comprehensively and accurately performed its functions in relation to the identification of the traditional Aboriginal owners of the nominated site, the conduct of consultations with traditional Aboriginal owners and other interested or affected Aboriginal persons or groups, and the nomination based on the consent of the Ngapa traditional Aboriginal owners responsible for the site.

## 2.2 Legal requirements

Section 3A(2) of the Act provides that, with the consent of the “traditional Aboriginal owners”, a Land Council may nominate Aboriginal land in its area as a potential site for consideration as a Commonwealth repository.

The term “traditional Aboriginal owners” has the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976* (the *Land Rights Act*),<sup>4</sup> and means a local descent group of Aboriginals who “have common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land”, as well as a traditional entitlement to forage over the land.<sup>5</sup>

This requirement is consistent with s 23(3) of the *Land Rights Act* which requires that a Land Council shall not take action in relation to Aboriginal land unless satisfied that the traditional Aboriginal owners (as a group) consent.

The *Land Rights Act* distinguishes between two groups of Aboriginal persons who may hold traditional interests to land: “traditional Aboriginal owners” (from whom under the statute consent must be obtained, in accordance with traditional or otherwise applicable decision making processes, regarding proposed development),<sup>6</sup> and other Aborigines “entitled by Aboriginal tradition to the use or occupation of the land concerned, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.”<sup>7</sup>

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<sup>4</sup> Section 3 of the Act.

<sup>5</sup> Section 3 of the Act.

<sup>6</sup> Section 23(3) and 77A of the *Land Rights Act*.

<sup>7</sup> Section 4(1). See also ss 11(1)(a), 23 (especially subsection 3) and 71 of the *Land Rights Act*.

These statutory definitions together with the legislative scheme of the *Land Rights Act* fully encompass the traditional interests and rights contemplated by the common law term 'native title'.

The function of identifying traditional Aboriginal owners and other interested Aborigines is vested by the *Land Rights Act* in the responsible Land Council. This function is a continuing task, bearing in mind that the identity of traditional owners may change over time due to births and deaths, or in some cases due to 'succession' whereby a neighbouring group may succeed to traditional ownership of land where the original group dies out.<sup>8</sup>

A nomination cannot be made under the Act (or an agreement entered under the *Land Rights Act*) unless the responsible Land Council has ensured that the informed consent of the traditional Aboriginal owners (as a group) has been obtained, and that consultation has occurred with other Aboriginal persons interested in the land or affected by the proposal.<sup>9</sup>

Section 77A of the *Land Rights Act* provides that the position of the traditional Aboriginal owners (as a group) shall be ascertained in accordance with their traditional, or otherwise agreed and adopted, decision making process. Section 3B(1)(g) of the Act ensures that s 77A is applicable in relation to the nomination of land by a Land Council for a repository.

Section 3B(1) of the Act provides that a nomination must contain certain information, including as to the conduct of consultations, identification, and consent of traditional Aboriginal owners.

### 2.3 Anthropological advice

In 1997 the Aboriginal Land Commissioner, Justice Gray, published his report in the Warlmanpa (Muckaty Pastoral Lease) Land Claim No 135 (lodged in 1991), and recommended that all land claimed be granted as Aboriginal land. The hearing was conducted in 1993 and 1994. The evidence before the Commissioner included oral testimony from senior Aboriginal persons, and an anthropologists' report and site register. The land was granted as Aboriginal land in 1999.

In his report the Commissioner found that there were various groups whose members are the traditional Aboriginal owners of areas of land on Muckaty Station, namely:

- Milwayi (the two snakes);
- Ngapa (rain);
- Ngarrka (the wild man);
- Yapayapa (the uninitiated boys);
- Wirntiku (the curlew bird);
- Kurrakurraja (the storm bird);
- Walanypirri (the pelican).

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<sup>8</sup> Since colonisation this has usually (but not always) occurred when one group has died out. In *Re Waanyi People's Native Title Application* 1995 129 ALR 118 at 130, 131 and 132 Justice French, sitting as the President of the National Native Title Tribunal, found that the common law recognises this concept. See also *Mabo v Qld No 2* 1992 175 CLR 1 at 61 per Brennan CJ.

<sup>9</sup> Sections 5(2) and 23(3) of the *Land Rights Act*.

The evidence before the Commissioner was that each group takes its name from a significant mythological character that is an important element of the estate (as noted in brackets in the previous paragraph), and is associated with other mythological characters.

These groups are comprised by both *kirta* (descent from father's father) and *kurtungurlu* (descent from mother's father), and have complementary responsibilities.<sup>10</sup> The terms *kirta* and *kurtungurlu* are often respectively referred to as 'owner' and 'manager', and derive from the responsibilities performed by Aboriginal persons in relation to each other in both a ceremonial and a secular context.

The Commissioner found that groups of traditional Aboriginal owners existed regarding all of the station - each group being the traditional Aboriginal owners with responsibility for "part of the land claimed".<sup>11</sup>

The Commissioner referred to dreamings as "creatures which participated in the formation of the landscape, the naming of its features and the imparting to humans of the things which make up the law for a particular group, namely language, culture, song and ceremony."<sup>12</sup> Sacred sites are places where a dreaming stopped or performed some creative action in relation to the landscape. The major dreamings on the station "are travelling dreamings" (rather than limited to one location). The Commissioner explained:<sup>13</sup>

"Different parts of the tracks followed by dreamings belong to different groups of people. A group will have responsibility for a defined part of a dreaming track. The sites along that part of the track and the country surrounding them will belong to that group."

The presence of a dreaming (or sacred site involving a dreaming) which is associated with an Aboriginal group on land which is traditionally owned by another proximate group will ordinarily mean that members of the first group have a traditional interest in the land and must be appropriately consulted, but will not confer status as traditional Aboriginal owners whose consent is required under the *Land Rights Act* (or under Aboriginal tradition). That status remains conferred on the second group which has primary spiritual responsibility for sites and traditionally owns the land. That this is the case is hardly surprising. Some dreaming tracks traverse the continent (eg the storm bird), and it is well known that there are many groups of traditional owners for land upon which such dreaming tracks and sacred sites are located - notwithstanding that those groups have a different dreaming.

The Commissioner recognised that in relation to Muckaty Station the "Ngapa group has three branches, each focused on a different part of the *Ngapa* dreaming track".<sup>14</sup> The *Ngapa* dreaming involves desert rain, a dreaming which "crosses the claimed land in a broad swath",<sup>15</sup> "as rain itself does".<sup>16</sup> It is no surprise that large areas or swathes of land on Muckaty Station associated with this dreaming are Ngapa country. The NLC has identified an additional two Ngapa branches or groups regarding land outside Muckaty Station. The close relationship between Ngapa groups may give rise

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<sup>10</sup> Muckaty Land Claim Report paras 3.2.1 to 3.2.4, 3.4.

<sup>11</sup> Muckaty Land Claim Report para 4.1.

<sup>12</sup> Muckaty Land Claim Report para 4.2.1.

<sup>13</sup> Muckaty Land Claim Report para 4.2.2.

<sup>14</sup> Muckaty Land Claim Report para 3.7.

<sup>15</sup> Muckaty Land Claim Report para 4.5.1.

<sup>16</sup> Anthropological report, Muckaty Land Claim, Dr Sutton, Dr Nash, Petronella Morel, p 23.

to “overlapping responsibilities”<sup>17</sup> such as may also arise in relation to other neighbouring groups, however each group constitutes a separate group of traditional Aboriginal owners in relation to that part of the *Ngapa* dreaming track and associated land for which they have primary spiritual responsibility.

The NLC's anthropological advice was (and remains) that members of the Ngapa branch or group associated with the Lauder families are the traditional Aboriginal owners of the nominated site. The group is comprised by approximately 40 persons.<sup>18</sup> Members of other Ngapa groups are the traditional Aboriginal owners for other land. This advice was consistent with previous consultations regarding other developments such as the Amadeus to Darwin gas pipeline in 1996, the Alice Springs to Darwin railway in 1998, and the haulage road on Muckaty Station for the Bootu Creek manganese mine in 2004 - all of which traverse the length or breadth of the station and cross the country of different traditional owning groups from whom separate consent (relating only to their respective country) was required under the *Land Rights Act*. This advice was also iterated during consultations with senior (and other) representatives of other Ngapa groups (and of other neighbouring groups), who confirmed that they did not have primary spiritual responsibility for the nominated site. This means that they are not traditional Aboriginal owners for that land (which is not, using native title terminology, their country or the country for which they speak) and, although consulted, their consent for the nomination was not required under the Act or under Aboriginal tradition. (Nor would their consent have been required if the nomination had instead been negotiated under the *Land Rights Act* or the *Native Title Act 1993*.)

## 2.4 Consultations

The possibility of locating a Commonwealth repository on Aboriginal land was first raised with traditional owners in the NLC's region at its Full Council meeting held during the week of Monday 17 October 2005. The meeting included a comprehensive briefing by representatives of the Department of Education, Science and Training and the Australian Nuclear Science Technology Organisation (ANSTO).

In light of that briefing the NLC Full Council unanimously called for an amendment so that a Land Council can nominate a site (or sites) in the Northern Territory for a repository, provided that the traditional owners agree and sacred site and environmental issues continue to be protected. Subsequently the requested amendment was made.

The NLC Full Council is comprised by 83 Aboriginal persons who are representative of the NLC's region. The representatives for the general Muckaty Station region include Ngapa elder, Amy Lauder, and her husband Jeffrey Dixon. Jeffrey Dixon is a member of the NLC Executive Council.

Shortly after the meeting the NLC Chairman, John Daly, was contacted by telephone by Amy Lauder and Jeffrey Dixon, who indicated that traditional owners on Muckaty Station were interested in the possibility of locating the Commonwealth repository on their country by agreement. A few weeks later John Daly attended a meeting with traditional owners, and discussed the proposal.

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<sup>17</sup> Muckaty Land Claim Report para 3.7.

<sup>18</sup> A precise figure is not presently available.

In December 2005 the Act was enacted. On 7 March 2006 the NLC Executive Council, including Jeffrey Dixon, visited the research reactor at Lucas Heights and received a briefing from ANSTO officers.

Consultations formally commenced on 23 March 2006, being a meeting conducted at Tennant Creek between NLC officers and traditional owners of Muckaty Station. In addition to providing a briefing, arrangements were made for Commonwealth representatives to meet with traditional owners.

On 10 and 11 April 2006 a meeting was held at the Lauder family outstation on Muckaty Station. NLC representatives met with traditional owners on 10 April, and on 11 April Commonwealth representatives attended and provided a briefing to traditional owners. The meeting was well attended and included representatives of relevant traditional owning groups for Muckaty Station.

On 1 May 2006 a delegation of traditional owners (drawn from various groups), together with NLC and Commonwealth representatives, visited the research reactor at Lucas Heights and received a briefing from ANSTO officers.

Formal consultations were deferred for the remainder of 2006 given anticipated amendments to the Act (which occurred in December 2006). However responsible NLC officers were regularly in the region in relation to other matters, and consulted with traditional owners (from various groups) on an informal basis in conjunction with those matters. The NLC also has a regional office in Tennant Creek, and its officer in charge regularly conducted consultations with traditional owners.

On 7 and 8 February 2007 formal consultations recommenced, with a meeting conducted at Renner Springs (to the north of the station). NLC representatives met with traditional owners (drawn from various groups) on 7 February, and on 8 February Commonwealth representatives attended and provided a briefing to traditional owners including in relation to a package of benefits in a site nomination agreement. The meeting was well attended and included representatives of relevant traditional owning groups for Muckaty Station.

On 20 February 2007 a further delegation of traditional owners (drawn from various groups), together with NLC and Commonwealth representatives, visited the research reactor at Lucas Heights and received a briefing from ANSTO officers.

On 7 and 8 March 2007 further consultations were conducted on country at Muckaty Station. NLC representatives met with traditional owners (drawn from various groups) on 7 March (64 Aboriginal persons attended), and on 8 March Commonwealth representatives attended the meeting at Muckaty Station, and provided a briefing to traditional owners including in relation to a package of benefits (45 Aboriginal persons attended).

Between 7 and 10 May 2007 further consultations were conducted on country at Muckaty Station, and in Tennant Creek. NLC representatives met with traditional owners (drawn from various groups) on 7 and 8 May in Tennant Creek and at Muckaty Station. On 9 May Commonwealth representatives attended the meeting at Muckaty Station, and provided a briefing to traditional owners including in relation to the package of benefits. On 10 May NLC and Commonwealth representatives further met with traditional owners at the NLC office in Tennant Creek. All of these meetings were well attended, and included representatives of relevant traditional owning groups for Muckaty Station.

At the meeting on 8 May 2007 the Ngapa group associated with the Lauder families, being the traditional Aboriginal owners, consented to the nomination of the proposed site on the country for a Commonwealth radioactive waste repository (this meeting was attended by 41 Aboriginal persons). Senior representatives of other Ngapa groups supported, and deferred to, this consent. Further, there was substantial support for the nomination from other neighbouring groups, with only a few individuals in other groups expressing concerns. The fact that some such individuals have been vocal in the media and before the Committee does not alter the fact that they are a small minority of the persons having traditional associations with Muckaty Station as a whole. Nor does it alter the fact that these persons were consulted, and in fact attended most or all of the NLC's meetings. The traditional Aboriginal owners' consent was confirmed in the presence of Commonwealth representatives at Muckaty Station on 9 May 2007 (this meeting was attended by 42 Aboriginal persons).

In compliance with s 3B(1)(g)(iv) of the Act the NLC consulted with residents of the Lauder family outstation (located about 6 kms north east of the nominated repository site) and an outstation at Namarani (located about 16 kms north-west of the nominated repository site), being Aboriginal communities or groups which arguably may be affected by the nomination.

Section 3B(1)(g)(ii) of the Act requires, in relation to a nomination, that the traditional Aboriginal owners understand the nature and effect of the proposed nomination and the things that might be done on or in relation to the land if the nomination is approved. The comprehensive consultations conducted by the NLC, together with Commonwealth representatives, meant that this requirement was satisfied (both in relation to the Ngapa traditional Aboriginal owners of the nominated repository site and other Aboriginal persons consulted).

Specifically the NLC was (and remains) satisfied that its officers and Commonwealth representatives comprehensively discussed, and advised regarding, the proposed repository at the various meetings, and provided accurate information in relation to it and also in relation to the Lucas Heights reactor and transport of waste to the site. It is evident that other information, which the NLC (on the basis of its own scientific advice) and the Commonwealth consider is incorrect or inadequate, has been provided by environmental groups to Aboriginal people in the Muckaty Station region (such as the references to “thousands of trucks”, and to genetic damage in the Bulletin article, referred to below). The consultations conducted by NLC and Commonwealth representatives enabled Aboriginal people to assess competing viewpoints and the accuracy of information, and thus to make their own decision regarding the repository (including, in some cases, by altering previously expressed positions).

## **2.5 Incorrect or inadequate information provided by environmental groups in the Muckaty Station region**

The NLC naturally respects that Aboriginal people, like the broader public, may hold strong views for or against a development particularly in relation to nuclear matters which may involve significant public interest. Since 2006 there has been significant media and public interest regarding the conduct of consultations at Muckaty Station, and the NLC's consultations and performance of functions have occurred in that somewhat politically charged context. Various Aboriginal persons were interviewed in the media, and letters were signed by Aboriginal persons objecting to the repository were forwarded to the NLC and other bodies. The NLC also received various written requests for information from interested individuals or organisations. In all cases the NLC provided a written response.



Two Aboriginal persons featured in an article by Paul Toohey in the Bulletin of 21 November 2006 entitled *The Big U Turn*. One of those persons reportedly referred to “a DVD of kids being born with no arms and no face” which was given to him by an environmentalist, and stated that “[y]ou could put \$100,000 in my hand right now for the dump and I wouldn't take it”. The NLC considers that this and other such advice in relation to the operation of a Commonwealth repository for low level radioactive waste and a store for intermediate level waste is incorrect, has no scientific basis, and seriously misrepresents environmental, health and safety considerations.

Likewise, when speaking at a rally held in Tennant Creek on 4 September 2008, Dr Jim Green of Friends of the Earth incorrectly claimed that there “would be hundreds and hundreds and hundreds of trucks coming through the Barkly” and that over “periods of time you would have thousands of trucks coming through the Barkly”.<sup>19</sup> In fact the Commonwealth repository will involve up to 150 trucks of low level waste during the first year of operation, and an average of one truck per year thereafter for 50 years, with occasional transport of intermediate level waste under high security (this waste will ultimately be stored in a deep geological repository at another location distant from Muckaty Station).

Dr Green also told the rally that a repository would not be safe, although he reportedly conceded in 2006 that “[i]n theory it is possible to run a nuclear waste dump safely”, his objection apparently being that the Commonwealth's “appalling track record with these sorts of projects” means that there can be no confidence that this would occur.<sup>20</sup> Stringent environmental standards naturally should be supported. Upon declaration the proposed repository - including its construction, operation and transport to it - will be assessed under the *Environmental Protection and Biodiversity Conservation Act 1999* in a process expected to take about two years, being a process which may be challenged in the Federal Court. The NLC does not accept that the Commonwealth lacks the capacity to comply with environmental requirements and safely construct and operate a repository.

It is noted that a 2004 ‘Report on the Transportation and Storage of Nuclear Waste’ by a NSW Parliamentary committee has been submitted to the Senate Committee, presumably for the purpose of opposing a Commonwealth repository. The Australian Conservation Foundation (ACF) similarly sought to rely on this report in 2004 before another Senate Committee,<sup>21</sup> given the report's recommendations that the Commonwealth's proposed national repository (ie at Woomera) “be abandoned”<sup>22</sup> with Lucas Heights storing waste in the “interim” as the “best short-term solution”,<sup>23</sup> and that “therefore” proposed transportation of waste should at that time “also be abandoned.”<sup>24</sup> That

<sup>19</sup> *No nuclear waste in the NT*, You Tube video of a Tennant Creek rally on 4 September 2008, Beyond Nuclear Initiative, Alice Springs, Arid Lands Environment Centre, <http://au.youtube.com/watch?v=17K-P5GkLWg> .

<sup>20</sup> Tennant and District Times 2 June 2006: *Short-term benefits or long-term danger* by Daniel Bouchier. Dr Green similarly conceded that “[i]n theory it might be possible to safely construct and manage a nuclear repository” except for the Commonwealth's “track record of incompetence and mismanagement” in a letter to the Tennant and District Times on 1 June 2007.

<sup>21</sup> ACF written submission (by David Noonan and Dave Sweeney) November 2005 pp.4-6 to Senate Employment, Workplace Relations and Education Committee. The ACF described the report's recommendations as “most valuable in the context of the current proposal and commends this report to the Committee's attention” (p.5).

<sup>22</sup> NSW Parliament Joint Select Committee on the Transportation and Storage of Nuclear Waste *Inquiry into the Transportation and Storage of Nuclear Waste* recommendation 1, p.100.

<sup>23</sup> NSW Parliament Joint Select Committee on the Transportation and Storage of Nuclear Waste *Inquiry into the Transportation and Storage of Nuclear Waste* par.5.310.

<sup>24</sup> NSW Parliament Joint Select Committee on the Transportation and Storage of Nuclear Waste *Inquiry into the Transportation and Storage of Nuclear Waste* recommendation 2, p.100.

report however found, contrary to the ACF's position, that “it is vital that Lucas Heights does not become a de facto or permanent facility for the storage of nuclear waste”,<sup>25</sup> that “transport of the low level waste is relatively safe”,<sup>26</sup> and that “[p]ackaging and shielding of radioactive material for transportation has evolved to give a considerable degree of protection to the public.”<sup>27</sup>

On 18 November 2008 Dr Hilary Tyler of the Medical Association for Prevention of War disclosed that, apart from the production of medical radioisotopes and uranium enrichment research (being research separate to the reactor operation), she was “not sure what else is done” at Lucas Heights.<sup>28</sup> Likewise, in their submissions to Senate Committees since 2005 regarding the Act (and indeed in almost all anti-nuclear literature) environmental groups did not address the important benefits - in addition to medical radioisotopes - which are said to justify the Lucas Heights reactor, being technological applications in products regularly used by Australians.

In fact the main purpose of the Lucas Heights reactor is neutron scattering or beam research - a powerful technological tool which enables materials to be analysed at a sub-atomic level,<sup>29</sup> including to identify defects (eg physical stress in jet engines, bridges or roads) or to create high performance materials. It has been “an essential tool” in the development of high density data storage in hard drives for modern computers, mobile phones, iPods and MP3 players.<sup>30</sup> Radiological techniques identify mineral and oil deposits, illicit radioactive imports,<sup>31</sup> and are extensively used in industry (eg gauges to measure the thickness of materials). Radioisotopes are used in environmental research (eg the analysis of aquifers and air pollution), smoke detectors and exit signs.<sup>32</sup> Advanced silicon semiconductors with high conductivity and electrical uniformity also derive from a reactor through a

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<sup>25</sup> NSW Parliament Joint Select Committee on the Transportation and Storage of Nuclear Waste *Inquiry into the Transportation and Storage of Nuclear Waste* par.5.314.

<sup>26</sup> NSW Parliament Joint Select Committee on the Transportation and Storage of Nuclear Waste *Inquiry into the Transportation and Storage of Nuclear Waste* par.6.127

<sup>27</sup> NSW Parliament Joint Select Committee on the Transportation and Storage of Nuclear Waste *Inquiry into the Transportation and Storage of Nuclear Waste* par.6.242. The NSW committee continued that nonetheless “all reasonable steps” should be taken to reduce any possible risk of an accident”, albeit that this is “an unlikely event”, and concluded that the “most effective risk reduction approach in these circumstances is to not transport the waste” (par.6.128). There was no assessment as to the objective grounds whereby not transporting waste at all is a “reasonable step”, including by comparison to the risks of transporting other dangerous goods such as gas or fuel. This is a surprising omission, especially given the recommendation that waste storage at Lucas Heights was only an interim or short-term measure, and is a serious deficiency in the NSW committee's report.

<sup>28</sup> Hansard Senate Committee on Environment Communications and the Arts, 18 November 2008, p 9.

<sup>29</sup> ANSTO newsletter March 2007.

<sup>30</sup> *Future access to neutron sources: A strategy for the UK*, Council for the Central Laboratory of the Research Councils (now the Science and Technology Facilities Council, established in 2007 by Royal Charter) 2005 p.39: <http://www.neutrons.cclrc.ac.uk/Download/NeutronReportApp2.pdf>. The phenomenon of giant or colossal magnetoresistance has revolutionised computing by enabling high density data storage and fast computers (Dr Andrew Greentree, University of Melbourne, ABC Radio National Science Show, 13 October 2007). This phenomenon was independently discovered in 1988 by Professor Albert Fert and Professor Peter Gruenberg, and resulted in their joint award of the 2007 Nobel prize for physics. Although the discovery of the phenomenon did not require nuclear technology, its subsequent commercial development did: “neutron scattering is the method of choice for solving magnetic structure” at a sub-atomic level (p.61), and was “an essential tool” in subsequently understanding the phenomenon and developing commercial applications (p.39). See also *Neutron scattering studies of nanomagnetism and artificially structured materials* by MR Fitzsimmons, SA Bader, JA Borchers, GP Felcher, JK Furdyna, A hoffmann, JB Kortwright, K Shuller, TC Schulthess, SK Sinha, MF Toney, D Weller and S Wolf, *Journal of Magnetism and Magnetic Materials* 271 2004 103-146:

[http://www.ncnr.nist.gov/instruments/ng1refl/Pub/Fitz\\_JMMM\\_2004.pdf](http://www.ncnr.nist.gov/instruments/ng1refl/Pub/Fitz_JMMM_2004.pdf)

<sup>31</sup> A system being installed at Brisbane airport will be capable of imaging a metal cargo container. ANSTO website.

<sup>32</sup> National Radioactive Waste Repository Draft Environmental Impact Statement Main Report, DEST p.1.

neutron irradiation process,<sup>33</sup> and are used in high power applications, including semiconductors in advanced computers, mobile phones, video cameras, air conditioners, fax machines, hybrid cars,<sup>34</sup> switching devices and sensors.<sup>35</sup>

By using such products - including (as well as medical radioisotopes), for example, modern computers, advanced mobile phones (such as with video cameras), and hybrid cars - which reportedly have been driven by the Prime Minister, Kevin Rudd, the Opposition leader, Malcolm Turnbull, the Greens leader, Bob Brown, and the former Democrats leader, Lyn Allison<sup>36</sup> - all Australians contribute to nuclear waste from research reactors and bear responsibility for its safe disposal.

The NLC ensured, in its consultations, that Aboriginal groups were fully informed regarding the operation, risks and benefits of the Lucas Heights reactor and the proposed repository and transport to it, so as to ensure that they could make their own decision regarding use of their country for a repository.

### **3. CAAMA RADIO INTERVIEW WITH NGAPA ELDER, AMY LAUDER, 19 NOVEMBER 2008**

On 19 November 2008 Ngapa elder, Amy Lauder, was interviewed on CAAMA Radio 8KIN FM. With the permission of CAAMA Radio an audio file of that interview is provided, together with a copy of the transcript of the interview.

The NLC invites the Committee's members to listen to the audio file of the interview. Amy Lauder emphatically confirmed, consistent with the above advice as to the NLC's consultations, that consultations were properly conducted, accurate information was provided, and that the Ngapa group associated with the Lauder families consent to the nomination of their country on Muckaty Station for a repository. Amy Lauder also made clear that only the Ngapa traditional owners may make decisions regarding the nominated site, that the nomination does not affect the land of other groups, and that objectors from other groups, in her words, "should sit back and mind their own business" and not interfere with the capacity of the Ngapa group to utilise its land.

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<sup>33</sup> This process is known as "neutron transmutation doping", and involves the conversion of silicon atoms to phosphorus through neutron irradiation giving a specific electrical conductivity. ANSTO presently has a 15% world market share, which will likely increase with OPAL.

<sup>34</sup> Advice provided by ANSTO. See, for example, a paper entitled "Optimisation of the poolside facility for neutron doping of silicon in high flux materials testing reactor BR2" presented at a meeting of the International Group on Reactor Research from 11-15 March 2007 at Lyon, France, V Kuzminov and H Blowfield explained: "More recently, customers have begun to anticipate their production requirements for 8-inch irradiations to meet the automotive industries fast growing demand for Insulated Gate Bipolar Transistors. World leading car manufacturers consider the production of these key electronic devices from 8-inch silicon [involving neutron transmutation doping] to be an important part of their overall strategy which is aimed at reducing the price of the next generation of super fuel efficient Hybrid Electric Vehicles";

<http://www.euronuclear.org/meetings/rrfm2007/transactions/rrfm2007-transactions-session-4.pdf>

<sup>35</sup> See, for example, ANSTO media release 2002: <http://www.ansto.com.au/info/press/2002/p005.html>. Many computers and other products presently operate with semiconductors of lower conductivity which do not require neutron transmutation doping (NTD). Silicon semiconductor devices in high power applications are comparatively large and require NTD in manufacture, since non-NTD methods cannot reliably produce these devices. Personal comment, Stephen Jones, assistant director, radioactive waste management section, department of education science and training.

<sup>36</sup> Article by Jewel Topsfield in the Age on 16 June 2007 entitled *Green MP switches to the current power play* <http://www.theage.com.au/news/national/green-mp-switches-to-the-current-power-play/2007/06/15/1181414549954.html>

#### 4. CERTAIN MATTERS RAISED DURING OR IN RELATION TO THE SENATE COMMITTEE HEARING

The above information establishes that the NLC properly and comprehensively conducted consultations in accordance with statutory requirements, including with both the traditional Aboriginal owners and other interested or affected Aboriginal people or groups. However it is appropriate to further respond regarding some specific concerns raised before the Senate Committee. (Various incorrect concerns and allegations were made before the Senate Committee regarding the NLC's consultation process, however this supplementary submission does not detail, and respond to, each specific allegation.)

First, in relation to the consultation process, Natalie Wasley of the Arid Lands Environment Centre/Beyond Nuclear Initiative stated that her “understanding, from everyone here today, is that a decision made about the Muckaty Land Trust needs to be done with all five family groups.”<sup>37</sup> (The Land Commissioner's recommendation that a single Land Trust be established was said to support this view, although it was merely procedural and no such legal inference may be drawn.)<sup>38</sup> Such comprehensive consultations in fact occurred. However only the traditional Aboriginal owners, being the Ngapa group associated with the Lauder families, were empowered under the Act and under Aboriginal tradition to consent to the repository. Conversely persons from other groups are not entitled under the legislative scheme or under Aboriginal tradition to prevent traditional Aboriginal owners from utilising their land as they see fit.

Secondly, to the extent that Natalie Wasley or others suggested that persons or groups which are not traditional Aboriginal owners have decision making capacity in relation to the nominated site - or that all traditional owning groups encapsulated within the cadastral boundary of Muckaty Station, by some undisclosed process, must jointly make decisions for all land given it is a “Shared Single Land Trust”,<sup>39</sup> such suggestions have no legal or anthropological basis. Natalie Wasley conceded that she is not an anthropologist (or a scientist),<sup>40</sup> and that she had not “specifically met with Ms Lauder and her sister and husband”.<sup>41</sup> The Ngapa persons who were said by her (and some others) to object to the nomination are from other Ngapa groups, and are not traditional Aboriginal owners of the nominated site (meaning their consent is not required). Indeed they readily conceded these facts in the NLC's consultations. And the proposition that cadastral boundaries formulated for pastoral purposes happened to correspond with traditional boundaries in relation to Aboriginal decisions regarding land is both surprising and without basis.

Thirdly, at the hearing in Canberra on 28 November 2008 Patrick Davoren, of the Department of Resources, Energy and Tourism, explained that the question of traditional ownership had not been contested before the Senate Committee. This statement was correct. The objections made by various persons and organisations concerned the manner and conduct of the NLC's consultations with interested or affected groups, however no Aboriginal person has disputed the NLC's anthropological advice that the traditional Aboriginal owners of the nominated site are members of the Ngapa group

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<sup>37</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 25.

<sup>38</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 21. See also submission 95 to the Committee, McCluskys Lawyers on behalf of opposed Aboriginal persons, November 2008: letter dated 3 September 2008 from McCluskys, Lawyers, to the NLC, p 3.

<sup>39</sup> Submission 95 to the Committee, McCluskys Lawyers on behalf of opposed Aboriginal persons, November 2008, p 1.

<sup>40</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 25.

<sup>41</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 25.

associated with the Lauder families. Nor has any Aboriginal person claimed that that land is the country of their group, rather than that Ngapa group. This is a critical point. It necessarily follows that those objecting - or said to be objecting - are well aware that they have no legal or traditional right to speak for, or make decisions regarding, that country. Their evidence and objections must be appreciated and assessed on that basis.

Fourthly, Natalie Wasley suggested that the NLC's consultations and nomination may be tainted due to a conflict of interest deriving from a Ngapa elder being a Full Council member and Chair of the Muckaty Aboriginal Land Trust, and from her husband being an Executive Council and Full Council member.<sup>42</sup> This suggestion has no basis. In making the nomination the Full Council was not required to resolve a traditional ownership dispute between competing Aboriginal persons or groups, and thus no decision involving a conflict of interest arose. As stated above no Aboriginal person has disputed the NLC's anthropological advice as to the traditional ownership of the nominated site. Being satisfied as to the traditional Aboriginal owners' consent, the conduct of comprehensive consultations, and that the compensation arrangements were reasonable, the Full Council properly and lawfully nominated the land. Its decision was unanimous.

Fifthly, on 18 November 2008 a Larrakia person representing two environmental groups sought to augment concerns as to the NLC's consultations regarding the repository by reference to her incorrect perspective of NLC consultations regarding Larrakia matters in the Darwin region. As the NLC's CEO, Kim Hill, explained to the Committee, disputes within Aboriginal groups are not uncommon and resolving them is something which NLC officers "live and breathe" on "a day-to-day basis".<sup>43</sup> Such disputes are resolved in accordance with legislative requirements on the basis of comprehensive consultations and anthropological advice. The resolution of such disputes in accordance with law has enabled the Larrakia to successfully pursue significant commercial ventures and promote important cultural outcomes. The NLC's comprehensive consultations has facilitated these ventures and outcomes by ensuring that a very small minority cannot override the properly formulated decision of the group.

Sixthly, Natalie Wasley claimed that the process under the Act is "clearly not a scientific process" since "[n]one of these sites was short-listed when a national study was done about siting a radioactive waste facility."<sup>44</sup> This study commenced in 1992, and resulted in three sites near Woomera being recommended in 2003. In relation to the Northern Territory it was assumed by the study that all traditional owning groups would object, and thus all Aboriginal land in the Northern Territory was excluded even if it appeared scientifically suitable.<sup>45</sup> That assumption was incorrect.

Seventhly, likewise the NLC's detailed anthropological research and comprehensive consultations in relation to the proposed repository has ensured that a very small minority of Aboriginal persons associated with Muckaty Station (whose country does not include the nominated site) cannot override or interfere with the properly formulated decision of the Ngapa traditional owners to utilise their land as they see fit. Senator Ludlam's media claim in the Tennant and District Times on 21 November 2008,<sup>46</sup> prior to receiving all the evidence (and thus involving prejudgement), that the NLC's position

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<sup>42</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 24.

<sup>43</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 25.

<sup>44</sup> Hansard Senate Committee on Environment Communications and the Arts, 17 November 2008, p 20.

<sup>45</sup> This is clear from the study's methodology. Advice provided by Pat Davoren, Department of Education, Science and Training, August 2005.

<sup>46</sup> Tennant and District Times 21 November 2008: *Local input into Senate nuke waste dump enquiry*.

was “problematic” disclosed a serious failure to properly assess evidence as to the consultations and nomination in accordance with legal requirements and anthropological advice.<sup>47</sup> Senator Ludlam's further incorrect media claim that the NLC's consultations involved “people who had been threatened [by the NLC] and told not to speak out” was never put to the NLC, constituted a serious denial of natural justice and prejudgement of issues, and may be actionable. Obviously such unfortunate behaviour is a matter for the Committee and the Senate itself to consider. The NLC and its officers have never, whether in relation to the repository or any other consultations, engaged in such inappropriate behaviour or actions as alleged.

Resolution of complex issues of public policy in a highly charged political environment requires professionalism, impartiality, and careful attention to established facts and legal requirements. Such impartiality and respect for differing views has underpinned the NLC's representation of Aboriginal groups - whether for or against uranium or other developments - for over 30 years. Senator Ludlam's incorrect media claims sadly disclose that this required impartiality may not be brought by him to the complex and important issues of public policy that have been raised before the Committee in relation to the repeal Bill.

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<sup>47</sup> By contrast, in an address to the Senate on 3 December 2008 regarding radioactive waste, Senator Ludlam recognised that it was not appropriate “to reflect on the deliberations of the committee, because this is a matter that is still under active consideration (Hansard Senate, 3 December 2008, p 37).