

DISSENTING REPORT BY THE AUSTRALIAN GREENS

1.1 The Australian Greens deeply regret that the Legal and Constitutional Affairs Committee has decided it 'cannot conclude that the evidence provided by the NLC misled its inquiry into the Bill or raises any matter of privilege for future consideration by the Senate'.

1.2 It is that the committee cannot or will not make a conclusion?

1.3 Had the Committee taken the time and opportunity to examine documents and seek expert advice on the legal questions at hand – either in camera or on the record - its conclusions might have been different. Had the Committee chosen to do so, it could have become qualified to make a determination, and thereby fulfil the mandate it set for itself to inquire into the legal and constitutional matters.

1.4 In not seeking the requisite information to allow it to properly fulfil its function, the Committee has decided to not decide.

Background

1.5 In May 2010, after a rushed and pressured inquiry, the Legal and Constitutional Committee recommended that the Senate pass the National Radioactive Waste Management Bill.¹

1.6 The Committee made its recommendation after limiting the focus of its Inquiry to, 'legal and constitutional matters, including issues relating to procedural fairness and the Bill's impacts on, and interaction with, state and territory legislation'.

1.7 The Committee recommended the Bill be passed acknowledging that it did not have access to key documents and information, in particular the deed of agreement relating to the nomination or to anthropological reports.

1 Referred on Thursday 25 February 2010, the Committee was initially given a 15 March reporting deadline – 11 working days. That date was changed to 30 April after strong objections from the Greens. While the Committee's process was longer than the government initially intended, the short time frame for submissions was a limiting factor on all stakeholders putting forward their views. Despite this the Committee received 237 submissions that were overwhelmingly critical of the legislation, particularly the extent to which it retained one nomination, that of Muckaty, and shielded it from procedural fairness and access to judicial review. The Committee was repeatedly called to go to Tennant Creek and was unwilling to do so. Had it done so it would have helped to compensate for the fact that providing rights to Aboriginal people to be heard in written form only is prejudicial. The failure to visit Muckaty or hold a hearing in Tennant Creek questions the accuracy of claims about the process engaging all stakeholders.

1.8 The Committee was therefore forced to rely heavily on the testimony and assertions of those who did have access to those documents, the Northern Land Council (NLC).

1.9 The withheld NLC anthropology report is the basis upon which the NLC nomination of the Muckaty site rests. Apparently it assigns a particular portion of land to the Lauder clan of the Ngapa group, quite specifically. This is contrary to the findings of Justice Gray, the Land Commissioner, and his report of 18 March 1997 that Ngapa family groups 'share the same sites' and had 'commonality of land interests' on Muckaty Station.

1.10 The NLC is recognised in the May 2010 Committee report as the 'relevant representative body' and its evidence and submissions are quoted throughout. The Committee report includes NLC assertions that it had fulfilled its statutory requirement to comprehensively consult with Aboriginal Traditional Owners and that it had correctly determined the Lauder clan of the Ngapa group as the rightful owners of the Muckaty nomination.

1.11 These assertions pertain directly to the legitimacy of key provisions of the bill and issues relating to procedural fairness.

1.12 The Australian Greens do not believe these assertions are supportable, and that it is the job of this Committee to test these assertions.

1.13 Evidence taken through submissions and public hearings during the Committee's own Inquiries make it clear that the lands of Muckaty station are not carved up in the fashion the secret NLC anthropology report purports.

1.14 The basis upon which the Muckaty Land Trust was established clearly recognised overlapping and group responsibilities for this country.

1.15 The original finding of the Aboriginal Land Commission, was that there is joint and interconnected ownership between the five main groups where dreaming overlapped. This was a core reason why a single Land Trust was granted to a number of groups – Milwayi, Yapayapa, Ngarrka and perhaps the Winrtiku and Ngapa. The report explicitly stated that the site nominated for a nuclear waste repository was jointly owned by at least three of those five groups.

1.16 The documents that came to light in the National Archives on 9 May 2011 only reinforce this finding, despite the NLC dismissing this as merely a casebook. Those documents provide details about sacred places for ceremonial men's business, and detailed indications of shared ownership. They were not disclosed, explained or referenced.

1.17 If these facts contained therein are deemed irrelevant for the NLC, why have they not made better attempts to explain the discrepancy between the secret report written by Dr Peter Sutton, Dr David Nash and Petronella Morel (all current or previous NLC employees) and the prevailing opinion by every other source?

1.18 These matters are before the Federal Court for good reason. The case will no doubt draw attention to the fact that the leader of the group that supposedly has exclusive rights over the floodplain and earthquake zone of Muckaty was a member of the Full Council of the NLC at the time of the nomination, and her husband was also on the Full Council and the Executive Council.

1.19 I thank the Committee for responding to my letter that raised a question as to the extent that the NLC's submissions were contradictory to the evidence presented by eminent lawyers from the National Archive whether the NLC *knowingly* misled the Committee; if so, whether a possible contempt has been committed in that regard. I was concerned that the inconsistencies are so great as to potentially constitute the misleading of the Committee.

1.20 I continue to be concerned that the inconsistencies are so great as to potentially constitute the misleading of the Committee.

1.21 I also continue to find it a profound shock, as do many supporters of the Australian Labor Party that coercive attempts to dump radioactive waste out in 'terra nullius' did not end with the election of the Rudd Government, but have in fact picked up exactly where the former Government left off. While our leaders have changed, our Resources Minister has not.

1.22 I continue to recall that this government opened its first term with an apology and that if this legislation is allowed to proceed, it will close its second term owing another apology to Aboriginal Australians.

Senator Scott Ludlam

Australian Greens

