

Keep the Poison Out of Muckaty

Kurlalu yarnmi Majju Majju Manu Wangku ka Wangangka yama nyirrinji mana Manu Wangku Kuna

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Fighting nuclear waste dumps in the Northern Territory

On 15 July 2005 the Howard Coalition government announced plans to build a national radioactive waste facility in the Northern Territory. The plan was a clear reversal of policy taken to the 2004 federal election explicitly promising not to target the Northern Territory. Science Minister Brendan Nelson initially named three parcels of Defence land as possible dump sites, remarking, ‘Why on earth can’t people in the middle of nowhere have low-level and intermediate level waste?’

The announcement was made without any consultation with traditional owners, their representative land councils, the wider community or the then NT Labor government. Harts Range, Fisher’s Ridge and Mt Everard were thrust into the spotlight and became the new battleground over radioactive racism in Australia.

Desert Dumps and Federal Laws

Remote and desert areas are often seen as sacrifice zones to be used as dumping grounds for people or products unwanted by the state or larger society. In 2006 Native American Ojibwe activist and commentator Winona LaDuke highlighted this short-sighted approach, stating: ‘The greatest minds in the nuclear establishment have been searching for an answer to the radioactive waste problem for fifty years, and they’ve finally got one: haul it down a dirt road and dump it on an Indian reservation.’

The proposal to build Australia’s first purpose-built national radioactive waste facility in the Northern Territory—around 3500 kilometres from where most of the radioactive waste is currently produced and stored and the nuclear experts reside—is a clear example of this thinking. In 2007 Nelson’s successor as federal Science Minister, Julie Bishop, said that the proposed NT sites were ‘some distance from any form of civilisation’, despite the fact that all sites were adjacent to Aboriginal communities or outstations.

The NT dump proposal followed the failure of almost a decade of trying to impose a dump in northern South Australia. The SA dump plan targeted an area where traditional owners had suffered first from nuclear bomb tests and then the imposition of the massive Olympic Dam uranium mine. They led a vibrant campaign that forced the federal government to back down.

It is proposed that low-level, long-lived intermediate-level radioactive waste will be taken to the proposed NT facility. The latter category includes spent fuel rods from the Lucas Heights nuclear reactor in Sydney that need to be isolated from people and the wider environment for thousands of years.

Claims that the dump is needed for continuation of nuclear medicine in Australia are strongly contested by professionals. Dr Peter Karamoskos, a nuclear medicine specialist who also advises the federal nuclear regulator ARPANSA, says, ‘It is at best misleading and at worst a lie to claim that a large-scale nuclear waste repository such as what is being proposed would be solely justified to handle the minuscule amounts of nuclear medicine waste generated in Australia.’

To facilitate the NT plan the Howard government pushed the *Commonwealth Radioactive Waste Management Act* through Parliament in December 2005. This legislation allowed the federal government to override NT laws and ignore the concerns of affected traditional owners. Senior members of the Labor opposition government called the legislation ‘sorry’, ‘arrogant’ and ‘sordid’, and pledged to overturn the laws if elected.

The law was amended in 2006 to allow Aboriginal land councils or the NT government to nominate additional sites. The Northern Land Council (NLC) praised the amendment and put forward a site in the Muckaty Land Trust, 120 km north of Tennant Creek in Central Australia. The NLC referred to traditional owners speaking against the waste dump as ‘dissident individuals’ despite a statutory obligation to represent the views of all traditional owners in its region.

The nomination deed was classified commercial-in-confidence and Muckaty traditional owners opposed to the plan were refused access to key documents, including

anthropological reports about their families. They stepped up their campaign and began travelling interstate to gather support.

Compensation and Division

The Muckaty nomination came with the promise of compensation for a small group identified by the NLC as exclusive traditional owners of the site. This restricted view of ownership is challenged by many traditional owners, who say all members of the Muckaty Land Trust need to be involved in the decision-making process in accordance with the shared dreaming and cultural responsibilities in the area.

In 2010 traditional owners concerned about the dump plan applied unsuccessfully to former Indigenous Affairs Minister Jenny Macklin for a boundary change in order to be represented by the Central Land Council (CLC) rather than the NLC.

The CLC has taken a clear and community-informed stance against the dump plan, stating that the radioactive waste management legislation ‘subverts the processes under the Land Rights Act which offer greater protection to traditional landowners and affected communities’. In May 2013 CLC Chairman Maurie Ryan addressed a rally in Tennant Creek saying that the CLC is ‘on a collision course’ with the NLC over this matter.

Aboriginal people in the Northern Territory are facing federal bi-partisan political support for decreasing funding to remote homelands and outstations in favour of a ‘hub-towns’ model. In this context the compensation being offered for the dump, most likely tied to specific infrastructure and education scholarships, is initially, and understandably, attractive. Entitlements hard won since the 1967 referendum and taken for granted as citizenship rights in urban areas have become moving pieces in a toxic trade-off.

Whoever is taking this waste dump into our country needs to come back and talk to the traditional owners. We don’t want it, it’s not our spirit. Our spirit is our country, our country where our ancestors been born.

— Traditional owner Dianne Stokes

NT Labor has remained a fierce critic of the dump plan. Federal Labor promised to repeal the Howard government’s ‘draconian’ legislation but instead, driven by pro-nuclear resources Minister Martin Ferguson, introduced laws so similar that most of the Coalition didn’t bother to show up for the 2012 Senate vote. Key protections, including the *Environmental Protection and Biodiversity Conservation Act* (1999) and the *Aboriginal and Torres Strait Islander Heritage Protection Act* (1984) remain suspended during the site selection phase. Limited procedural fairness and judicial review provisions have been restored but these do not apply to the current Muckaty nomination.

Under the legislation selection of a site effectively extinguishes any rights or interests, including Native Title rights, in the land nominated or any land ‘required for providing all-weather road access to the selected site’.

Federal Court Action

The Muckaty site nomination is now before the Federal Court, with traditional owners opposed to the dump plan taking action against both the NLC and the Commonwealth over key issues of ownership, consultation and consent. A trial is set for June 2014.

Melbourne-based law firm Maurice Blackburn is convening the action with support from senior barristers, including Ron Merkel QC and Julian Burnside QC. Maurice Blackburn social justice practice lawyer Elizabeth O’Shea says: ‘There are allegations that the NLC engaged in misconduct and breach of fiduciary duty by their actions in nominating the Muckaty site’.

As Mark Lane Jangala, a listed applicant in the Federal Court case states: ‘There was not a meeting in town consulting all of the traditional owners for the land, they just got the individual people they knew. The others, we were left out. We are going to challenge them in court then through our court— Aboriginal law and culture with the dot paintings on our body. Both sides have law’.

Community Campaign

While the legal wheels slowly grind along, local community engagement and activism around the waste dump continues to grow. Regular rallies in Tennant Creek and elsewhere in the Northern Territory have been supported by actions around the country, a documentary called Muckaty Voices has featured at festivals around the world and an award-winning photo exhibition profiling the community and country under threat is touring the country, including opening the prestigious Head-On photo festival in Sydney. Traditional owners have written poems, letters and songs and continue to speak from their heart for their homeland.

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To bargain with traditional owners for money that is to be used to pay for essential services, which should come from the same public revenues as they do for all other Australians, is a complete scam. This is a shameful, immoral manoeuvre by short-term, results-oriented political pragmatists.

— **Uniting Church Nightcliff, Darwin**

The campaign has already outlasted four federal portfolio ministers as well as multiple NLC chairs and CEOs. None of these decision makers predicted or prepared for the sustained resistance and resilience of the Muckaty traditional owners. With support from civil society groups, including medical and public health organisations, trade unions and national environment groups, there is little chance that the project will be able to advance quickly or quietly.

The Maritime Union of Australia (NT) held a rally at Stokes Hill Wharf in Darwin in July 2012 to mark seven years of the NT dump proposal. Branch organiser Thomas Mayor said that the MUA ‘has been proud to support the traditional owners who are opposed to the construction of the proposed dump in their community. The MUA is also very concerned that our members would have to handle this waste when it enters the Port of Darwin, bound for Muckaty when the emergency response capabilities in Darwin do not exist for such a dangerous cargo’. United Voice NT secretary Matthew Gardiner, representing emergency service workers in the Northern Territory, has warned that if an incident occurred while transporting the current stockpile of radioactive waste to Muckaty, it would require every single fire-fighter in the NT to respond. Unions NT, the Territory’s peak union body, has resolved to support any community or unionist refusing to cooperate with the waste dump plan, as has the Australian Council of Trade Unions, which has called for an end to the Muckaty plan and remote dumping options.

Federal Labor started the search for a remote central radioactive waste facility over two decades ago and in

February 2012 then minister Martin Ferguson conceded there had been a ‘failure’ on the part of successive governments to resolve this issue. The initial project timeframe assumed a remote national radioactive waste dump would be operating by late 2012. With a final site not yet declared, the first shipments of radioactive waste to return from Europe after reprocessing will now be taken to the Australian Nuclear Science and Technology Organisation’s Lucas Heights nuclear complex in southern Sydney for ‘interim storage’. ANSTO, the federal nuclear regulator ARPANSA and all the relevant departmental officials agree that there are no technical barriers to onsite storage at Lucas Heights. The facility has the capacity, appropriate security and access to nuclear expertise in the case of an incident. Environment groups have stated that the Sydney storage option provides the breathing space for an independent assessment of future options.

The anti-nuclear movement in Australia has long worked to highlight and halt the Lucas Heights nuclear complex. The first reactor, now mothballed and set to be dumped at Muckaty after decommissioning, was gifted to Australia by Britain in the 1960s in gratitude for allowing nuclear weapons tests in the South Australian desert and on the Monte Bello islands off Western Australia’s Pilbara coast. While small in size, the research reactor still poses the threat of malfunction and environmental contamination. Though the reactor is promoted as essential for production of medical isotopes, Australia’s medical needs can be met by imported products, as regularly happens during periods when the reactor is not operating, and technologies for the production of medical isotopes without nuclear reactors are increasingly viable.

The Australian Council of Trade Unions, the Public Health Association of Australia, the Australian Conservation Foundation and many others are calling for the government to initiate an independent National Commission to further the discourse around radioactive waste management in Australia, ensuring that it doesn’t start and finish with a desert dump. Any serious approach the problem of nuclear waste would need be based on the key principles of active waste minimisation and reduction at source—stop producing it and turn off the Lucas Heights reactor.

The Muckaty radioactive waste dump plan has caused great distress and heartache to the local community and has eroded community confidence in the capacity and commitment of successive federal governments to credibly address this issue. For many years traditional owners have awoken with a nuclear threat hanging over their heads and their lands. This threat will only be lifted if governments break the pattern of short-term political thinking about the management of a very long-term and serious human and environmental problem.

The Abbott government’s election has raised deep community concerns that the Coalition, the original drivers of the Muckaty plan, will seek to accelerate the current and contested process. Minister Ian Macfarlane has said he will meet with traditional owners, but to be meaningful this engagement must include people opposed to the dump. In the clear absence of community consent for the Muckaty plan, an expert National Commission is an essential step in rebuilding political and procedural credibility around radioactive waste management. **■**