

Submission to the Nuclear Fuel Cycle Royal Commission August 2015

Campbell Law Barristers & Solicitors

Campbell Law does not support South Australia becoming further involved in the nuclear fuel cycle for the following two fundamental reasons:

1. The likely negative impacts on Aboriginal communities, culture and heritage.
2. Cheaper, safer and more sustainable alternatives to nuclear energy are available.

Aboriginal Heritage and Culture

Any further involvement by South Australia in the nuclear fuel cycle will likely have a strong impact on culture and heritage for many Aboriginal people. Although land rights and native title are important and must still be considered, it is primarily Aboriginal heritage and culture, which far predates white settlement, which is of primary concern.

While we acknowledge that several community information sessions have been held by the Royal Commission to engage with the Aboriginal community, we are highly concerned that there has been no formal consultation with Aboriginal heritage groups specifically, and little focus on cultural issues generally. For example the upcoming meeting of the Aboriginal Congress of SA which is being held in Port Augusta on 10-11 August appears to have only given notice to chairpersons of native title groups.

Aboriginal Heritage Act 1988 (SA)

If South Australia was to become further involved in the nuclear fuel cycle there are two Acts which protect culture and heritage that could apply to future activities on Aboriginal land and waters. Firstly, the *Aboriginal Heritage Act 1988 (SA)*, and secondly the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*.

In particular, the *Aboriginal Heritage Act 1988 (SA)* provides for the protection and preservation of Aboriginal sites, objects and remains. An Aboriginal site is defined as an area of land that is of

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significance according to Aboriginal tradition or that is of significance to Aboriginal archaeology, anthropology or history. Under section 23, a person must not, without the authority of the Minister, damage, disturb or interfere with any Aboriginal site or damage any Aboriginal object.

As any further involvement in the nuclear fuel cycle is likely to directly affect Aboriginal country and culture, the above provisions must be taken into account.

The decision in *Starkey & Ors v State of South Australia* [2011] SASCFC 164 confirms that Aboriginal people have the right to protect their country and heritage. Here the Full Court overturned the Minister's decision to grant a mining company the right to progress with exploration which could damage, disturb or interfere with an Aboriginal site as the Minister had denied Aboriginal groups natural justice in regards to their application for the Minister's powers to be delegated to them. The case has wide ramifications for the human rights of Aboriginal people in protecting and preserving their cultural heritage.

Constitution Act 1934 (SA)

The *Constitution Act 1934 (SA)*, under section 2, states that the Parliament, on behalf of the people of South Australia, acknowledges and respects Aboriginal peoples as the State's first peoples and nations and recognises Aboriginal peoples as traditional owners and occupants of land and waters in South Australia.

The Act acknowledges that traditional owners' spiritual, social, cultural and economic practices come from their traditional lands and waters and they maintain their cultural and heritage beliefs, languages and laws.

This declaration is of particular importance given that Aboriginal peoples have endured past injustice and dispossession of their traditional lands and waters. It is critical for the Royal Commission to respect the unique and irreplaceable contribution that Aboriginal people make to the State.

Protection and Preservation

The protection and preservation of culture and heritage is paramount to Aboriginal people. Traditional owners are custodians of their land. Uranium mining, milling, enrichment and storage of nuclear waste for many thousands of years, are not considered a proper use of country and are deemed culturally inappropriate by Aboriginal people. Offering large sums of money by way of compensation to vulnerable people ignores wider Aboriginal culture and heritage.

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Exploration, Extraction and Milling

From the toxic legacy of Maralinga nuclear testing, uranium mining operations and attempts to impose unwanted nuclear waste dumps on traditional owners' land, the nuclear industry is already responsible for suffering and displacement of Aboriginal communities. When radioactive minerals were discovered at Mount Painter in 1910 the mining of uranium commenced without any consultation with traditional owners. Aboriginal people rightly regard uranium as a dangerous substance which should be left in the ground. Disturbance of uranium deposits pose a long term threat to Aboriginal health, culture, country, and heritage. The impact from ignoring traditional owners' rights to their country and philosophies, much like the fallout from British nuclear testing at Maralinga, can never be remedied.

Transport of any uranium products would affect a large number of Aboriginal Nations in SA.

Further Processing and Manufacture

The establishment of a uranium enrichment industry has recently been promoted as a way to 'value add' to South Australian uranium exports. However the world enrichment market is heavily over-supplied. In 2006 Switkowski Review found that 'there may be little real opportunity for Australian companies to extend profitably' into enrichment. Enrichment of uranium is simply not economically viable.

Electricity Generation

It is undeniable that nuclear power has a range of unavoidable risks to public health and the environment. The timeframes involved with storing nuclear waste are almost unimaginable for modern humans to imagine. It is utterly irresponsible to keep producing more waste for future generations to deal with when there are much safer and more sustainable alternative energy options available. Apart from risks to health, the environment and future generations, nuclear is also a highly expensive undertaking that has so far has been viable without generous taxpayer support.

A recent report titled '100% Renewable Electricity for South Australia' by Dr Mark Diesendorf, Associate Professor and Deputy Director of the Institute of Environmental Studies at the University of New South Wales, found that SA can be powered by 100% renewable energy within the next 15 years. Renewable energy is not only environmentally sound, it is also economically sensible as it creates rigorous investment opportunities and new jobs.

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South Australia is the driest State in the driest inhabited continent. Access to large quantities of water needed for cooling a nuclear reactor risk having a devastating effect on already strained water supplies from the Great Artesian Basin and Murray River. Scientific evidence makes clear that desalination of sea water in a slow moving marine estuary is not an environmentally sound alternative. As South Australia becomes one of the first places on Earth to feel the devastating effects of a changing climate, our use of water should be carefully considered.

Aboriginal Nations own the waters – fresh and sea. Any disturbance and/or use of waters is an effect on Aboriginal culture and heritage.

The permission of Aboriginal Nations is necessary – both morally and legally.

Management, Storage and Disposal of Waste

The spent fuel produced in nuclear reactors is in orders of magnitude more radioactive compared to mined uranium. It takes around 200,000 years for the radioactivity of this waste to decline to that of the original uranium ore body. To put this in perspective, anatomically modern humans first appear in the fossil record in Africa about 195,000 years ago.

The governments of Australia have a disgraceful history of trying to impose radioactive waste on Aboriginal land. For the last 15 years, traditional owners and the wider community have fought in South Australia, Western Australia and the Northern Territory against proposals for a nuclear waste facility. The law in South Australian now reflects this fact through the *Nuclear Waste Storage Facility (Prohibition) Act (SA) 2000*. Clearly Aboriginal people do not want radioactive waste dumped on their land.

Consultation and Conversation

The Royal Commission should engage in respectful conversation and proper communication with traditional owners in a culturally appropriate manner. This may mean that some Aboriginal people will wish to express themselves in their own language. This might be because English is unknown, or because it is impossible to convey certain thoughts and ideas in the English language. The Royal Commission should therefore provide for interpreters, funding for transportation costs and further visits to country to hear spoken evidence where applicable.

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Recommendations Regarding Future Activities and Aboriginal Nations

In its recommendations the Royal Commission must acknowledge the current law regarding the *Aboriginal Heritage Act (SA)*.

The Royal Commission must acknowledge the moral and legal rights of Aboriginal Nations to protect their land, waters, culture, sites and heritage.

The Royal Commission must note the importance of respectful conversations with Aboriginal Nations if the government decides to allow developments in the nuclear fuel cycle which could affect Aboriginal sites, waters, culture and heritage.

The Royal Commission should stress in its recommendations that past developments, mines, waste dumps, testing, and transport of uranium products have ignored the rights of Aboriginal people, in effect, continuing the ill-treatments manifested in activities such as removal from their lands and the stolen generation.

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