OUTLINE OF SUBMISSION TO NUCLEAR FUEL CYCLE ROYAL COMMISSION BY MARALINGA TJARUTJA AND YALATA COMMUNITY INCORPORATED
PURPOSE OF THIS SUBMISSION

1. The purpose of this submission is to specifically address certain matters relevant to Terms of Reference 1, 2 and 4 of the Royal Commission and generally to provide the Royal Commission with information relevant to the question of how, in the future, government and industry should deal with Aboriginal communities in relation to nuclear issues.

WHO ARE MARALINGA TJARUTJA AND YALATA COMMUNITY INCORPORATED

2. Maralinga Tjarutja (MT) is a corporation established in 1985 by the Maralinga Tjarutja Land Rights Act 1984. Its functions under s 5 of the Act are;

   (a) to ascertain the wishes and opinions of traditional owners in relation to management, use and control of the lands and to seek, where practicable, to give effect to those wishes and opinions; and

   (b) to protect the interests of traditional owners in relation to the management use and control of the lands; and

   (c) to negotiate with persons desiring to use, occupy or gain access to any part of the lands; and

   (d) to administer land vested in Maralinga Tjarutja.

3. Yalata Community Incorporated (YCI) is an association incorporated under the Associations Incorporation Act 1985 (SA). Its central objective is to relieve poverty, sickness and destitution, distress, suffering, misfortune and helplessness of Aboriginal people living on the Yalata Reserve. The community may advance its central objective by the following means;

   (a) promoting the development of the community

   (b) developing local self-government

   (c) working towards the support of the community by developing economic projects and enterprises that provide such projects shall be legally constituted separately from the community

   (d) preserving and maintaining the traditional culture of the community

   (e) promoting education, technical training, vocational training, health, age, housing and other community services the community considers necessary for its welfare

   (f) providing proper management of the lands vested in Yalata Community Inc.

4. The Maralinga Traditional Owners and the Yalata people are one and the same people who as part of the Western Desert Cultural Bloc had, prior to 1952, been living at the
HISTORY OF OOLDEA AND MARALINGA.

5. By 1950, Ooldea Soak had become a central focus for the Western Desert Aboriginal people with its permanent water supply, the presence of Daisy Bates between 1919 and 1936, construction of the East-west railway line between 1912 and 1917 and the establishment of the United Aborigines Mission in 1933. The South Australian Government intended to close Ooldea Mission despite strong evidence of the movements of Aboriginal people through the Woomera Prohibited Area and continuance of ceremonial practices, demonstrating cultural attachment to the land.
6. Records show that Walter McDougall, the Native Patrol Officer working in the area for the Long Range Weapons Research Organisation had observed that Aboriginal people held a form of traditional ownership of the lands and that he fully appreciated the spiritual and cultural necessity of maintenance of contact with these lands. He wrote in 1950 that the continuation of ceremonies on ‘tribal country’ was ‘necessary for (the traditional owner’s) existence…if deprived of this by force he is likely to die of homesickness’.1

7. Ooldea had attracted Western Desert people primarily because of ration distributions which began from 1936 onward drawing desert groups from distant waterholes and carrying flour back out to the desert. Over time, missionaries used to send UAM Aborigines to meet newcomers and encourage them in, providing tobacco, food and clothing. Children were ‘rounded up’ and placed in school and dormitories away from their parents. Despite this institutionalisation they maintained contact with their traditional country, visiting rockholes such as Piling, Puntja, Tjulili, Makeru and areas east of Lake Dey Dey.

8. In 1950 the Aborigines Protection Board Annual Report referred to a pastoral station being offered for Ooldea and the railway Aborigines. In a Patrol Report dated 12 July 1950 the recommendation was made to move Aborigines out of Ooldea and prohibit the use of the area for a hunting and ceremonial ground in the future with a view to declaring it a prohibited area for long range weapons use. The report did not make any reference to the Aboriginal people and that their spiritual homes lay in the desert and ‘spinifex’ region to the north and west. The intention outlined in this report was in breach of assurances given by the Minister of Defence in 1947 that patrol officers were to control interference with ‘habits of the Aborigines and any areas of special significance to them’.2

9. The decision for the Lutheran Church to manage the mission at Yalata, where Ooldea Aborigines would be relocated to, combined with a public announcement for the testing of atomic weapons, precipitated the prompt closure of Ooldea Mission by the United Aborigines Mission on 24 June 1952. Ooldea Aborigines described in their evidence to the Royal Commission into British Nuclear Tests (1984-1985) their feelings of that day, that they had been ‘cut up’ and ‘split up’ into groups, not knowing which way to go and were wailing and crying.3 A group of 105 elected to go to Ernabella and Coffin Hill, a small group agreed to travel south to Colona station (near Yalata) and another 100 travelled to Cundeelee.

10. Patrol Officer McDougall proceeded to intercept the north-bound group who got as far as Bulgannia station and ordered them back, having arranged train travel to Ooldea and trucks from Koonibba Mission to take them to Yalata. Notwithstanding their forced resettlement at Yalata they continued to strive to keep their ritual and ceremonial links

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1 Aboriginal Collection ("Ab. Coll."). 1979, cited in Final Submission on behalf of Aboriginal Groups and Individuals to Royal Commission into British Nuclear Tests in Australia, Johnston Withers, 16 September 1985.

2 Ab. Coll. 27, 10 March 1947.

3 T Queama, Royal Commission transcript 9238-9, 24 April 1985.
with other Western Desert communities in the north, now in a place alien to their traditional country.

11. The Long Range Weapons Research Organisation saw the relocation of the Ooldea people to Yalata as a highly successful effort by the Patrol Officer. In later writings the Patrol Officer diminished the spiritual connection that Aboriginal people continued to hold asserting that ex-Ooldea men had a mere ‘reminiscent interest’ to Ooldea and the northern areas and that this would cease in two years. Yalata Aborigines spoke about their unhappiness at Yalata; ‘we felt lonely about Ooldea, we were worrying for it, we tried to get back up there’.4

12. Ooldea is a significant site, a mythological site associated with a dreaming story explaining how the soak came to be there. Anthropologists have described it as an important traditional centre where Aboriginal groups from widely distant areas would attend seasonal ceremonies; it was an initiation site.

13. Aboriginal people continued persistent attempts to maintain their ceremonial and peripatetic ways of life and did not want to stay at Yalata, a place with alien ecology located outside their traditional lands.

14. The search in 1953 for a permanent atomic weapons test site settled on Maralinga, 37 km from Ooldea, requiring the revocation of the Ooldea Reserve. At no time were authorities made aware by the Patrol Officer that Ooldea was the birthplace and burial place for many Aborigines, or that it was a dreaming site itself, a fact that had been recorded by Daisy Bates many years before.

15. By this time, McDougall had plans to get the Yalata men to ‘establish’ new ceremonial sites at Yalata as part of his scheme for them to sever spiritual links with the Ooldea region. The Patrol Officer took Yalata men to the Ooldea region with the aim of ‘cleaning up’ the area through removal of sacred objects they had left there over the past eighteen months. The significance of the fact that ritual paraphernalia had been hidden in sites around Ooldea to be used for return visits and that they ‘belonged’ to this country was not understood. When the Patrol Officer returned and was unable to see any evidence of sacred objects, he concluded ‘all active tribal interest is now at an end’, allowing for the Secretary of the Aborigines Protection Board to advise that Ooldea Reserve could be used ‘for any desired purpose by the Long Range Weapons Research Organisation’.

16. The men from Yalata were concerned about the ‘clean-up’ efforts of the Patrol Officer as they saw this as him blocking them from their country by preventing men’s business taking place. Later ‘passes’ through use of a letter of authorisation, were introduced as a way of controlling movement by train, to prevent Aborigines straying into a dangerous or prohibited area. Aboriginal movements were further curtailed by cutting rations and this was also done at Coober Pedy to encourage Aborigines to return to Yalata. Alice Cox, a Maralinga traditional owner, recalled the incident stating that men were sent back with some urgency resulting in some missing out on ceremonies.5

4 AB15:10
5 T7270; Ab. Coll. 437.
17. Maralinga people were kept away from their country by virtue of no rations being issued to those intending to travel north of the Mission. The Patrol Officer subsequently devised an idea to create a rotational lifestyle by moving people between one shed tank and another at Yalata because it was observed that ex-Ooldea people were leaving Yalata and had to be forced to remain. These sites were used as ration depots so that older Aborigines could resume their wandering lifestyle and lessen the tendency to travel north towards their old hunting grounds.\textsuperscript{6} Big Camp was established on this basis with a large collection of family groups.

18. Dissatisfaction with Yalata and its social problems became so great that many Aboriginal people rejected Yalata and responded by removing themselves from it.

19. Between 1953 and 1963 the United Kingdom conducted a program of nuclear weapons trials at Maralinga and Emu. In all, nine major nuclear trials involving atomic explosions, and approximately six hundred smaller scale experiments which dispersed radioactive and hazardous materials were performed at the two locations (the “Minor Trials”). The following is a chronology of the tests undertaken by the British on Maralinga Lands;

- **Totem Series 1953**
  Emu was approved in September 1952 as the site for the Totem trials. Prof Leslie Martin and Prof Ernest Titterton gave unqualified assurance that it was ‘impossible’ that the Totem trials would cause any risk to health…of any human beings.\textsuperscript{7} Security briefings were provided for pastoralists in the area. The Patrol Officer’s advice was that there were no Yankunytjatjara people in the area who would be affected by the tests. The orders for RAAF aircraft included no instructions to patrol for Aboriginal movements. Two major nuclear trials code named Totem 1 and Totem 2 were performed at Emu. The fallout from the first of these trials in September 1953 (Totem 1, a 10 kiloton blast the size of the Hiroshima bomb) passed through the Aboriginal community at Wallatinna and smaller Aboriginal groups at Mintabie.

- **Operation Buffalo 1956**
  The next series of atomic bomb tests were at Maralinga in 1956, when four nuclear trials [code named One Tree (27.9.1956), Marcoo (4.10.1956), Kite (11.10.1956) and Breakaway (22.10.1956)] were undertaken.

- **Operation Antler 1957**
  In 1957 three trials code-named Tadje (14.9.1957), Biak (25.9.1957) and Taranaki (9.10.1957)] were carried out.

- **Minor Trials 1955-1963.**

\textsuperscript{6} Ab. Coll. 555.

\textsuperscript{7} Ab. Coll. 207
20. In 1973 the South Australian Government appointed a committee to consider the uses to which Maralinga Village could be put. The committee’s recommendations included that the village buildings be demolished and salvaged and that the Yalata Mission be given the opportunity of submitting a list of items to the Minister which it would like to acquire at no cost from the Maralinga Village.

21. In March 1974 the South Australian Government authorized the Superintendent of Yalata to be the caretaker and act on behalf of the government to control the assets at Maralinga Village. On 3 May 1974 the Department for Community Welfare approved salvage rights be transferred to YCI upon its incorporation in late 1974.

22. A manager was appointed who employed between 50 and 60 Aboriginal people, mainly from Yalata, working in teams for the salvage work. The manager had inquired about the radiological safety aspects of this work with the South Australian Health Department and was assured there was nothing to worry about, though this was later refuted by the South Australian authorities.\(^8\) No Geiger counters were provided or used during salvage work and the only precaution taken was to take workers to the contaminated sites, explain the risks and advise them to stay away from there.

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\(^8\) South Australian Submission to Royal Commission.
23. The South Australian Aboriginal Lands Trust, established in 1966, was empowered to hold land in trust for Aboriginal communities. In anticipation of a transfer of Yalata community to the Lands Trust, a salvage agreement was executed with YCI on 5 June 1975 and required the community ‘to remove underground appurtenances and attachments to buildings and facilities where salvage is in the opinion of the community an economic proposition’.9 The agreement provided for the proceeds of sale of ‘any cache of materials buried and not connected to any buildings’ to be divided between the Trust and YCI.

24. The Aboriginal Lands Trust did not acquire title to Maralinga Village or its surrounds. However those engaged in the salvage operation believed they were permitted to salvage underground material and did so. Such material was subsequently reburied under advice from the Chief Defence Scientist. YCI did seek advice whether they were able to dig up steel and copper piping and if there were any contaminated materials buried in the pits in or near the village. The response from the Australian Government, which only came some three years later, was then irrelevant.

25. Section 16 of the *Aboriginal Lands Trust Act (1966)* gives ‘powers to transfer lands to the Trust’: ‘the Governor may by proclamation transfer any Crown lands or any lands for the time being reserved for Aborigines to the Trust for an estate in fee simple or for such lesser estate or interest as is vested in the Crown’. The Yalata lands were transferred to the Aboriginal Lands Trust and, as a result of amendments in 1973, provisions under the *Mining Act 1971* and the *Petroleum Act 1940* removed any right of entry, prospecting, exploration or mining in respect of land vested in the Trust. Such rights of entry, prospecting, exploration or mining were, however, exercisable, subject to conditions, should the Governor elect to so declare by proclamation.

26. Yalata’s isolation and lack of opportunity for outstation development hindered the people’s ability to deal with unwanted violence or trouble with their children. Social problems such as heavy drinking, petrol inhalation and offences against property and person were evidenced at Yalata. The dearth of alternative living situations contributed to a state of dependency and deprived the people of a viable means of dealing with unwanted behaviour. Regulations under the *Aboriginal Lands Trust Act 1966* were brought in to prohibit the possession, consumption, sale and supply of alcoholic liquor on Yalata Reserve.

27. It was clear that Western Desert people did not wish to live at Yalata and many had chosen to locate themselves a considerable distance from the settlement as they reoriented themselves to their traditional lands again. A visit by the Yalata people to the Great Victorian Desert in 1981 was made partly to seek out suitable locations for outstations. Establishing outstations was a national movement in the 1970s and Yalata had been cut off from these progressive developments of their northern kin and also missed out on the granting of land rights as part of the *Anangu Pitjantjatjara Land Rights Act 1981*.

28. In May 1982 the Yalata administration encouraged Aboriginal people to return on a permanent basis to their country by providing a truck, water tank and provisions. The

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response was overwhelming. Despite precarious supplies and the remoteness of the location, eighty Yalata people and their children made camp at Lake Dey Dey and have been in the region at Oak Valley on the Maralinga Lands ever since.

29. Maralinga people waited a long time for title to their traditional land to be granted, sitting at the doorstep of their country, in order to return home to care for sites and rectify neglect of those places for which they have special responsibilities. Despite having been kept away from their sites, water holes and country for thirty years, older residents at Yalata retained a remarkable attachment to them. The Report of the Select Committee of the South Australian House of Assembly on the Maralinga Tjarutja Land Rights Bill 1983 concluded;

‘Aboriginal people from Yalata and from other places with an interest in Maralinga land are firm in their claim to attachment to that land and strongly reject any suggestion that they are any less tribal, with lesser traditional rights and obligations to their land. There is a further important dimension to this present Bill. It will enable a group of dispossessed people who were forcibly removed from their lands nearly thirty years ago, to return at last to their cultural home lands with a sense of dignity and purpose. At present these people live at Yalata. That is not a happy community. The lands do not have any cultural attachment for the people and the social dislocation that has occurred over the past thirty years, particularly in relation to alcohol, has seriously damaged the whole community. Some of the people have already returned in a small homelands movement onto the Maralinga lands. Your Committee had the opportunity of consulting with a large number of people from Yalata Community at a special meeting place at ‘Old Maralinga’ where they gave evidence of their attachment to the land, their knowledge of its special characteristics and their desire to return there to live and care for the land. Your Committee was privileged to view, confidentially, secret artefacts and a map of significant sites which indicated the ties of these people to this area. The vigour and depth of the aspirations of the traditional people are real and vital; that is their wish to return to their homelands with dignity and with a strong law that will enable them to manage and care for the lands in a manner which also meets the needs and wishes of the wider society that they live in today’. ¹⁰

30. The Maralinga Land Rights Act 1984 returned to the Maralinga/Ooldea traditional owners 76,420 square kilometres of land surrounding the Maralinga and Emu Test sites. The proclamation of the Act on 6 December 1984 brought into effect a Land Grant which gave to Maralinga Tjarutja, the body corporate created by the Act, the whole of the land specified in Schedule 1 to administer on behalf of the traditional owners. There were two excisions; an area of 510 square kilometres surrounding the 1953 atomic site of Emu (Sections 1486 and 1487) and Section 400, the area of approximately 3000 square kilometres where Maralinga Village and the 1957 – 63 Atomic Test and Minor Trial sites were located. The South Australian Government did not want to hand over land which was still contaminated.

¹⁰ Aus. Col. 830227.
31. Since 1985 MT has represented the interests of the Maralinga Traditional Owners in relation to all matters relating to land management of the Maralinga Lands. This has included negotiating with every mining and petroleum exploration company which has sought permission to explore on the Maralinga Lands and dealing with the legacy of the British Nuclear Tests on the Maralinga Lands.

32. Currently Yalata has a population of about 250 people. Its community facilities include a school, community store, health clinic, community office and police station.

33. Currently Oak Valley has a population of between fifty and one hundred residents. Its community facilities include a school, community store, health clinic and community office.

34. Since the grant of land rights to Maralinga Tjarutja in 1985 many people who were formerly resident at Yalata have moved to Oak Valley and lived out their lives there. Others move regularly between these two communities.

35. The council of Maralinga Tjarutja is comprised of both Oak Valley and Yalata residents who work cooperatively on issues relating to Yalata and the Maralinga Lands.
THE EXPERIENCE OF MT AND YCI IN RELATION TO NUCLEAR ISSUES

36. The Maralinga and Emu test sites are located in the region south of the Great Victorian Desert and north of the Nullarbor Plain. Maralinga is 270 km north-west of Ceduna. Emu Field is about 190 km northeast of Maralinga.

The legacy of the British Nuclear tests to the Maralinga APY and Yalata People

37. It is very important to bear in mind some of the less savoury aspects of the legacy of the British Nuclear Tests at Maralinga. In the view of MT and its scientific and legal advisors, Section 400 is the location of the most long-lasting and irresponsible environmental disaster in Australia’s history. Some, but not all, of the environmentally deleterious activities which took place at Maralinga between 1955 and 1963 were:

(a) the detonation of seven atomic bombs ranging in yield from approximately 2 to approximately 10 kilotonnes;
(b) 7,965 kilograms of uranium 238 were spread across the Maralinga test sites during the 1955-1963 minor trials;
(c) 976.9 kilograms of natural uranium were dispersed across the Maralinga test and minor trial sites in the minor trials conducted between 1957 and 1963;
(d) not less than 101 kilograms of beryllium were exploded and dispersed at the Maralinga minor trials test sites between 1956 and 1963;
(e) Twenty kilograms of Plutonium were detonated – much of which was spread across the north west quadrant of Section 400 in the Vixen B trials between 1959 and 1963;
(f) radioactive and other hazards were buried in numbered and un-numbered pits throughout the test site;
(g) highly radioactive elements were buried in a “cemetery” adjacent to the Maralinga air strip and;
(h) contaminated vehicles and other materials were buried in pits just before the British left in 1963.

38. Whilst the clean-up of the test sites is as good as could have been achieved, some observations must be made about the consequent state of Section 400 as a result of the British Nuclear Tests and minor trials subsequent to the clean-up.

39. First, the clean-up has not removed all plutonium, a low energy gamma emitter (with a half life of 24,500 years), beryllium and natural uranium, and it is not clear how much remains despite extensive rehabilitation measures. What is abundantly clear is that no effort has been made to remove the fine particulate low dose plutonium which extends in plumes north and north west of Taranaki over an area of about 250 square kilometres. It was agreed by the State, the Commonwealth and MT that digging up the soil upon which this particulate low dose plutonium was dispersed and endeavouring to revegetate it would create an environmental disaster greater than the current plutonium contamination.

40. Second, no one can be entirely certain what contaminants remain. When the Australian Technical Assessment Group (TAG) commenced the task of recommending options for the clean-up in 1988 it, not surprisingly, asked the British Government to indicate all of
the contaminants which remained on the range. The British Government was unable to do so. This position has not changed as some of these contaminants (eg beryllium) and other buried radioactive substances are incapable of detection.

41. Third, much of the remaining contamination is in burial pits throughout the range, not all of which may have been identified.

It should also be noted that a nuclear clean-up can never render radioactive material safe. All it can do is place it in a safer and more contained environment. It is thus, essentially, an earth moving exercise. The 1995-2000 Australian clean-up did this largely by removing the highest concentrations of plutonium contaminated soil and the contents of some burial pits and burying them in deep engineered burial trenches on the range.

What Maralinga Tjarutja has done about the legacy left by the British and Australian governments

42. Since the Maralinga Lands were handed back to Maralinga Tjarutja it has worked very hard to deal with the issues of the nuclear legacy left it by the British and Australian governments. Over the last 30 years Maralinga Tjarutja has, inter alia;

(i) found out about the nature, extent and risks of the residual radioactive contamination – particularly during research for the Technical Assessment Group Report (1990);
(ii) obtained compensation from the Australian Government for those persons who could establish a claim for damages for injuries from the British Nuclear Test Program;
(iii) successfully negotiated with the British and Australian governments about the clean-up of Section 400 and compensation;
(iv) cooperated with Australian and South Australian governments in the clean-up;
(v) successfully negotiated with the Commonwealth and State governments for the handback to Maralinga Tjarutja of the rehabilitated lands - including all necessary indemnities and a long term ongoing joint Land Management Plan for Section 400;
(vi) succeeded in having the Woomera Prohibited Area boundary removed from Section 400 and
(vii) succeeded in having the South Australian Government remove Section 400 from the ambit of the SA Mining Act so that no exploration or mining can take place on Section 400

Finding out about the nature, extent and risks of the residual radioactive contamination – particularly during research for the Technical Assessment Group report

43. Efforts were made to clean up the trial sites at the end of each trial series but this was not performed in order to return the land back to its uncontaminated state. The intention
was to remove the most obvious and serious contamination and to place the test sites in a condition where they could be used again and where contamination from subsequent trials could be identified and assessed. By 1964 the British Government decided to place Maralinga on a ‘care and maintenance’ basis removing the need for qualified health physics staff on the site.

44. In 1966 there was a final clean-up, Operation Brumby, precipitated by advice from the British High Commissioner to the Prime Minister’s Department, acknowledging the ten year validity of the Memorandum of Arrangements between the United Kingdom and Australia was coming to an end.

45. The Memorandum of Arrangements included;

‘The United Kingdom Government accepts liability for such corrective measures as may be practicable in the event of radioactive contamination resulting from tests on the site’.

46. The Australian Government did not provide the Atomic Weapons Test Safety Committee with any information or policy in respect of Aboriginal inhabitants returning to their homelands. It was inexcusable that the Australian Government did not give consideration to the future use of the Maralinga Lands by the traditional Aboriginal inhabitants when considering the parameters for the final clean up by the British, before they were discharged of all their obligations to the Australian Government.

47. Operation Brumby was based on a set of assumptions that were subsequently shown to be wrong, as an assessment of this operation revealed it was not performed to a demanding standard but rather some ambiguous standard; ‘conditions of effective complete evacuation of the Range’. The clean-up was not such that the land was fit for permanent habitation nor did it consider the likelihood of Aborigines returning to the Range area to live. Whilst reported to the Prime Minister as a successful operation, Operation Brumby did not reveal to the Australian Government the existence of plutonium fragments at Taranaki, Wewak, TM100-101 and Tadje. Levels at some areas exceeded levels set by the Atomic Weapons Test Safety Committee and the use of ploughing of the plutonium contaminated soil as part of Operation Brumby made it more difficult and costly to achieve the required level of decontamination in the future.

48. There were two principal reasons why a further clean up became necessary; firstly the Atomic Weapons Test Safety Committee did not fully understand the nature and extent of contamination by plutonium contaminated metallic fragments at Taranaki, Wewak and TM 100-101 and accordingly could not properly assess the hazards arising from these areas and whether the means of decontaminating these areas would be effective. Secondly, there was a failure by both governments to envisage or investigate the likelihood that Aborigines would return to live in their traditional fashion on the Maralinga Lands. Consequently the Atomic Weapons Test Safety Committee did not demand the Range be rendered fit for permanent habitation and did not investigate any of the exposure pathways which constituted increased hazards for traditional Aboriginal people by reasons of their lifestyle. Neither did the British Government take the view that permanent habitation was the required standard.
Dr Palmer and Ms Brady, two anthropologists who were retained by APY, MT and YCI to assist them prepare their case before the Royal Commission into British Nuclear Tests in Australia 1984-5, discussed Aboriginal attitudes to the contaminated sites in their research findings to the Royal Commission. They described rockholes and sites said by the traditional owners to be ‘finished’- an Aboriginal English word synonymous with ‘dead’ and not to be trusted any more. The ‘poison’ was perceived by the Aborigines to have affected the land and there was fear the wind would blow it over to where they were camped. They were fearful that the contamination would affect the meat and waterholes and could make people sick. There were many ‘scare stories’ associated with the bombs that have become folklore. As custodians of particular sites required to take responsibility for their care and maintenance, it was not surprising that Aboriginal people were adamant that the Range be cleared up. The possibility of these areas remaining unclean would cause considerable anxiety to their custodians, whether or not they were actually living in the area.

Radiological surveys conducted of the Maralinga Range performed by the Australian Radiation Laboratory in 1984-85, identified the following major hazards:

1. Plutonium fragments at Taranaki, Wewak, TM 100 and TM 101;
2. Plutonium contamination at Tadje;
3. Plutonium contamination in the “North West Plume” from Taranaki;
4. Glazing at Biak, Breakaway and One tree;
5. Natural Uranium U235 and U238 at Naya, Wewak, Dobo, Kuli and the Small Firing Sites;
6. Radio- nuclides from the major trial sites;
7. The possibility of beryllium contamination at Kittens, Naya, Wewak, Kuli and TM50, and
8. Plutonium in its various forms in the burial pits.

Without doubt, the most significant, but also the most complex and least well understood, hazard to traditional Aborigines was from the plutonium contamination. There have been a number of attempts to isolate and quantify the hazards from plutonium contamination at Maralinga. The nature and relative significance of the various plutonium hazard pathways are understood to be different by various studies. The main pathways are through inhalation and related to the dust levels arising from normal camp life, the risk of ingestion, and the risk of injection through cuts and gashes from people who walk bare footed. Other risks that were identified but not fully researched at the time of the Royal Commission included radiological risks, biological risks from vegetation that Aboriginal people consumed and from fission products in the food chain and environmental risks from the burial of radioactive waste.

Obtaining compensation from the Australian Government for those persons who could establish a claim for damages for injuries from the British Nuclear Test Program.

In 1991 Maralinga Tjarutja concluded negotiations with the Commonwealth of Australia which resulted in the payment of compensation to some 25 Aboriginal people

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11 R Sandimar transcript of evidence. 72885 and 7243
who had been affected by the British Nuclear Test Program in various ways - ranging from being caught under the “black mist” of radioactive fall-out at Wallatina in 1953, to being sent on perilous journeys by range patrol officers west of Maralinga in 1957 and being found on the range, seized and sent to Yalata in 1957. The amounts of compensation, by agreement, remain confidential.

(iii) Successfully negotiating with the British and Australian Governments about the clean-up of Section 400 and compensation

53. The Australian Government responded to the findings of the Royal Commission into British Nuclear Tests by establishing, in February 1986, a Technical Assessment Group (“TAG”) comprising five eminent Australian, British and American scientists to advise the British and Australian Governments on options for the clean-up of Maralinga. Maralinga Tjarutja participated in studies jointly commissioned by the TAG and MT and the British and Australian Governments – designed primarily to establish the most likely pathways of plutonium contamination for Aboriginal people living in their traditional state.

54. This research was incorporated into the report of the Technical Assessment Group which was provided to the Australian and British Governments in 1990. That report provided essentially six costed options for further rehabilitation work at Maralinga and Emu.

55. Maralinga Tjarutja obtained its own independent scientific advice on the options set out in the TAG report. MT’s advisers included Dr Peter Johnston from Australia, Dr Herwig Paretzke from Germany and Dr Henry Cohn from the Lawrence Livermore Laboratory in San Francisco.

56. Maralinga Tjarutja advised the governments that it favoured option 6c which was designed to clean up all contamination apart from about 200 square kilometres of lightly plutonium contaminated land on Section 400 where, in the view of MT, the environmental consequences of removing the topsoil over that 200 square kilometres to remove the plutonium would be worse than leaving the contamination in place and fencing the area.

57. The Governments and MT agreed to option 6c and Section 400 was rehabilitated in accordance with this option between 1995 and 2000.

58. Given that the clean-up which was agreed between MT, the Commonwealth and the State Government left some plutonium contamination undisturbed, MT negotiated with the Commonwealth to be compensated for the loss of use and enjoyment of this land and for the health risks from the residual plutonium contamination. These negotiations concluded in 1995 with the Australian Government agreeing to pay the sum of $13.5 million to Maralinga Tjarutja to be held in trust for the traditional owners for the purpose of assisting traditional owners to return to and live appropriately on the lands. The Maralinga Piling Trust was established in 1995 to administer the trust fund for the traditional owners – and continues to do so. The trust comprises four traditional owner trustees and a corporate trustee company.

(iv) Working with the Australian and South Australian Governments on the clean-up

60. Between 1995 and 2000 Maralinga Tjarutja worked with the Australian and South Australian Governments in relation to the proposed clean up by providing labour and
services to the clean-up, participating in review committees and being involved in the
oversight of the rehabilitation measures.

(v) Successfully negotiating with the Commonwealth and State Governments for the
handback to Maralinga Tjarutja of the rehabilitated lands

61. Between 2000 and 2009 Maralinga Tjarutja negotiated with the Australian and South
Australian Governments for the return of the 3,000 square kilometre area of land
known as Section 400 which includes the rehabilitated test sites and Maralinga Village.
This involved the negotiation of:

(a) the Maralinga Nuclear Test Site Handback Deed; and

(b) the Maralinga Land and Environment Management Plan.

62. The Handback Deed was designed to deal with all issues that arose from the transfer of
contaminated land from the Commonwealth to the State and then to Maralinga Tjarutja
and in particular the indemnities required and given by the Commonwealth to the State
and Maralinga Tjarutja.

63. The Maralinga Land and Environment Management Plan sets out the tasks required to
be performed by Maralinga Tjarutja, the State and the Commonwealth for the on-going
management of the former test sites and for the division of functions between the three
parties. The Management Plan establishes the Maralinga Committee, comprising a
representative of each party, which meets annually to review the plan and the state of
the test sites. This has resulted in a very successful co-operative land management
regime.
(vi) Having the Woomera Prohibited Area boundary removed from Section 400

64. In 2013 the Commonwealth considered amendments to the Defence Act to facilitate mineral exploration on the Woomera prohibited area – which extends north-west from Woomera and crosses part of the Maralinga and APY lands. As part of the public consultation process, Maralinga Tjarutja indicated that it was prepared to facilitate mining exploration on its portion of the Woomera Prohibited Area but requested that the Woomera prohibited area be moved north and east so that it no longer covered Section 400. This position was ultimately agreed to by the Commonwealth and the Woomera prohibited area has been reduced in size to exclude Section 400.

65. Throughout all of these initiatives and negotiations MT was supported by YCI and APY. Many of the 25 persons for whom MT negotiated compensation lived on the YCI and APY Lands.

WHAT MT AND YALATA PEOPLE HAVE LEARNT ABOUT NUCLEAR ISSUES AS A RESULT OF THE LEGACY OF THE BRITISH NUCLEAR TESTS

66. MT and Yalata people went into the Royal Commission in 1984 with a very low base of knowledge about the radioactive contamination on or near their lands and its risk. They were significantly disadvantaged, compared to other Australians, in being able to appreciate the nature, extent and risks of radioactivity. The MT and Yalata peoples had very limited education and no one in these communities held tertiary level qualifications. Like many in the general Australian community, there was not even an elementary understanding of nuclear power or of the issues of contamination or the risks and half-life of radioactive materials.

67. In Western Desert Languages (e.g. Pitjantjatjara, Yankuntjatjara and Kokatha) there is no word or concept for radioactivity. Anangu have adopted the word ‘poison’ in Aboriginal English or *iranti* (meaning “killing magic, deadly magical weapon”) in Western Desert Language. Western Desert people also have different communication styles, preferring story telling instead of directive question-answer approaches and events are described in a relational sense. In this context, concepts of dates and numbers are not well understood, for example people count from one, two to many. Therefore it is not surprising that Western Desert people would find perplexing concepts about radioactivity being expressed in quantitative terms such as;

- (ii) A half-life of 24,000 years
- (iii) An order of magnitude
- (iv) A micron (a millionth of a meter)
- (v) 5 milisieverts

68. MT and Yalata residents have learnt ways to deal with these disadvantages. However it takes much longer for these communities to grapple with nuclear issues and the technical issues than the general population.
69. Lessons MT and Yalata People have learnt include that;

(i) it is critical to make it clear immediately when dealing with government/industry/scientists if the issues are not properly understood;
(ii) the process of exchanging information and negotiating between traditional owners and government/industry/scientists on nuclear matters must be slowed down so as to proceed at the pace of the traditional owners - not at the pace of the other parties;
(iii) traditional owners must be properly resourced to obtain their own independent advice on all aspects of negotiations with government/industry/scientists (including, scientific, economic, legal and health advice). For example, the advisors retained by Maralinga Tjarutja in relation to the Maralinga nuclear clean-up were a German nuclear physicist, an American radiation biologist, an Australian applied physicist, two anthropologists and two South Australian arid area botanists;
(iv) it is necessary for government/industry/scientists to work hard at maintaining a process of relationship building with traditional owner stakeholders;
(v) establishing good communication channels and continuous dialogue between traditional owner groups and government/industry/scientists enables better understanding of the respective parties’ issues, concerns and challenges, thereby fostering trust and goodwill;

70. Potential lessons for government/industry/scientists which arise from the relationship developed between MT, YCI and the Commonwealth and South Australian governments include;

(a) once the concepts, issues and risks are properly understood, traditional owners generally make very practical and constructive choices;
(b) when these practices have been adopted and followed through, a strong and constructive relationship develops;
(c) it is always better for a traditional owner group to pull out of negotiations than to feel they have been pressured into a decision;
(d) it is very important for traditional owner groups to feel assured that government/industry/scientists genuinely wish to engage with them, and value and respect their views, acknowledge their legal and cultural interests and therefore the basis of their contributions.

TERMS OF REFERENCE AND ISSUES TO BE CONSIDERED

General comments

71. MT and YCI have no particular technical expertise in relation to the exploration, extracting, processing and milling of uranium. Accordingly MT and YCI confine this submission to the following matters within the terms of reference in which they have some experience or expertise.

72. Whilst MT and YCI do not have any technical expertise in relation to questions such as the exploration, extracting, processing and milling of uranium, they have a very keen
interest in issues of community health and expanding the economic base of some of the most impoverished communities in the country.

73. MT and YCI, in making these submissions, do not proceed from a pro or anti-nuclear position. The essence of this submission is that the most important aspect of any future dealings between the nuclear industry/government and Aboriginal communities is that those dealings are based on the need for Aboriginal communities to be properly placed in the position where they can make fully informed and empowered decisions about whether they want to participate or not and, accordingly, on what terms.

SPECIFIC TERMS OF REFERENCE AND QUESTIONS RAISED IN THE ISSUES PAPERS.

A TERM OF REFERENCE 1 ISSUES PAPER 1 QUESTION 1.8

Would an expansion in extraction activities give rise to new or different risks for the health and safety of workers and the community? If so, what are those risks and what needs to be done to ensure they do not exceed safe levels?

74. MT and YCI are not experts in the risks associated with the exploration, extracting, processing and milling of uranium and thus cannot comment on many aspects of this question.

75. However, it became clear during the Royal Commission into British Nuclear Tests in Australia in 1985 that the risk assessments made by the British Government during the British Nuclear Test Program at Maralinga between 1955 and 1963 of the dangers posed by the residual nuclear contamination at Emu and on Section 400 were based on inappropriate assumptions. These assumptions included that persons visiting or occupying Section 400 would live according to a western lifestyle and would, for example;

(i) take drinking water from covered tanks;
(ii) wear shoes and western clothing at all times they were outside
(iii) wash their hands before meals;
(iv) cook in kitchens on conventional stoves;
(v) wash food before eating it and
(vi) eat no “bush tucker”.

76. MT and YCI were able to demonstrate to the Royal Commission that these types of assumptions paid no regard to the higher level of risks associated with Aboriginal people living their traditional lifestyle. The Royal Commission noted;

(i) ‘The most significant hazard to Aborigines using the test sites is from plutonium contamination resulting from the Minor Trials.'
Unfortunately, it is also the most complex and least understood of the hazards...

(ii) ‘A number of attempts to quantify the hazard for plutonium contamination were presented to the Royal Commission. The range of different pathways considered and variability in the values of the dose estimates provided reflects the uncertainty of the lifestyles of Aborigines who might use the Range area and a lack of basic data on the important pathways. Prior to the ARL 1985 report, it was generally accepted that inhalation was the main exposure pathway. However, other evidence tendered suggested that ingestion of bush foods could be more hazardous than inhalation for Aborigines living a traditional lifestyle [RC 574]. The risks from wound contamination were also considered to be important and possibly the limiting pathway in some areas [RC 574]. Another report tendered raised the hazard of particles larger than a respirable size which lodge in the pharynx [RC 821].’

77. The Royal Commission recognised the importance of this in its Recommendation 3 - which was in the following terms;

‘Action should be commenced immediately to effect a clean-up of Maralinga and Emu to the satisfaction of the Australian Government so that they are fit for unrestricted habitation by traditional Aboriginal owners as soon as practicable.’

78. In response to this recommendation the Australian Government established a Technical Assessment Group (“TAG”) in February 1986 to advise the Minister for Resources and Energy on options for rehabilitation of the sites used for the British nuclear testing program, including:

‘...in considering options for the clean-up of the sites, possible access should cover the range from fully unrestricted habitation by Aboriginals including the case of high dependence on local plants and animals for food and casual access, assuming retained, or if necessary, extended fences.’

79. The TAG comprised two Australian, two English and one American scientist. They consulted heavily with the Maralinga traditional owners and developed several research projects designed to better assess risk pathways and the extent of risk to traditional owners. The research found

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13 Ibid p 614.
14 Rehabilitation of Former Nuclear Test Sites in Australia: Report by the Technical Assessment Group, Department of Primary Industries and Energy, 1990, p vii.
The environment and Aboriginal lifestyle together ensure that the intake of soil and dust through ingestion and inhalation is high and the incidence of cuts, abrasions and wounds likely to contain dust, ash or soil is high".15

80. The TAG concluded that the risks to traditional Aborigines were different and of a different order and found that significant further rehabilitation would be needed before Section 400 could be rendered safe for traditional Aboriginal people.

81. This is a good example of the way in which certain nuclear products, bi-products and waste pose particular additional risks to Aboriginal people living in a traditional and semi-traditional lifestyle.

82. The probability that nuclear products, bi-products and waste will pose greater or particular additional risks to Aboriginal people living in a traditional and semi-traditional lifestyle must be recognized in any risk assessment of an expansion in extraction activities or in any processing or radioactive waste storage enterprise.

83. The appropriate risk assessment for Aboriginal people or communities living in a traditional and semi-traditional lifestyle must be carefully and thoroughly researched and developed in conjunction with the Aboriginal community – as the TAG did with the Maralinga community between 1986 and 1990.

B TERM OF REFERENCE 1 ISSUES PAPER 1 QUESTION 1.9

Are the existing arrangements for addressing the interaction between the interests of exploration and extraction activities and other groups with interests such as landowners and native title holders suitable to manage an expansion in exploration or extraction activities? Why? If they are not suitable, what needs to be done?

84. This submission addresses only the interests of YCI, whose land is held in trust by the Aboriginal Lands Trust and MT which owns its traditional lands by way of statutory inalienable freehold title. Neither is a native title holder in the strict sense.

85. Whilst their statutory land holding regimes and protections differ, YCI and MT have the following in common.

(i) They are the same people, and thus acknowledge and observe the same Western Desert traditional laws and customs.

(ii) To the north and west of both Yalata and the Maralinga Lands lies the Woomera Prohibited Area ("the WPA"). The WPA includes the eastern half of the Maralinga Lands and a small section of the southern end of the APY Lands. Until early 2015 it also covered the northern half of Section 400 but it was withdrawn early this year following representations to the Minister of Defence on behalf of MT.

15 Ibid p67.
Exploration and Mining on the MT Lands

86. In the past, the South Australian Government has, with some justification, viewed the control exercised by the Department of Defence over the Woomera Prohibited Area (“WPA”) as a disincentive to mineral and petroleum exploration in areas covered by the WPA. This is not the case in respect of the areas of the WPA which are on the MT Lands—as the exploration and mining regime set up by s 19 of the Maralinga Tjarutja Land Rights Act operates exactly as elsewhere on the MT Lands and now demonstrates a 30 year history of constructive negotiations with mineral and petroleum explorers.

87. Exploration and mining on the Yalata Lands is regulated by Part 7 of the Aboriginal Lands Trust Act 2013 which provides;

52—Interaction between this Act and Mining Acts
(1) A mining authority must not be granted or renewed under a mining Act in respect of Trust Land except to a person who has permission to carry out mining operations or regulated activities on the Trust Land...
(2) …the Minister to whom the administration of the mining Act is committed must allow the Trust a reasonable opportunity to make submissions relating to the conditions subject to which the mining authority should be granted or renewed.

53—Permission required to carrying out mining operations etc on Trust Land
(1) ... a person who, without the permission of the Trust granted under this Part—
(a) carries out mining operations or regulated activities on Trust Land; or
(b) enters Trust Land for the purpose of carrying out mining operations or regulated activities,
is guilty of an offence.
Maximum penalty: $120 000.

88. Exploration and mining on the Maralinga Lands is regulated by s 21 of the Maralinga Tjarutja Land Rights Act 1984 which provides;

Mining operations on the lands
(1) Notwithstanding the provisions of any other Act, a person who, without permission under this section—
(a) carries out mining operations upon the lands; or
(b) enters the lands for the purpose of carrying out mining operations, shall be guilty of an offence and liable to a penalty not exceeding the maximum prescribed by subsection (2).
(3) An application for permission to carry out mining operations upon the lands—
(a) may be made ... and ....
(6) Upon an application under this section, Maralinga Tjarutja [APY] may—
(a) grant its permission unconditionally;

89. The existing protections provided to MT under its legislation are, subject to the one matter set out below, suitable and have stood the test of time as the regime established under this legislation has produced constructive negotiations between MT and explorers
for access for mining and petroleum exploration purposes over the 30 years the Acts has been in operation.

One aspect that is not satisfactory

90. MT is currently in dispute with the South Australian Department of State Development, Energy Resources Division over rehabilitation works required on land impacted by a mineral and petroleum exploration company, Rodinia Oil (Aus) Pty Ltd which abandoned its exploration program when it went into liquidation. When it abandoned exploration it had not performed remediation of all its exploration earthworks, leaving MT with remediation costs well in excess of $1 million.

91. MT considers that the security bond of $50,000 required of this exploration company by the State was manifestly inadequate, given the scale of the company’s petroleum operations and the subsequent damage to MT land arising from the unremediated exploration.

92. In MT’s opinion, the above circumstances highlight some possible deficiencies in the current administration of mineral and exploration license applications on Aboriginal land in South Australia including:

- the risks to Aboriginal landowners posed by company insolvency occurring during exploration activities on land;
- inadequacy of the security bonds required by the State to be lodged by mineral and exploration companies and
- the capacity of State Governments to achieve compliance with regulated activities undertaken by mineral and exploration companies.

93. Given this experience, MT is of the view that approval of future petroleum and mineral license applications by the State should be subject to considerably increased security bonds. MT believes that such a measure is required to adequately protect landowners in the event that the licensee is unable to undertake rehabilitation and related activities, to a satisfactory standard.

Are the existing arrangements satisfactory for YCI

94. The land holding model and the protections available to Yalata are not as strong for Yalata as for MT even though they are the same people. This is because the statutory land holding regime for Yalata under the *Aboriginal Lands Trust Act 1966* is from an earlier pre-‘land rights’ era.

95. The land tenure legislation for Yalata should be the same as for MT. This could be done by creating for Yalata exactly the same land holding legislation as MT enjoys under the *Maralinga Tjarutja Land Rights Act 1984*. They are after all, the same people inhabiting and administering proximate lands.

Employment and enterprise opportunities from mining and exploration.

96. In her *Boyer Lectures 2012*, Dr Marcia Langton described the ‘quiet revolution’ referring to the changing relationship between Indigenous people and the mining sector,
consequent upon the resources boom. Economic opportunities have created a ‘new guard of creative Aboriginal workers’ and the welfare state’s grasp of ‘the old paradigm of mendicant natives is loosening’. Dr Langton expresses how history’s treatment of Aboriginal people as different and exceptional had left them ‘inherently incapable of joining the Australian polity and society’.

Yet when Rio Tinto adopted a bold policy framework for engaging Aboriginal people with respect for their rights, it presented extraordinary opportunity. At the Argyle Diamond mine in Western Australia, Aboriginal employment stands at 25 per cent of the total workforce. Like Rio Tinto, mining companies including Fortescue Metals Group and BHP Billiton have ‘developed recruitment and other labour force strategies that have contributed to the creation of the largest Australian Indigenous industrial workforce ever’.

Companies are also offering Indigenous entrepreneurs unprecedented opportunities to tender for contracts, and in 2011 alone, Rio Tinto and Fortescue awarded more than $300 million to Indigenous contracting companies.

Mining is often the only significant industry in remote Australia. Dr Langton reflects on how, whilst this was once ‘a battleground for Aboriginal people fighting for basic rights against ruthless mining corporations unfettered by legislative protections of the local people or the environment, an accord has been reached where native title has provided the leverage for negotiated settlements’.

The historical mistreatment of Aboriginal people by mining companies had left lasting implications for the relationship between Indigenous people and the mining industry. In exploring the reasons for Aboriginal opposition to mining in the 1980s, companies discovered that it was ‘not opposition to mining itself but concern about the racist and inequitable situation of the past being replicated and consolidated in new ventures.’

Dr Langton noted wide assumptions that Aboriginal people were making ambit claims for land and financial returns and the mining industry was treating Aboriginal objection to mining proposals with contempt. It was noted that state governments had not dealt with Aboriginal demands in a constructive way, further hindering the possibility of mining companies and Aboriginal groups talking about issues constructively.

Aboriginal people were seeking ‘recognition of their inherent rights and entitlements and acceptable terms and conditions for their cultural, social and economic futures’. They feared their cultural heritage would be destroyed and the environment degraded, taking away from their customary responsibilities to ‘look after country’, to protect and promote cultural integrity and social vitality.

In Arnhem Land, the Yolngu triumphed over discrimination by creating their own economic enterprises to create jobs. The success of the model, Dr Langton attributes to the affirmation by the leaders of their commitment to land, culture and ceremony but

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also to a work ethic and economic drive, values that can co-exist and strengthen the
group. She has witnessed a growth in intellectual understanding of their predicament in
their determination to solve problems, and a desire to be their own agents.

104. It may be said that Aboriginal land owners and leaders are carving an Aboriginal
footprint in the resources sector, upon rejecting what Noel Pearson described as the
‘soft bigotry of low expectations’.

105. All Aboriginal land and native title bodies including APY, MT and YCI want to
maximize the return for their traditional owner communities from;

(a) royalties
(b) Aboriginal employment in mining enterprises and
(c) Aboriginal enterprises associated with exploration or mining

106. There are many examples of constructive partnerships in relation to royalties,
employment and Aboriginal enterprises in the last ten years in Australia, for example in
the Pilbara. Aboriginal landholding bodies are aware of them and stand ready to
negotiate constructively.

TERM OF REFERENCE 2 ISSUES PAPER 2 QUESTION 2.7

What are the processes that would need to be undertaken to build confidence in the
community generally, or specific communities, in the design, establishment and
operation of such facilities (for the conversion, enrichment, fuel fabrication or
reprocessing of, or the manufacture of materials containing radioactive and nuclear
substances)?

107. MT and YCI do not expect that it is likely that a facility for the conversion, enrichment,
fuel fabrication or reprocessing of, or the manufacture of materials containing
radioactive and nuclear substances (“a facility”) would be located on the Maralinga or
Yalata Lands, given their remoteness from Adelaide, South Australian ports, rail
terminals and other infrastructure.

108. However the issue of building confidence in remote Aboriginal communities to make
informed decisions is common to all the nuclear activities contemplated in each of the
terms of reference and is very important if Aboriginal communities are to play a role in
any nuclear activity in the future.

109. Attached to this submission are statements of the following persons who have worked
with MT and YCI and who have expertise relevant to this and the following questions

Dennis Brown   -  Maralinga traditional owner
Chris Larkin      - Kokatha elder and retired public servant
Dr Scott Cane    - Consulting Anthropologist
Patrick Davoren   - retired public servant
Richard Preece   - community adviser and former public servant
110. Based on the attached statements, MT and YCI consider that the following are the essential aspects of building confidence in a remote Aboriginal community in relation to industry and government proposals.

**Good communication**

(a) communicating and negotiating with the community in the way that the community stipulates – not in a way dictated by government/industry;\(^{17}\)
(b) giving careful thought and applying sufficient resources to demonstrate the proposal and illustrate the issues;\(^{18}\)
(c) listening carefully to what Aboriginal people are saying;\(^{19}\)
(d) ensuring good communication skills to engage with Aboriginal communities;\(^{20}\)
(e) Aboriginal people want to have face to face dialogue with the decision makers;\(^{21}\)
(f) all negotiations should be assisted by independent interpreters except where they are demonstrably not required;\(^{22}\)
(g) difficult concepts (eg. radioactivity) need to be deconstructed and explained in an appropriate way and with the assistance of trusted community advisors;\(^{23}\)

**Giving respect to the community**

(h) acknowledgement of the history of nuclear tests in the region, the impact of this on the MT and YCI people and their country, and that the elders hold this memory and concern;\(^{24}\)
(i) respecting the diversity and decision-making processes of that community;\(^{25}\)

**Negotiating in good faith**

(j) providing full, objective and unbiased information to the community;\(^{26}\)
(k) providing that information in a way which is acceptable and intelligible to the community;\(^{27}\)
(l) developing a relationship of trust between industry/government representatives and the community;\(^{28}\)
(m) negotiating constructively and in good faith with the community;\(^{29}\)

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17 Cane paras 12, 14-15, 21, Larkin paras 5, 10, Davoren para 20, Preece para 6.
18 Cane paras 18-20, Davoren paras 22-24, 30.
19 Cane paras 13-16, Larkin paras 5-7, Davoren para 20.
20 Preece para 6, 13.
21 Larkin para 11, Davoren para 6, Preece para 4.
22 Preece para 16.
23 Cane 18-20, Davoren para 4, Preece para 16.
24 Cane paras 12, 14-15, Larkin para 12, Davoren paras 11, 13-14.
25 Cane paras 12-16, Davoren para 12, Davoren paras 11, 13-14, Preece para 13.
26 Cane para 24, Davoren para 12.
27 Cane paras 18-20
28 Cane paras 23, 26, Larkin paras 14-15, Davoren paras 7-9, Preece para 31.
being open and transparent about the known risks and economic and social benefits of future enterprise;\(^3\)\(^0\)

ensuring continuity of personnel throughout the negotiations.\(^3\)\(^1\)

**Negotiating to the Community’s time frames**

(p) proceeding at a pace acceptable to the community to receive, assess and act on that information;\(^3\)\(^2\)

(q) investing significant time in the engagement and consultation, given the complexities; distinguishing between information provision and consultation to achieve free, informed and prior consent;\(^3\)\(^3\)

(r) setting longer and more realistic time frames for consultations with Aboriginal communities having regard to the fact that it always takes longer for Aboriginal communities to come to a decision through their decision-making processes;\(^3\)\(^4\)

(s) giving the traditional community considerable time to think about the issues\(^3\)\(^5\)

**Equipping the community to negotiate on equal terms;**

(t) providing the community with sufficient resources to obtain high quality advice on the proposed project (technical, legal and other advice);\(^3\)\(^6\)

(u) Aboriginal people need to understand the long term implications of the decision;\(^3\)\(^7\)

**Supporting the community**

(v) accepting the decision of the community and not seeking to influence or change the decision of the community or individual members;\(^3\)\(^8\)

(w) being careful to protect the community against the influence of outside lobby groups.\(^3\)\(^9\)

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29 Cane paras 12-20, 23, 26-27, Larkin paras 5, 7, 10-12, 14-15, Davoren paras 4, 6-9, 11, 13-14, 20-24, 30, Preece paras 6-7, 9-11, 13-14.

30 Cane 18-20, Larkin para 13, Davoren para 4, Preece para 7.

31 Cane para 27, Larkin paras 14-15, Davoren para 9.


33 Cane paras 12, 14-15, Larkin para 12, Davoren paras 11, 13-14, Preece 6.

34 Cane paras 12, 14-15, Larkin para 12, Davoren paras 11, 13-14.

35 Cane paras 12, 14-15, 21, Larkin paras 5, 10, Davoren para 20, Preece paras 19.

36 Cane para 24, Davoren para 12.

37 Larkin para 13.

38 Cane para 16, Larkin para 12, Preece paras 6.

39 Cane para 16, Davoren para 27.
TERM OF REFERENCE 2 ISSUES PAPER 2 QUESTION 2.8

What additional risks for health and safety would be created by the establishment and operation of such facilities (for the conversion, enrichment, fuel fabrication or reprocessing of, or the manufacture of materials containing radioactive and nuclear substances) in South Australia?

What needs to be done to ensure that risks would not exceed safe levels? Can anything be done to better understand those risks?

111. MT and YCI do not have the expertise to make submissions on the additional risks which may be created by the establishment and operation of facilities for the conversion, enrichment, fuel fabrication or reprocessing of, or the manufacture of materials containing radioactive and nuclear substances in South Australia. However MT and YCI can assist the Royal Commission on what can be done to assist remote Aboriginal communities to properly understand those risks and be in a better position to decide whether they wish to assume those risks.

112. MT and YCI refer to the matters raised at paras 66-70 above, relating to the significantly greater difficulties suffered by Western Desert traditional communities in understanding the scientific language and concepts relating to radiation and its risks. These difficulties are extensive and place these communities at a significant disadvantage in understanding and dealing with the risks of radiation.

113. All the same steps need to be taken to assist Western Desert communities to fully understand those risks as are required in relation to question 2.7 above (building confidence in the community to assess the proposal and properly respond to it) namely those steps set out in para 110.

TERM OF REFERENCE 2 ISSUES PAPER 2 QUESTION 2.10

Given current techniques for further processing of radioactive and nuclear substances, what are the relevant lessons for the contemporary management of environmental impacts which should be learned from past South Australian processing practices?

114. MT and YCI have no expertise in relation to past South Australian nuclear processing activities. However they do have unique expertise among South Australian communities in dealing with significant residual radioactive contamination of their lands and managing the environmental impacts.

115. Based on their experience in managing the environmental impact of the residual radioactive contamination of the MT lands by the British government (set out in paras 43-70 and 75-83 above), MT and YCI can identify the following relevant lessons.

   a) do not commence the nuclear activity unless the risks are fully understood and have unqualified acceptance by a properly resourced and fully advised community;⁴⁰

⁴⁰Cane para 24, Davoren para 12.
b) detailed continuing records of the nuclear activity and its environmental consequences must be kept by the processor and supplied simultaneously to the community;  

c) the corporate knowledge about the nuclear activity and its environmental consequences must be fully preserved and 


d) all of the lessons set out in para 110 above.

Entry checkpoint to Maralinga Village and Section 400

TERM OF REFERENCE 4 ISSUES PAPER 4 QUESTION 4.7

What are the processes that would need to be undertaken to build confidence in the community generally, or specific communities, in the design, establishment and operation of nuclear waste repository facilities?

116. It is not just a question of building confidence. It is fundamentally a question of negotiating in good faith constructively and on equal terms with the community.

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41 Davoren paras 5-6. At the Maralinga Minor Trials sites many of the records of site contamination between 1956 and 1963 were not kept by the British Ministry of Defence and could thus not be passed back to MT and the Australian Government.

42 Cane para 27, Larkin paras 14-15, Davoren para 9.
117. All of the suggestions set out above, including in para 110, will be essential for a constructive negotiation with and decision by the community.

118. The types of concerns that Aboriginal communities will have about nuclear waste repository facilities will include the following. Confidence will not be built in the community unless these concerns are met and sound guarantees are made in a way and to the extent necessary, to satisfy the Aboriginal community.

(a) **The protection of Aboriginal heritage**

119. Aboriginal communities have suffered many instances of disturbance or destruction of sites of significance. Aboriginal concerns about the location or nature of the construction of the repository, related infrastructure, roads or railways must be taken extremely seriously and heritage protection solutions implemented which are entirely acceptable to the community.

(b) **Health risks associated with a repository**

120. Aboriginal communities will need to be fully satisfied that the repository and its infrastructure pose no health risks. The health risks for Aboriginal people living a traditional lifestyle may well be different (see paras 51-55 and 75-83 above) and will need to be fully researched in conjunction with the community.

(c) **That the social impact of the repository will be minimal and under the control of the community**

121. The social impact of a project can be extremely deleterious to an Aboriginal community in a number of ways that may not be anticipated by the proponent. Such impacts can only be ascertained and prevented by detailed and careful explanations of all aspects of the repository, detailed discussions (see para 110) and a commitment to research and meet all concerns raised by the community. There will also need to be ongoing consultation and co-operation between government/industry and the Aboriginal landowners about continuing or changing social impacts.

(d) **Aboriginal employment**

122. Undertakings that a repository project will include Aboriginal employment and enterprise development must be significant, tangible, imaginative and must translate into long–lasting Aboriginal employment and enterprise development programs. The approach outlined in paras 98 – 108 above is essential to maximising ongoing Aboriginal employment and enterprise development associated with any repository. This must also be accompanied by serious and detailed programs to deal constructively with employment issues and ensure Aboriginal employment continues.
(e) Criticism of Aboriginal communities

123. Any Aboriginal community that indicates a willingness to entertain a radioactive waste repository is likely to be subject to criticism and pressure from vested environmental interests and possibly other Aboriginal communities. The community will need to be assisted to deal with such criticism, which may be long lasting. One important aspect will be to ensure that any decision by the community is based on sound independent scientific advice\(^43\).

(f) Changes in scientific knowledge

124. Scientific knowledge about nuclear technology and risks is evolving. As a result, occupational, environmental and other radiation standards are under constant review. Any proposal for a waste repository must include that the repository and its environmental impact will continue to be modified to meet changing radiation standards.

Dated the 13\textsuperscript{th} day of August 2015

Andrew Collett AM  
Counsel for MT and YCI

\(^{43}\) Davoren statement paras 26-27