Dear Sir,

Royal Commission – Our role in nuclear energy – Response to the Royal Commission’s address to the Aboriginal Congress of South Australia

As you are aware, on Monday 10th and Tuesday 11th August, the Aboriginal Congress of South Australia (Congress) convened a meeting in Port Augusta to discuss the Nuclear Fuel Cycle Royal Commission and the issues and concerns of the potential expansion of the uranium mining industry in South Australia. Following discussions with yourself and other members of the Royal Commission, representatives from sixteen claim groups and PBCs continued to discuss matters of the nuclear fuel cycle. As Chairperson of Congress, I now write on behalf of those native title representatives present and on behalf of Congress SA to state our common position.

The native title groups represented at the August Congress meeting included:

- Adnyamathanha Aboriginal Corporation RNTBC
- Antakirinja Matu-Yankunytjatjara Aboriginal Corporation RNTBC
- Barngarla
- De Rose Hill Ilpalka Aboriginal Corporation RNTBC
- Irrwanyere Aboriginal Corporation RNTBC
- Kaurna
- Kokatha Aboriginal Corporation RNTBC
- Narungga Nationas Aboriginal Corporation
- Nauo
- Ngadjuri Nations Aboriginal Corporation
- Ngarrindjeri
- Nukunu
- Tjayuwara Unmuru Aboriginal Corporation RNTBC
- Wangkangurru Yarluyandi Aboriginal Corporation RNTBC
- Yandruwandha Yawarrawarrka Traditional Land Owners Aboriginal Corporation
- Yankunytjatjara Native Title Aboriginal Corporation RNTBC

**The Letters Patent**

The Nuclear Fuel Cycle is yet another case where we anticipate unwanted interference with our traditional lands, water, sea and sky against our will. We ask that the Commission give regard to the Letters Patent – the very document upon which this state was founded – and the rights of ongoing enjoyment of country and culture afforded to Aboriginal people by it. Indeed, these sentiments on the preservation of our rights and interests are reflected in s211 of the Native Title Act. As a former Governor of South Australia, you will no doubt understand the significance of this founding document. For the Aboriginal community of South Australia, the Letters Patent illustrates the injustices served through colonisation of our land and waters.

In 1836, the Letters Patent created the Province of South Australia. King William IV stated that nothing in the Letters Patent ‘shall effect or be construed to affect the rights of any Aboriginal natives of the said Province to the actual occupation or enjoyment in their own Persons or in the Persons of the Descendants of any Lands therein now actually occupied and enjoyed by such Natives’. We, the Traditional Owners of this land, believe that the Letters Patents contemplated a just settlement in South Australia, however our history demonstrates that justice has not been afforded to Aboriginal people. Our lands were taken from us without our consent, causing irreparable loss and harm to all Aboriginal Nations. Issues continue to arise and our rights continue to be compromised, particularly with regard to the founding principles of free occupation and enjoyment of our lands. In giving consideration to this Royal Commission, we see further actions led by the State which are inconsistent with the intent of the Letters Patent.

**No to Nuclear**

We, as native title representatives of lands and waters of South Australia, stand firmly in opposition to nuclear developments on our country, including all plans to expand uranium mining, and implement nuclear reactors and nuclear waste dumps on our land. We ask that the Royal Commission recommends against such plans, thoroughly and respectfully considering our views and the views of other Aboriginal groups, individuals and key stakeholders to prevent dirty and dangerous nuclear projects being imposed on our lands and on the lives of our people now and for future generations. Many of us suffer to this day the devastating effects of the nuclear industry and
continue to be subject to it through extensive uranium mining on our lands and country that has been contaminated. We view any further expansion of industry as an imposition on our country, our people, our environment, our culture and our history. We also view it as a blatant disregard for our rights under various legislative instruments, including the founding principles of this state.

**Current Laws - Nuclear prohibition**

Under the *Nuclear Waste Storage Facility (Prohibition) Act 2000* (SA), there is a prohibition against the construction or operation of facilities for the storage or disposal of nuclear waste in South Australia and its transport into and within the State. We ask the Royal Commission to take note that this legislation was drafted just ten years ago with the intention of protecting our state and community. It is worth considering the objectives of this Act, which are:

... to protect the health, safety and welfare of the people of South Australia and to protect the environment in which they live by prohibiting the establishment of certain nuclear waste storage facilities in this State.

Whilst we acknowledge that laws can change for the greater good, we do not see how changing a law which prohibits the importation of dangerous substances into South Australia can bring about any positive outcomes for the people of South Australia and the environment. All represented Native Title groups support the prohibition against nuclear waste storage and will not support any amendment to this legislation. From the perspective of the Aboriginal community, economic benefits (whether to the State itself or community members) do not outweigh the detrimental cost to Aboriginal health, Mother Earth and our rich and ancient culture, and all South Australians. Short term economic gain should not cloud the fact that we as the South Australian community may be taking on a dangerous liability that will remain so for thousands of years.

**Current Laws – Our Rights**

If bipartisan support were attained and a proposed nuclear waste dump were to interfere with native title land or significant sites, Aboriginal people – whether as Traditional Owners or Native Title Holders – have various rights and protections under the *Native Title Act 1993* (Cth) (‘NTA’), *Aboriginal Heritage Act 1988* (SA) (‘AHA’) and *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (‘ATSIPA’). There is some uncertainty around how nuclear developments will interface with these rights, thus with this in mind we ask the Commissioner to examine the rights of Aboriginal people against best practice. The development of a nuclear waste dump may
give rise to a right to negotiate an outcome under the NTA, but we know the challenges of negotiations and that if an agreement that all parties are satisfied with is not achieved, the final decision will lie with an arbitrator. Unlike our brothers and sisters in Muckaty Station, Northern Territory, we do not have a right to veto. This is a clear distinction between land held under the NTA and under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth). Knowing that we cannot simply say ‘no’, Aboriginal people may need to concede some rights or we may be at the mercy of an Arbitrator whose interests may or may not align with land holders.

In regard to Aboriginal Cultural Heritage, ‘Traditional Owners’ might be able to rely on the South Australian AHA to prohibit ‘damage, disturbance or interference’ to an Aboriginal site. However, we have experienced that the Minister can override this and authorise that our sites and rich culture be destroyed. We also know that there has never been a single prosecution under the AHA, acknowledging its limited practical application. How, we ask, can Aboriginal people be expected to place our faith and trust in the Government when, under such legislation, our land, sacred sites and culture is already under threat?

Again, we ask that when making his recommendations, the Commissioner gives regard to our legal position and the fact that laws written with the intention of protecting Aboriginal rights and interests may lack sufficient practical application or give rise to uncertainty. Consider, too, these rights in light of strong international standards - namely the United Nations Declaration on the Rights of Indigenous Peoples and the right of ‘free, prior and informed consent’ bestowed on Indigenous people, giving this nation’s first people the right to either approve or reject proposed actions that may affect country, culture and connection to it. These are strong, internationally recognised rights which cannot and should not be ignored.

**People, Environment and Health**

It goes without saying that nuclear materials and radiation is hazardous to health and to the environment. It respects no borders and travels with wind, rain, in waterways and through soil. When humans, animals and plant life is exposed to radiation, a myriad of health implications ensue, including gene damage, cancer, sterility, depressed biodiversity, shorter life spans and other chronic illness.

Our elders and families who were subject to the ‘puyu’ or ‘black mist’ following atomic testing at Maralinga are testament to the damaging effects of radiation. Many have suffered from cataracts, blindness, loss of teeth and cancer and continue to suffer the effects today. We do not want to see a
repeat of this dark history. Our people are already the subject of poor health, low life expectancy, high infant mortality, and higher incidences of diabetes and heart disease. The vast and disturbing health disparities between Aboriginal and non-Aboriginal people will only be widened if our people are again exposed to nuclear radiation.

Our concerns also regard the native flora and fauna which we, as traditional owners and custodians of this land, have a responsibility to protect for the enjoyment of future generations. We fear contamination of the Great Artesian Basin and other underground water systems, which provide important sources of fresh water through much of inland Australia. As you can appreciate, this affects not only the Aboriginal community but also the broader Australian population who will be gravely impacted if there were to be spillage or leakage of nuclear waste, whether during its transportation or storage. On a deeper level, our totems and stories are inextricably linked to animals and plants. It is our identity, where we begin and where we will go and any interference with these things has devastating consequences – as history as already demonstrated when our People have been forced from our lands.

We are concerned that this Royal Commission is not giving the necessary consideration to the significant health implications of the nuclear fuel cycle. While the terms of reference were amended to include health, the mention of this is absent in the Issues Papers or in other material and initiatives of the Commission. We ask that the Commission engage with health experts to properly consider the implications on health of all aspects of the nuclear fuel cycle and any scenarios being contemplated by the Commission.

Values and Responsibility - Country, Kin and Culture
We are concerned that interference with country has implications not only on the physical environment, but also on its deeply complex social, cultural, and kinship systems. These systems determine how Aboriginal people relate to each other and define our roles, responsibilities and obligations in relation to one another, to country, to ceremonial business and to cultural practices. Hurting our land and promoting disconnection between it and its owners, severs the cultural obligations we have to lands and waters and our responsibilities under our law to protect and maintain it for future generations.
Thus, we call on the South Australian Royal Commission to recommend against any further uranium mining, the construction of processing plants and nuclear reactors, the generation of electricity through nuclear and radioactive materials, and the disposal of nuclear waste on our country.

**History**

Again, we ask that the Royal Commission give serious consideration to the atomic testings that took place in the 1950s and 60s on Maralinga-Tjarutja lands and the impact that it had on Aboriginal people insofar as forceful displacement, health implications (as stated above) and irreversible environmental damage, and the 'clean-up' that remains incomplete. From the Maralinga Atomic Tests, to the Federal’s Government’s proposals for a National Waste Dump and now, a state inquiry into the feasibility of expanding mining, processing and waste disposal, Aboriginal people and our lands continue to be at the mercy of the nuclear industry and our rights continue to be impeded.

This very debate is not our debate but a generational debate. Our elders past and present spoke so strongly against and more recently, our brothers and sisters in Muckaty, Northern Territory spoke strongly against. South Australia has a nuclear past that cannot be ignored and Aboriginal people who have been impacted by this nuclear past cannot be ignored, as well as those Aboriginal people who still suffer today from such an industry, not to mention the non-Aboriginal community of South Australia.

**Engagement and Information Sharing**

The Commissioner has asked Congress to specifically identify ways of engaging Aboriginal people in the inquiry process, learning from past mistakes of the Government and focusing on how to do things in a better, more culturally inclusive and consultative manner.

The starting point is our concerns around the lack of Aboriginal participation within the Royal Commission itself. Our expert knowledge of the land cannot be denied, nor can it be read and interpreted by anyone better than by Aboriginal people. We would ask that the Commissioner engage Senior men and women to provide expert opinion and Aboriginal perspective, particularly with regard to the land and its use.

Notwithstanding such concerns, native title representatives express an ongoing willingness to continue a dialogue with the Commissioner and advise that if the Commission is to continue to engage with the broader Aboriginal community in South Australia, it meets regularly with Congress to discuss the progression of the inquiry, including any new evidence that emerges; it arranges such
meetings with the heads of Congress; such meetings are held in locations most convenient to regional and remote communities; and it employs an interpreter for such meetings since a vast majority of our community members have the English language as a second or third language.

One question we do have is how the Commission will respect the information that may be shared in the fact-finding exercise? Will this information be treated confidentially? How are the Aboriginal peoples’ health stories going to be addressed and articulated in the Royal Commission? We ask that the Commissioner please provide a response to these very important issues raised so we are very clear on how this information will be handled.

From an Aboriginal perspective, we believe the best way to engage the Aboriginal community and to then attain, store and share relevant information should involve the following:

- The Commission must at first acknowledge the fact that this Industry has never considered the Human Rights of Aboriginal people, the first peoples of this State. This is not about State economics, industry or State development but rather, about Human Rights. The Commissioner must recognise that these matters are personal; there is hurt, pain and suffering, and Aboriginal people are still being treated with very little respect. As traditional owners of this land, we too have cultural obligations and responsibilities for our future generations. We emphasise, Aboriginal peoples have suffered, so their stories need to be respected and treated with dignity;

- Aboriginal people must be at the forefront of any regional engagement and not an afterthought. Aboriginal people must have a seat at any expert panel to provide advice on Aboriginal Law and Culture, past doings, regional history and Aboriginal specific legislation;

- Aboriginal people also need to be employed as experts to articulate peoples’ and key stakeholders’ submissions.

- Interpreters and translators need to be engaged and skilled in the language of the industry. It was raised that if the Commission was going to engage with Aboriginal interpreters and translators, they needed to be trained and brought up to skill in understanding: (a) what is a Royal Commission; (b) what are the Terms of Reference; and (c) technical terms and the simplified corresponding terms for the wider community to understand. To date, this has
not occurred). In addition, these staff should be employed for the entire duration of the Royal Commission process, working under the Regional Engagement Manager to ensure that any interaction or engagement with the Aboriginal community follows their recommendation on cultural protocol.

- The Staff of the Royal Commission need to work closely with State Departments – Department of State Development – Aboriginal Affairs and Reconciliation Division in order to gain an understanding of the key groups and organisations that exist in South Australia.

- The Commission needs to be very clear about the fact-finding/evidence based process. Evidence that is gathered must be treated with respect and articulated by the Aboriginal expert panel member for the Commissioner’s report. This information should form a Chapter specifically on Aboriginal issues and concerns. Any submissions containing highly confidential and culturally sensitive information should be returned or destroyed on request.

- Importantly, communication and dialogue must be a regular, two-way process, with all key groups and stakeholders. It must be open and transparent.

To summarise, we ask that the Commissioner give serious consideration to all matters expressed in our submission but particularly our innate connection to Mother Earth, its cultural significance and our responsibilities in relation to it. Let us remind the Commission that Aboriginal people of South Australia have fought – and won the fight – against nuclear activity in this State. We stand as a united front and say no to nuclear. We ask that the State give us – the Traditional Owners – the right to be engaged meaningfully, to have our views heard and taken seriously, and finally to have our land, custom and culture be respected and maintained for generations to come.

Yours Sincerely,

Tauto Sansbury
Chairperson, Aboriginal Congress

Karina Lester
Chairperson, YNTAC

On behalf of the Chairpersons and representatives of the aforementioned Native Title Groups