



1 June 2022

The Honourable Madeleine King MP  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

Dear Minister King

### **The Barngarla People and the NRWFMF**

We congratulate you on your recent election victory and appointment as the Minister for Resources and Northern Australia. We are writing to you, as the former Minister for Resources administered the *National Radioactive Waste Management Act 2012* (Cth) under the relevant Administrative Arrangements Order. We have not seen anything which alters this, and so we are sending you this letter to you on the understanding you are now the correct Minister.

We have been awaiting the appointment of the Minister for Resources before writing this letter. That being done earlier today, we now take the opportunity to write to you and Prime Minister Albanese and have also provided this letter to the First Nations Caucus.

We appreciate Labor's efforts, whilst in opposition, to protect our right to Judicial Review. We particularly appreciate the work that you and your office did when you were the Shadow Minister.

As you may remember the National Party shortlisted the site of Napandee at Kimba, and then conducted a community ballot to determine if the facility had appropriate support. As the First Peoples for the area, the Barngarla were excluded from this ballot. Following the removal of our right to vote, we were also excluded from a further survey, the Neighbourhood Survey. In the 21<sup>st</sup> Century we, as Indigenous People, were denied the right to vote on the most controversial development in Australia being placed on our Country.

Sadly, the former Government at every turn tried to silence us in this process, as the Government did not allow us access to the land to undertake a proper heritage survey, tried to remove our right to judicial review, sought to legislate the location directly, abandoned their commitment to ensure that the facility had broad community support, altered the proposal to include military waste inconsistently with the treaty and tried, through various affiliated organisations, to interfere with our ability to bring judicial review including having parties costs orders against us as a means to blocking the Barngarla people from going to Court.

Despite this, we stood tall, and we have brought these legal proceedings. They were brought against Minister Pitt, but because you have won the election, the matter now becomes yours to deal with and you have to decide what Government you want to be.

Although we appreciate the right to bring these proceedings and all that you and your office have done in Opposition, the Barngarla people unequivocally make it clear that we request that you revoke the declaration or consent to the orders quashing the declaration. We call for this to occur at the earliest opportunity possible in the new Labor Government, because we do not want to fight against you in Court which would not only take a number of years, but result in spending our vulnerable community's resources protecting our people against the contemptuous behaviour of the last Government; nor do we want your Government to be tarnished by these horrible failures.



We are committed to this progressing this matter and believe we will win in these proceedings if we have to fight them, but we do not think we should have to fight your Government on these issues.

Nothing in this letter undoes Labor's previous effort to block legislation removing our right to Judicial Review. Nor is what we are now asking inconsistent with what we asked of you in Opposition. It has always been our clear position that our treatment by the former Government was horrible to our people, and no declaration to place a nuclear facility on our traditional Country should be made. When you were in Opposition, all we could ask of you was to step in and protect our right to Judicial Review, as whilst in Opposition you had no power to undo any declaration. We continue to be grateful for these efforts as they have allowed us to pursue judicial review. However, much like you have now inherited a Court case against you, you have also inherited the power to remove the declaration altogether. Accordingly, we now write to you in your new status as a Minister of the Government, and our request to you reflects that new capacity.

At its core, as we know you know well, the Barngarla have had Minister Pitt place the National Radioactive Waste Management Facility on our traditional country, without us receiving the right to a vote in the community ballot. We were excluded, they said, because "our native title land wasn't rateable." But we all know that the previous Government gerrymandered the ballot to prevent us from voting, because, ultimately, they did not want us to vote.

As the First Peoples of our Country, we were cautiously optimistic to see Australia's new Prime Minister commit in his first speech to the *Uluru Statement from the Heart*. Let's look at this statement from our collective peoples. It calls for a "*First Nations Voice*". It states that only "*When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country*". It talks about "*our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination*".

We ask ourselves how can we have any of the promise of the Uluru Statement from the Heart, when the most controversial Government project currently in Australia is being placed on our Country, in the area of our native title Determination and less than a few minutes walk from our immediately adjacent native title lands, where we can live, hunt, and preserve our traditions, and yet where we were given, **no** vote, **no** say, and **no** self-determination.

Further we ask how can any Australian feel reconciled with a Government, when a Government can abandon the commitment to "broad community support" and walk away from that without any consequence. It remains a sad stain on the integrity and honesty of the former Government, that they would spend years promising to not place this facility on an unwilling community, and then at the last minute, Minister Pitt would conclude that he was not bound by this and decided to declare Napandee even without being satisfied that the community at Napandee wanted the facility.

We asked for the vote, but we were denied this by Minister Canavan, Minister Pitt and those working for them or with them. The Uluru Statement from the Heart ends with the words: "*in 1967 we were counted, in 2017 we seek to be heard*". No truer words have been spoken for us. In 2017 and 2018 we sought to be heard in the specific sense of asking to be part of the vote. We asked to be in the Kimba Community ballot to have a vote on the nuclear facility, but were told by the Government we were not allowed to vote. We were not heard; the former Government tried to take away our voice, but they could not silence us.

You know this because you know what happened next. Realising that they had failed to provide even a once of respect or fairness to our People, and the farming community of



Kimba who stand together with us, the Coalition Government then sort to remove our right to judicial review. Rather than trying to fix their mistakes, they sort to remove our rights altogether.

Not only was this an attack on us as First Nations People, it was also a deliberate abandonment of Government and Executive accountability. Australians deserve accountability, and clearly voted for this at the last election.

The Uluru Statement from the Heart makes clear that our *“sovereignty is a spiritual notion: the ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown”*. Our spiritual sovereignty has been violated by the former Government, and we hope and believe in your Government that you will not violate it further.

We understand that any Government in Australia would like to have a solution on where to locate this controversial facility, and so we understand the fatigue and concern which will raise the voices to ignore our plight. However, we cannot avoid the plight of the vulnerable. This was the Australia we were becoming under Prime Minister Morrison, but it must not be our future under Prime Minister Albanese.

At its core, we cannot see how a Labor Government can implement the Uluru Statement from the Heart and the long overdue reform on Government accountability, whilst maintaining Court proceedings against us as the First Peoples for this area, where all we ever tried to do was have a vote and a say on our Country. There is too deep a logical inconsistency in promoting *“First Nations Voice”* whilst fighting us in our Court case which only came about because the former Government denied our voice existed.

Nor can we see how work on Government integrity can be progressed, in circumstances where your Government would be fighting to preserve the horrible failures of its predecessors. In particular, a declaration where the Government abandoned the test of broad community support.

This is clear if we reflect on this one point: if this facility is built where it is presently proposed, it will forever be built on a location where the First Peoples for the area did not get the right to vote.

For these reasons we think you need to withdraw the declaration or consent to it being quashed. We see no other way.

These are not your failings, or the failings of your Government. You inherited them, like we did. In that way, we are both victims of the bad behaviour of the National Party who came before you. But we will not be victims because we will fight for our Australia and to make our country better. We will be what our shared Nation needs; good people, local heroes, people with the values to stand up and make a difference. We hope to make that difference with you, together.

Sincerely,

*The Barngarla People*

Barngarla Determination Aboriginal Corporation RNTBC ICN 8603