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Members in attendance: Senators Antic, Brockman, Gallacher, Hanson-Young, McAllister, Patrick.

Terms of Reference for the Inquiry:
To inquire into and report on:
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Evidence was taken via teleconference—

Committee met at 11:05

CHAIR (Senator Brockman): I declare open this hearing of the Senate Economics Legislation Committee for the inquiry into the National Radioactive Waste Management Amendment (Site Specification, Community Fund and Other Measures) Bill 2020. The Senate referred this inquiry to the committee on 28 February 2020, initially for report by 12 June, but this has since been extended to 31 August 2020. The committee has received 104 submissions so far, and they are available on the committee's website. Our first hearing was held on 30 June, with the second on 28 July 2020.

As this is a public hearing, a Hansard transcript of the proceedings is being made. However, the committee may determine or agree to a request to have evidence heard in camera. Information on procedural rules governing public hearings and claims of public interest immunity has been provided to witnesses and is available from the secretariat. I remind media representatives listening to follow the media guidelines and any instructions of the committee secretariat. I also let you know that answers to questions on notice should be sent to the secretariat by close of business Friday 14 August 2020.

Welcome. Thank you for appearing before the committee today. I invite you to make a brief opening statement.

Mrs Lienert: I've been in Kimba for over 23 years, and my husband and I own a property 40 kilometres north of Kimba. We also own a manufacturing general engineering business in town and have three young children. I'm also a schoolteacher in the community and am heavily involved in the community in various ways. Thank you for the opportunity to present today.

Kimba has changed a lot over the past 30 years, decreasing in size and population. Farms are getting bigger and using fewer employees, and small businesses are finding it tougher. Many locals have to fly in and fly out for work, and many others have had to leave town. Like many other small communities, we are vulnerable and need to find ways that create a sustainable community not reliant on one industry—namely, agriculture.

We represent the Working for Kimba's Future Group, a volunteer group formed in April 2016 with the common goal of identifying and working towards a secure and independent future for our community. Along with that goal, on behalf of our community we strongly support having the national radioactive waste management facility on the selected site at Napandee, near Kimba. Our group, which represents people with a wide variety of community interests, perspectives and backgrounds, has observed increasing support for the facility throughout the community. Over the past five years, our community has had many opportunities to learn about the facility, the need for it nationally and how it will be safe and create 45 jobs directly, with many overflow benefits. Throughout the process, our community has been provided with the motivation to take a step back and look at the future and long-term viability of the district.

Based on the process, we know that the two industries—radioactive waste management and agriculture—can work safely side by side with no negative impact on our existing industry across the EP and beyond. We know about the numerous benefits this facility will bring. It will deliver jobs to our community and wider region not only once in operation but also in the building stage. A business construction workshop alone had 120 people in attendance from all over the EP, finding out how they or their businesses can get involved in the project. In addition, the facility would form new direct links between our community and the region for science and educational opportunities with Geoscience Australia, ANSTO, CSIRO and Canberra. We also know the facility would lead to an increase in tourism in the area.

When many of us speak to people from across the Eyre Peninsula and South Australia, we've been congratulated for our community's persistence and proactiveness in looking further into this new sustainable industry. The public can see that the small communities like ours need this. Our group supports the facility.

We also support the community fund being set out clearly in legislation. That fund reflects extensive consultation with the Kimba community through the Kimba Consultative Committee and Kimba Economic Working Group and will provide direct benefits to support economic growth, community infrastructure and development, and future opportunities to secure high-quality services and more.
Finally, we also support the decision to provide land in the buffer zone around the facility for community research and development in the agriculture sector.

We are satisfied that the process has been appropriate and thorough and that the community has been clear in its support. Sixty-two per cent of the community said yes to this facility, including all direct neighbours to the site. That was one of the reasons our area was chosen to have it. We are extremely pleased and proud to say it will be at Kimba.

In conclusion, we've had this consultation process which has created a well-informed community on an issue of some complexity. Now, after five years, we can all be confident and definite that Napandee is the best site. It is now time to reward our community for its dedication and innovation by moving forward in the process. Thank you for your time.

CHAIR: Thank you for your opening statement. I'll kick off questions. Can you tell us a little bit about the origins of the group and how that interacted with the origins of the idea to site the nuclear waste facility in and around Kimba?

Mrs Lienert: Yes. In April 2016 we had a meeting with a lot of community members who were very passionate about exploring the opportunity to host the waste facility. From this, a large group of people put up their hands to say that they wanted to be heavily involved in that investigation. After the first phase, when we missed out on the opportunity, we had lots of people come to us and say that they wanted to persist. They found out there was lots of information that they didn't know, and we provided as much of that information to them as possible, and we found out that we had a lot more support. And so we persisted with finding the best location for this facility.

The people who supported us along the way are from the 62 per cent of people who voted yes. They come from a diverse range of people. They are farmers, local businesspeople and people with young families right through to the elderly. People all across the community have supported our group a long the way. We were able to provide them with important information to help them understand what this facility is really about and what the process was really about, and they could then go ahead and make an informed decision. We've just provided the information they've needed and helped people gain a better understanding to make that decision.

CHAIR: Excellent. Thank you very much. I'll throw to the deputy chair now.

Senator GALLACHER: Mrs Lienert, this point is very technical, because we're actually inquiring into the National Radioactive Waste Management Amendment (Site Specification, Community Fund and Other Measures) Bill 2020. Are you fully cognisant of the implications of that bill? I'll read a couple to you:

- allowing regulations prescribing additional land for expansion of the site made under proposed subsection 19A(1) to commence before the Parliament has had the opportunity to scrutinise the regulations; and
- specifying additional land that is required to provide all-weather access to the site via notifiable instruments, which are not subject to parliamentary tabling or disallowance.

These technical aspects of this inquiry, on one hand, give the Senate some ability to scrutinise them as a precedent for other areas, but, in particular, do they affect your community? Do you see any problems with these types of legislative instruments?

Mrs Lienert: No, not at all. We have a great understanding of what the facility will mean to the community, what will need to be done for it—

Senator GALLACHER: [inaudible] participated in the earlier references inquiry, and I think this is a legislation inquiry about specific aspects of the legislation. I know that there are very passionate views on both sides of the argument, and I've heard them throughout the hearings that we've conducted in Kimba and Hawker and the like, but this is actually about the legislation. It goes on to say:

In light of the minister's detailed advice, the committee leaves to the Senate as a whole the appropriateness of excluding aspects of the natural justice hearing rule in relation to decisions about the making of regulations to expand the site and the making of instruments to provide all-weather access to the site.

These are very technical, legalistic mechanisms. Are you aware of them, and do you support them? That's my question.

Mrs Lienert: Yes, we are aware of them, and yes, we do support them.

Senator GALLACHER: The final one I want to put up there is:

In light of the minister's detailed advice, the committee leaves to the Senate as a whole the appropriateness of allowing delegated legislation to exclude the operation of prescribed State, Territory or Commonwealth laws.
Are you aware of that and do you support it or disagree with it?

Mrs Lienert: Yes, we are aware of it, and yes, we support it.

Senator Gallacher: Thank you very much, Chair.

Chair: Senator Antic, are you on the line?

Senator Antic: I am. I'm interested to know from those in the group what they think that Kimba's future would look like if the facility were not to go ahead. Has anyone given any thought to that rather curly question?

Mrs Baldock: Yes. We've heard a lot about our supposed prime agricultural land in the Kimba district and how the 150 hectares for the facility will take that away. I wouldn't think that any other parcel of 150 hectares in a low rainfall area would produce anywhere near the benefit of over $8 million annually to the community. Of course the rest of the farming area in the Kimba district will continue to generate whatever income it would normally, regardless of these 150 hectares being used or not. Our prime agricultural land is actually very marginal. In fact, it's well outside the highly recognised and documented Goyder's Line. On my farm, not that far down the road from Napandee, our growing season's rainfall is sitting at a very low decile 2 for the fourth consecutive season. That means low production, low income and mental and economic stress.

Every time our community experiences drought, we lose people. We lose students, youth, neighbours, friends, sporting club members, emergency service volunteers and all manner of human capital and capacity. We gain more empty houses and property for sale. Even in good times, we lose our youth in search of higher education and job opportunities. These will shrink even further if we continue to rely heavily on agriculture in a low rainfall area. No facility will mean the continuation of little opportunity for us to retain our youth and attract them back to support our community and growth viability and vibrancy.

Of course our community would continue to work very hard at seeking other opportunities, as we've done for decades, even if we weren't to have the facility, but we don't have to look very far down the road to see other similar communities that have continued to rely on agriculture and diminished to the point that they no longer have any retail stores, they've lost their sporting clubs and students have to travel for longer and longer on school buses. The spiralling effect as the loss gains momentum is very hard to halt, regardless of how many silos we might paint and signs we might erect on the highway.

Senator Antic: You would be aware, of course, of proposed amendments to move the facility to Woomera. Following on from that explanation, I'm interested in what your views were regarding that proposal.

Mrs Baldock: Naturally, the 62 per cent of our community prefer it to be in Kimba, not Woomera, obviously, for all the reasons we have previously outlined.

Senator Antic: You would be aware of that and do you support it or disagree with it?

Mrs Baldock: Yes. We've heard a lot about our supposed prime agricultural land in the Kimba district and how the 150 hectares for the facility will take that away. I wouldn't think that any other parcel of 150 hectares in a low rainfall area would produce anywhere near the benefit of over $8 million annually to the community. Of course the rest of the farming area in the Kimba district will continue to generate whatever income it would normally, regardless of these 150 hectares being used or not. Our prime agricultural land is actually very marginal. In fact, it's well outside the highly recognised and documented Goyder's Line. On my farm, not that far down the road from Napandee, our growing season's rainfall is sitting at a very low decile 2 for the fourth consecutive season. That means low production, low income and mental and economic stress.

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Senator Antic: Thank you.

Chair: Did you have any further questions, Senator Antic?

Senator Antic: I can keep going. I've got a couple more, but I am conscious of taking other people's time. Is everyone happy for me to have another question?

Unidentified speaker: Yes, no worries.

Senator Antic: This is perhaps more of a broad question. Clearly, your group are very supportive of the proposal. I'm just interested if you could flesh out bullet points as to why it is that the group is so supportive of the facility. You've covered a few of them already, of course, but there might be some specifics for the area, the region or the town.

Mrs Cliff: Right from the word go, we were interested in the fact that the facility has the potential to provide jobs for our community that aren't reliant on agriculture. When we went into this, we were more than happy with the proposed 15 jobs that were estimated at that time. To think that there are 45 jobs here and the recently announced 35 jobs in Adelaide, that is just fantastic for South Australia. It mightn't seem like a big number, but, to a small population, that is huge. We do believe that the jobs are there and they will have spin-off in the community, creating more jobs and more economic activity. They were the key things—that we are looking to maintain our population. We are looking to hopefully grow it, but, at the very least, maintain what we have here and provide something for our children so they can stay here and work here rather than having to go away to find that employment.

Senator Antic: Are you expecting that you will have some return of people or some return of children that might be looking for work? Obviously, there's a will, I imagine, amongst some of the younger people and the family-age people to come back and be closer to family. This might give them the opportunity to do so.
Mrs Cliff: Yes, there are definitely young people out there who would return home if there were other types of job opportunities here.

Senator ANTIC: I have one final question. I'm interested in the group, Working for Kimba's Future. Can you tell us, once again, who you represent broadly in the area. Is it businesses, residents or all of the above?

Mrs Lienert: Within our actual committee group, we have people from small businesses, farmers, young people and older people. We represent a range of employees and employers across the district—volunteers, which is quite heavily reliant on, within our small community. We represent all of those sorts of people and people that are looking forward to the future of the community and can see that we need something more sustainable in our community to keep us going.

Senator ANTIC: That's a very broad group. That's all from me, Chair.

CHAIR: Senator Patrick?

Senator PATRICK: Thank you very much for your time today. Over the period of the construction, the numbers it looks like, in terms of jobs, are something in the order of about three to four full-time employees, or equivalent of those. Is that a significant consideration in your support for the facility?

Mrs Cliff: We'd just reiterate the fact that, even just a few jobs that are permanent and not related to agriculture—there will be a lot of jobs that are related to security, waste operation and technicians, site management and community outreach, environmental protection and quality control, and five new jobs in safety and radiation protection. That's 45 jobs, it has been estimated. We were happy with 15. The jobs may be full time or part time or whatever, but all of them create economic benefit to our community, and from that there are spin-offs in other businesses, creating jobs and employment for other industries that are keen to be supported by having something to start them off here.

Mrs Lienert: In addition to that, the whole build process of the facility would also bring in over 180 jobs—70 just in preparation work in getting the area ready. So it's not just about what's there once the place is in operation. It's about everything else leading up to this, and the boost to the economy and jobs is going to be enormous.

Senator PATRICK: Okay. I'm just working off the Cadence Economics study that talked about migratory work—that is, FIFO-style work—during the construction. It estimates somewhere between three and four full-time local employees. Then it moves on and says that during the operation period it should be up around 45. What do you say to the prospect that maybe two or three years into the operation of the facility that facility is made a remote facility, with the potential loss of those jobs? Is there anything that's guaranteed, in your view? Certainly, there's nothing in legislation, and governments change and ministers change. How sure can you be that these jobs will, in actual fact, stay, noting ARPANSA's response to this committee?

Mrs Lienert: We understand that there will be 45 jobs within the facility. Whether it's two or three years down the track of operation or 50 years or 100 years, there are so many of these jobs that cannot be taken away. For example, the security jobs are still going to be needed. The waste operations and technicians are still going to be needed on site. So I do not believe that a decrease of that amount in the number of jobs would come anywhere near that in two or three years. In addition to that—

Senator PATRICK: Some may drop, if it were the will of the government. And I say that noting that the Bureau of Meteorology, for example, which has made a number of its instrumentations remotely accessible, have contracted and pulled their jobs away, particularly from country areas.

Mrs Lienert: It is our understanding that ARPANSA would not allow that at this stage, as everything needs to meet the regulations and best practice and be along those lines. At this stage, we have not been privy to any other information that takes away anything, other than 45 jobs, and we believe in that.

Senator PATRICK: So you haven't seen ARPANSA's responses to questions on notice in this inquiry that make it very clear there is no requirement to have a manned facility. It's not a licensing requirement. An option could be presented to ARPANSA that doesn't involve a manned facility.

Mrs Cliff: Regardless of what the proposed outcome is, there are no guarantees in life in anything. Even agriculture is becoming more and more automated. Globally, we are becoming automated. Of course that's a potential thing in the future; however, we believe that the opportunities for our community to grow in the meantime and for the tourism attached to it won't disappear, and we can maintain that into the future.

Senator PATRICK: What about the opportunity—

CHAIR: Senator Patrick, I will just need to share the call. We will come back to you if we have any extra time.
Senator McALLISTER: I have one question for the group and, before I ask it, I thank you very much for appearing and sharing your perspective. It's really appreciated. You've been involved with this process for some time, I gather, talking with both community leaders and government about the project. Is that correct?

Mrs Lienert: Yes.

Senator McALLISTER: When this process commenced, it was imagined that the end point would be the minister making a determination under the legislation after a period of consultation. Was that your understanding?

Mrs Lienert: Yes.

Senator McALLISTER: Can you communicate any information that's been given to you about why we've moved away from the old process where the minister made the decision to this new process where the parliament makes the decision through legislation? What have you been told about the reasons for this piece of legislation?

Mrs Cliff: I believe that the processes are evolving. This process has taken more than four decades to come to this point. I do believe that it is appropriate that our federal parliament be responsible for coming up with a long-term solution for our low-level and intermediate-level radioactive waste.

Senator McALLISTER: Thanks; that's really useful, and I appreciate your opinion about it. But I'm asking a different question: have you been provided a reason for the change? When this particular consultation on this site started, one process was on foot under the old legislation, and, at the end of that process, the minister made a decision. We've now moved to a new process where there's a piece of legislation. What did the department tell you about why the process was changing?

Mrs Baldock: Thank you for the question. We've been aware that the legislation will need changing, because it was established when the site was proposed for the Northern Territory. Through the KCC and the economic working group, we have been aware that the legislation will be changed before it becomes operational.

Senator McALLISTER: When did you become aware of it?

Mrs Baldock: Probably very early on in the process of having the KCC and the economic working group established in Kimba, I recall. An awareness of a legislation change being needed has been long term in the process of those two bodies.

Senator McALLISTER: When you say 'early on', what does that mean from your perspective? Different people are working on different time frames. Can you help me out?

Mrs Baldock: Probably within the first three meetings, perhaps, of the KCC.

Senator McALLISTER: What year are we talking about?

Mrs Baldock: Probably two years ago.

Senator McALLISTER: And who raised it?

Mrs Baldock: The department would have advised us of that at those meetings.

Senator McALLISTER: So the department advised you two years ago—so in 2018?

Mrs Baldock: Approximately.

Senator McALLISTER: And that was in the Kimba Consultative Committee?

Mrs Baldock: That's correct—and the Kimba Economic Working Group.

Senator McALLISTER: Thank you. Can you talk me through the reason that they gave again?

Mrs Baldock: My understanding is that the legislation, as it stood back at that time, was suited to the site being placed in Northern Territory, so it needed to be changed. Plus, our community negotiated for a much better community benefit package, which also needs to be legislated.

CHAIR: Senator McAllister, we need to keep moving.

Senator McALLISTER: Thank you very much.

CHAIR: Senator Patrick had one final question, and then we can probably come back to you, Senator McAllister, if you need a little bit more time.

Senator PATRICK: I have a question in relation to opportunity cost. It's been put to me that Kimba is actually a very useful site for the launching of balloons and perhaps other space-based activities; you're clearly aware that that's a push for South Australia, with the new headquarters here. Noting what Defence has said about the inconsistency between space-related activities over Woomera and the placement of a radioactive waste management facility, have you as a group discussed the opportunity cost that may be lost in respect of space-based opportunities?
Mrs Cliff: Senator, thank you for your question. I don't believe that we as a group have discussed the potential for space activities here in Kimba. There's a lot of activity happening in Port Lincoln and up on the Nullarbor. No one has indicated that there is any future potential for that in our district. So, no, we haven't discussed that. Two of us sitting here were heavily involved in Kimba hosting many, many hot air balloons in a trans-Australia race, so we do have experience with that, and I don't believe there would be any issues whatsoever.

Senator PATRICK: Thank you.

CHAIR: Senator McAllister, do you have anything to finish up with?

Senator McALLISTER: No, that's okay, but I do want to thank the witnesses for answering my questions.

CHAIR: Yes, absolutely. On that note, thank you very much for appearing before us today.

Mrs Lienert: Can I just say something before we finish. I just want to say that the process has been going on for 45 years, at a huge cost, to find a site for this nationally important repository. Whichever government takes it on and whatever happens in the future, Kimba is a willing community. We have a willing property owner and 100 per cent direct neighbour support, a result it will be very hard to replicate again. So we really hope that we can move forward, get the decision that we need for our community and see this site built at Napandee in the future.

CHAIR: Great. Thank you very much.
Evidence was taken via teleconference—

[11:37]

CHAIR: We now move to No Radioactive Waste on Agricultural Land in Kimba or SA. Thank you for appearing before the committee today. Information on procedural rules governing public hearings has been provided to witnesses and is available from the secretariat. Answers to questions on notice are required back by 14 August. Would you like to make any opening remarks?

Mr Woolford: Yes, I have a statement covering quite a few issues, so I'll get into it. The no radioactive waste group SA committee has been the central voice representing over 400 members opposed to the siting of the national facility in Kimba. We hope, in the short time we have today, to clarify some of the many concerns regarding the site selection process and how the process has been unfairly conducted.

After five years seeking a fair, unbiased and transparent process, it is impossible to put into words how completely gutted our members felt at the announcement of Napandee as the chosen site. This proposal has caused, and continues to cause, division within our community and has had a significant impact on people and their wellbeing. This has been fuelled by the actions of the department in their quest to establish a facility at all costs and justify their decision.

The finding by former Minister Canavan that broad community consent for the facility exists in Kimba, the basis on which the bill rests, is tenuous at best. The path that the federal government has taken to making this finding has been a long road of propaganda, manipulation and promises without justification for the conclusions and the decision made. We want to make it clear that our community did not nominate and that 452 out of 824 deemed-eligible voters does not constitute a win in the community. That is 54.8 per cent.

We have witnessed over the five years a changing of the rules and boundaries of our neighbours to achieve the desired outcome in relation to who is considered a neighbour to the site. Initially, neighbours were considered to be within a 10-kay radius of the proposed site. After the views of these neighbours were heard, this was later changed to only those within five kilometres, and 'direct neighbours' needed to share a fence line. Clearly, these changes were influenced by the level of support shown within each radius and the fact that the second tier of neighbours, those outside the five-kilometre boundary, remained strongly opposed.

Another example was the establishment of the Kimba Consultative Committee in Kimba. When we raised concerns, as soon as applications for the committee were called, about this committee needing to represent a balanced view for and against, we were assured by the project manager at the time, Bruce McCleary, that in order for the KCC to be reputable it would need to include six people supporting, six opposed and six neutral. In reality, the committee was very clearly weighted towards those in favour, including the landowner, which resulted in the meeting simply being an opportunity for the department to tick the consultative box.

We know that the Hawker site was removed from the process due to the lack of support, as shown in the result of the ballot. However, there is every probability that this same finding may have been found in Kimba had the same voting rules applied. In Hawker, members of the community living within a 50-kilometre radius of the site were all given the opportunity to vote, in addition to those living and paying rates within the Flinders Ranges Council. After a clear voice within the KCC called for the ballot to include a 50-kilometre radius of the site, rather than just the local government boundary, it was deemed an unviable way to conduct the ballot, despite this process being utilised in Hawker.

Using only the council boundary to define voting rights meant that some people live closer to Napandee than those living in the township of Kimba, where there's nowhere to vote and they are unfairly excluded. Former Minister Canavan gave clear assurances to the KCC members that the decision to use only the Kimba District Council boundary for voting would in no way discriminate against those living outside, as they were invited and encouraged to write submissions, and that these submissions would clearly be categorised into a public document by place of residence and vicinity to the site for its decision-making process. What we do know, as reported at the KCC meeting on 23 February 2020, is that 2,789 submissions were received in total. In that total, 94.5 per cent were opposed to the facility. These submissions have all been ignored in favour of the multiple survey results of the same focus group living in and operating a business solely in the Kimba District Council area.

The stream of information to the community during the consultation period has been tightly controlled and almost entirely narrated by the department. No assistance, practical or financial, has been given to provide independent advice regarding the proposal aside from that hand-picked from the department—for example, the continual reference to the fact that low-level waste and intermediate-level waste are currently stored in over a hundred separate locations across Australia. While this statement on its own is true, independent advice tells us
that 99 per cent of Australia's hospital waste, apart from a small amount of legacy waste, is short-lived and destined for landfill and not for the national facility. This point actually has no relevance to the need for a facility and certainly doesn't justify a siting at Kimba. The waste will continue to be stored at the majority of these sites regardless of where and when a facility is established. This misleading information has been used over and over again by the minister and the department in the media factsheets and can even be found in the second paragraph of the bill outline.

The department and others in Kimba have made assurances that this discussion has been robust and that the Kimba community has had the opportunity to hear both sides of the debate. However, we would like to provide some clarity regarding this. Every speaker who has visited Kimba at the expense of the government has been a supporter of the proposal. What is not clearly stated by the department is that every speaker who has spoken against the facility in Kimba has been self-funded or paid by our members. Approximately $24,000 of our members' money—and vast amounts of time—has been spent to ensure our community, who has opposed the facility, has a voice. This has been a big expense for us, compared to the millions in taxpayers' money the government has used to try and convince us to accept a flawed proposal without all the information to make a fully informed decision.

The decision by the federal government to seek a voluntary site suitable for the disposal of low-level waste and to temporarily store intermediate-level waste is extremely short-sighted. Also, selling the facility as temporary storage for intermediate-level waste, when, in fact, it may be several decades, and realistically indefinitely, is misleading. The department has continually stated the importance of having all the nation's waste located at one facility. They've also confirmed that farming land in Kimba isn't an appropriate location for these underground burials to dispose of intermediate-level waste. Therefore, when the intermediate-level waste is eventually relocated, waste will be spread across two separate locations. We have always maintained that it would be a far more responsible solution to find a site that is suitable for permanent disposal of ILW and for the low-level waste to follow to a single location—having one facility, one shift and one cost to the Australian taxpayer.

We fully understand the need for Australia to establish a radioactive waste dump; however, we do not feel that the federal government has undertaken to find the best site for the facility. The ARPANSA code of conduct for disposal of radioactive waste includes a criteria that the immediate vicinity of the facility have no insignificant natural resources, including potential valuable mineral deposits, and that it have little or no potential for agricultural or outdoor recreational use. Only four per cent of South Australia's arable farming land and the Eyre Peninsula make up a large portion of that. Our agricultural industry is and will always remain central to our town and region. That's why it's so important to maintain our clean and green reputation.

As farmers we are required to conduct risk assessments for the potential risks in so many of our day-to-day practices, including farm safety, livestock managing, [inaudible] reviews. This is all to identify and reduce potential risks to our industry. Despite our ongoing requests for an independent risk assessment, it's expected that our concerns will be allayed based solely on a department fact sheet and assurances from an apparent roundtable discussion about which we have practically no information.

At the time the minister announced that the Napandee site had been identified, we were surprised and confused that the decision was not declared as per the requirements of the act. It is now clear that the reason for this is the minister's decision to amend the act to specify the selected site. This is extremely concerning to us, as it is our understanding that the decision to directly legislate the selected site will effectively remove the opportunity for any judicial review of the site selection process, which is something our community members state that they, and in fact all Australians, should have the right to to ensure procedural fairness is not denied. We have had no communication about that legislation change.

We're not blind to the fact that automation will play a vital role in the future management of radioactive waste, with safety measures, security and cost efficiency utilising future technologies. No-one can guarantee any long-term jobs or where people must reside to work at a facility or adopt for droughtproofing a community.

After five years, it's really impossible to share in such a short time the many issues this process has raised. As representatives of such a large membership group, we do wish we had the opportunity to speak with you longer and answer your questions. Thanks very much.

CHAIR: Great. Thank you very much. Deputy Chair, do you have any questions?

Senator GALLACHER: Mr Woolford, I do remember, throughout the references inquiry, your passionate advocacy and I accept it for what it is. I have a simple question, though. Is there any circumstance at all which could be negotiated that would make Kimba a suitable site, in terms of your organisation?

Mr Woolford: That's hypothetical, because there is nothing on the table.
Senator GALLACHER: [inaudible]

Mr Woolford: At the moment, I can only say to you that the intermediate-level waste, and how that's going to be handled, is the major concern for all people. And, certainly, this change to the legislation to take away the rights of an individual is a big concern. We need to find the best site, the best location, for this country. That's the most important part of this.

Senator GALLACHER: I think we all agree on that. You're saying it's not Kimba, though?

Mr Woolford: I'm just saying that, at the moment, under the current circumstances that have been put to us, it's not Kimba, no, because no-one outside Kimba has even had a say in this. It's just wholly and solely locked into the 824 people in Kimba, and that's it.

Senator GALLACHER: Alright. You touched on this briefly towards the end of your submission. Are you saying that there has been little or no consultation with organisations like yours about this specific bill?

Mr Woolford: Yes, correct. I'm on the KCC as well, and I can assure you the only talk about legislative change has been about the financial package that was going to be implemented in this process. There's been no engagement from the department saying they were going to change this this part of the process, and why and when, and not declare it. There's no question of that.

Senator GALLACHER: I know we're all pressed for time, and you'd like more time. Let me just run through a couple of things specifically. So you're not aware of the part talking about 'allowing regulations prescribing additional land for expansion of the site made under proposed subsection 19A(1) to commence before the parliament has an opportunity to scrutinise the regulations'. You're not aware of that?

Mr Woolford: We're aware of that. That's for sure. But we are also aware of what removal of the judicial review will do to all that.

Senator GALLACHER: Okay. In layman's terms, what is the judicial review going to do? If the minister went ahead and it went ahead via regulation, you were saying a judicial review would encompass all of the decision-making. Is that your understanding?

Mr Woolford: No, I think, at the moment, the judicial review, which is always in play, is all about giving independent scrutiny of the decisions that are made by the minister. So I think the way this has been done and how it's been tightly controlled by the department, not allowing anyone else in, gives people the right to know that a fair decision will be made. That's why I think it's so important.

Senator GALLACHER: If this legislation passes, there will be no judicial review; it'll just happen.

Mr Woolford: That's correct. If there's no judicial review, obviously that's a change from what normally happens with legislation. That takes away anyone's right, and I for one—

Senator GALLACHER: But you do have an understanding of this bill. Whether it's general or through the KCC, I think you said, or your own organisation, you have a clear understanding of this legislation?

Mr Woolford: Pretty much, yes.

Senator HANSON-YOUNG: Thank you so much for your opening statement. It went to some of the questions that I have. But I just want to tease out this issue of the fact that the boundary was changed because of who the neighbours were who were considered to be impacted by this. You expressed frustration with how it was being run in Hawker in comparison to Kimba. When you say that the boundaries were changed, were you given promises previously as to who would be consulted and who would be involved in the ballot and that changed after the fact, or is it more that it was felt that that should happen and then it didn't?

Mr Woolford: Right from the beginning—and Kimba was in the first part of this process and then it was removed—that's what happened in that process of the 10 kays. As it's got down and as it's got closer to this decision, it's been tightly pulled right in so that those farmers who live just up the road aren't deemed as immediate neighbours. The interesting thing is, when you live in a community such as ours, or a rural community, neighbours are spread far and wide. As far as the change of it all goes, it's just the way the department have done it. Certainly to me, as this process has continued on, the department have changed things as they've gone along—I believe, personally, to get the outcome they were after, simple as that.

Senator HANSON-YOUNG: So it's a stitch-up?

Mr Woolford: Yes.

Senator HANSON-YOUNG: Can I ask about the issues that you raise in your submission relating to the stream of information being 'tightly controlled and almost entirely narrated by the department'. Can you highlight some examples of that for me?
Mr Woolford: Everything that's been done with fact sheets that have been provided, and even the speakers—in the five years of this debate, there has not been an open forum where experts from both sides of the debate sit in Kimba and discuss it and take questions from everybody. It has always been controlled. The department wouldn't allow that to happen. They had a webinar in Sydney. All the information that's been provided to Kimba has come through the department wholly and solely. There has been no independent information whatsoever. We brought in Peter Karamoskos, Margaret Beavis and different people. We paid for them to come in and talk. Everything has been controlled here. There has been nothing independent about this at all.

Senator HANSON-YOUNG: How do you feel about the community benefit package? Is this something that you've seen has been able to deal with some of the concerns that community members have about the trade-off of what this dump would mean for the reputation of agricultural production coming out of the area or is this simply a bribe that has hit the wrong mark? What's your response to the community benefit package?

Mr Woolford: There have been some projects done that have been beneficial for those community groups that can't afford to raise that money, but there is no mistake: when we had the vote on this, we were told by the department and by Samantha Chard that there was no money left; it was all spent. I've got a letter at home, on my table, to that effect. Then, two days before the vote, in came another $2 million. Is it a bribe? To me, most certainly it is. Whilst people are jumping over one another to get hold of some of this money, and the next round will be very interesting, I think: why did they have to put so much money there if this is such a good thing? I've always said, 'Without the money, where would this process be?' For me, yes, it certainly has played a major role in how the outcome of this has turned out.

Senator PATRICK: It seems to me as though a summary of the situation for you is that we've got to this point through the old legislation, in a process that you, I presume, say would have been subject to review and, presumably, there have been some flaws in the process that would have initiated a judicial review. So we've gone through a flawed process, and now we've flicked to a very short process whereby parliament selects the site. Is that your summary of what's going on here?

Mr Woolford: Yes, most definitely. It really is. As I said earlier, why would you change the legislation to do it this way? Obviously, they are concerned about the outcome. But it certainly has been our understanding, yes.

Senator PATRICK: So you have the feeling that there are some aggrieved in the community that would in actual fact exercise a judicial review right if—

Mr Woolford: I think that's the case. You also have to understand the people outside the Kimba district boundary. There's been a Berlin Wall put up around the community, and communities aren't decided by the council boundary but by people that are living close to it and by the neighbouring farmers. No-one's had a say in this whatsoever, which, as a national issue, I find quite remarkable. So you certainly couldn't rule that out. But if this legislation goes ahead, it certainly stops all that, doesn't it?

Senator PATRICK: That's clear. What are your views on the amendment that I've put up in respect of shifting the site or selecting an alternate site, which is Woomera, as opposed to, I presume, agricultural land, which is something your group clearly objects to?

Mr Woolford: I think it's a logical option for discussion. I really do believe that, because, for me and so many others here—and certainly wider than the Kimba community—I find it quite remarkable to expose our agricultural industry to any potential risk at all for what we have now. You had that option in Woomera, for example, where the location is isolated, where it's secure and where, obviously, 40 per cent of the current legacy waste is stored. I think it's certainly worthy of discussion—without a doubt—because we need to find the best site that's not going to impact people and that's not going to impact their industries.

Senator PATRICK: To be clear: your group is not against a facility per se. You're simply against a facility on agricultural land.

Mr Woolford: That is absolutely correct. Like I said, we're speaking for a lot of people in this community that are no different to the future group. We're family members, we're employers and we're farmers. What we are doing is trying to stand up and oppose this for the people living outside of Kimba that have been denied a vote and denied a say.

Senator PATRICK: I'm going to ask a last question, perhaps on behalf of Senator McAllister, although I think Senator Gallagher may have gone to it, noting that she's asked every witness this. It's clear from your answer to Senator Gallagher that you weren't advised upfront but only of the community need for a community benefit appropriations by way of a bill of parliament. What has the department told you about the reasons for the legislation?
Mr Woolford: To be perfectly clear, nothing. It was not about the judicial review part of it; it was nothing. The financial package was only ever discussed, and that's what the KCC wanted to make sure of—that that was more to go to get the package in place. There was nothing about the judicial review being removed and how they were going to declare the legislation.

Senator ANTIC: Thank you, Mr Woolford, for your views on this. I'm interested in a couple of different angles, but they relate to the issue, which seems to be the pre-eminent one, of agriculture. My understanding of the site that's being talked about is that there is some land that's been set aside specifically for agricultural research and development. I'm asking for your view on whether or not you think that angle would be useful in monitoring any impact. Do you have any views on that?

Mr Woolford: You're breaking up a bit, but, to say that they're going to have a research thing around it, straightaway, the one thing that concerns me and so many others is: how do you go to the perception and stigma attached to a facility? That is one of the biggest things we're concerned about. As a lot of people have raised too, when you start having research areas around a site, obviously the fire risk is another issue in itself that really hasn't even been delved into yet. So for a lot of growers here, they question why you would do that. If there were a facility, why would you have anything around it? That's as far as I can tell you.

Senator ANTIC: One of the reasons I ask that is that there have been facilities around the world—similar facilities, if not higher level ones—that deal with close agricultural areas and there's never been any issue, so far as I'm aware, demonstrating the effects on prices of agricultural products. One example is the Champagne district in France. I don't think that it has ever affected the prices of champagne. But you seem to be concerned that it will affect prices. Do you have any evidence to share with the committee that supports those concerns that the facility might affect agricultural prices?

Mr Woolford: I haven't got any exact examples and I guess that's why we would call for an independent risk assessment on all of this. We have to remember that France is a nuclear nation—and the lower levels of waste, some of those sites. Certainly, for us, it is all about trying to eliminate any risk at all to the current situation we have with our ag industries on the Eyre Peninsula. It really is. And the biggest thing is that we have a choice in this country. France didn't. They are a nuclear nation. They've got no space. We've got plenty of space, so we can put this facility in the best place, under one cost, where it doesn't pose any potential risk to any ag industry whatsoever.

Senator ANTIC: What about the issue of jobs in the area? I think you've said in your submission that you think it will affect jobs in the area, but it seems to be that for the facilities located in farming regions—places like, as we've said, France and Belgium and others—the industry plays an important role in the life of local communities by creating a new industry. We heard earlier this morning from some others that say, 'Look, we're quite keen on this. It will provide a shot in the arm for the local community, particularly at a time when there are issues in parts of the agriculture industry.' Do you see any benefit there in terms of a shot in the arm for jobs in the area if the facility were to proceed?

Mr Woolford: If you look at the build, it's no different to any build in that there's going to be a benefit initially. But there's no guarantees about the job; let's be clear on that. Who's to say that people who live outside of Kimba won't travel in for those jobs? There's no guarantee that there are going be jobs here and that they're going to live and stay in the town of Kimba. It was touched on earlier that they went from six jobs to 15 to 45. So there has been a fair change through this process and, certainly, there is no guarantee. That's where it is for us.

Senator ANTIC: I have just one last question. I am interested, Mr Woolford, in your response to this—and I note that you're against it—but what would you like to see happen, if the facility does proceed, from that point onwards?

Mr Woolford: I really can't tell you that. If the facility goes ahead in its current form, that will mean the rights of all Australian people and those that live close to this site across South Australia will not get a say. We're going to double-handle the intermediate level waste, and it does not make government accountable for finding that final geological burial site for the intermediate level waste. That's why, if it stays in ANSTO where they've got plenty of time and plenty of room, it will put pressure on government to find that site.

Senator ANTIC: Thank you. Nothing further, Chair.

CHAIR: We will keep moving. Thank you very much for your time today.

Mr Woolford: Okay. Senator, if I can, I just want to reiterate this whole thing about the impact it's had on people. That's the sad thing that has been forgotten here—the impact on people. What are they going to do if this facility goes ahead? Will they stay? We're losing people. At the moment, people are continually seeing whether...
they're going to move out because of their mental health, and that's a real issue that has been forgotten. So thanks very much, senators.

**CHAIR**: Thank you.
JOHNSON, Mr Dean, Mayor, District Council of Kimba

LARWOOD, Mrs Debra, Chief Executive Officer, District Council of Kimba

Evidence was taken via teleconference—

[12:04]

CHAIR: Now, do we have the District Council of Kimba on the line?

Mr Johnson: Yes, you do. Thank you, Senator.

CHAIR: Excellent. Well I'll go through the official bit and then we'll get started. I now welcome via teleconference representatives from the District Council of Kimba. Thank you for appearing before the committee today. Information on procedural rules governing public hearings has been provided to witnesses and is available from the secretariat. Answers to questions on notice need to be back by 14 August. Do either or both of you wish to make any opening remarks?

Mr Johnson: Yes, I'll handle the opening remarks, thank you. Thank you for the opportunity to speak with you today and for the opportunity to make this short opening statement. The District Council of Kimba and the wider Kimba community have actively participated in the process to find a site for the National Radioactive Waste Management Facility since 2015. Because of that, we believe our small community is the most knowledgeable and informed population in Australia when it comes to radioactive waste and how it is handled. We acknowledge that any issue involving nuclear technology or radioactive materials will be vigorously debated, and that has certainly been the experience in our community. In light of that, we hope our community's investment in time and the decision that our community has made will be recognised and respected by members of this committee.

Kimba council would not be in support of the facility being located here unless our community wanted it, and the clear majority do. Council stands by the decision to not accept a simple phone survey to gauge support, but rather to use an independent ballot conducted by the Australian Electoral Commission as a measure of determining support. An incredible 90 per cent plus participation rate in the final ballot demonstrated an invested community. Having 62 per cent of our community vote yes to this facility in that vote demonstrated a decided community. We dismiss assertions that this has been in any way a rushed process and we encourage the parliament to use this as an opportunity to give the people of Kimba certainty. With five years of consultation behind us, the people of Kimba have made a decision, and we deserve confidence going forward in a way that is free from constant interruptions, challenges and delay. If that involves legislation, then so be it, and that is obviously a matter for the government, parliament and this committee.

On a final note, I know that there have been some questions and concerns outlined about who was able to participate in the ballot. I want to address those upfront and right here. The reason our ballot was restricted to residents and ratepayers in our council boundaries is simple: we are a council. We applied the same yardstick and parameters as are applied in council elections. Of course I acknowledge there has been a keen interest in the role of some who don't live in our area, including traditional owners. Although the Barngarla are not residents of Kimba and there is not native title on the land, we very much respect their history and belief, even if we don't agree with their view on this project. We continue to hope that the Barngarla will work with our community to develop projects that further the understanding of, and recognition to, their people. We want to see the facility move ahead here generating the type of employment opportunities that would encourage their members to consider moving to Kimba in the future. This facility would directly create 45 full-time federal government jobs in our community. That's jobs for existing residents and opportunities for new ones. We believe the community will support these workers as much as the facility will support our community.

This facility comes with a combined $31 million funding package that was hard fought for and which would underwrite the economic and employment stimulus opportunities that will arrest and reverse our population decline. That includes the $20 million community fund that we believe should be indexed to reflect the fact that it has otherwise declined in real terms year on year through the delays in this process. This facility will deliver a new industry, new opportunities and new growth for the people of Kimba and help our community not just to survive but to thrive for generations to come. Thank you again for the opportunity to appear at today's hearing.

CHAIR: Thank you very much for that. We'll go straight into questions. Deputy Chair Senator Gallacher, do you have any questions?

Senator Gallacher: Just a couple of brief ones, Chair. Returning to the issue before the legislation committee, are you fully aware of the implications of the National Radioactive Waste Management Amendment
Mr Johnson: Yes, we're fully across that.

Senator GALLACHER: Are you aware of the establishment of the community fund at the minister's discretion and the acquiring of additional land for the all-weather road?

Mr Johnson: Yes, absolutely. We spent considerable time on those amendments, and we're right across it.

Senator GALLACHER: And the removal of natural justice as it's currently constituted given the minister's discretion?

Mr Johnson: Yes, we certainly are. I've got to say that we'd support any measures that provide surety for our community going forward.

Senator GALLACHER: Also:

In light of the minister's detailed advice, the committee leaves to the Senate as a whole the appropriateness of allowing delegated legislation to exclude the operation of prescribed State, Territory or Commonwealth laws.

So the whole detail and content of that legislative instrument have been explained to you properly and succinctly.

Mr Johnson: Yes, that's right.

Senator GALLACHER: And you are as an organisation supportive.

Mr Johnson: Formally council hasn't considered support for the project as a whole if you like. Council's position has been neutral throughout the consultation process. What we did commit to do was provide and facilitate information to our community, making sure that they had all the information and that they had access to a ballot so that the community support could be gauged through that. We supported the community through that, and I think 62 per cent is undeniably a very solid majority. We support the community's decision to move forward.

Senator GALLACHER: Okay. Thanks very much.

CHAIR: Senator McAllister, did you have any questions?

Senator McALLISTER: Yes, thanks. I really want to ask about the specifics of this legislation, and thanks very much for appearing. You've been involved in this process from the beginning and you'd understand that at the beginning when Kimba was being explored as a site it was anticipated that the end point, should it be accepted as the site, would be a decision by the minister under the existing legislation. What reason has been provided to you by the government for this piece of legislation that's before the committee?

Mr Johnson: We've had detailed discussions about the old national radioactive waste bill, which was obviously written at a different time. It was, I believe, over a decade ago now, so it was more centred on the Northern Territory bill. I think our community and the KCC have been really clear throughout this process that we would need a new bill. Obviously, the site would be part of that bill. It's really important for us that the community fund and those other benefits are also included in the bill. We've been a solid part of putting together this bill, and we believe it's entirely appropriate.

Senator McALLISTER: That's a useful indication of what you think about the bill. I'm trying to understand what the department has told you about the bill and what the reason is for having a new bill as communicated to you by the department.

Mr Johnson: I guess as an organisation we've been embroiled in the Federal Court for quite a period of time now, so I think the reason the legislation has been changed to remove that judicial review is very clear. We do not want to spend the next ten years of our lives in court again, and those that are strongly opposed and advocate against anything nuclear will not change their minds. They will challenge every day. There's no doubt about that, so I think it's entirely appropriate. The parliament should review this very well. Then, if the parliament is in agreement and passes the bill, that provides surety for our community going forward, and we would support that.

Senator McALLISTER: Again that's a useful statement of your position. Has the department indicated to you that eliminating the possibility of judicial review is one of the reasons to proceed with this legislation?

Has the department indicated to you that eliminating the possibility of judicial review is one of the reasons to proceed with this legislation?

Mr Johnson: Yes, that's certainly one of the reasons. The legislation really had to be rewritten to provide all the new information for this new site as well.

Senator PATRICK: On what day were you made aware of the reasons, by the department, for the shift to the bill in respect to judicial review?
Mr Johnson: It was at a meeting. I'm sorry, I couldn't give you a date.

Senator PATRICK: Can you take that on notice?

Mr Johnson: It would have just been a verbal meeting so I don't believe I'd have a note on the exact date. Is that important?

Senator PATRICK: Was it this year or was it last year?

Mr Johnson: It would have been last year, I believe.

Senator PATRICK: You made a statement, in response to Senator McAllister, that you seek to avoid additional cost to the council in relation to litigation. It's apparent that the past litigation related to the running of the election. I would have thought any judicial review in this instance would have been directly against the department now rather than the council. You had a very particular role to play. What are you anticipating in the way of litigation against the council?

Mr Johnson: I wasn't specifically saying the action would be against council. To be really clear, it's about time. This has been a 40-year process already. It's been very deep and very long. I think it would be a real shame if it's another 10, 20, 30 or 40 years before we get a national radioactive waste management facility, which I think everyone acknowledges we need to have as a nation.

Senator PATRICK: In response to questions asked, I think, by another committee, I've got a response from the minister that says, 'The district council of Kimba ballot was undertaken by the local council in the local government area surrounding the Napandee site, following procedures consistent with that of council elections under the Local Government (Elections) Act.' I did read the decision. Basically you held a poll under the act. That's correct isn't it?

Mrs Larwood: No. The poll wasn't officially held under the Local Government (Elections) Act. We based the criteria around the same criteria that we use at the Local Government (Elections) Act. The poll was classified as a ballot and was held by the Australian Electoral Commission.

Senator PATRICK: That goes to the very nub of the question that I have. The Local Government (Elections) Act 1999 has a specific purpose relating to the election of councils. Why did the council take the view that that was the appropriate way to conduct a ballot in respect of a national radioactive waste management facility? The act has a particular purpose, which seems very different to that of voting on whether or not to have a radioactive waste management facility.

Mrs Larwood: In respect of the local government act, there is capacity in there to use it for purposes outside of purely local government elections. From our perspective, the criteria for the ballot were based on a process that we use to appoint persons, in this case council, who represent and oversee the management of our community and the local government area. From my perspective, as the person in charge of council's role in the ballot, it's robust and it's defendable. It means that there was never, ultimately, a decision made by any individual person on who got to vote. There's no capacity to go outside of what was already set in the ballot. The representative nature of the criteria has been recently, as you've just mentioned, thoroughly tested in the full bench of the Australian Federal Court in a decision that has been upheld despite appeal. It provides criteria—

Senator PATRICK: To be very clear, the decision is not one of whether it was the appropriate way to decide whether or not to have a national radioactive waste management facility. It was a decision about whether or not the poll was conducted in accordance with the act. That came up very, very clean. That was actually the case. I'm trying to get to the decision. I wonder if the council has any minutes or decision reasoning as to why it took that approach when it made the decision to use the Local Government (Elections) Act versus the way in which it was done in Hawker. Do you have any council records of that decision being made?

Mrs Larwood: It potentially is in a council report that was presented to elected members, and that was all formed as part of the court case and was included in affidavits. But the reason we went with that is that it's transparent, it's defendable, it's robust and it's accountable. We actually investigated alternative options outside of section 14 of the Local Government (Elections) Act, and we couldn't find anything that was as accountable and as robust as this. It's what council considered the most appropriate avenue to allow us to gauge the interests of the community.

Senator PATRICK: I'm just wondering if you can provide the committee with the council minutes on how that decision was made, and also any background and documentation showing the exploration of other options. Could you take that on notice.
Mrs Larwood: Yes. The majority of the exploration of other options was undertaken in conjunction with the department. They did the majority of the work on that and just basically asked us for our opinion as to whether it would work.

Senator PATRICK: Just whatever documentation you have, because that information is not before this committee so I'd like to bring it formally before the committee if that's possible. That's the end of my questioning. Thank you very much for attending. I'm very sorry that we weren't able to make it up to Kimba. They always have a good feed on at the pub there.

Mr Johnson: Thank you, Senator. I will say that all senators are welcome to Kimba at any time. I'm happy to buy you a beer any day.

CHAIR: We would have loved to have been there, as Senator Patrick said, but unfortunately the current circumstances don't allow it. Senator Hanson-Young, did you have any questions?

Senator HANSON-YOUNG: A number of my questions have already been asked. I did want to go to this issue of what type of waste will indeed end up being licensed for disposal at this facility. I just want to ask the council, given the fact that the intermediate-level waste will still require—even though it would never be there permanently at this point; many concerns have been raised already about the double handling of this type of waste. Why put it in somewhere like Kimba if it's then to be moved and transported somewhere else anyway? It's not a permanent facility. Having said that, there is still a question as to whether it could even be licensed to go there. I'm just wondering what level of assurance or understanding the local government has about whether those licences will be given.

Mr Johnson: The licensing process is probably something that's outside council's jurisdiction. However, we are as a community very, very aware of what the waste is and how it will be treated and handled at a facility if it were to be built in Kimba. The low-level waste will be a disposal site, so it will be its final resting place, if you like. As far as the intermediate-level waste, it's been 40-plus years already to find a home the low-level waste.

Senator HANSON-YOUNG: I understand this. Sorry, we are short on time, of course. Do I take it from this that you haven't been given any assurances about the licensing of the intermediate-level waste?

Mr Johnson: No, we're very comfortable that the intermediate-level waste will be held at Kimba until a final disposal site is sought. I believe that would be the job of the professionals at this waste site to develop that final disposal location.

Senator HANSON-YOUNG: Have you had any communications with the department about what happens if that licence is not given by ARPANSA?

Mr Johnson: My understanding is that you would have to agree to whatever conditions are put on the licence, so in one way, shape or form you're going to have to get to a position where you can be licensed. So that's what will happen.

Senator HANSON-YOUNG: But you don't know what that's going to entail. There's concern in the community about whether the jobs are going to be delivered there and the impact of the flow-on effects to agricultural exports. You're just taking all of this at face value at this point?

Mr Johnson: No. I think that's really very much an oversimplification of a five-year process. This community has asked all the tough questions. We've received assurances. We've looked at the job specifications that have been provided. If anything, they're light on. There are no maintenance people involved in those jobs either. We believe that there will be more jobs than that. But, as far as the licensing is concerned, there will be waste acceptance criteria developed and that will have to go directly to the licensing. ARPANSA will set those rules, and this facility will be responsible for making sure that those rules are dealt with as they come up.

Senator HANSON-YOUNG: If ARPANSA doesn't allow for intermediate-level waste to be housed in Kimba, the council won't have a problem with that?

Mr Johnson: I don't think it would be Kimba council's job to be arguing with the regulator.

Senator HANSON-YOUNG: I'm talking about all of the other modelling and the economic benefits that the council are basing their support for this dump on.

Mr Johnson: I can't see why the regulator would not allow temporary storage of intermediate-level waste at a national waste facility. I can't see how that would happen.

Senator HANSON-YOUNG: So you just expect that the licence will be given?

Mr Johnson: I expect that the people involved will have to accept the licensing requirements, so, yes, I'm absolutely confident that that will be met.
Senator HANSON-YOUNG: In terms of the jobs component and the economic element, what jobs are the Kimba council working on? What do you believe will be delivered out of this for the community?

Mr Johnson: I think that's on the record—45 full-time federal government jobs.

Senator HANSON-YOUNG: And you've got—

CHAIR: Sorry, Senator Hanson-Young. We will need to move on. Senator Antic, do you have some questions?

Senator ANTIC: Yes. Thank you, Mayor Johnson and Mrs Larwood. I have a couple of questions. We've heard obviously that the council is supportive of the facility. It's interesting to note that the flipside to the argument has been suggesting that we need to go back, think about this a little more and look for another place. You talked about 40 years. Does it concern you that doing so would draw us more into what I've described as analysis paralysis? This is clearly a fairly important project for the area and there appears to be community support for that. Have I summarised that accurately?

Mr Johnson: Yes, that is completely accurate. I think this has been a 40-year process already. It has been thoroughly investigated. This site has been thoroughly investigated. There are no reasons for us not to be considered. It's technically suitable. We have heard from a range of experts who say that this land is entirely suitable for it. I think it has been clearly demonstrated that the community is willing to host this facility, and we should get on with it.

Senator ANTIC: Aside from putting the project back a number of years—maybe as many as 10; who knows?—and aside from the fundamental problems that go with it, does the council have a view about the proposal to move the facility to Woomera?

Mr Johnson: We were pretty disappointed and frustrated by talk that alternate locations, in particular Woomera, could now be considered. That's despite no voluntary nomination of land, no participation in this national project, not to mention that this has been ruled out before. I know Defence was really strong on that being a bad idea, but I am happy to delve into that a bit more and reiterate why it should not proceed from Kimba's perspective.

We've been involved in this process for five years, and we are deeply invested. While a big majority support the facility moving forward—I've spoken to many in the community who've held fears or were opposed to the proposed facility. I've heard their concerns firsthand, and I acknowledge and respect their views, but we have been provided with experts who have talked about the concerns, about agricultural damage and the risk. It's been shown internationally that these two industries can exist side by side. As far as safety goes, we've had radiation safety experts, nuclear medicine experts, mayors and community members from smaller communities near similar facilities in France, the mayor of the Sutherland shire, and radioactive waste experts allaying their fears. They've told us how it's generated, and why it's vitally important to deal with the legacy of the waste generated by nuclear technology now and into the future.

I guess my point is that our community has been engaged and invested in this process for a really long time. And to now just throw it in a different location, like Woomera, is disrespectful on so many levels. It doesn't recognise our commitment. It ignores the enormous support our community has given. And although our community is committed and has supported it, to now suggest taking it to an unwilling landowner and community would effectively start that whole process all over again. Why? What a complete and utter waste of time and taxpayers money! Frankly, it's a bad idea that fails both the pub test and the common sense test. I guess it's fair to say I'm not a fan of the idea.

Senator ANTIC: I can gather that! My experience of local government has always been that people involved in local government—local councillors and local mayors—have as good a feel for their local communities as anybody going around. With that in the back of your mind, can you tell us, therefore, whether or not you believe there is strong support for the facility in the local community?

Mr Johnson: There is absolutely no question whatsoever that there is a clear majority of support for this project. I respect the views of those opposed to it, but it has been clearly demonstrated why Kimba really feels it needs this facility. I believe we can support the facility as much as the facility can support our community.

Senator PATRICK: You started off the process in a neutral position. At what point did you go into a position of support?

Mr Johnson: We always maintained the position that we would allow our communities to have a vote. I think 62 per cent speaks for itself, Senator.

Senator PATRICK: So basically at the point of the vote is where you changed to a different mode?
Mr Johnson: We've always supported the investigation of the economic benefits and employment prospects for our community. If you look at our strategic plans and our long-term financial plans, we need to address the decline in our population. It has long been considered by council that we need to investigate bringing alternative industries to Kimba. So, yes, we're backing our community in.

CHAIR: We will need to move on. Thank you very much for your time.

Proceedings suspended from 12:34 to 12:46
BILNEY, Mr Jason, Director, Barngarla Determination Aboriginal Corporation RNTBC
DARE, Mrs Linda, Director, Barngarla Determination Aboriginal Corporation RNTBC
TAYLOR, Ms Dawn, Director, Barngarla Determination Aboriginal Corporation RNTBC
LLEWELLYN-JONES, Mr Nick, Solicitor, Norman Waterhouse

Evidence was taken via teleconference—

CHAIR: I now welcome representatives from the Barngarla Determination Aboriginal Corporation: thank you for appearing before the committee today. Information on procedural rules governing public hearings has been provided to witnesses and is available from the secretariat. Witnesses should speak clearly and into the microphones to assist Hansard to record proceedings. I would advise you that answers to questions on notice should be sent to the secretariat by close of business on Friday 14 August. Is there anything you'd like to add about the capacity you're appearing in today?

Mr Llewellyn-Jones: Mr Bilney is the chairperson of Barngarla Determination Aboriginal Corporation, and Norman Waterhouse are the legal representatives of Barngarla.

CHAIR: Great. And I'll apologise—I can hear that the correct pronunciation is Barngarla, rather than as I was pronouncing it!

Mr Llewellyn-Jones: Yes, thank you. Note for the record that the directors have all clapped, so thank you for that.

CHAIR: Do you wish to make any opening remarks?

Mr Llewellyn-Jones: We do. We appreciate there's not much time, but, if we can indulge the senators briefly, Ms Dawn Taylor was born in Kimba and she wants to do a welcome. We're all in Whyalla on Barngarla country. And then I'll make an opening remark, and then the directors will try and take turns answering questions. I appreciate it's a little bit difficult, but it's one of those dynamics—having both a lawyer and Aboriginal people present together, we'd like to sort of share the opening remarks, if that's okay.

CHAIR: Yes, of course. Please go ahead.

Ms Taylor: I'd like to welcome you all to country. We are over the phone but we are all today on Barngarla country. Kimba, where I was born, is Barngarla country.

Mr Llewellyn-Jones: I think our opening statements will be as follows. You should have received submissions from us and also a response yesterday. I appreciate that many of the people in this committee are very busy and may not have had a chance to read all of that, so I will try to distil it as quickly as I can.

CHAIR: Before you start, you have sent through that information but the committee hasn't considered formally yet as a submission. There is some information in it that could potentially verge on adverse comment, so I'll just inform you that, as yet, the committee hasn't formally received that document.

Mr Llewellyn-Jones: That's fine, thank you. To the extent that it's necessary to work through those issues, we're happy to assist the committee in any way. We do, in fact, go to some length to try and suggest that there's no suggestion of deliberately incorrect information being put before the committee or anything like that. We don't suggest that any of the information has been deliberately put forward incorrectly.

We see schedule 1 of the bill very clearly, and we've made this this very clear from the outset. We understand that there is a desire to resolve the issue of the waste facility. It's been going on for a long time. We understand that. And to some extent it should have been done back in March. If the government wants to put a facility at Napandee then it is entitled to do so and it could have done so in March; it can do so now. It can do so by issuing a declaration under section 14 of the existing act. In our mind schedule 1 of the bill is not a bill to determine the location of the facility. Schedule 1 of the bill has really one main consequence, and that is that it removes judicial scrutiny of what's happened to date. I appreciate some people might find the idea of judicial scrutiny frustrating, but that is ultimately what the Gillard legislation envisaged. Also, given this process has gone on for a very long time, it's probably something which is very sensible to ensure occurs.

As we've pointed out, there's obviously some difference of opinion in regard to what has happened in this process between the Barngarla and the department. You've probably heard from people today who also suggest a difference of opinion in what's happened between themselves and the department, and that's unfortunate. But, again, those kinds of scenarios are exactly why some form of independent scrutiny should be applied to this process. There's nothing particularly clever or technical or tricky in any of this. If the department has applied a
robust process which has followed the law and followed what it's indicated it would do to the full extent, then judicial review will have no risk to it and ultimately the matter will be resolved and the facility will be at Napandee. In fact, if the declaration had been issued in March when the decision by Canavan effectively was made, then we would almost certainly be through the judicial review proceedings by now, or very close to it. It's probably taken longer to get through this process of the bill than actually just applying that scrutiny in the beginning.

I am conscious—and I'm sure we will receive comment about this—that people will indicate, 'This process has gone on for many years,' and I sympathise; I think the board sympathise with that. But we would like to note for the record that Aboriginal legal rights took many years to establish, much longer than this 30- or 40-year process for the facility. It took 180 years before the native title system even came into effect. It took 20 years for the Barngarla to win their native title, and they're still fighting for their native title over Port Augusta, 30 years down the track. Respectfully, as much as it might be frustrating from a public policy perspective to hear the news that the process has miscarried—and that's the Barngarla's position; this process has miscarried—and it might be frustrating from a public policy perspective to then be told that it would be appropriate to subject that to judicial scrutiny, because ultimately that might lead to further delay, respectfully, Aboriginal people are not the target of that. Aboriginal people have spent longer fighting for their legal rights than probably anybody in Australia, and ultimately removing their rights to judicial review in order to respond to something having taken a long time to get done is, we would respectfully say, not appropriate, given the history of land use in this country.

I don't necessarily want to get tangled up in an issue of a dispute over what's happened between the department and Barngarla, because I think it's really inappropriate in a 30-minute hearing to try and ask senators to resolve those issues. I don't think such a thing is possible, nor would I even suggest it should be done. Again, that's why we say independent scrutiny should be applied. We would say though, as a general rule—and I'm trying not to be disparaging in this way—that, when there's a situation where people may not agree what's happened, might have differing versions of events, our experience at least, and we would assume the experience of many parliamentarians, would be that the party seeking to avoid independent scrutiny is the one who may not be that accurate. But, even if that were not the case, there've just been a number of changes of staff which have gone on through this process with the department. We started off with Bruce Wilson and Rebecca Montaigne; we've moved on to Ms Chard. These people were not involved in the fight—well, they were not actively involved in Barngarla at the beginning the process—and a lot of the stuff which has been relayed fundamentally isn't true. We are happy to provide records of that—for example, there was not no opportunity for a heritage working group in 2017. The first time that was ever proposed was after Dr Goring had attended in 2018, or even most recently an email that I sent to Ms Chard indicating, 'Please contact the Barngarla contact email,' then a week later she indicated that she'd been told to only contact via the lawyers.

This is something I just want to raise for the record: the Barngarla are a very sophisticated Aboriginal group. I'm conscious that you're listening to their lawyer speak and not them. That's, unfortunately, because of the format that we've got at the moment, where we're conscious of time. The chair would like to speak about the organisation more generally. Barngarla are, kind of, the Aboriginal group that I think everybody in the Senate would want to see an Aboriginal group be. They're an Aboriginal group which deals with business all the time: they're owning shares in port deals in their country; they're setting up solar projects jointly with businesses in their country; they've got deals with BHP, deals with Fortescue and deals with CIMIC; they're responsible for projects with Port Lincoln council and Whyalla council; they're building a new port; they're part of the process of planning the build of a new high school in Whyalla; they're part of the process of building a new bridge in Port Augusta. They're doing all the things that you want Aboriginal people to do. They were the first Aboriginal group to have a Rhodes scholar in Australia's history, I might add; they have Aboriginal art gallery owners; they have people who run civil engineering companies which work with miners; they're about to purchase native seeds to do native flora repatriation as part of a joint venture with some farmers in the community. They're a very engaged group, and they're always contactable through their email process. So, to the extent that there's been any suggestion that they've been difficult to deal with, we just categorically reject that.

We would just like to say this. To summarise our position and my client's position as clearly as I can, we think that schedule 1 one of the bill is a mistake. We think the government should issue the declaration, subject itself to scrutiny and, in the event that the government's done everything properly, that's the end of it and this matter will be resolved. If the government hasn't done things properly, then you will all know. As senators, you will all know, and then you can make a policy decision after that has occurred. Because this is not the last opportunity for you, as senators, to legislate directly on the location of a facility at Napandee. You do not lose that power. Constitutionally, subject to a law being within the constitutional framework of Australia, you have the power to do whatever you want. You can legislate the location of Napandee now or you can do it later on. But you would
do it later on with the full facts available to you, so, in the event that there were a judicial review and it determined that the department had acted inappropriately, you would then know and you could make an informed decision about it. In the event that the judicial review determined that the department had acted appropriately, then that would be the end of the matter; you wouldn't need to legislate. So, as we say, this is not the last opportunity to deal with the facility or the last opportunity to place it at Napandee, but it is the last opportunity to ensure that there's independent scrutiny of what the department's done.

I think that's, fundamentally, our summary. I don't know if any of the Barngarla directors—I'm conscious that the committee will want to move forward and that there's limited time. Because it's unusual representing Aboriginal directors, I wouldn't mind if there's any capacity for maybe the chairperson to make a final comment very quickly. Do you want to add anything, Jason?

Mr Bilney: Basically, to reiterate what Nick said before, it's taken us 20 years to win our native title and for them to make a decision on a nuclear waste dump in Kimba. We're marking the 53-year anniversary of the referendum. What does that say to all Indigenous people? We won our country, but we still don't have a right to say what we need to say about our country. It's very disrespectful to me, my community and my elders. We were always approachable through our Barngarla contact email. Like Nick said, we do a lot a lot of business deals with a lot of solar projects and port projects. We're a very sophisticated native title group, and we're there to try and better our community. We function as a board and there's a whole bundle of communities together stretching right across the Eyre Peninsula. One really strong issue is the nuclear facility—the waste facility. Bear in mind, I know it's taken so many years to actually get to this point to build a facility, but it basically took our voting rights away and we were excluded from voting on Kimba. We should have been included as native title holders.

Mr Llewellyn-Jones: I think that's our opening remarks, thank you, and we're happy to field questions.

Senator GALLACHER: I'm looking at your submission. I presume it's drafted by you, Mr Llewellyn-Jones. It's dated 3 April 2018. Are you familiar with that submission to the earlier references committee inquiry?

Mr Llewellyn-Jones: I don't have that one in front of me.

Senator GALLACHER: It's a comprehensive submission, as always. Clause 8 goes to the terms of reference. Clause 8.3 states:

However irrespective of any community benefit package, Barngarla will not support the NRWMF in the area.

Mr Llewellyn-Jones: The position of Barngarla is that a benefits package won't make them—

Senator GALLACHER: It continues:

This indicates the committee's terms of reference paragraph B have not been met. There is no broad community support in respect to the NRWMF from Barngarla.

That's your current position, is it not?

Mr Llewellyn-Jones: We've put forward two proposals to solve that.

Senator GALLACHER: Solve that?

Mr Llewellyn-Jones: I do want to just answer the question. Firstly, we've indicated Barngarla has agreed to do a proper joint ballot which could determine whether or not they have broad community support and they would agree to be bound by a properly conceived ballot which included a definition of 'broad community support' in advance and one that they didn't have to organise on five days' notice when they weren't entitled to go into—

Senator GALLACHER: And the next point?

Mr Llewellyn-Jones: The other issue of course is that the Barngarla had put forward to Minister Pitt not that long ago that they would be willing to agree to a process where scrutiny is applied to the decision process to date. In the event that scrutiny shows that there's been a miscarriage of that process then obviously the government has to deal with it. In the event that there was merely a technicality which was why they were able to invalidate the declaration then they would be willing to work with governments to continue to proceed with it. They don't want this argument that there's some technicality will interfere with the process. Barngarla had dealings with many companies.

Senator GALLACHER: Mr Llewellyn-Jones, I have indicated a couple of times there is not a lot of time. I perfectly understand your position now—that you have put to the government an issue which needs broad community support. That definition, in your terms, has not been met. That is clearly with the government. The second point you made—the decision you put to Mr Pitt—is clearly with the government, so there's no ambiguity from your position at all, as far as I'm concerned.
Mr Llewellyn-Jones: No, there is not. Just to clarify, a community's package won't be something which will sway the Barngarla one way or another because the Barngarla are fairly well-off group in so far as they have many deals. They have perceived already on their country. So the point that's probably made in those submissions is trying to suggest that there's no kind of package or benefit which will change the decision of the Barngarla. That's not an approach the government should run.

Separate to that, the Barngarla have tried to find two solutions which might allow for this matter to progress. When I say 'progress', people realise what's happened or work out what's happened and then make sensible decisions based on that. I don't mean progressed necessarily on the basis the facility would be in Appleby. But one of those solutions would be to basically do the ballot again properly, with the right number of people in it, with a proper lead-in time to it so we can have a proper understanding of whether or not there was broad community support and also a clear understanding of what broad community support means or meant. That would be one circuit breaker. Alternatively, we can subject this process to scrutiny but we're willing to work with government to prevent a scenario where a technicality interferes with the declaration. But at the end of the day, if the declaration is invalidated because of some matter of substance, which we would say it is, we all need to know that.

Senator GALLACHER: Your position—to me at least, anyway—is abundantly clear. You mentioned earlier that had it been done by regulation or legislation in March, the practical effect of judicial review is that it would have been completed by now. So is that normally a four-, five- or six-month process—judicial review?

Mr Llewellyn-Jones: I do want to be clear. I would think the trial of judicial review would be done normally within about four or five months. It depends.

Senator GALLACHER: It actually looked like a judicial review. You had an independent juror administrator appointed. They then perused the decision-making process, documentation and interview people or take evidence. What does it actually look like?

Mr Llewellyn-Jones: Often it would be done on the papers. So, what would normally happen is you'd submit a whole bunch of affidavits to the court. There might be a calling of witnesses, I suppose, but that would normally be no more than a day or two of evidence. Normally, judicial review is done on the papers. Again, each case is different. I don't want to be seen to be putting an absolute rule forward. What you'd normally do is go before a single judge, say, in South Australia—maybe Justice Charlesworth or Justice White. There'd be a number of affidavits in. They normally get put in—there might be timeframes of a month to six weeks—and then maybe six weeks in response. Then there'd probably be a day's worth of argument—normally a judicial review is about a day's worth of argument, but sometimes it can be a day and a half. It is not normally longer than that, because it's normally fairly clear, and then you might get a judgement. We have disposed of judicial review proceedings in four or five months, but, of course, there could be appeals and that might delay things for another six months. Sometimes they're longer. But it's not an unrealistic conflict, to be honest. We're now five months into this bill having been introduced, effectively. I have seen judicial reviews, I believe, that have been resolved in approximately that time. That being said, yes, I don't disagree that it could go for longer. They're not normally two-year processes. They're normally done on the affidavits. They're normally before the courts. The decisions might take two or three months, I suppose. In any event, I suppose from a different perspective the proceedings would be almost—I'll put it to you in this way because I want to be clear about what I'm saying: if a declaration had been made in March, I'm fairly comfortable that a final decision, including on appeal, would have been done before the next election. So, there wasn't a significant risk to the government, in terms of some kind of delay until the election. It would have been resolved by then.

Senator GALLACHER: I think it's extremely valuable for the committee to get your practical experience there. I just want to go to the next thing. Even if all of that process is concluded, does ARPANSA licensing still involve the Barngarla people in heritage sites?

Mr Llewellyn-Jones: ARPANSA licensing will involve the Barngarla people, as it relates to the health of the Barngarla people. But the ARPANSA licensing process won't be able to revisit issues about what the department did in the site selection process.

Senator GALLACHER: I understand that, but even if there were a judicial review and we were into the process now, you still have rights under the licensing. I particularly noted from your submission last night that not every site is registered, and that makes sense as it's an expensive, time-consuming process. If there are heritage sites identified, there's no impediment to having them properly dealt with, is there?

Mr Llewellyn-Jones: That assumes, of course, that the issue of heritage sites is the only issue that is the problem with the department's site-selection process, which it isn't. If it were solely a question of heritage sites,
perhaps not. We've been in situations where there hasn't been capacity to move the footprint for matters, in terms of pumped hydro and solar projects previously. So, it's not a guaranteed situation, but likely the Barngarla position is that the errors of the department's conduct, if I can call them that—and I'm trying not to be too critical of anybody here—

Senator GALLACHER: I'll finish up with this fairly direct question. Having participated in the earlier references inquiry—which recommended that the minister and the government fully engage with Indigenous organisations, and they accepted that they would. But I suppose that came off the back of evidence where they clearly got it catastrophically wrong by saying there were no native title implications in the area and didn't get off on the right foot from inception. Is that true in your estimation?

Mr Llewellyn-Jones: There's definitely no doubt that six or nine months were lost in this process, with the department not accepting that unregistered sites could be important. There's native title immediately adjacent to the site of the Pinkawillie National Park but there isn't native title on the site. I think we've provided some very detailed maps to help the Senate understand that, with the blue and the red—just because it's a very specialist area in relation to that. We provided those maps yesterday to help with the location of native title. But there was definitely a lot of correspondence between Bruce Wilson and the Barngarla and us, as their lawyers, trying to explain that the fact that there were no registered sites wasn't definitive on the fact that there was no heritage there, because of the peculiarities of the South Australian heritage regime. Ultimately, an Aboriginal group won't go to the cost of spending five or ten thousand dollars per site flying around registering all their sites—five or ten thousand dollars per site listing a report to go up and register sites all over the area, especially given the Barngarla had spent a lot of money immediately beforehand trying to provide a court trial to establish the native title. There was no real time to do so. But we kept on trying to indicate that Wilson—that this was not the correct way of looking at it, and that really caused problems. Then you get to this time frame where Dr Goring goes out in February, because finally they decided what they have to go out. She goes out with them in February. Obviously there's a disagreement as per the Baldock evidence on that, but so be it. In any event, we then had the department changing its position very quickly. There would have been some scope to start addressing matters, but the reality was it then got consumed in the eligibility of the ballot problem. Then the Barngarla said: 'We're happy to deal with the department, but we need to accommodate for the fact that we're in litigation against the council at this point in time. How can we work with the department whilst making sure our lawyers can be present so we don't end up doing something that affects litigation?' That was the situation, and it was just never solved. The department and ANSTO and things like that had a mechanism to allow Barngarla and the lawyers to attend. Then Barngarla were concerned, because it was an active litigation about how they'd manage that, and so the thing largely became problematic to address. But realistically—

CHAIR: Can I interrupt? I appreciate that some of these questions require detailed answers, but I am very conscious of time and I do need to share the call. I've got indications from Senator Antic and Senator Hanson-Young. Senator Antic?

Senator ANTIC: I've only got a couple of bits and pieces. I notice the submission seems to suggest that the Barngarla felt they didn't have any say in the process. Is it correct to say that you've directed the department to deal only through the lawyers or through written correspondence? What options would be considered to progressed discussions further from this point, if that is the case?

Mr Llewellyn-Jones: To answer the question properly, they're a board driven organisation, not a chair driven organisation. One of the difficulties often happens in Aboriginal organisations when there is one person as the chair—and I've got Jason, who is the chair, sitting next to me right now—whereas the Barngarla are a board driven organisation with their twelve directors. They do a lot of work on governance to make sure they're a board driven organisation. They do prefer things in writing to the Barngarla contact email, because it allows all the directors to get that email simultaneously or concurrently, because that email is set up to automatically go to all directors, with the exception of two or three elders who don't use email regularly. Those elders then get it mailed to them.

We don't agree that there's been a comment made in an absolute sense that communication has to go through the lawyers. In fact, to the contrary, there was an email sent a week before Ms Chard's evidence, indicating to contact the Barngarla contact email regarding arranging a meeting with the minister. We've extended the opportunity. I emailed one of the minister's staff recently, before this hearing, to just confirm they've received the letter, and we're very happy to do that. In fact, the Barngarla, quite genuinely, want to take Mr Pitt out onto the native title land in Whyalla. Of course, the COVID situation has precluded that.
The Barngarla do want to deal with things through email more than phone calls, because they're a board driven organisation, not a chaired one, so, if there's only a phone call with one person, it's very difficult to make sure the information is distributed fairly.

I know you haven't worked out how to deal with the response, I know we've got no time and I know we do want to work with the Senate. We're not trying to create a situation where it's 'he said' and 'she said' on the evidence before you. Even in the letter attached to Ms Chard from Barngarla yesterday—they're very grateful to get that information.

There's clearly a threshold problem. They don't think there is full community support. They don't think that their voice has been included. They think they were cut out of a ballot they should have been involved in. They think they've been cut out of the heritage assessment they should have been involved in. They think the process has been miscarried and they think that schedule 1 of the bill is an attempt to remove judicial oversight of that. But, as it relates to moving forward, getting that information is useful. The Barngarla do find that useful. Letters to the Barngarla contact email is the best way of doing it.

To the extent that there might have been comments about contacting lawyers, that might have been in the 30 minutes we've got, which again, to be honest with you, is why we think there—

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Senator HANSON-YOUNG: A number of the questions that I had been answered, but I want to ask specifically about the issues in relation to why we are now dealing with this as a piece of legislation and the reason for the removal of judicial review. Have the traditional owners being given an explanation from the government about the change in approach?

Mr Llewellyn-Jones: No, not in any meaningful way. One of the reasons why we wanted to meet with Minister Pitt is that, in fairness, we do see Minister Pitt as a fresh pair of hands in that he wasn't the minister who
was conducting this process historically. As a consequence, to some extent, we felt that maybe we could get a clear answer from the minister when he attended Whyalla. Of course the problem of COVID prevented that meeting from taking place. But we haven't received an answer that explains why. I understand there might be people who would suggest that it's to create some kind of certainty, but it doesn't seem viable to me. It's a long process and it's controversial. Removing judicial oversight or independent oversight at this late stage is just going to create arguments of legitimacy for years to come. It strikes me as a much worse idea than just going through and having that oversight now. That was part of the Gillard legislation, and I think it was right because ultimately if judicial oversight is removed from this process it's just going to lead to years of people saying that the department didn't think it could live up to the scrutiny and that would create a legitimacy problem for the facility.

It's actually in everybody's interests to ensure there's independent oversight. We make this point: all sides of politics—on the Tasmanian dam, the bank nationalisation case for the conservatives or the fact that Mabo was determined by the courts before the parliament—benefit from having an independent umpire. So we're quite surprised that this suggestion is even there and that it's even being considered. We think that issue fatigue is part of it. We know people just want a resolution to this. I get it. There's nothing more unappealing than being told the process might have failed again. But we just don't see why independent scrutiny should be removed, and we haven't been provided a clear reason. To some extent it's similar to Senator McAllister's hearing the other day. No real answers have been provided.

**Senator HANSON-YOUNG:** I want to ask the chairperson something in relation to the heritage issues. I'm interested in what the heritage values are on the proposed site. I understand that there has been an assessment done by the department and that the traditional owners have done their own assessment but you weren't invited in the official one. What are the heritage values on the site, and what should we as members of the federal parliament be made aware of?

**Mr Bilney:** There are tangibles and there are intangibles—things you can see and things you can't see. It's like reading a book: our country tells the story as we travel through it. There are a lot of significant sites and places that stretch right over Bungala country. It was handed down through stories from our grandparents. It's adjacent to the national park, it's connected through the Gawler ranges. All the stories and everything were passed down through our family. It could be a female or it could be a male. I can't tell you what actual sites, but there are sites all the way along this. Everything is connected to us. It's like Mother Earth, and it's our right to protect and preserve our country. It's part of preserving that country. It took us 21 years to win our native title and have a say on our country. It is very disrespectful that they've gone ahead and said there's no heritage on there. Whether it is heritage or sacred sites, we still have heritage on that country.

**Senator HANSON-YOUNG:** What do you say to the opposing view—one of the representatives from the local council said it to this committee early today, and it has been repeated a few times by other witnesses—that this is private land so it really has nothing to do with you as traditional owners? What's your response to that?

**Mr Bilney:** It might be private land, but there is defensible and there is indefensible. We have a lot of sites all over. It might have been farmed for 200 years or whatever but, in the end, there are still things that are tangible and intangible; there are a lot of things that are connected to our people and our country. We have a lot of family that are connected to that country and brought up in that country, so there are a lot of places that connect to us.

**Ms Taylor:** I was born at Kimba, raised there, went to Sunday school there and had my first children there. In Kimba, we started off in a metal shack. Kimba, and around that area, means a lot to me because I grew up going out on excursions and travelling around that area with the farmers all around that area. My grandfather was one of the first people to turn on the tap for the water to flow through Kimba. Growing up in Kimba and going out on country with excursions and letting them know what we used to do as kids—the meaning, to me anyway, is still there. I still take my grandchildren and children out there and tell them where we went and how we went there. My mother was a Reid before she got married. The Reid family was pretty well known. They worked in Kimba. They were cleaners and caterers. My uncle was a butcher. My grandfather worked on the highways and with the waterworks. Some of them were working with the electricity company and even played football there. So Kimba, and that area, means a lot to me and my family.

**Mr Llewellyn-Jones:** We get what is called extinguishment in the Anglo-Saxon—Western—property law tradition. Native title land exists where there hasn't been a grant of freehold or a grant which extinguishes it, but that's very separate from the connection people feel, either culturally or historically, to both the site and the surrounding sites.

**CHAIR:** Senator Hanson-Young, do you have any further questions? We will need to wrap up.
Senator HANSON-YOUNG: I have a final question. This committee raised with the department the lack of engagement with the department that the Barngarla people had expressed and informed us about, including the heritage assessment. Has there been any specific follow up from the department in relation to the heritage assessment and heritage values and including you?

Mr Llewellyn-Jones: I think there was a letter from Ms Chard, and there's a response to that, which are both before the committee, but largely, the matter is presently waiting for Minister Pitt to respond to the proposal to try and ensure some kind of scrutiny over the department’s conduct to date. The Barngarla went out of their way to hire an expert to go there when the department responded to look at heritage. The Barngarla went out of their way to ensure heritage was done. If this facility ends up being built on this area the Barngarla will make sure that the heritage is protected, but we're dealing with a threshold issue, the fact that at the moment there's no scrutiny of what's happened to date. The Barngarla have put a position to the minister that they hope the minister will take on in good faith. We've got no reason to believe that we haven't. In fairness, our dealings with Minister Pitt's office have been fine to date. I've got no complaints with the dealings we've had with the office. But at the moment we need a response to that.

Senator HANSON-YOUNG: Just to be clear: the department haven't come back to the table with a specific proposal for how to involve the traditional owners in a new heritage assessment.

Mr Llewellyn-Jones: No. The only thing which is in the letter of Ms Chard from 30 July is just a general overview of what they want to do. There's been no specific proposal. Again, the Barngarla have been back to Ms Chard and said, 'That's fine. We'll do whatever we need to do, but let's wait till we get a response from the minister.'

CHAIR: We will need to move on. Thank you all, once again, very much for your time today. We really do appreciate it.

Mr Llewellyn-Jones: Thank you, senators. Thank you all.
ECONOMICS LEGISLATION COMMITTEE

CHARD, Ms Samantha, General Manager, Australian Radioactive Waste Agency, Department of Industry, Science, Energy and Resources

REINHARDT, Ms Sam, Head of Division, Northern Australia and Major Projects, Department of Industry, Science, Energy and Resources

Evidence was taken via teleconference—

[13:27]

CHAIR: Welcome. Thank you for appearing before the committee today. Information on procedural rules governing public hearings has been provided to witnesses and is available from the secretariat. I advise you that questions on notice should be sent to the secretariat by close of business on Friday 14 August. Do either or both of you wish to make any opening remarks?

Ms Reinhardt: No.

Senator PATRICK: Chair, the committee has been provided with answers to questions on notice which are highly relevant to the hearing moving forward today. We've only just received them. There is a note that says that the department has requested confidentiality. It's not clear what it's requested confidentiality on. I want to ask questions in relation to some of these answers, but I don't have any knowledge as to what they're seeking confidentiality over.

CHAIR: To be honest, I haven't had a chance to look at those questions on notice myself. Ms Chard, is there anything you can clarify for Senator Patrick?

Ms Chard: Yes. The committee asked for briefs and advice about the decision-making process for the site specific legislation. We have provided the committee with a series of briefs that provide that guidance. They do contain some redacted material, but what those briefs effectively illustrate is that the department briefed the minister on the potential to specify the site in legislation in July 2019 and that we further briefed the minister on site-specific legislation in 2019 and then again in November 2019. The documents contain redacted information that goes to legal privilege and to the deliberations of cabinet, but we have also sought that the briefs themselves be provided to the committee in confidence, because they effectively outline the deliberative advice of public servants to government, which typically is not provided in public so as not to discourage public servants from providing frank and fearless advice. Obviously, it's the decision of the committee as to whether or not you want to accept those documents in confidence.

CHAIR: I don't want to put words in your mouth, Ms Chard, but I'm wondering if the committee should consider adjourning for a period of time to explore some of these issues, and then we can make a more formal decision. Would anyone object to that course of action?

Ms Chard: I'm comfortable with that.

Senator ANTIC: I'm happy with that, Chair.

CHAIR: Senator Patrick?

Senator PATRICK: I'm happy with that. I'm hoping Senator McAllister is also in line. She clearly has an interest in these QONs as well.

CHAIR: Senator McAllister, are you back online?

Senator GALLACHER: She's having difficulty with her communication.

Ms Chard: We're happy to do such a briefing with you later, if it suits you.

Senator GALLACHER: Are we doing this on the hop? Should we simply not schedule another hearing with the department, which can be done by telephone conference, to consider it? Do we have to do it now? We have allocated time here for the questions that are before us, and now we have QONs that came back, I think, about 20 minutes ago. Do we need to try to cram it all in now, or should we separate the two issues?

CHAIR: I'm happy to hold a teleconference later in the week to deal with those specific questions, if that's the view of the committee.

Senator HANSON-YOUNG: My concern with all of that is that the department's responses and the reason for confidentiality, and whether we accept that or not, are indeed related to the remainder of questions that we might be asking today. So I'm just not sure you can—

CHAIR: To be honest, I've been chairing the hearing, so I have not even looked at those questions and responses while I've been chairing the hearing, so I find it very difficult to make a determination right now.
**Senator Patrick:** To help you make your decision, Chair, one of the claims here is about frank and fearless advice. I'm very familiar with FOI. It's hard to say you have frank and fearless advice when you know there is only one person who will receive the advice. That's the general principle that's taken under FOI, so I don't actually accept that argument. I think we need to have a discussion about that.

**Senator Hanson-Young:** I would be interested to know whether Senator McAllister is on the line, but I propose that we adjourn. I'm not prepared to go into more questions of the department until we know and resolve the issues on the questions they haven't yet answered.

**Chair:** Alright. I'm perfectly comfortable with that course of action. Senator McAllister I understand you are back on.

**Senator McAllister:** I am.

**Chair:** We're just deciding whether to adjourn now and come back later in the week to hear from the department after we can consider the answers and the information they've sent through to us requesting confidentiality.

**Senator McAllister:** I think there are a couple of questions. The first, which I think the committee ought to consider in a serious way, is whether or not we accept these documents as confidential. They're heavily redacted and, if that's the case, it's not entirely clear to me why they shouldn't be in the public domain, given the amount that has been redacted already. The second is that, having made that decision, we then need to make a decision about what parts of our conversation can happen publicly. Those are complex matters. They're hard to do on the fly. I accept that, Chair, and, as you say, you've been chairing and you haven't looked at the documents. I'd support an adjournment, a private discussion and resuming with the department at some future point.

**Chair:** Senator Antic, did you have a view?

**Senator Antic:** I'm happy to adjourn as well. I think that's sensible.

**Chair:** Okay. Have I missed anybody out? Deputy chair, I'd better hear from you.

**Senator Gallacher:** I'm happy to adjourn, but I think, Chair, you should just make clear to those listening that any resumption will be broadcast to all interested parties.

**Chair:** I think that's a determination for the committee.

**Senator Patrick:** I would also say to those who are listening that the committee's preference always is to have as much information in the public domain as possible.

**Chair:** Absolutely. On that basis, I ask all senators who are interested to stay on the line for a brief private meeting. Ms Chard, with apologies, I will ask you to exit the teleconference. We will reconnect with you later on—hopefully, later this week.

**Ms Chard:** Thank you.

**Chair:** Thank you both. On that note, today's session is adjourned.

*Committee adjourned at 13:36*