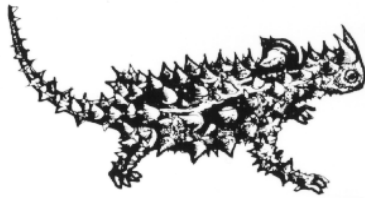


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## **Submission to the Constitutional and Legal Senate Inquiry in relation to the National Radioactive Waste Management Bill 2010**

The Arid Lands Environment Centre (ALEC) is the peak regional environment organisation servicing Central Australia. ALEC researches, advocates and acts towards the vision of ‘healthy futures for arid lands and people’.

The National Radioactive Waste Management Bill 2010 is a deceptive piece of legislation that contravenes Australia’s international obligations, subjugates Northern Territorians and imposes radioactive waste on unwilling communities. The Federal Labor Government promised to repeal the Howard Government’s Commonwealth Radioactive Waste Management Act and it has done so, but it is being replaced with something equally coercive, undemocratic and draconian. There is no recourse to challenge this Bill once it is passed through Parliament. The Minister for Energy and Resources is the ‘absolute’ authority on this and no level of environmental protection legislation, Northern Territory law or indigenous land rights can stop it. That in itself is an issue that needs to be considered by the Senate Inquiry.

The National Radioactive Waste Management Act looks set to be the yardstick for Federal intervention and control in the Northern Territory – which conflicts with environmental concerns, seismologic data, land rights and common sense. The longevity of a nuclear waste repository depends very much on local support for it. Given the level of opposition to the imposition of this Bill, a national nuclear waste dump at Muckaty is not in the interests of anyone. It is a politically expedient option that reeks of Howard-era politics and is a disappointment to all fair-minded Australians. Science must dictate how best we are to deal with radioactive waste in the 21<sup>st</sup> century – digging another hole in Central Australia hoping that the rest of Australia will forget about it - is not a solution.

### **National Radioactive Waste Management Bill**

The National Radioactive Waste Management Bill (NRWMB) is the Labor Government’s answer to the Howard Government’s Commonwealth Radioactive Waste Management Act (CRWMA). The replacement Bill is more insidious than the CRWMA. The Labor Government claims it has fulfilled its election promise by repealing the CRWMA in Schedule 1 (a mere 12 lines) but has used 36 pages to replace it, ensuring that nominations from the CRWMA are maintained ie. Muckaty. The NRWMB erodes all legal avenues for challenging the location of a site and gives no recourse for Traditional Owners, land holders or State/Territory Governments to appeal a Ministerial decision.

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The proposed Bill is highly coercive. Section 11 of the bill explicitly overrides any state or territory laws that would hinder site selection. Section 12 eliminates Aboriginal interests (the Aboriginal and Torres Strait Islander Heritage Protection Act 1984) and environmental interests (the Environment Protection and Biodiversity Conservation Act 1999) from the process of choosing a site. Section 13 eliminates the property rights of any individual unlucky enough to be in the path of the dump or its access corridors. Once a site is chosen, it will be assessed under Commonwealth environmental legislation which has almost no mechanisms for preventing the project from going ahead.

The proposed NRWMB is simply a legal construct to enable the identification, nomination and acquisition of land for a national nuclear waste repository in the Northern Territory. It is designed to override any existing and future Commonwealth, State or Territory legislation that may impede the imposition of a nuclear waste dump in remote Australia. The NRWMB expands the gulf between the rest of Australia and remote Australia, where hazardous materials created on the eastern seaboard and internationally are dumped remotely in the Northern Territory.

### **Lack of Consultation**

The proposed NRWMB gives ‘absolute discretionary powers’ to the Minister for Energy and Resources. This contradiction of the consultative measures detailed in the Bill, pays lip service to consultation of Traditional Owners while ensuring that the final decision rests with the Minister. The illusory nature of the NRWMB is geared towards the Muckaty nomination. This so-called voluntary nomination was made under the CRWMA. A comprehensive repeal of the CRWMA would require re-nomination of sites, however the Federal Labor Government has deceived the Australian public by pushing the Muckaty nomination. A nomination made under duress (the CRWMA) should not be considered for nomination. The ‘nomination’ by the Ngapa people is highly contested and unrepresentative. There is a certain murkiness surrounding the Muckaty nomination in terms of the secretiveness around the contractual arrangements, anthropological studies and the ‘veto’ powers of the nominating party.

Given the difficulties for the Muckaty Traditional Owners to travel to Canberra, Sydney or Darwin for this Senate Inquiry, we request that evidence be gathered in Tennant Creek. The ‘voluntarism’ of this nomination is seriously in question. This conflicts with the Government’s commitment to the principles espoused by UK Committee on Radioactive Waste Management including two key principles of "voluntarism and partnership between communities and implementers" ([www.corwm.org.uk](http://www.corwm.org.uk)). The voluntarism espoused by the Minister for Energy and Resources is reflective of a public relations campaign rather than developing actual partnerships with the Ngapa. The coercive powers under the NRWMB are more akin to colonialism than consultation. The Federal Government needs to build partnerships with remote Australians rather than railroad decision-making processes, especially those that will be in effect for millennia.

### **Political expediency vs science**

Nuclear waste should be moved as little as possible, and should be stored above ground close to the point of production, close to centres of nuclear expertise and infrastructure. The Lucas Heights nuclear agency ANSTO is by far the biggest single source of the waste, and all the relevant organisations have acknowledged that ongoing waste storage at Lucas Heights is a viable option — the Australian Nuclear Science and Technology Organisation, the Australian Radiation Protection and Nuclear Safety Agency, the Australian Nuclear Association and even Mr Ferguson’s own department. Additionally, requiring ANSTO to store its own waste is the best — and perhaps the

only — way of focussing the Organisation's collective mind on the importance of waste minimisation principles.

Any site selection process ought to be based on scientific and environmental siting criteria, as well as on the principle of voluntarism. In 2005, the Howard government chose the NT, and ruled out NSW, for purely political reasons. When the Federal Bureau of Resource Sciences conducted a national repository site selection study in the 1990s, informed by scientific, environmental and social criteria, the Muckaty area did not even make the short-list as a "suitable" site.

### **A Way Forward?**

- The Senate Inquiry should be held in Tennant Creek to enable Traditional Owners to give evidence.
- The nomination of Muckaty should be ruled out due to its nomination under the duress of the CRWMA.
- Science and environmental criteria should determine the best possible method of managing radioactive waste in Australia, not politics.
- The NRWMB should be scrapped and a scientific and environmental process of identification and nomination of a site be facilitated.
- Unlike the NRWMB, transparency and accountability of the decision-making and consultative process should be mandatory.
- The Government should be condemned for exploiting political and constitutional weaknesses to impose a radioactive waste repository on unwilling communities. The NRWMB is not a 21<sup>st</sup> century solution to 20<sup>th</sup> century radioactive waste— but a 19<sup>th</sup> century method of dealing with a 21<sup>st</sup> century problem.