



Committee Secretary  
Senate Legal and Constitutional Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

19 March 2010

Dear Sir/Madam

## **RE: INQUIRY INTO THE NATIONAL RADIOACTIVE WASTE MANAGEMENT BILL 2010**

The Environment Centre NT is the peak non-government environment organisation in the Northern Territory (NT). Our work is dedicated towards environmental protection and the maintenance of healthy Territory ecosystems. We are also committed to a more socially just and sustainable NT community, with special recognition of the rights, aspirations, responsibilities and knowledge of Aboriginal people.

Focusing on legal and constitutional matters in relation to the National Radioactive Waste Management (NRWM) Bill 2010, our submission to the Inquiry addresses procedural fairness and judicial review. It also raises related concerns pertaining to Ministerial discretion, the overriding of all relevant State and Territory legislation and the overriding of Commonwealth environmental and Aboriginal heritage protections.

### Procedural fairness and judicial review

We firstly bring to attention the nomination of the Muckaty site by the Northern Land Council (NLC). This nomination, which sits at the heart of the development of the NRWM Bill, occurred by way of a contentious agreement between the NLC and the former Federal government. The NLC/Federal government agreement was able to avoid public scrutiny due to special provisions in the *Commonwealth Radioactive Waste Management Act 2005* which explicitly denied procedural fairness and judicial review. Consequently, the Muckaty nomination is now strongly contested by many Muckaty Land Trust Traditional Owners who were not part of the agreement process<sup>1,2,3</sup>.

The Environment Centre NT is very concerned that there exists no legitimate means for resolving the contest. Indeed, as the NRWM Bill currently stands, there is no allowance for procedural fairness or judicial review regarding Muckaty; the nomination continues to be afforded protection from public scrutiny. This is extremely disappointing given radioactive waste storage is a significant issue that has

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<sup>1</sup> <http://www.abc.net.au/pm/content/2010/s2828142.htm>

<sup>2</sup> <http://indymedia.org.au/2010/02/24/%E2%80%9Caborigines-from-across-the-country-will-fight-nuclear-dumping%E2%80%9D>

<sup>3</sup> <http://tennantcreek.yourguide.com.au/news/local/news/general/new-bill-gives-powers-for-dump-to-proceed-at-muckaty-leaving-traditional-owners-feeling-betrayed/1762118.aspx>

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the potential to impact not only on Traditional Owners but others living and working in the wider region for years to come. We recommend that the Muckaty nomination be abandoned in light of the fact that it has been exempt from the foundational tenets of a just and democratic society.

We also stress the critical importance of the Senate Legal and Constitutional Committee holding a public hearing for Traditional Owners and other stakeholders in Tennant Creek. This will ensure that those people who have the greatest interest in the Committee's work, but who may not have had the capacity to respond in writing to the Inquiry, can raise their legitimate questions and concerns in person. The request for a meeting in Tennant Creek underscores the importance of full public participation, including voluntary and informed consent by Traditional Owners, in this matter of national, regional and local significance.

More generally, the Environment Centre NT expresses strong disappointment in the limited opportunity for procedural fairness that the NRW Bill affords, particularly given the nature of the issue at hand. For example, S. 9 provides an unusually detailed construct of procedural fairness that effectively acts to limit its broader interpretation and application by the Court, while S. 17(2)d states that only "persons with a right or interest in the land" can comment on proposed declarations by the Minister.

We question why the NRW Bill fails to align with the general progression and development of environment-related legislation here in Australia and around the world, which involves a widening of the scope for procedural fairness, particularly with respect to third parties. A widening scope, as opposed to the narrow scope in this Bill, is important for acknowledging that environment-related issues (e.g. the siting of a radioactive waste site) not only impact on immediate landholders but also the broader community (e.g. those who live in the locale of the site, those who live/work along transport routes etc).

### Absolute Ministerial discretion

S. 8 of the Bill clearly spells out that approval of nominated land occurs under absolute Ministerial discretion. Similarly, S. 13-17 give the Minister sole discretionary power to extinguish all rights over a parcel of land. It is worrying to see this sweeping power proposal, which limits procedural fairness and implies that people's rights, liberties or obligations are completely dependent upon non-reviewable decisions. More specifically, in respect to Muckaty, the Bill provides no indication as to how the Minister will carry out their assessment of the nomination, and disturbingly, makes it clear that local people have no right of appeal.

### Overriding of all State and Territory and other Commonwealth legislation

The Environment Centre NT does not accept the overriding of all State and Territory legislation that might work to hinder site selection (S. 11). Additionally, we object to the elimination of Aboriginal interests (the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*) and conservation interests (the *Environment Protection and Biodiversity Conservation Act 1999*) from the process of choosing a radioactive waste site. We also perceive an injustice in S. 4(4), which guarantees that the Muckaty nomination will remain valid even if it is found to conflict with provisions under the *Aboriginal Land Rights (Northern Territory) Act 1976*, and similarly in S. 13, which effectively eliminates the property rights of any individual whose land lies in the path of the waste site or its access corridors.



In raising our objection to the overriding of Territory legislation we highlight the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004* that was introduced by the Northern Territory government to control the transportation and storage of radioactive materials. This law reflects serious concerns about environmental risks and long term impacts that have been raised by the Territory's constituents. A complete dismissal of the will of the people, as proposed by this Bill, flies in the face of sound democratic process.

We note that once a radioactive waste site is chosen, it will be assessed under Commonwealth environmental legislation. However, the *Environment Protection and Biodiversity Conservation Act 1999* can in no way adequately cover all of the legitimate concerns held by members of local resident populations, as it is focused on matters of national environmental significance. We call for power to be given to Territory and State legislation so that local issues can be properly addressed.

The Environment Centre NT appreciates the opportunity to provide a submission to this inquiry. We hope to see an outcome of a more democratic and respectful approach to radioactive waste management, which restores principles of consultation, consensus, transparency, best practice, rights to appeal, fairness and accountability. Ultimately, we believe that nuclear waste should be moved as little as possible. Any site selection process ought to be based on scientific and environmental siting criteria, and also on the principle of voluntarism, which is not at all apparent in the case of the Muckaty nomination.

Yours sincerely

[Melanie Bradley]

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