Australian Conservation Foundation

Submission

Inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the

National Radioactive Waste Management Bill 2010

March 2010

1. Introduction

The Australian Conservation Foundation is committed to inspiring people to achieve a healthy environment for all. For over 40 years ACF has been a strong voice for the environment, promoting solutions through research, consultation, education and partnerships and by working with the community, business and government to protect, restore, celebrate and sustain our environment.

ACF welcomes this opportunity to comment on the *National Radioactive Waste Management Bill 2010* (**Bill**) given its long-standing interest in and engagement with radioactive waste management issues in Australia.

In ACF's view, processes to date for assessing management options for low to intermediate level radioactive waste have been inadequate, unnecessarily narrow in scope and lacked legitimate community support. We oppose passing of the Bill in its current form and urge the Federal Government to pursue a broader and more thorough public assessment process applying best practice approaches outlined in this submission.

Should a more thorough assessment process determine that a centralised remote facility for the storage of low to intermediate level waste is the most prudent management option, ACF would be supportive of such an approach provided site selection, construction and operation is reflective of international best practice industry approaches, upholds broadly accepted human rights principles and effectively manages long-term risks associated with radioactive waste storage.

2. Summary of position on Bill and Recommendations

2.1. Summary of ACF position on Bill

- ACF has serious concerns about a number of aspects of the Bill and key processes and decisions to date made under those provisions of the current *Commonwealth Radioactive Waste Management Act 2005* (**CRWMA**) that are preserved by it. We oppose the Bill in its current form.

- In particular, ACF is concerned that:

    - the **process surrounding the nomination and acceptance of the site at Muckaty was flawed** and fell well short of standards demanded by international best practice and human rights principles; and

    - given the Bill's exclusion of numerous regulatory regimes that might otherwise apply to the siting, construction and operation of a facility for the storage of low to intermediate level radioactive waste

(**Facility**), there is a **risk that regulatory standards will be inadequate**.

- The Federal Labor Government made a clear election commitment to repeal the CRWMA and establish a consensual process for Facility site selection based upon scientific evidence and community consultation. In ACF's view the Bill falls far short of this promise and is effectively little more than a "re-packaged" version of the CRWMA.

- As the focus of this Inquiry is on legal and constitutional matters, we have limited our comments to issues of a more "legal" character and (subject to our overarching recommendation that the Bill be withdrawn) made specific recommendations on provisions of the Bill in that context.

- However in ACF's view, any adequate assessment of the impact and appropriateness of the Bill must take into account the findings of the 2008 Senate inquiry into the CRWMA[1] and must also consider the extent to which the Bill permits:

    - a site selection process that is founded upon free, prior and informed consent of affected communities and is adequately informed by the full range of relevant issues – **scientific, environmental, health, social, cultural and economic** (**Essential Criteria**); and

    - effective and **adequate regulation of a facility used for storage of low to intermediate level radioactive waste** and related activities (including transportation of waste to the site) .

- ACF believes that the Bill fails when measured against these benchmarks.

- Given the history of the CRWMA and the Muckaty site selection, ACF wishes to register its **concern about the limited scope of this Inquiry and, given the importance of the issues, the limited time** available for making submissions to it.

2.2. Overarching recommendations

- **ACF calls for the Bill (and the Muckaty nomination and acceptance) to be withdrawn and replaced by new legislation repealing the CRWMA in its entirety**.

- **The Federal Government should then proceed with a site assessment process based on best practice principles outlined in this submission and reflective**

[1] Senate Environment, Communications, Information Technology and Arts Committee; *Inquiry into the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008* (**2008 Inquiry**)

of the specific and long-term risks posed by a radioactive waste storage facility.

- Whether such process requires specific enabling legislation or could proceed under existing legislative mechanisms (for example those facilitating "strategic" environmental impact assessment that can consider the relative merits of alternative sites) should be subject to detailed and transparent consideration by the Government.[2]

2.3. Specific recommendations on Bill

- Subject to our overarching recommendations outlined above, ACF recommends the following specific amendments to the Bill:

#	Bill Section	Recommendations
1.	**4**	Previous site nominations and approvals must be subject to both procedural fairness and review of administrative decisions. They must also reflect best practice approaches to free, prior and informed consent - in accordance with international industry best practice and broadly accepted human rights principles.
2.	**4(4), 5(5), 7(4), 8(6), 14(2) and 16(6)**	The validity of key decisions and processes under the Bill including site nomination and acceptance must be conditional upon compliance with basic evidentiary requirements and processes underpinning free, prior and informed consent. Therefore these sub-sections that allow key decisions to stand notwithstanding a failure to comply with procedural fairness requirements should be deleted.
3.	**5**	The bias and presumption created by the Bill in favour of a NT site is at odds with a site selection process properly informed by each of the Essential Criteria (outlined above) and founded upon genuine community consent. This bias and presumption should be removed.
4.	**8(1) and 13(2)**	Key approvals and declarations should not be subject to unfettered Ministerial discretion. In making relevant decisions the Minister for Resources and Energy, Minister for Tourism (**Responsible Minister**) should be required to have regard to each of the Essential Criteria. The Responsible Minister should be required to give reasons for decisions if requested.
5	**11, 12, 19, 23, 24 and 30**	ACF is concerned by an approach under which numerous Territory, State and/or Commonwealth regulatory regimes are displaced by a

[2] See for example Part 10 Chapter 4 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

		limited number of Commonwealth laws to the extent that they would "regulate, hinder or prevent" key matters pertaining to the Facility (including its siting, construction and operation and the transport of radioactive waste). In ACF's view any approach that purports to exclude the operation of laws that would otherwise apply **must be informed by a comprehensive and publicly available matrix of risks** posed by the siting, construction and operation of the Facility (including the transportation of hazardous waste) and an **analysis of how the laws saved by the Bill will address those risks** in the absence of the displaced laws.
6	**General**	The Bill must explicitly exclude the use of any Facility established under it for the storage of higher level radioactive waste and any waste, including spent nuclear fuel, which is not of Australian origin.

3. Historical context of Bill

In ACF's view, any proper consideration of the Bill must be informed by the history of its evolution.

In the schedule to this submission we have outlined key points in this history. In summary, it is characterised by a lack of transparency, inadequate consultation processes and the failure of successive governments to meet key policy commitments.[3] By effectively ratifying site selection decisions made by the previous Government and retaining key aspects of the CRWMA, the Bill endorses and continues a process that lacks transparency, excludes affected communities from site selection and development decisions and restricts the operation of laws that would otherwise apply to protect communities, their health and the environment.

4. Key flaws in Bill

While the Bill re-introduces some basic accountability and review mechanisms into Facility site selection and development process, it retains fundamental flaws that characterised the CRWMA approach.

We have briefly set out below ACF's chief concerns. These reflect two broad themes:

- the lack of basic accountability mechanisms embodied in the Bill and its approach to the selection of a site for the Facility; and

[3] Veteran journalist Paul Toohey has described the Bill as "…*one of the most plainly insincere examples of legislative sleight of hand ever seen in this country" Northern Territory News* 27 February 2010

- the Bill's impact upon the regulatory framework that may otherwise apply to the establishment and operation of the Facility.

4.1. Basic accountability mechanisms - free, prior and informed consent, procedural fairness and judicial review of administrative decisions

International industry best practice and broadly accepted human rights principles require that minimum standards be adhered to in ensuring that any site proposed for a radioactive waste repository has the free, prior and informed consent (**FPIC**) of affected communities. In the Northern Territory context, these principles are reflected in general terms in the *Aboriginal Land Rights (Northern Territory) Act* 1976.[4]

We have outlined these minimum standards in more detail in paragraphs 5 and 6 below. In summary they require:

- accurate identification of communities with an interest in the subject land and other affected stakeholders, including in an Indigenous context, the Traditional Owners of country;
- effective consultation with these communities including full and accurate disclosure of all relevant information in a form that is understandable and accessible;
- an opportunity for informed views of affected communities to be expressed;
- consent to the proposal, informed not only by a comprehensive understanding of it but also by advice from relevant professionals; and
- transparency in key approval processes and decisions.

The nomination and approval process in connection with the Muckaty Site in the Northern Territory has suffered from a broadly acknowledged failure to meet these minimum requirements. In particular, serious concerns have been raised[5] as to:

- whether those entitled to speak for country (Traditional Owners) were correctly identified and consulted and therefore consented to the nomination;
- whether Traditional Owners were given sufficient information and access to professional advice to the extent necessary to ground informed consent; and

[4] See in particular sections 23 and 19 of the Act

[5] See Letter from Muckaty Traditional Owners to Responsible Minister dated 8 May 2009, '*Land Owners out of mind out of site'*, Sydney Morning Herald 27 February 2010, Chapter 2 of the Report of the 2008 Inquiry and the submission of the Environmental Defender's Office (NT) to this Inquiry.

- the lack of transparency around agreements and understandings reached between the Federal Government and individuals consenting to the nomination.

ACF is concerned that despite these substantial shortcomings, the Bill both preserves the Muckaty site nomination and approval and insulates it from basic accountability and administrative review processes.

Notably the Bill retains from the CRWMA, the exemption of the Muckaty Site nomination and approval from both procedural fairness requirements and review under the *Administrative Decisions (Judicial Review) Act* 1977.[6] While aspects of these accountability and review mechanisms have been re-instated for other subsequent approval processes under the Bill, they must also apply to the fundamental question of valid site nomination and approval.

As a result of these exclusions and separate conditions that must be satisfied before the Responsible Minister can accept the nomination of sites in other jurisdictions, the Bill entrenches a flawed process and establishes a presumption and bias towards the Muckaty Site and/or other sites in the Northern Territory to the exclusion of potential sties in other jurisdictions.[7] This approach is at odds with a site selection process informed by the Essential Criteria, founded upon genuine community consent and reflective of best practice approaches to project Environmental Impact Assessment.

Moreover, ACF has serious concerns with other aspects of the Bill that undermine procedural fairness and place limitations upon accountable decision making. These include:

- provisions of the Bill specifying that that a **failure to comply its procedural and due process provisions does not invalidate decisions** taken by the Responsible Minister. As these procedural and due process provisions enshrine basic evidentiary requirements that go to the validity of a nomination and contain procedures intended to safeguard free, prior and informed consent, they must not be overridden by separate provisions that render them ineffectual;[8]

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[6] Schedule 2 of the Bill saves from the general repeal of the CRWMA, previous nominations and approvals under sections 3A and 3C of the CRWMA. It also saves the exemption of those nominations and approvals from review under the *Administrative Decisions (Judicial Review) Act* 1977.

[7] Under section 5(2) of the Bill, in deciding whether to make a declaration that nominations may be made in respect of a prospective site in any State or Territory the Minister must have regard to whether it is unlikely that a facility will be able to be constructed and operated on Aboriginal land that has been nominated under section 4 of the Bill. A site may only be nominated under section 4 if it is Aboriginal land in the Area of a Northern Territory Land Council.

[8] See Bill sections 4(4), 5(5), 7(4), 8(6), 14(2) and 16(6)

- limiting the class of **persons entitled to comment** upon the proposed approval of a nomination and declaration of a selected site to "*persons with a right or interest in the [subject] land*".[9] While it is not entirely clear what a "right or interest" in land means for these purposes, clearly the classes of persons affected by a radioactive waste storage facility and/or with a reasonable and legitimate interest in responsible radioactive waste management go well beyond persons who have formal proprietary or equitable interest in the land on which the facility is constructed; and

- the **absolute discretion conferred upon the Responsible Minister** to make key approvals and declarations without being required to take any criteria or other matters into account in approving a site nomination or selecting a site.[10] For example, there is no requirement at all to take into account community consent, any of the Essential Criteria (see above) or indeed any other explicit criteria. Moreover there is no requirement to publish reasons for any decision and no affected person has the right to request these.

4.2. Regulatory framework

Displaced Regulatory Regimes

The Bill perpetuates the CRWMA's approach of excluding a plethora of legislative provisions and safeguards that would otherwise apply to the broad range of activities contemplated by the Bill.[11]

In essence, all laws that might apply to the selection of a site and the construction and operation of the Facility (including the transport of radioactive material) are excluded with the exception of the *Australian Radiation Protection and Nuclear Safety Act 1998* (**ARPANS Act**), the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) and the *Nuclear Non-Proliferation (Safeguards) Act 1987*.[12]

The timeframes within which this Inquiry will be completed have not permitted comprehensive analysis of the implications of excluding almost all laws that might ordinarily govern the selection, approval, construction, operation and monitoring of a large-scale facility with the potential to result in significant

[9] Bill sections 9(5)(c) and 17(2)(d). Sections 9(3), 9(6) and 17(3) require the Responsible Minister, in making key decisions under the Bill, to have regard only to the comments of classes of people entitled to make comments.

[10] See Bill sections 8(1) and 13(2). By way of contrast, in determining whether or not to issue a facility licence, the CEO of the Australian Radiation Protection and Nuclear Safety Agency must take into account a range of matters outlined in paragraph 41 of the *Australian Radiation Protection and Nuclear Safety Regulations 1999*, and international best practice in relation to radiation protection and nuclear safety.

[11] See Bill sections 11, 12, 19, 23, 24 and 30

[12] Bill section 24(2)

environmental, community and health impacts . However we note that the submission of the Northern Territory Government (**NTG**) to this Inquiry lists 27 pieces of Northern Territory legislation that would be displaced by the Bill. These include regimes for the regulation of matters ranging from Waste Management and Pollution Control to Dangerous Goods and Water Management.[13]

ACF endorses the NTG's recommendation that the Commonwealth should identify the legislative or other means by which it proposes to fill the gap created by this displacement.[14]

In ACF's view this analysis must be informed by a **comprehensive and publicly available matrix of risks** posed by the siting, construction and operation of the Facility (including the transportation of hazardous waste) and an **analysis of how the laws that are saved by the Bill (including controlled facility licence conditions issued under the ARPANS Act) will address those risks** in the absence of the displaced laws. Without this, affected communities cannot have confidence that the risks are adequately addressed.

Fitness for Purpose of Saved Regulatory Regimes

In its submission to this Inquiry the Environmental Defender's Office (Northern Territory) has noted a number of limitations to the ARPANS Act and the EPBC Act to the extent they are intended to play the primary role in regulating the construction, operation and management of the Facility.[15]

These include the:

- absence of means by which a "strategic assessment" or planning based zoning approach can be adopted to identify appropriate sites[16];
- absence of a regime for contaminated land management or control;
- inappropriateness of EPBC Act processes as a framework for managing and monitoring long-lived hazardous waste;[17]

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[13] Submission of the Northern Territory Government to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the *National Radioactive Waste Management Bill 2010* available at:
http://www.aph.gov.au/Senate/committee/legcon_ctte/radioactivewaste/submissions.htm
[14] Ibid p.12
[15] See Section 3 of the EDO (NT) submission
[16] ACF is not aware that any strategic assessment type process (eg. under the EPBC Act) is proposed in connection with the Facility.
[17] EPBC Act project based environmental impact assessment and approval processes are traditionally ill-suited as a longer term management framework. Moreover EPBC Act approval conditions and enforcement processes have historically been weak. See analysis

- lack of robustness in procedural aspects of the ARPANS Act. Notably, several key safeguards under the Act depend upon the exercise of discretion by the CEO of the Australian Radiation Protection and Nuclear Safety Agency and the right to initiate review of key decisions is limited. For example under the ARPANS Act:

    - the suspension or cancellation of a Facility licence following breach of its terms[18] and the decision to direct actions to rectify non-compliances with the ARPANS Act or regulations[19] or to apply to the court for injunctions to restrain non-compliances[20], all turn on the exercise of discretion by the CEO; and

    - the decision to grant a Facility licence and the conditions attached to it are reviewable only upon the application of the licence applicant and not any other affected person.[21]

  As we have suggested above, the limitations and gaps posed by the application of a limited number of Commonwealth laws to the exclusion of all others can only effectively be assessed through a systematic exercise of identifying all material risks associated with Facility siting, construction and operation and establishing whether they are adequately addressed under applicable laws and regulations.

5. Facility site selection - international industry best practice approaches

The Responsible Minister recently justified the Government's approach to radioactive waste management (as reflected in the Bill) as follows:

"a process started in 1988 cannot go beyond this Parliament, ***because we have to establish in accordance with the international protocols a repository*** *which meets our needs domestically and meets our international commitments."*[22]

ACF supports Australia addressing radioactive waste management in a way that is consistent with internationally recognised best practice and any applicable protocols.

International best practice increasingly maintains that the most ethical, democratic and effective approach to siting nuclear waste storage facilities requires voluntary consent, transparency and democratic dialogue.

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and recommendations in Chapter 16 of the Report of the Independent Review of the EPBC Act: http://www.environment.gov.au/epbc/review/publications/final-report.html

[18] Section 38 ARPANS Act

[19] Section 41 ARPANS Act

[20] Section 43 ARPANS Act

[21] Section 40 ARPANS Act

[22] See http://www.abc.net.au/news/stories/2010/03/16/2847541.htm 16 March 2010

Successful siting decisions require genuine stakeholder and community involvement. Indeed where these processes are absent, the international and Australian experience is that there is the risk of community unrest and subsequent abandonment of the project.

In a 2007 study, the International Atomic Energy Agency (**IAEA**) noted examples of states which, having used undemocratic methods lacking public involvement and acceptance, have "had to reconsider their programmes." One of the conclusions of the study was that "reassessment can become necessary because past decisions were not reached through a socially acceptable process.[23]"

The IAEA recommends that a functional and viable process requires adherence to certain principles and processes: maintaining transparency, democracy, community participation, stakeholder involvement,

> *"In addition to information dissemination and education, public involvement must include opportunities for the public and the local and regional government entities to be a part of the decision making progress for the waste management facility. Facility location, site characterization, design concepts, performance objectives, monitoring methods, routes for delivery, community incentive programmes are all topics for stakeholder input and involvement."*[24]

In commentary on the *UN Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management* (to which Australia is party), the IAEA notes that "public consultation on radioactive waste management strategies was not only a good practice to follow, but was also essential for the development of a successful and sustainable policy.[25]"

According to the IAEA, there is also a need for:

> *"a clear legal framework; a strong and independent regulatory function; competent licensees or operators; clear lines of responsibility and accountability; public involvement in the decision making process; adequate financial provisions; clear, integrated, plans on how spent fuel and radioactive waste will be managed to ensure continued safety into the future, and as this could be for decades, to avoid creating a legacy situation that would impose undue burden on future generations…*[26]*"*

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[23] IAEA, *Factors Affecting Public and Political Acceptance for the Implementation of Geological Disposal* (IAEA-TECDOC-1566), Vienna, October 2007

[24] IAEA, *Low and Intermediate Level Waste Repositories: Socioeconomic Aspects and Public Involvement*, Vienna: 2007

[25] IAEA, *The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management - Summary Report First Review Meeting of the Contracting Parties Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* 24 December 1997

[26] Ibid.

The European Union requires member states to adhere to certain social principles in terms of site selection. An recent independent review commissioned by the European Commission examined practice in 22 states.[27] It advocated the participation of stakeholders, and stated the necessary principles of openness, democratic dialogue and transparency.

The report concluded:

> *"[F]inal waste repositories must be sited where local communities are willing to give their consent to these facilities for many generations. Experience has shown that, without this consent the project will sooner or later be cancelled, stopped or indefinitely delayed -one way or the other. Therefore, siting must focus on three key issues: the safety of the repository system; the impact on local image and socio-economy; the importance of public acceptance and how it can be reached[28]."*

Australia is a member of the Organisation for Economic Development (**OECD**) and the Nuclear Energy Association (**NEA**). According to those bodies:

> *"It is widely accepted that openness and transparency are essential for the winning of public approval... The local public is increasingly demanding to be involved in such planning and this may accelerate introduction of concepts such as "stepwise decision making". The challenge for the future, therefore, will be satisfactory development of systems for consulting the public, and local communities in particular, and the creation of sources of information in which the public can have full confidence[29]."*

The number of states opting to use voluntary siting and transparent and democratic practices within their waste management process reflects both the high success rate of this approach and the failure rate of other non inclusive approaches.

> *"[Volunteer sites] have been successful in establishing a process of open dialogue between the facility developer, regulators, and other stakeholders at the local level. Taking account of these experiences, and recognising that there are historical and cultural differences, consideration of a contract between society and a local community*

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[27] Including Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom and the USA. The European Union (EU) *Inventory of Best Practices in the Decommissioning of Nuclear Installations Final Report,* 30th June 2006, Brussels - Luxembourg, Brenk Systemplanug Consulting Engineers and Scientists.

[28] Ibid.

[29] Nuclear Energy Agency (NEA), & Organisation For Economic Co-Operation and Development (OCED) *The Decommissioning and Dismantling of Nuclear Facilities, Status, Approaches, Challenges)*

and within that context volunteerism, the use of the veto and benefits for a community should be an integral part…"[30]

International best practice is augmented by Japan's approach which can be summarised as follows:

"Based on consideration of international experience in repository siting, we recognised local acceptance as a critical issue which is essential to the success of such projects. We thus decided on a policy of calling for volunteer communities that would be willing to consider hosting this facility.[31]

Public involvement plays a key role and the sophisticated and extensive public education systems that exist provide a vital service to gain public acceptance. There is a full range of compensation and benefit programmes used as incentives for hosting a (Low and Intermediate Level Waste) LILW facility. Even if exemptions exist the experience in most countries indicate the direct/indirect incentives as a necessary part of gaining public acceptance. The countries, regions and local communities have their own established processes to make public decisions.[32]*"*

This principle is further reinforced by the UK's independent Committee on Radioactive Waste Management; "Community involvement in any proposals for the siting of long-term radioactive waste facilities should be based on the principle of volunteerism, that is, an expressed willingness to participate..."[33]

ACF believes that in its current form the Bill endorses and perpetuates a process of selecting, constructing and operating radioactive waste management sites which is lacking in community involvement, transparency and procedural fairness. In so doing, it is acting contrary to international best practice in relation to the selection and operation of radioactive waste management sites.

6. Facility site selection - human rights principles – free, prior and informed consent

It is clear from the discussion in paragraph 5 above that international industry best practice approaches require extensive community consultation, stakeholder engagement and procedural transparency.

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[30] United Kingdom Nirex Limited ,*Technical Note, Concepts That Could Aid A Site Selection Process*, 2005, Oxfordshire, pg 7, available at

[31] The Nuclear Waste Management Organization of Japan (NUMO), NUMO-TR-04-03

[32] IAEA, Low and Intermediate Level Waste Repositories: Socioeconomic Aspects and Public Involvement, 2007, pg 5, Vienna,

[33] The UK's independent Committee on Radioactive Waste Management (CoRWM) Committee on Radioactive Waste Management, *Managing our radioactive waste safely*, CoRWM, London, July 2006.

This approach is also required by broadly accepted human rights principles founded in international conventions adopted by Australia and enshrined in domestic legislation. These include the right of Indigenous people to free, prior and informed consent (**FPIC**).

Article 29 of the *Declaration on the Rights of Indigenous Peoples* states that:

> *"States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free prior and informed consent."*

The Federal Government endorsed the *Declaration on the Rights of Indigenous Peoples* in April 2009.

In a 2005 Report, the UN Permanent Forum on Indigenous issues summarised the minimum standards required for FPIC as follows:

- No coercion or manipulation is used to gain consent.
- Consent must be sought well in advance of authorisation by the State or third parties for activities to commence or legislation to be implemented that affects the rights of indigenous peoples.
- Full and legally accurate disclosure of information relating to the proposal is provided in a form that is understandable and accessible for communities and affected peoples.
- Communities and affected peoples have meaningful participation in all aspects of assessment, planning, implementation, monitoring and closure of a project.
- Communities and affected peoples are able to secure the services of advisers, including legal counsel of their choice and have adequate time to make decisions.
- Consent applies to a specific set of circumstances or proposal, if there are any changes to this proposal or to the circumstances this will renew the requirement for free, prior and informed consent in relation to the new proposal or circumstances.
- Consent includes the right to withhold consent and say no to a proposal.[34]

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[34] UN Permanent Forum on Indigenous Issues Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous Peoples, New York January 2005, summarised in the submission of the *Human Rights and Equal Opportunity Commission* to the Senate Education, Employment and Workplace Relations Committee Inquiry into the *Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006*

ACF notes that under the *Declaration of the Rights of Indigenous Peoples*, responsibility for ensuring the FPIC of Indigenous peoples in relation to the storage and disposal of hazardous materials in Indigenous lands or territories, rests with the State.

As noted above, serious concerns have been raised about the consultation process used in the selection of the Muckaty site for the Facility. In ACF's view, the Bill's ratification of Muckaty as the site for the facility and its insulation of this decision from further review, significantly reduces the credibility of the Labor Government's recent endorsement of the *Declaration on the Rights of Indigenous Peoples.*

ACF welcomes the opportunity to make this submission to the Senate Standing Committee on Legal and Constitutional Affairs and would be pleased to discuss this further. Please direct any inquiries to:

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Schedule
Key Steps in Evolution of *National Radioactive Waste Management Bill 2010*

July 2004: Prime Minister John Howard scraps federal government plans for a radioactive waste dump in northern South Australia

September 2004: Federal Environment Minster Ian Campbell gives a 'categorical assurance' there will be no federal radioactive waste dump in the NT.

July 2005: Science Minister Brendan Nelson announces there will be a federal dump on one of three Commonwealth sites in the NT

December 2005: The *Commonwealth Radioactive Waste Management Act 2005*, described by the Labor Party as "sordid" and "arrogant", becomes law.

December 2006: The CRWMA is amended to limit the ability to challenge site nominations made by Land Councils.

September 2007: The Muckaty site, nominated in contested and confidential circumstances, is accepted by Science Minister Julie Bishop.

November 2007: Federal Labor government elected with a clear commitment to repeal the CRWMA and establish a consensual site selection process based on best science and community consultation and support.

December 2007: Portfolio responsibility for radioactive waste management is moved from Science to Resources, Energy and Tourism. No explanation is given for this departure from long-standing bi-partisan convention.

December 2008: A dedicated Senate Inquiry into the repeal of the CRWMA calls for the swift repeal of the Act. The 2008 Inquiry finds the Act is not a suitable foundation on which to build Australian nuclear waste policy. It acknowledges the Muckaty site nomination is contested and recommends new legislation based on a set of foundation principles not reflected in the CRWMA including voluntary engagement, best practice, procedural inclusion, transparency and key accountability and review processes.

January 2008 – January 2010: Responsible Minister refuses repeated stakeholder requests to engage on the issue of radioactive waste management. Correspondence, meeting requests, Senate Estimates questions etc are either ignored or responded to in an inadequate manner.

February 2010: Responsible Minister introduces the Bill. The Bill preserves the Muckaty site nomination and ring-fences it from basic procedural fairness and accountability mechanisms re-introduced in relation to other aspects of site selection.