



Parliament of Australia

Senate

Legal and Constitutional Affairs Committee

National Radioactive Waste Management Bill 2010

Northern Land Council Submission

30 March 2010

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

NATIONAL RADIOACTIVE WASTE MANAGEMENT BILL 2010

1. Summary

The Northern Land Council (NLC) welcomes the opportunity to provide a submission regarding the *National Radioactive Waste Management Bill 2010*.

The purpose of the Bill is to fulfil both:

- the Government's longstanding commitment to identify a national site for safely disposing and storing Australia's radioactive waste - a commitment shared by both major political parties;
- the Government's electoral commitment to appropriately require procedural fairness in relation to the process of identifying a national site, with the current legislation (the *Commonwealth Radioactive Waste Management Act 2005*) being repealed.

In 2008 the Senate Environment, Communications and the Arts Committee considered a Bill proposed by Senator Scott Ludlam to repeal the current legislation (*Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*). This was the sole purpose of the 2008 Bill.

In its written submission dated 4 November 2008 the NLC stated:

The NLC would only support repeal of the Act if it is replaced by appropriate laws which both preserve the Ngapa clan's rights regarding its existing nomination under the Act, and which enable traditional owners of other land to facilitate development of their country for a radioactive waste facility if they wish - provided that the environment and sacred sites are protected.

The Bill preserves the Ngapa traditional owners' rights regarding their existing nomination which was made by the NLC Full Council in 2007.

The NLC's comprehensive consultations during 2006 and 2007 established that there is substantial support for the waste facility from neighbouring Aboriginal groups on Muckaty Station, with only a few individuals in other groups expressing concerns.

This remains the case, as was confirmed yesterday in public statements when representatives of the Ngapa traditional owners visited the Lucas Heights nuclear research facility.

The NLC supports the Bill.

This submission does not address or comment regarding the general nomination power contained in Part 2 Division 2 of the Bill.

2. Background and submission

The NLC is a statutory authority whose primary function under the *Land Rights Act*¹ and *Native Title Act 1993* is to represent the interests and position of traditional Aboriginal owners regarding their country, including by negotiating agreements regarding Aboriginal land with their consent.²

In 1983 the then NLC Chairman, the late Gerry Blitner, explained that this function requires the NLC to support traditional owners who favour uranium mining on their country, as well as supporting other traditional owners who object to such mining on other country. The Chairman rejected a national media article which referred to the “largely pro-uranium mining Northern Land Council” as being “unfair and untrue”, and stated (in relation to the then position of traditional owners regarding Koongarra):³

The Council simply supports the wishes of the Aboriginal people it represents in the areas under its jurisdiction. It was their wish that mining go ahead and it was this wish which the Council expressed to the Minister.

Nothing has changed. It remains the case that the NLC supports the wishes of traditional owners - whether for or against - regarding uranium related development, or other development, on their country. Indeed the NLC is required by law to so perform its statutory functions.

As the NLC's Chief Executive Officer, Kim Hill, stated in 2008 in relation to the Ngapa nomination:⁴

People need to take a deep breath. It's the right of those Traditional Owners to do business.

In 2005 the NLC supported the position of the Mirrar traditional owners who opposed mining at Jabiluka by entering a long term care and maintenance agreement with Energy Resources Australia Ltd and the Mirrar.

Also in 2005 the NLC supported the *Commonwealth Radioactive Waste Management Act 2005* after it was amended to restore the capacity of traditional owners, if they wish, to develop their country for a radioactive waste facility.

In 2006 the NLC supported amendments which benefit traditional owners, including by:

- providing that the Minister may restore land as Aboriginal land when it ceases to be required for a waste facility and has been rendered safe;
- indemnifying the Land Trust in the unlikely event that any claim regarding previous waste storage arises after land is restored as Aboriginal land;
- ensuring, consistent with the scheme of the *Land Rights Act*, that a Land Council's nomination of a site for a facility (and indirectly also the Minister's declaration) will be protected from challenge on certain procedural grounds.

The Bill retains the capacity of traditional owners, if they wish, to develop their country for a radioactive waste facility by means of a nomination of Aboriginal land. The beneficial amendments made in 2006 are retained in the Bill.

¹ *Aboriginal Land Rights (Northern Territory) Act 1976*.

² Sections 23(1)(a), (b), (ba) and (e), and 23(3), of the *Land Rights Act 1976*.

³ *Land Rights News*, no 33, 1983, p 4.

⁴ *Black & White: The man on the land* by Graham Ring, *National Indigenous Times*, Issue 164, 16 October 2008.

Commonwealth laws regarding environmental, nuclear safety and nuclear non-proliferation protection remain in force in relation to the construction and operation of a repository (and transport to it),⁵ including the requirement of assessment under the *Environmental Protection and Biodiversity Conservation Act 1999*.⁶ These laws are excluded in relation to site investigation prior to declaration (ie acquisition of property by the Commonwealth).⁷ This legislative approach is unremarkable. Governments often acquire or reserve land for a public purpose prior to environmental assessment. Likewise private persons are not subject to planning and environmental processes merely by purchasing property; those processes occur if and when a development application is made.

In 2007 the NLC supported the position of Ngapa traditional owners who overwhelmingly support the nomination of their country at Muckaty Station for the Commonwealth's radioactive waste facility. In return traditional owners will benefit from a comprehensive \$12 million package comprised by an \$11 million charitable trust and \$1 million of education scholarships.

The NLC's comprehensive consultations during 2006 and 2007 also established that there is substantial support for the waste facility from neighbouring Aboriginal groups on Muckaty Station, with only a few individuals in other groups expressing concerns.

This remains the case, as was confirmed yesterday in public statements when representatives of the Ngapa traditional owners visited the Lucas Heights nuclear research facility.

Although objectors claim that the nomination is highly "contested", in fact it has not been disputed that the relevant Ngapa group (associated with the Lauder families) are the traditional Aboriginal owners of the nominated land.

As explained in the NLC's supplementary submission to the former Senate Committee dated 4 December 2008 - but ignored by objectors, there are other Ngapa groups which are responsible for other land.⁸ Under both Aboriginal tradition and the *Aboriginal Land Rights (Northern Territory) Act 1976* (and the current legislation) those Ngapa groups, although consulted, may only make decisions regarding their country. The signatures on various letters produced by objectors did not include any members of the Ngapa traditional owning group.

The NLC also comprehensively consulted with other Aboriginal communities and groups. Again, it has not been disputed that such comprehensive consultations occurred.

In these circumstances it is not appropriate that there be retrospective legislation to expand the grounds whereby the NLC's 2007 nomination may be challenged. Any subsequent Ministerial decisions regarding the nomination will however be subject to procedural fairness as required by the Bill.

⁵ *Environmental Protection and Biodiversity Conservation Act 1999*, *Australian Radiation Protection and Nuclear Safety Act 1998*, and the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

⁶ Sections 5(1) and 6(1) of the Act. All such State/Territory laws are excluded.

⁷ Section 5(2) of the Act. NT environmental laws are also excluded.

⁸ Similarly in north-east Arnhem Land there are many Yolngu groups who are the traditional owners of their specific country; members of one Yolngu group at Blue Mud Bay will not, for example, speak for country at Elcho Island which is the responsibility of another Yolngu group.

It is evident that the objectors' true concerns relate to environmental protection and safety. These matters will be addressed pursuant to a comprehensive environmental impact process which will involve public participation.

The NLC looks forward to working with Governments, traditional owners and the general community, to facilitate the national interest that a radioactive waste facility be safely established by consent in an appropriate location.