

## **For The Attention Of the Legal & Constitutional Committee / Senate Enquiry:**

### **Commonwealth Radioactive Waste management act; Repeal Legislation bill.**

With respect to the Senators

I am writing with regard to the above matter in the hopes that I may be able to contribute with concerns I will raise here and that these concerns may make an in part contribution to the general responses, to be tabled and discussed prior to the Senate Committees creation of a final report .

I would like to raise several issues in relation to the repeal legislation content; I will try to simplify my submission by a process of itemisation.

#### **SECTION 11: CONSTITUTIONAL INTEGRITY?**

Would it be fair for a citizen of our Nation to expect that:

Any legislation which is allowed to be put in place that has the intention or potential application for setting any kind of precedent for a blanket undermining of, or over riding of, existing State or Territory law, regardless of specific intent at the time of the bills gazetting should be tabled and discussed by *all* State and Territory Governments in separate sittings and via a separate autonomous legislative process, before admission to a Federal parliamentary legislative process?

It is my opinion that unless all state and territory governments as recognisable governing entities agree in-house in principle to such wide ranging and potentially dangerous legislative changes, the constitutional rights of all governed Australians are undermined.

*Section 11 of this bill should be viewed as an attempt at radical change to Australia's constitutional processes and provided the appropriate gravitas before enabling.*

The hypocrisy of the current regime in attempting such a manoeuvre without an appropriate respect for the ethos of proper constitutional process is made all the more evident by recourse to recent history.

The Labour party's executive having been so openly opposed to similar behaviours by the Howard government visa vee rescinding of state and territory statutory authority are now themselves abusing privilege, short circuiting not only due process but also their own integrity.

It should only take a moment to reflect the results of the undermining of a respect for due process with regard to constitutional ethos by recalling the end of the Whitlam era.

It's truly ironic that the Westminster process we are governed by, which evolved from just such concerns over land title, land use and titular authority being constantly undermined and abused by despotic agendas, is now revisiting its origins in a steady process of deconstruction by a delinquently applied democratic process. We are still in the thrall of despots it seems.

What does the Territory government have to say about this issue? Should they not be given first right of veto, before any bill which involves land within their constituency boundaries is debated in a Federal environment?

What do all the other state governments have to say about legislation which in the future will allow land within their own constituent boundaries to be arbitrarily possessed and its denizens dispossessed of their rights?

I would not ever vote again for a state government which allowed this bill to pass through Parliament.

If we allow this bill to pass, just section 11 alone has the potential to destroy the security provided by the Westminster titles process in the minds of Australians. The security and stability provided by free hold title may as well be nonexistent, the oversights and guarantees provided by due process in our own democracy rendered ineffectual.

Section 11 of this bill to my mind is little different in its approach to a respect for democratic process than that demonstrated by the behaviours of Robert Mugabe.

## **SECTION 12: INDIGENOUS HERITAGE PROTECTION OR COLONIAL RESERVATION TREATY?**

The Heritage protection Act of 1984

(2) For the purposes of this Act, an area or object shall be taken to be injured or desecrated if:

(a) in the case of an area:

- (i) it is used or treated in a manner inconsistent with Aboriginal tradition;
- (ii) by reason of anything done in, on or near the area, the use or significance of the area in accordance with Aboriginal tradition is adversely affected; or
- (iii) passage through or over, or entry upon, the area by any person occurs in a manner inconsistent with Aboriginal tradition; or

(b) in the case of an object—it is used or treated in a manner inconsistent with Aboriginal tradition;

and references in this Act to injury or desecration shall be construed accordingly.

(3) For the purposes of this Act, an area or object shall be taken to be under threat of injury or desecration if it is, or is likely to be, injured or desecrated.

## **4 Purposes of Act**

The purposes of this Act are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.

## **5 Extension to Territories**

This Act extends to every external Territory.

## **6 Act binds the Crown**

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

## **6A Application of the *Criminal Code*:.....?**

To enable legislation that undermines this act, specifically for the purpose of government activity on, around or in; an indigenous community is to render the act null and void, in its entirety, in its ethos, in its intent, in its application, in every aspect.

So, now. No more Aboriginal Heritage protection Act. Is this the intended purpose of this bill?

The question is however moot, regardless of intent the bill if ratified and implemented will create a vacuum where it (the heritage act) once existed to effect.

This obvious eventuality should be ringing alarm bells to wake up even the most obtuse of our senior legislators whether they boast parliamentary privilege or public service tenure.

It's just not good enough that we could allow those with the power the privilege to exercise it, and at the same time permit the willful neglect of the observation of the obligations that come with that power and privilege. To allow this neglect would be to accept in our ignorance the potential mess that a bill like this could create if enabled.

To be irresponsible enough to be able disregard the consequences of enabling this legislation is nothing less than delinquent and would demonstrate a true lack of integrity within our collective leadership.

Once the Heritage Act has been rendered inconsequential, the fiscal and social expense involved in the process of bringing legislation back to its current status, existing legislation which represents the growth and a currency of development of collective social awareness and cohesion within our collective ethos, would be enormous.

This bill If enabled as it is presented before us will ensure that the divisions and prejudices put to rest by the existence of the Act over its time of influence will inevitably resurface. I cannot believe other than that this will have unexpected (for the enablers) deleterious effects upon the National psyche. The Act was created in a lengthy and considered process, by a growth and development in the collective attitude of a Nation as reflected by its governing paradigm, it will be sundered overnight.

This bill before you (and section 12 specifically) represents a quick change process. Its a well known universal constant that the faster change is attempted the greater the ensuing chaos and probable residual damage.

Once enabled, the effect of Section 12 will be the same as if the Aboriginal Heritage Act where to be repealed. This would have drastic and far reaching consequences and should be considered very carefully before being put to a vote

## **SECTION 12: COPENHAGEN AGREEMENTS & COMPROMISES / TRANSPARENCY OR EXPOSURE?**

*"The Environment Protection and Biodiversity Conservation Act 1999" Abuse of Part 9 amendments.*

Section 12 seeks to remove the force of this Act also, by the misuse of Part 9 Ministerial prerogatives.

It is ironic that this cynical undermining of the ethos underpinning the need for the Act is before us exactly because the Act was enabled to ensure that the agenda represented by the bill could in the future, be governed by a minimum of responsible oversight.

The EPBC Act was not intended as a Nimby-istic anti development weapon but as an instrument to ensure due process is followed in a world where all cause and effect must be taken into account.

It's no longer consistent within a process which includes an instinct for self preservation, for people to allow development without environmental oversight. Its also not appropriate for the same reasons, from a collective perspective.

The '*go for it now, pay for the consequences later*' approach is no longer appropriate nor acceptable at a collective level in a comparatively wealthy democracy. It may be acceptable or unavoidable in poorer developing Nations or those places without the benefit of a democratically elected leadership but even in those places; the world as a whole is demanding recourse to long term cause and effect considerations.

The future expense involved with degradations with or without reparations for damage caused by hastily enabled, badly thought out development approvals, always has, without exceptions, far out weighed any benefits brought by their inception.

Unfortunately the costs are not often born by those responsible, where it has been, it has become popular legend.

Cases in point are so many as to be irrelevant, be sure to think a moment about your own constituency and I am positive you will find an example. If not, ask a staff researcher to actually look for you.

The current class action for Maralinga victims will no doubt take into consideration the legal precedents and decisions which form a platform for acceptance or rejection of this bill.

Before allowing the passage of this bill, Ministers must ask themselves if they are able to condone the prospect of the British government abrogating itself of the responsibility for recklessly carrying out nuclear weapons tests on Australian people /citizens, on inhabited indigenous land and without recourse to transparent processes which include a communication to those who would be exposed an awareness of probable risks associated with exposure over time to the impact of this technology.

### **How important is this Nuclear Waste dump to the Federal government? Is it a precursor for a larger agenda?**

Is it an attempt to set a precedent for general acceptance of the industry and its development on Australian soil?

Again, this is a moot question. If the legislation is enabled, it **will** set a precedent for general acceptance of the industry and its development on Australian soil. It will be that much easier to lobby for and obtain popular approval for every aspect of the nuclear Industry by the voting public.

We need to think again, carefully of the ramifications of a general acceptance for nuclear industry activities within Australia.

I have outlined some of the ramifications I believe this legislation will have if enabled below in numbered form;

1).Any nuclear industry activity that results in a refining facility being located in this strategic region will inevitably involve this region in the regional politics of strategic nuclear capabilities.

Any legislative process which enables a senatorial acceptance for any increase in nuclear industry activity on Australian soil will increase the likely hood of acceptance for other increase scenarios.

It's probable that the next step after a waste dump, is a treatment facility, which is another name for a refining facility

Do we really want to encourage the future development of strategic nuclear capabilities for the region?

We will only be the first for a short time, we will not have the most threat ever. We will ensure our own entrapment as the regional strategic puppet. As a puppet for masters we may regret becoming entangled with. Regimes whose nature places them beyond our ability to exercise without dangerous compromise our own will.

We will initiate the process by accepting the process as inevitable.

The long term stability of this region is in no way improved by initiating the development of an independent strategic nuclear capability.

Any development in the industry in general is inseparable from the perception of the inevitable potential for the worst case scenario in the minds of our regional neighbors. There are too many cases in point currently in the global press to make an example especially relevant.

Just by the propagation via our legislative ethos, of the perception of this potential, we are in fact also potentially instigating a process of unparalleled delinquency by any Australian government in the history of Westminster politics in this Nation

*As part of a combined leadership in this region it is our responsibility to ensure that our collective future is one of co operation in peace, not of rule by fear.*

2). Once the journey on the path down the road to a nuclear industry infrastructure acceptance by the Australian people has begun, the process is irreversible, for at least 50 years.

In those 50 years it is highly likely given the enormous expenditure in money and effort involved that we will see the deconstruction of smaller scale, more diverse responses to the energy and environment issue.

Passive efficiencies, decentralized renewable energy systems, grid coupled remote area power systems development, wind power farms, solar power farms, wave power facilities, biofuel technology, over unity/ permanent magnetic drive systems R&D, COP development for appliances and processes, all these and more will be endangered by a process which encourages large scale, expensive centralized nuclear energy generation infrastructure.

The momentum developed by the implementation of the nuclear energy industry in an economy such as ours will move everything before it. This momentum is an unavoidable part of the development of such large scale infrastructure. It narrows the focus of approach and commits many future generations to a high risk process.

Sure, energy may become cheaper than it would have been, but we will have to use more to support the industry that invested in it and sells it to make good on that investment.

It's a no brainer. It should be obvious to an objective thinker that it's simply a short term economic approach, force implemented for a long term.

I have not even begun to discuss the waste problem.

3). The waste doesn't go away.

If it did I wouldn't be spending my Sunday writing this and you would not be reading it.

## **SECTION 12: HUT PROVINCE, GREEN PARROTS AND LEGLESS SKINKS**

When all else has failed and the consensus is that a potential development poses more risk than benefit the Environment Protection and Biodiversity Conservation Act has provided a solid precedential foundation for Ministers to exercise the will of the people.

If the act can be rescinded for a location for the express purpose of avoiding the force of the Act, the Act is rendered impotent.

Again, this is a precedent of enormous ramifications as with the nulling of the Aboriginal Heritage Protection Act, by selective land or area exemptions.

The Acts were enabled to ensure a process of testing and oversight, the avoidance of test by the Acts, by attempting to specify land areas separate to its enforcement should really involve a process of cessation from the governance by the legislative authority, to be consistent.

Muckaty Station as an independent sovereignty? That is consistent with the bills application intention. If one were to follow through with this reasoning, it would of course be perceived as an act of war to exercise Australian will against the wishes of the denizens of Muckaty Station. Would this ignite Civil war behaviors?

## **SECTION 13 / COMPULSARY ACQUISITION OF LAND RIGHTS / TITLE**

Does any person holding a Westminster title, freehold or lease or any derivative thereof hold anything of real value if this bill is allowed to pass through? Will there be any security in the land title process if this bill is allowed to pass?

If the relevant Minister of the time decides that a nuclear waste storage facility or a pulp mill or a weapons research facility or a multistory shopping mall or correctional facility needs for the common good to be developed where your family home now stands, or where your business operates, what protection would you have?

### **MUCKATY**

#### **Dianne Stokes**

“We don’t want this stuff on our country. There is a big lawn at Parliament House. They should keep it there if it is safe”.

#### **Janet Thompson**

“We are not happy about other people making decisions on what to do and having their say on our land”

“NLC bosses should have a big meeting with all of the Muckaty traditional owners”

#### **Christine Morton**

“Our land is our life. Once our great grandfathers walked this land. This waste dump will destroy our land and animals. We say no. No to the waste dump”

#### **Sammy Sambo**

“We use that land for men’s cultural ceremonies which came from our great grandfather. If they put a waste dump at Muckaty it betrays the next generation”

Just for a moment think what it means for our collective future as a Nation that our political leaders could institute a compulsory process, against the will of the people, to create a toxic waste dump in the place where some of us live and have lived for many generations.

It’s actually beyond my ability to comprehend the motives of those that would condone this behavior in a democratically elected government. It is the behavior of sociopaths.

This bill in its entirety and all it represents is a total anathema to ethical and honest democratic process. It disgusts me that I may have voted for a government that would attempt to introduce such a thing.

Thankyou for your attention.

S. Skutz