

EDUCATION, SCIENCE AND TRAINING

SENATE LEGISLATION COMMITTEE - QUESTIONS ON NOTICE 2005-2006 SUPPLEMENTARY ESTIMATES HEARING

Outcome: 3

Output Group: 3.2 – Assistance for science collaboration and innovation

DEST Question No. E465_06

Senator Wong asked on 2 November 2005, EWRE Hansard page 59.

Question:

I want to know whether or not DEST believes – we can put it that way – that you had sufficient power as a result of section 109 of the Constitution and the ARPANS Act to transport waste across Australia and to override objections by the states and territories.

Answer:

Commonwealth Radioactive Waste Management Facility

The operation of the facility, including transport of radioactive waste, will proceed in accordance with licenses issued under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

A number of existing state and territory jurisdictions purport to prohibit or regulate the Commonwealth's activities in establishing and operating a facility and/or transporting radioactive material to a facility. State and territory jurisdictions may introduce additional legislation purporting to prohibit or regulate the Commonwealth in these activities.

Section 109 of the Constitution, provides that, if a valid Commonwealth law is inconsistent with a law of a state parliament, the Commonwealth law operates and the state law is invalid to the extent of the inconsistency.

As the Minister indicated in the second reading speech for the *Commonwealth Radioactive Waste Management Bill 2005*, Commonwealth legislation is considered necessary to reduce the potential for costly delays by putting the Commonwealth's powers totally beyond doubt.