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Submission to  
Senate Standing Committee on  
Environment, Communications and the  
Arts

**Inquiry into  
the Commonwealth Radioactive  
Waste Management (Repeal and  
Consequential Amendment) Bill  
2008**

31 October 2008

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## **1. About Oxfam Australia**

- 1.1 Oxfam Australia is an independent, not-for-profit, secular international development agency. We are a member of Oxfam International, a global confederation of 13 Oxfams that work together to fight poverty and injustice in more than 100 countries around the world. We have worked with local communities around the world to combat poverty and injustice for over 50 years.
- 1.2 Our organisation undertakes long-term development projects, provides emergency response during disaster and conflict, and conducts campaigning and advocacy for policy and practice changes which promote human rights and justice. We support over 400 long-term development projects in 30 countries across Africa, Asia, the Pacific and Indigenous Australia.
- 1.3 Our experience confirms that effective development relies on the key principles of participation, transparency, collaboration and coordination, monitoring and evaluation, respect for human rights and establishment of mechanisms for review.

## **2. Oxfam Australia's Role in Indigenous Affairs**

- 2.1 Oxfam Australia has supported opportunities for Aboriginal and Torres Strait Islander peoples to exercise their rights to basic social services, sustainable livelihoods, a strong voice and cultural diversity, for more than 30 years. Our program has a particular focus on Western Australia and the Gulf of Carpentaria in Queensland, as well as nationally through our initiatives to support the Close the Gap campaign, Indigenous young people and the right of Indigenous people's to self-determination.
- 2.2 More recently, we have worked with and supported a number of Northern Territory-based organisations to monitor and evaluate the impacts of the Northern Territory Emergency Response.

## **3. Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008**

- 3.1 Oxfam Australia supports the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008* (the Bill), which will repeal the *Commonwealth Waste Management Act 2005* (the Act).
- 3.2 The Act sought to facilitate the development of a radioactive waste management facility in the Northern Territory. In order to achieve this, a range of potential legislative and procedural hindrances were removed.
- 3.3 While the Act does require the consent of all persons holding an interest in a proposed site, including the consent of traditional owners, amendments enacted in 2006<sup>1</sup> provide that a failure to comply with these requirements will not affect the validity of the nomination of a proposed site. In other words, as the Bills Digest explains, these requirements are simply “non-binding recommendations, whose breach has no legal effect”.<sup>2</sup>

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<sup>1</sup> As a result of the passage of the *Commonwealth Radioactive Waste Management Legislation Amendment Act 2006*

<sup>2</sup> Parliamentary Library, Bills Digest no 55, 2006-07, *Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006*

3.4 Oxfam Australia is concerned that one of the effects of the Act is to remove the rights of Aboriginal peoples to access legal or procedural mechanisms to oppose radioactive waste dumping on their lands. Moreover, as a result of the amendments made in 2006, it is possible to nominate a proposed site for a radioactive waste dump without obtaining the consent of the traditional owners.

#### **4. Free, Prior and Informed Consent**

4.1 The dumping of nuclear waste on Aboriginal peoples' land should *only* occur if they have been given the opportunity to give or deny their free, prior and informed consent to the dumping of such waste.

4.2 The principle of free, prior and informed consent (otherwise known as FPIC) is vital to upholding the human rights of Indigenous peoples and local communities both in Australia and around the world. This principle requires that individuals and communities should be informed - in appropriate, accessible language - about projects that might take place on their land. It also guarantees that they are given the opportunity to give or withhold consent to, or negotiate, land use.

**Free** refers to the general principle of law that consent is not valid if obtained through coercion or manipulation.

**Prior** refers to meaningful, informed consent sought sufficiently in advance of any activities.

**Informed** refers to the need for consultation with, and participation by, affected peoples with full disclosure of the details and likely impacts of a development activity in a way which is accessible and understandable to the affected peoples.

4.3 Free, prior and informed consent helps to protect Indigenous people's right to self-determination, promotes equitable relationships between Indigenous peoples, industries and governments, and recognises the rights of Indigenous peoples to have control over their traditional lands.

#### **5. United Nations Declaration on the Rights of Indigenous Peoples**

5.1 Oxfam Australia notes that the right to free, prior and informed consent is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples in the following articles:

##### *Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

##### *Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and

resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. 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.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

#### *Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

5.2 As such, the Act is inconsistent with the United Nations Declaration.

#### **Recommendation:**

**That Parliament passes the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*.**