



**Submission to Senate Standing Committee,  
Environment, Communication and the Arts  
Inquiry into:**

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

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## ***Beyond Nuclear Initiative***

*The Beyond Nuclear Initiative (BNI) uranium project seeks to highlight the adverse impact of the uranium and wider nuclear industry in Australia and to promote a nuclear free future. The project has a focus on the interface between the nuclear industry and Indigenous people.*

*In relation to radioactive waste management the project seeks to collate and synthesise the experience and knowledge gained from a decade of effective community resistance to the former federal government's waste dump push in both South Australia and the Northern Territory.*

*The BNI uranium project works to support, educate and empower Indigenous communities on the consequences of uranium exploration and mining and nuclear waste. The project seeks to work directly with Indigenous groups and networks including the Top End Aboriginal Conservation Alliance, the Australian Nuclear Free Alliance, Land Councils and other Indigenous groups, communities and stakeholders.*

*The BNI uranium project is a dedicated initiative that operates from the office of the Arid Lands Environment Centre in Alice Springs.*

*Beyond Nuclear Initiative is a joint project of Friends of the Earth, Australian Conservation Foundation and the Poola Foundation (Tom Kantor Fund).*

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## **Introduction**

The Beyond Nuclear Initiative (BNI) welcomes the opportunity to submit to the Senate Standing Committee on Environment, Communication and the Arts inquiry into the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008.

Since March 2006, the BNI project worker has been based in Alice Springs working with people opposing the federal radioactive waste dump proposed for the Northern Territory by the Howard government.

The project worker has regular communication with Traditional Owners and community members living near all four sites currently under assessment- Mt Everard, Harts Range, Fishers Ridge and Muckaty.

BNI has coordinated numerous meetings, public events and media interviews to support communities to share their stories and experiences with a broad national audience.

Over three years after the proposal was announced, there remains clear and sustained opposition to a federal radioactive dump being imposed on the Northern Territory.

Operating under the CRWMA has been an extremely frustrating and disempowering time for the affected communities. It is often expressed to me that many people are becoming sick because of the worry and stress they carry in relation to this proposal. People feel despondent that there is no opportunity for legal challenge to site nominations and that the federal government can blatantly disregard Traditional Owner objections to having the dump forced on country they are strongly connected to and have cultural responsibility toward.

This Senate Inquiry is a welcome opportunity to break the 'Decide-Announce-Defend' pattern that has dominated nuclear waste proposals and politics in Australia for over a decade and

provides clear opportunity to initiate a process of radioactive waste management that seeks broad community input and support.

It is recommended that the Senate Standing Committee to hold public hearings on this legislation in Alice Springs and Tennant Creek as many people from affected areas have expressed desire to attend.

## **THE NT DUMP PROPOSAL- BASED ON BROKEN PROMISES**

After the South Australian radioactive waste dump plan was abandoned in 2004, Territorians were given 'absolute categorical assurance' that a federal radioactive dump would not be located anywhere on the NT mainland. The rapid disregard of this promise gave little assurance that the following process of site selection would be consultative and open for discussion.

## **TRADITIONAL OWNER AND COMMUNITY OPPOSITION**

From the outset of the NT sites being announced, there was strong opposition from all of the targeted communities, the wider Territory community and the NT Government.

The Department of Defence sites that were first designated by the government for assessment are all situated extremely close to communities and community controlled business ventures. It has been said to me often that locating a dump so close to these businesses is ironic, as on the one hand people are encouraged to create sustainable industries and livelihoods in remote areas but on the other will inevitably have these negatively impacted by a nuclear dump being built only a few kilometres away.

Some brief comments from people living nearest the proposed sites are below:

### **1-Mt Everard- 40km NW of Alice Springs**

"This land is not empty - people live right nearby. We hunt and collect bush tucker here and I am the custodian of a sacred site within the boundaries of the defence land. We don't want this poison here" Steven McCormack-Traditional Owner living 4km from the proposed dump site

### **2- Harts Range-165km NE of Alice Springs**

"Other pastoralists have also expressed concern over the perception by the public that the beef will be contaminated. The cattle industry out here prides itself on being clean and green". William Tilmouth, Chairman Alcoota Aboriginal Corporation (operating 20km away)

"If this nuclear waste is so safe, why can't they keep it at the Lucas Heights nuclear plant in Sydney, where it is produced and where the nuclear experts work? We stand strong in our own culture as Indigenous people, and want the land and water to be protected for all children, black and white. We have enough issues of our own to deal with without having to deal with the nuclear waste". Mitch-Engawala community (20 km away)

### **3-Fishers Ridge- 42km SE of Katherine**

"Well it was shock horror, to think that everything was going along so swimmingly and then all of a sudden you're talking about a dump being in the middle of your property, we weren't very

happy about it. We've been in the territory 36 years, and I think this is one of the roughest deals that have been dealt out to us'. Barry Utlely- Yeltu Park Station Pastoralist living 4km from the site.

## **COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT ACT**

Recognising the strong opposition from communities and the NT Government, the CRWMA was created to override Northern Territory laws that legislated against the transport and storage of the materials earmarked for the dump; the Nuclear Waste Transport, Storage And Disposal (Prohibition) Act 2004.

With limited powers as a Territory, there was no option to object to this federal legislative intervention.

The heavy-handed and politically driven approach from the federal government ridiculed attempts to paint this process as scientifically valid. Indeed, none of these sites were short listed in the national study (completed in the late 1990s) that was commissioned to identify a site for a national radioactive dump.

The federal government simply declared that a basic assessment would determine which of the three sites, all nominated by an unscientific and undemocratic process, was most suitable. After a more in depth study of the preferred site, the government professed that engineering would take care of any particular site issues. This was emphasised to concerned Katherine region residents after the March 2006 flood-the proposed Fisher's Ridge site remained inaccessible by vehicle for a month.

The CRWMA 2005 passed despite strong objection from the ALP opposition, minor parties, the NT government and a broad section of the Territory population .

BNI continues to hold deep concern about the raft of CRWMA measures. The legislation undermines crucial public health, environment and heritage acts. It is highly objectionable that during site investigations the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 is excluded from having effect, and the Native Title Act 1993 is rendered obsolete by this law.

The opportunity to object to site nominations, and appeal decisions under the notion of 'procedural fairness' is also wiped out with the overriding of the Administrative Decisions (Judicial Review) Act.

## **CRWMA AMENDMENTS AND MUCKATY NOMINATION**

The BNI project worker has been meeting with Traditional Owners from all five families that comprise the Muckaty Land Trust since April 2006, when it was first rumoured that Muckaty might be nominated as an additional site to the three Department of Defence areas already under assessment.

On April 27, 2007 the NLC put out a media release titled "NLC will seek advice on behalf of TO's about waste facility". This release stated that *'The requirements of the Commonwealth Privacy Act 1988, and commercial confidentiality, mean that the NLC cannot release information as to the identity of the Aboriginal groups or as to the location of relevant land'*. However the attachment to this media release was titled ' Muckaty', alerting people to the possible nomination.

After months of media speculation, the Muckaty nomination was eventually put forward by the NLC on June 18, 2007. This was possible under provisions of the CRWMA Amendments 2006, which vastly reduce the consultation and consent requirements of Aboriginal Land Rights Act (ALRA 1972) agreements. ALRA provisions would normally apply to Muckaty, but the CRWMA effectively overrides this Act, by allowing site nominations put forward by Land Councils to be valid, even if full consultation and consent from all affected people has not been demonstrated.

*The Amendments, condemned by the Central Land Council but welcomed by the Northern Land Council (which had input into the drafting) are extraordinary in that they explicitly state that site nominations from Land Councils are valid even in the absence of consultation with traditional owners.*

Pat Davoren from the Department of Education, Science and Training, said in Senate Estimates on June 2, 2008, that “the people that have volunteered their land did so at meetings convened by the Northern Land Council under the rules set up under the Aboriginal Land Rights (Northern Territory) Act”. If this is the case, then it is a legal requirement for the opinions of all affected people to be considered. In reality, while the CRWMA is still in place, it renders these requirements insignificant.

Some Muckaty Traditional Owners found out about the nomination of their land through media reports, or when a letter was delivered by the NLC stating the nomination had already been made. For a decision of this magnitude, this was an appalling process and still often mentioned in discussions I have with Muckaty people .

Prior to the nomination, Traditional Owners from the Muckaty Land Trust held a meeting in Tennant Creek on February 28, 2007. Following this meeting a letter, dated March 1, 2007, was written to the Northern Land Council. This letter requested the NLC convene a meeting for all Muckaty traditional owners from the Land Trust to come together and discuss the waste dump proposal.

Traditional Owners asked for the meeting to be convened so all family groups could come together and decide about the dump. This request was not acted upon at the time and there is an urgent need for this to be revisited.

When this letter was sent to the Northern Land Council, no particular site had yet been identified for assessment.

On September 24, 2007 the former Science Minister Julie Bishop accepted the Muckaty nomination. This occurred despite extensive communication and appeals from many Muckaty people opposed to the dump plan and process. Throughout this entire process many Muckaty Traditional Owners continued to strongly and publicly express their opposition to the site being nominated for assessment.

While BNI understands that some of the Traditional Owners from the Ngapa group agreed to nominate the area, it is essential the concerns of all affected people should be taken into regard.

As the Muckaty Land Trust Land Commissioner’s Report (Land Claim 135) notes, the Land Trust is comprised of 5 family groups whose land and dreamings overlap sufficiently for the establishment of a single trust. As many Muckaty people emphasise in their submissions to this Senate Inquiry, all family groups should share in decisions for any area within the Land Trust.

*The statements below are from Muckaty Traditional Owners, written at and transcribed from a meeting the BNI project worker attended in Tennant Creek on February 28, 2007:*

**Dianne Stokes** “Top to bottom we got bush tucker right through the country. Whoever is taking this waste dump into our country needs to come back and talk to the Traditional Owners. We’re not happy to have all of this stuff. We don’t want it; it’s not our spirit. Our spirit is our country, our country where our ancestors been born. Before towns, before hospitals, before cities. We want our country to be safe”

**Janet Thompson (Mick)**. “We are not happy about other people making decisions on what to do and having their say on our land”

**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”.

## **NORTHERN TERRITORY ALP POSITION**

The NT Government and NT Labor party have maintained strong positions of opposition to the NT dump proposal.

The April 2008 conference of the NT ALP passed a motion that “the nomination of Muckaty as a potential radioactive dump site, made under the CRWMA legislation, was not made with the full and informed consent of all Traditional Owners and affected people and as such does not comply with Aboriginal Land Rights Act (ALRA)”.

The conference called “for the Muckaty nomination to also be repealed when the CRWMA legislation is overturned”.

## **FEDERAL ALP STATEMENTS AND COMMITMENTS**

ALP strongly opposed the CRWMA when it was proposed. ALP shadow ministers and NT representatives in the federal parliament called the legislation ‘sordid’, ‘flawed’ and ‘arrogant’.

Jenny Macklin (November 2006) described the CRWMA as “extreme, arrogant and heavy-handed”. She said: “Labor will defend the right of the community, including Indigenous communities, to be properly and fully consulted before decisions are made about the location of radioactive waste dumps.”

Anthony Albanese (2/11/05) described the CRWMA as “extreme legislation ... one of the most draconian pieces of legislation that has been brought before this chamber.” Mr Albanese noted that the CRWMA “brushes aside critical health, environmental protection, community safety and Aboriginal rights laws” and that its effect is the “sidelining of Indigenous rights”.

Peter Garrett (November 2005) described the CRWMA as a “sorry and a sordid business driven by a licensing imperative for nuclear processes that no-one has consented to. This government continues to make a mockery of the principle of informed consent, of community participation and of respect for the wishes and interests of Aboriginal people in this country.”

Trish Crossin (5/12/06) said that: "It is extraordinary and profoundly shameful that in a matter as controversial and contested as the siting of a nuclear waste dump such long held and procedurally proper processes are being circumvented." She noted that the Act "compromises the rights of Indigenous people living in the Territory to make decisions based on free, prior and informed consent."

The opposition report, and the minority report for the Senate Inquiries on the CRWMA expressed grave concerns about the power this law bestowed on the federal government to override NT Government, Traditional Owner and broad community opposition.

On September 27, 2007, Senator Trish Crossin and Minister Kim Carr released statements unequivocally committing Labor to repeal the CRWMA if elected ("The Dump We Were Lied About - A Step Closer" and "Rights flattened as government steamrolls towards waste dump")

### **NATIONAL ALP PLATFORM**

Labor's national conference in April 2007 voted to repeal the Commonwealth Radioactive Waste Management Act (CRWMA) if elected. Labor promised a method of addressing radioactive waste management issues which is "scientific, transparent, accountable, fair and allows access to appeal mechanisms" and to "ensure full community consultation in radioactive waste decision-making processes".

Excerpt from the National ALP Platform 2007 (chapter 5):

A Federal Labor Government will:

- \* Not proceed with the development of any of the current sites identified by the Howard Government in the Northern Territory, if no contracts have been entered into for those sites.
- \* Repeal the Commonwealth Radioactive Waste Management Act 2005.
- \* Establish a process for identifying suitable sites that is scientific, transparent, accountable, fair and allows access to appeal mechanisms.
- \* Identify a suitable site for a radioactive waste dump in accordance with the new process.
- \* Ensure full community consultation in radioactive waste decision-making processes.
- \* Commit to international best practice scientific processes to underpin Australia's radioactive waste management, including transportation and storage.

<[www.alp.org.au/platform/chapter\\_05.php](http://www.alp.org.au/platform/chapter_05.php)>

After a decade of the Coalition Government's haphazard and bullying approach to radioactive waste management, there had been a cautious sigh of relief when Labor pledged a different approach. However, Minister Ferguson and the ALP government has continued to be every bit as secretive as their Coalition predecessors on this issue, with the Minister even calling for the dump process to be 'fast tracked' ("New push for nuclear waste dump" The Age, June 9, 2008)

## **INTERNATIONAL TRENDS**

The UK Committee on Radioactive Waste (CoRWM) report, released in June 2006, highlights how internationally; *There is a growing recognition that it is not ethically acceptable for a society to impose a radioactive waste facility on an unwilling community.* [www.corwm.org.uk/](http://www.corwm.org.uk/)

The CoRWM also indicates that ; *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 .*

*Community involvement should be achieved through the development of a partnership approach, based on an open and equal relationship between potential host communities and those responsible for implementation.*

It is important that Australia now step into line with international trends that prioritise consultation and consent with affected communities.

## **NATIONAL ENVIRONMENT AND HEALTH GROUP OPPOSITION**

In June 2008, a consortium of national environment and public health groups wrote to the Prime Minister to urge repeal of the CRWMA. (attached). To date this letter has not been responded to. The unwillingness of the current federal government to discuss this election commitment does not bode well for public confidence. The question remains why it has taken almost a year and consistent requests for the NT waste dump issue to be addressed.

## **LONG TERM HAZARDS REQUIRE LONG TERM PLANNING**

Radioactive waste remains an environmental hazard, with potential social impacts, for many generations. Accordingly, decisions regarding management and facility location need to be made with measure and foresight. Legislation like the CRWMA, designed to expedite site nomination and selection, is the antithesis of good process in this regard.

There is no need to rush the construction of a remote facility for domestic radioactive waste management. While the government often purports the year 2011 as a deadline for receiving back waste currently overseas for reprocessing, as reaffirmed in recent Senate Estimates, Australia's contractual obligation is to take back the waste by December 31, 2015' (Senate Questions on Notice no. 737, 13 October, 2008). Though other non-public agreements and timelines may have been informally entered into by the previous federal government, these are not necessarily binding and do not provide the basis for the rushed and highly flawed process of site selection currently in operation.

## **INQUIRY**

BNI strongly encourages the government to undertake an independent and comprehensive public inquiry into radioactive waste management in Australia. Principles informing this inquiry should be based on non-imposition of radioactive waste transport and storage. This is in accordance with both ALP Platform and election commitments and contemporary international thinking.

BNI recommends that the money allocated to the waste facility assessment in the recent federal budget could be used to facilitate this Inquiry process.



The CRWMA is an extreme piece of legislation indicative of a government scrambling for a quick fix solution. However, as a long-term issue, radioactive waste management requires long-term thinking. As recognised internationally, community involvement and confidence is integral to nuclear projects being successful.

Given the undemocratic nature of the law currently forcing the dump on unwilling NT communities, it is clearly time for the federal government to enact its clear pre-election commitment to repeal the Commonwealth Radioactive Waste Management Act.

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**RECOMMENDATIONS:**

1. That the federal government immediately and unconditionally repeal the Commonwealth Radioactive Waste Management Act (CRWMA 2005/06) in accordance with clear pre-election commitments.
2. That all four NT sites currently under assessment for the federal radioactive dump be withdrawn as potential sites when the CRWMA legislation is overturned. This includes Muckaty, which was nominated under extreme contention and solely due to mechanisms of the CRWMA Amendments 2006.
3. That all affected communities and stakeholder groups are directly notified when the repeal and annulling of site nominations will occur.
4. That the federal government undertakes a comprehensive and independent public inquiry into radioactive waste management in Australia. The reference group for this Inquiry should include a broad range of non-government and Aboriginal organisations and community stakeholders.
5. That Senate Inquiry public hearings on the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008 be held in Alice Springs and Tennant Creek to allow more people from affected areas to attend and that the government provide financial support for people from remote areas to participate in the hearings.

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BNI appreciates your attention to the issues outlined and recommendations raised in this submission and looks forward to your response.

Please contact me if you have any questions or would like to discuss these matters further.

Sincerely,

Natalie Wasley  
Beyond Nuclear Initiative project worker