



Parliament of Australia

Senate

Environment, Communications and the Arts Committee

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

Northern Land Council Submission

6 November 2008

SENATE ENVIRONMENT, COMMUNICATIONS AND THE ARTS COMMITTEE

COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT (REPEAL AND CONSEQUENTIAL AMENDMENT) BILL 2008

1. Summary

The Northern Land Council (NLC) welcomes the opportunity to provide a submission regarding the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*.

The purpose of this Bill is to repeal the *Commonwealth Radioactive Waste Management Act 2005* (the Act). The primary effect of that Act is to override 2004 NT legislation - the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004* - which prohibits the establishment of a radioactive waste facility.¹ This statute was passed without any consultation with the NLC or traditional owners.

If the Bill is enacted, it will again be unlawful to establish a radioactive waste facility - even if traditional owners agree and the environment and sacred sites are protected.

This is the sole purpose of the Bill.

The NLC does not support the Bill.

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 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.

2. Background

The NLC is a statutory authority whose primary function under the *Land Rights Act*² 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.³

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

¹ Western Australia and South Australia have also passed legislation prohibiting a Commonwealth waste facility, however Western Australia and Queensland operate facilities in relation to their own radioactive waste and South Australia has announced that it will establish such a facility for its waste.

² *Aboriginal Land Rights (Northern Territory) Act 1976*.

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

being “unfair and untrue”, and stated (in relation to the then position of traditional owners regarding Koongarra):⁴

“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.

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.

Relevantly this amendment provided an important practical means whereby the objections of traditional owners of defence land (also proposed for a facility under the Act) at Mt Everard and Harts Range could be achieved – namely by consensually locating the waste facility at an alternative location.

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.

These amendments paved the way for traditional owners, if they wish, to nominate their country for a radioactive waste facility.

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.

⁴ Land Rights News, no 33, 1983, p 4.

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.

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.

In a statement on 25 May 2007, Ngapa elder, Amy Lauder, explained that traditional owners had made their decision for three reasons (copy attached):

“First, we want to create a future for our children with education, jobs and funds for our outstation at Muckaty Station and transport.

Secondly, we have been to Lucas Heights and accept that the waste facility will be safe for the environment.

Thirdly, our decision will help all people in Australia – because all Australians benefit from nuclear medicine which saves lives.”

A copy of Ms Lauder's letter to the Tennant and District Times dated 19 September 2008 is also attached.

The Ngapa traditional owners have a legitimate expectation, given their nomination and deed made under the Act, that they will receive these benefits if their country is environmentally suitable and is declared as the site for the Commonwealth repository - regardless of any change in the law.

In June 2008 the NLC Chairman, Wali Wunungmurra, confirmed that the NLC Full Council which was meeting at Mataranka fully supports the Ngapa traditional owners regarding their decision and their wishes for their country.

As the NLC's Chief Executive Officer, Kim Hill, recently stated in relation to the Ngapa nomination:⁸

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

3. NLC's position regarding the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008.

The sole purpose and effect of the Bill is to restore Northern Territory legislation such that it will again be unlawful to establish a radioactive waste facility - even if traditional owners agree and the environment and sacred sites are protected.

⁸ *Black & White: The man on the land* by Graham Ring, National Indigenous Times, Issue 164, 16 October 2008.

This will detrimentally affect the rights and interests of the Ngapa clan who have nominated their country for consideration as a radioactive waste facility.

The Bill will also detrimentally affect:

- the rights and interests of other traditional owners who may wish to nominate their country (where located on Aboriginal land) for consideration as a radioactive waste facility;
- the rights and interests of other land owners including native title holders who may wish to request the Chief Minister of the Northern Territory to nominate non-Aboriginal land for consideration as a radioactive waste facility;
- the interests of the Australian community – whose citizens all benefit from radiological medical treatment and cutting edge technology produced at Lucas Heights, and thus are each responsible for creating small amounts of radioactive waste - in obtaining a national site for the storage of Commonwealth radioactive waste, it being the longstanding policy of both major political parties that such a site be identified and a facility established.

The NLC does not support the Bill because it detrimentally affects the rights and interests of such traditional owners.

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 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.