



**NORTHERN TERRITORY GOVERNMENT  
SUBMISSION TO**

**SENATE EMPLOYMENT, WORKPLACE  
RELATIONS AND EDUCATION LEGISLATIVE COMMITTEE**

**COMMONWEALTH RADIOACTIVE  
WASTE MANAGEMENT BILL 2005**

**November 2005**

## **BACKGROUND:**

1. For over twenty years the Commonwealth Government and the State and Territory Governments have been involved in discussions on how best to dispose of the nation's low level radioactive waste. The need for the safe and secure disposal of this material has generally been acknowledged and accepted.
2. As a result of these discussions, the Commonwealth/State Consultative Committee on Radioactive Waste Management was established (c1985). It is understood that this committee recommended that an assessment program be commenced to ascertain the most appropriate site for a future radioactive waste management facility. This site selection process was subsequently carried out between 1992 and 1998. This exhaustive scientific process identified 8 broad regions within Australia that might be suitable for a radioactive waste management facility. Of these regions 2 were found suitable for further investigation. Neither of the 2 suitable regions were within the Northern Territory.
3. Following this site selection process and the resulting recommendations, the Commonwealth Government moved to compulsorily acquire an area of land in the north of South Australia. This proposed acquisition was opposed by the South Australian Government, which declared the subject land to be a national park and brought legal proceedings challenging the expedited process that the Commonwealth Government was seeking to use to acquire the land. These proceedings were ultimately successful and the proposed expedited acquisition was blocked. See *South Australian v Slipper* [2003] FCA 1414.

4. As a result of this setback and the apparent breakdown of efforts between the Commonwealth and the States to co-operatively arrive at a solution, the Prime Minister announced on 14 July 2004 that the Commonwealth Government would establish a facility for managing its own low level radioactive waste. He indicated that the Commonwealth Government would be examining sites on Commonwealth land, both onshore and offshore, for the establishment of a suitable facility. Rather than have a single national facility, the Commonwealth indicated that all States and Territories would need to establish facilities for their own radioactive waste.
  
5. On 15 July 2005 the Commonwealth Government announced that it would proceed with its radioactive waste management policy by investigating three sites in the Northern Territory. In subsequent correspondence to the Northern Territory (26 August 2005), the Commonwealth indicated that whilst it would have preferred an offshore island site, their analysis showed that such sites were unsuitable because of their low elevation, inadequate infrastructure and incompatibility with existing land uses.
  
6. The three identified Commonwealth sites in the Northern Territory are all located on Department of Defence land. They are located near to:
  - Fishers Ridge in the Katherine region, some 40km east of RAAF Base Tindal;
  - Hart's Range, some 200km north-east of Alice Springs;
  - Mt Everard, some 42km north-west of Alice Springs.
  
7. On 13 October 2005, the 'Commonwealth Radioactive Waste Management Bill' was introduced into the Federal Parliament as was the (Related Amendments) Bill of the same name. The purpose of the Bill, as set out in the Parliamentary outline, is to put beyond doubt the Commonwealth's power to do all things necessary for the selection of

a site and the establishment and operation of a radioactive waste management facility.

8. Any existing or future Territory laws that purport to prohibit, regulate or hinder site selection; the establishment & operation of the facility; or the transportation of waste; are declared to have no effect. This specifically applies to laws relating to land use, environmental issues, Aboriginal heritage issues, health and safety and licensing activities. In addition to these specific laws, there is capacity in the Bill to prescribe by regulation any other existing or future Territory law that may impact on site selection/establishment or operation of the facility.
9. In a letter to the Chief Minister dated 2 November 2005 the Minister for Education Science and Training, speaking about the current Bill, notes:

“The need for this legislation was clearly demonstrated by the actions of the Rann Labor Government in South Australia, which abused a provision in a Commonwealth law to force the abandonment of a national repository siting process initiated with the support of all Australian Governments. Recent statements made by you and your Ministers that your Government would use every available means to delay or frustrate the Commonwealth in establishing and operating the Facility, further demonstrate the need for this new Commonwealth legislation.”

#### **Overview of the Northern Territory Government Position**

10. Whilst the Northern Territory Government recognises the need for a radioactive waste management facility, it is submitted that such a facility should be located at the most appropriate site having regard to

the best possible scientific advice and not be based on an assessment of political expediency.

11. The Northern Territory Government considers that:

- (a) The process for selecting an appropriate site for the facility should:
- be conducted through the normal channels regarding approvals and controls;
  - proceed in the normal course of events (given that construction is not proposed until 2009);
  - be subject to the usual processes of review and scrutiny in the interests of transparency and community support; and
  - be subject to the applicable laws of the Northern Territory regarding environmental protection, health, safety and Aboriginal heritage issues.
- (b) The provisions that set aside specific existing laws made by the democratically elected Legislative Assembly of the self-governing Northern Territory and the provisions to prescribe future or other laws as being of no effect:
- are a serious erosion of the democratic rights of Territorians, and are contrary to the concept of self-government;
  - create legal uncertainty in regard to the application of Northern Territory laws; and
  - are contrary to the principles of good governance.
- (c) The restrictions on the right of review, the suspension of obligations regarding procedural fairness and the arbitrary nature of the proposed process is unwarranted, unjustified and contrary to the concept of self-government.

(d) The storage of long lasting toxic waste in a sensitive and fragile environment, with significant ground water issues, is contrary to sound scientific management. It has the potential to cause serious environmental degradation and damage to the image of the Northern Territory.

(e) Placement of radioactive material at a remote location does not make sense from either the security aspect or having regard to transportation risks. No regard has been given to the possible serious implications of the worsening security/terror environment both within Australia and world wide.

### **Submission**

12. The Northern Territory and its residents have had a long history of seeking autonomy in control of their own affairs. However, up until 1978 the Territory was largely controlled by Commonwealth Ministers and public servants from Canberra. This changed in 1978 with the passage of the Northern Territory (Self-Government) Act 1978 as a result of a continuing process of economic and political development.

13. That Act created or recognised all three traditional arms of government (legislative, executive and judicial) and thereby granted the Northern Territory self-government separate from the Commonwealth. The legislative arm of this grant, the Legislative Assembly of the Northern Territory, was given plenary powers to make laws for the peace, order and good government of the Territory (see S.6 *Northern Territory (Self-Government) Act 1978*).

14. The High Court has since recognised that the grant of legislative power is not exercised as a mere delegate of the Commonwealth Parliament,

but is in fact exercised by self-governing territories in their own right. The Legislative Assembly of the Northern Territory is fully elected on democratic principles to represent the people of the Northern Territory and has power and authority to make laws on matters such as land use, surface transport regulation, environmental protection, water resources and hazardous and dangerous substances. See Regulation 4, of the NT (Self Government) Regulations.

15. While the Commonwealth Parliament has constitutional power to make laws for the Government of the Northern Territory and the Legislative Assembly cannot make laws that are inconsistent with the laws of the Commonwealth which apply in the Northern Territory, the Commonwealth Parliament has never before in such a wholesale fashion sought to disapply so many existing or future laws of the Northern Territory's Legislative Assembly.
16. It is one of the conventions of self-government in the Westminster tradition that once self-government is granted to a political entity, it should not be taken away except in the most extreme circumstances (like war or civil disturbance). See the submission of the Commonwealth Attorney-General's Department to the Joint Parliamentary Committee on the Northern Territory, page 8 of Parliamentary paper No. 281 of 1974, where it observes that it would be politically unthinkable to take away such powers after they had been granted.
17. The Commonwealth Radioactive Waste Management Bill 2005, as introduced in the House of Representatives, would directly erode the plenary grant of legislative powers of the Legislative Assembly, as conferred by S.6 of the *Northern Territory (Self-Government) Act 1978*. If enacted the Bill would breach the governance conventions

and undermine the principles of self-government. It would also have the effect of nullifying Northern Territory laws relating to health, safety and environmental protection that were lawfully enacted and assented to.

18. If enacted, the Bill would also create uncertainty regarding the application, or the extent of application, of a number of existing Northern Territory laws and create uncertainty in regard to the application of future laws, which may, by regulation be declared of no effect. It is submitted that it is highly undesirable that there should be uncertainty in regard to the application of the laws of a jurisdiction. These are points of fundamental constitutional significance with ramifications going well beyond the Northern Territory.
19. The Northern Territory is progressing along a path of constitutional development. The grant of self government was an important step in that process, but does not amount to a grant of Statehood. With a view to facilitating the future grant of Statehood, the Commonwealth already treats the Northern Territory as far as possible as if it were a State, for example, for financial purposes through the Commonwealth Grants Commission process. The enactment of the current Bill would be contrary to the general progression towards Statehood and be an impediment to the future constitutional development of the Northern Territory.
20. If enacted the Bill would further entrench the two classes of citizens in Australia ... those in the States and those deprived of equal constitutional rights in the Territories. The latter case involves about half a million Australians, which is more than the population of Tasmania. In a free and democratic country, it has to be questioned



whether such a discriminatory denial of constitutional and democratic rights enjoyed by other Australians is fair or justifiable.

21. Throughout the debate on this issue, there seems to have been no question raised as to the Commonwealth Parliament's capacity to deal with this subject matter. Accordingly it is submitted that the appropriate course of action is to proceed with the selection of a site for a radioactive management facility on the basis of the scientific analysis of the most appropriate site and to follow due process. Given that any construction of the facility is not proposed until 2009, there is sufficient time, using existing laws, to obtain the necessary approvals and clearances. While this process may take longer and may be subject to review at steps along the way, it would be more transparent and more likely to achieve community support. This process may also result in the operations of the facility being subjected to more appropriate terms and conditions to address health, safety and environmental concerns. It is submitted that this would be beneficial in the overall context.

22. The dangers of selecting sites merely on the basis of political expediency rather than sound scientific research is readily apparent from even a superficial examination of the 3 nominated sites. Two of them are subject to significant groundwater issues and the third is of concern given the timeframes involved and the anticipated expansion of Alice Springs. The traditional owners of the land surrounding the two Central Australian sites also oppose the proposal.

23. Serious consideration needs to be given to the possible security implications of placing a waste facility in a remote location given the worsening security/terror environment both in Australia and world wide. Placement of radioactive material at a remote location does not make sense from either a security aspect or having regard to transportation

risks. The cost of transporting the material to the site and maintaining a sufficient level of full time security will be very high. There are very real dangers that it will not be possible to maintain the necessary levels of staffing and that short cuts will inevitably result.

### **Summary**

24. For the reasons outlined, the Northern Territory Government is firmly opposed to the enactment of the Commonwealth Radioactive Waste Management Bill 2005, regardless of consideration of either (a) the national need for a waste management facility, or (b) whether the Northern Territory is a suitable site for the facility.
  
25. The Bill provides unfettered capacity to strike down any law of the Northern Territory that would operate to regulate or impose conditions on the selection of a site, or on the construction/operation of the facility. These are laws duly made by the democratically elected representatives of the Northern Territory. They are laws designed to safeguard the environment; ensure health and safety; give due regard to Aboriginal traditional values and to protect individual property rights.
  
26. The Commonwealth went through an exhaustive scientific process to determine the most appropriate sites for a waste dump in Australia. That process came up with 2 suitable sites, neither of which is in the Territory. There would appear to be no question that the Commonwealth has sufficient power to proceed to acquire land and build/operate a facility at any suitable site within Australia, whether that site is within a State or not.

27. The objectionable aspects of the current proposal and the proposed legislation are as follows:

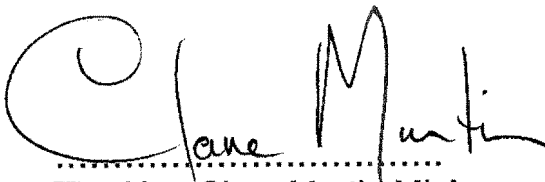
- the abandonment of site selection on the basis of best available scientific advice;
- the removal of the usual processes of review and scrutiny; and
- the imposition of waste from the rest of Australia on Northern Territorians, not because of arguments of national good, but because of an assessment of the likely electoral consequences.

28. If such a Bill had a similar impact on the rights of State citizens, or on State laws, it would never be contemplated. The Bill rides roughshod over Northern Territory laws and concerns. The facility is being forced on the Northern Territory without consultation and without regard to local rights or safeguards. The action is being taken, not because it is the right thing to do, but because Northern Territorians can be forced into subservient subjugation.

29. Serious consideration needs to be given to the possible security implications of placing a waste facility in a remote location given the worsening security/ terrorism environment in both Australia and worldwide.

30. The Northern Territory Government's position on the issue of where the proposed radioactive waste disposal facility should be located, is that the Commonwealth Government should seek independent, objective advice on the most appropriate site, wherever that might be in Australia. That advice should be based on the best scientific information available, and also take account of other issues such as transport implications, security and local concerns. The Northern Territory Government undertakes to abide by the umpires decision if such a process is undertaken.

Signed for and on behalf of the  
Northern Territory Government  
By the Chief Minister

A handwritten signature in black ink, reading "Clare Martin". The signature is written in a cursive style with a large initial 'C' and 'M'.

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The Hon Clare Martin MLA  
Parliament House  
Northern Territory  
November 2005