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From: EDO NT [EDO_NT@fcl.fl.asn.au]
Sent: Friday, 18 November 2005 11:46 AM
To: EET, Committee (SEN)
Subject: Commonwealth Radioactive Waste Management Bill 2005



LT Senate
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Dear Sir,

I attach a submission on the Senate inquiry into the Commonwealth Radioactive Waste Management Bill 2005 for the Inquiry's consideration. regards

Tom Cowen
Environmental Defenders Office (NT) Inc

office hours are 9am to 5pm

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**ENVIRONMENTAL
DEFENDERS OFFICE (NT) INC.**

The Chair Senator Judith Troeth
Senate Employment, Work Place Relations & Education Committee
Inquiry into the Commonwealth Radioactive Waste Management Bill 2005

Your Ref: **Commonwealth Radioactive Waste Management Bill 2005**
Our Reference: 050066

18 November 2005

SUBMISSION

Dear Senator,

Re: Commonwealth Radioactive Waste Management Bill 2005

I write in relation to the above matter. I have examined the Bill and wish to make several points about the Bill from the point of view of transparency, community involvement and environmental protection. As well I wish to make points about the way in which the Commonwealth Government has ignored the wishes of the people of the Northern Territory and mislead them about the Government's intentions.

Transparency

Transparency of decision making by Governments and the Departments responsible for implementing government policy is a cornerstone to the maintenance of a healthy democracy. Having worked for government in Papua New Guinea I am well aware that decision making that is not open to scrutiny by the public and through the judiciary leads to bias, nepotism and eventually rampant corruption. One may scoff at the suggestion that Australia could ever approach the "failed status" of some of our near neighbours but the process starts somewhere and proceeds by small increments so as to be almost unnoticed until it is too late. The Bill, as proposed, deliberately chooses to avoid transparency of decision making and abrogates the rights of concerned citizens to have the decision making process reviewed in an independent and open way. (Section 8)

One of the gatekeepers of good democracy in our federal system is the tension that exists between the States and the Commonwealth in relation to legislative powers that act as a check and balance. The Commonwealth governments approach to the citizens of the Territory is to treat them as having fewer democratic rights than the rest of the state based population of this country. There is an apparent belief, on the part of Commonwealth Ministers and members of parliament that the territories can have rights on some matters, such as mandatory sentencing, but not on others such as euthanasia or nuclear waste. This really makes Territorians feel like second class citizens. (Section 5)

This Bill disregards the International Atomic Energy Commission's recommendations on good social practices like consultation and transparency in relation to nuclear waste.

Community Involvement

A fundamental principal of planning processes is to involve the community in a meaningful way, through informed debate, to take part in the decision making process. Not only does this Bill not incorporate this principle but rather, to put it in clear terms, it is the most draconian piece of land use planning law ever brought before an Australian parliament. It runs counter to the trend in recent decades to involve the community in planning and land use decisions.. This is a piece of legislation that would have been unthinkable in Australia ten years ago. This bill enables the Commonwealth to set aside any existing or future state or territory laws and regulations that purport to prohibit, regulate or hinder the selection of Commonwealth land as a site. That includes the transportation of waste restrictions. It enables the Commonwealth to bypass the *Environment Protection and Biodiversity Conservation Act 1999* and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* in the selection process of a dump, overriding those pieces of Commonwealth legislation.

It also enables the Commonwealth to acquire or extinguish all interests in sites chosen for a facility that the Commonwealth has not already acquired or extinguished. In particular, it allows the government to bypass all these laws. It removes any recourse to procedural fairness as grounds to challenge the minister's decision. It enables the Commonwealth to set aside the Native Title Act for the life of the bill and the waste dump. Notwithstanding any state or territory legislation, it provides the Commonwealth with the express authority to do anything necessary for or incidental to establishing or operating a Commonwealth waste dump at the selected site and the transporting of radioactive waste to that dump. It does allow for the compensation of persons disaffected by the acquiring or extinguishing of any remaining land rights but this, of course, is a requirement of the Australian Constitution. Normative jurisprudence suggests that an evaluation of the legal rules and structures put in place by this Bill against what is considered "good law" would find this Bill sadly wanting.

The Bill over-rides the wishes of the community of the Northern Territory and the rights of communities, including Indigenous communities, around the nation to be involved in important land use decisions on their doorsteps. These bills deny the application of the usual planning, environmental and land rights laws—laws that would apply to any other land use decision in this country.

There are principles of law making that we expect to be applied when making tough decisions in Australia— a civilised nation, with a strong sense of democratic process. The Bill before Parliament removes any recourse to procedural fairness as grounds to challenge the minister's decision.

It is very clear from a reading of this Bill that this legislation is about removing the rights of Australian communities to be involved in land use, planning and environmental assessment decisions.

Environmental Protection

The Bill excludes the Commonwealth's own *Environmental Protection and Biodiversity Conservation Act* from any role in evaluation or licensing of any proposed nuclear waste facility site, despite what some members of the government claimed in the House of Representatives debate on this Bill. Since the community's main concern about environmental safety is paramount one would assume that the government would want to strengthen the provisions for environmental impact assessment and protection rather than avoid them.

In regard to the construction or operation of a waste dump all Territory laws regarding land use, environmental clearances, Aboriginal heritage, dangerous goods and licensing are over-ridden. If this does not extend far enough, there is provision to prescribe any specific Territory laws that regulate or hinder the construction or operation of the facility and to over-ride these laws as well. Although the Bill purports to be concerned with only three potential waste sites in the Territory the language used captures all jurisdictions so that the rights of States is diminished by this proposed law as well.

Other Considerations

The Government want to make it impossible for the Northern Territory legislature to have the right to properly voice the concerns and wishes of the Territory's community.


It is noted that section 4 of the Bill allows an authorised person to take many actions. For example one such action is to construct bores and extract water. Under Territory law (*Water Act*) all water in the Territory is owned by the Territory and the construction of a bore and the extraction of water requires approval and a licence issued by the Controller of Water. This requirement is necessary to ensure that the water authorities know what is happening to water in aquifers and overland flows. This Bill overturns this Territory authority and makes the Water Act of no effect, despite the Territory law being sound in principle and practice and based on good environmental scientific data and good jurisprudence. This is just one example but there are many others: clearing vegetation, extracting sand and gravel, construct roads and so on are all activities exempt from even minimalist independent assessment of their potential impacts.

All of these activities can be done with no scrutiny by independent bodies on the potential impacts on the environment.

Any other Territory or State law can be added by Regulation. Section 13(4) That is, this Bill creates a power in the executive to exclude any State or Territory law from operation in relation to any activity described in section 12. To say that this Bill rides roughshod over the citizens of the Territory and their laws would be an understatement. The provisions of the Bill are not proportionate to the purpose that the Bill is trying to achieve. There are other ways that this could be done that do not require the complete abrogation of the rights of the citizens of the Northern Territory.

I trust that the Senate Inquiry will take these submissions into account and make recommendations to the Senate and the government appropriate to the standards of law that the Australian community wants.

Yours sincerely,



Tom Cowen
Principal Lawyer