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From: Jayne Weepers [Jayne.Weepers@clc.org.au]
Sent: Sunday, 20 November 2005 6:28 PM
To: EET, Committee (SEN)
Subject: Submission to the Inquiry into the Radioactive Waste Management Bill 2005

Peter

Please find attached the Central Land Council submission to the Inquiry into the Commonwealth Radioactive Waste Management Bill 2005 and Commonwealth Radioactive Waste Management (Related Amendment) Bill 2005.

An email to follow will contain two documents (maps) for attachment at Appendix 2. I would appreciate it if you could acknowledge receipt of both the main submission and Appendix 2.

Thanks

Jayne

Jayne Weepers

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Central Land Council

Submission to the Senate Committee Inquiry into the *Commonwealth Radioactive Waste Management Bill 2005 and Commonwealth Radioactive Waste Management (Related Amendment) Bill 2005*

20 November 2005

Executive Summary and Recommendations

The Central Land Council welcomes the opportunity to make a submission to this inquiry.

The Central Land Council (CLC) is a statutory authority established under the Commonwealth *Aboriginal Land Rights Act (NT) 1976* (ALRA). The CLC is also a Native Title Representative Body under the *Native Title Act 1993*.

The CLC represents the traditional landowners of two of the proposed sites listed in Schedule 1 of the *Commonwealth Radioactive Waste Management Bill 2005* [the Bill].

These sites are the Harts Range and Mount Everard sites. The CLC also represents the claimants in the Alcoota Land Claim which is being finalised over the Aboriginal owned Alcoota Pastoral Lease, the lease which surrounds the proposed Hast Range site.

Traditional landowners for both sites have repeatedly expressed concerns over the plans to locate the Commonwealth's radioactive waste management facility on their land.

The Bill is a deeply flawed piece of legislation that allows the Commonwealth government to override many important considerations in the selection of a site for a radioactive waste facility. More specifically, the legislation has the effect of over-riding native title, environmental and heritage considerations, considerations that are of particular relevance given the importance of the Mt Everard and Harts Range/Alcoota sites to Aboriginal people. In addition, traditional landowners will also be unable to protect any sacred sites or culturally important places because the Northern Territory *Aboriginal Sacred Sites Act* will have no effect.

The Central Land Council believes that the amendments to the Bill to allow for nomination of a potential site by the Chief Minister of the Northern Territory or a Land Council, remain unworkable and that better protection would be afforded to traditional landowners who chose to nominate a site in accordance with the operations of the *Aboriginal Land*

Rights (Northern Territory) Act 1976. The Central Land Council does not support the *Commonwealth Radioactive Waste Management (Related Amendment) Bill 2005* [the ‘Amendment Bill’] and calls on the Senate to reject the Bill in its entirety, including the Amendment Bill.

Recommendation 1.

The Central Land Council recommends that the Senate reject the *Commonwealth Radioactive Waste Management Bill, 2005*, and its amendments, in its entirety.

The Central Land Council is concerned that best practice has not been followed in the site selection process detailed in the Bill. Originally, two separate facilities were identified for storing low-level and intermediate level waste. The site selection process for the low level waste facility occurred over a 10 year period commencing in 1992, and involved public comment at three stages. Siting criteria were established by the National Health and Medical Research Council (NHMRC) in its 1992 *Code of practice for the near-surface disposal of radioactive waste in Australia*. Eight regions across Australia were identified for further assessment and Woomera finally chosen as the preferred site for the storage of low level waste. Importantly, the Central Australian sites that have currently been proposed were not identified as part of this process.

The National Store Project, designed to store intermediate level waste, commenced in 2001. The report of the National Store Advisory Committee was never widely released. However, a short-list of 22 Defence properties across Australia suitable for intermediate level store was produced. Again, the Central Australian sites were not on this short-list.

The siting procedure detailed in the Bill does not give effect to the siting criteria relating to the storage of nuclear waste listed under the National Health and Medical Research Council (NHMRC) Code of Practice and in the Commonwealth’s own guidelines for the siting of nuclear waste. In particular, the siting and tender process fails to consider Aboriginal specific land use practices and cultural heritage issues, such as the presence of sacred sites.

Recommendation 2

That the Commonwealth follow their own siting guidelines and that a thorough process be put in place to determine the siting of any nuclear waste facility in Australia. This process should follow best practice and in particular should include a detailed social and cultural study to take into account any particular Aboriginal land use practices and any culturally significant sites.

Traditional owners have raised concern about the lack of recognition of any rights they have in the relevant country. The Bill offends rights that may be held by traditional owners in two ways:

- i) The Bill allows the Minister to declare that any rights in a site be acquired without any consultation or process, and
- ii) The Bill takes no account of rights that may be affected in land surrounding a site.

Traditional owners / native title holders assert they have native title rights in both the Harts Range and Mt Everard sites. In both cases the land was acquired by the Commonwealth in 1978, without consultation or any agreement, and native title holders assert native title was not acquired. On 8 November 2005 native title holders lodged native title applications over both sites to seek recognition of their native title rights.

Recommendations 3 and 4.

That the *Native Title Act 1993* be followed in any site selection process.

That affected land interests be recognised and included in any site selection process.

Traditional landowners for both the Alcoota/Harts Range and Mt Everard sites are strongly opposed to the Commonwealth radioactive waste management facility being located at either site or on any part of their country, and instructed the CLC to assist them to oppose such a facility from proceeding. Of primary concern to traditional landowners is the need to keep their country safe and healthy for present and future generations, and to be able to continue to use their country for hunting and getting food. The views and concerns of traditional landowners are well summarised in the statement they made to the Prime Minister, see Appendix 1.

Recommendation 5.

That the Australian government recognise that traditional landowners have expressed grave concerns about the siting of a nuclear waste facility in central Australia and have repeatedly said that they do not want such a facility located on either the Mt Everard or Harts Range/Alcoota sites, or on any part of their country.

1. The *Commonwealth Radioactive Waste Management Bill, 2005*

The *Commonwealth Radioactive Waste Management Bill, 2005* (otherwise termed ‘the Bill’) is a deeply flawed piece of legislation that allows the Commonwealth government to override many important considerations in the selection of a site for a radioactive waste facility. More specifically, the legislation has the effect of over-riding environmental and heritage considerations that would have been given effect by the operation of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and *Environmental Protection and Biodiversity Conservation Act 1999*. These heritage considerations are of particular relevance given the importance of the Mt Everard and Harts Range/Alcoota sites to Aboriginal people.

Another piece of legislation of great importance to Aboriginal people that has been overridden by the Bill is the *Native Title Act 1993*. In declaring a site pursuant to clause 1.7 of the Bill, the Commonwealth acquires all rights and interest in the land, including specifically native title rights and rights to minerals. The effect of this is discussed in some detail in section 4. below. However, in brief, in declaring a site pursuant to clause 7 of the Bill, the Commonwealth acquires all rights and interest in the land, including specifically native title rights and rights to minerals. The effect of the declaration operates despite the Commonwealth’s *Land Acquisition Act 1989*. Thus the effect of the Bill is to set aside established laws and processes for the acquisition of land and land-use decision making and management.

The Bill also effectively overrides all Northern Territory laws. Any law of the Northern Territory that would regulate, hinder or prevent the doing anything authorised by clause 4 (site selection activities) and clause 12 (construction and operation activities) have no effect. This has particular implications for Aboriginal people. Traditional landowners will also be unable to protect any sacred sites or culturally important places because the Northern Territory *Aboriginal Sacred Sites Act* will have no effect.

The intent of the Bill is clearly to remove any doubt about the Australian Government’s power to select a site, construct and operate a radioactive waste facility in the Northern Territory. In giving effect to this intent the Commonwealth has also, in effect, rendered irrelevant a number of important considerations in the siting of a nuclear waste facility. Such effect contravenes even the Commonwealth’s established process for site selection (as detailed below), and is representative of a complete disregard for the cultural heritage

significance and land use considerations of Traditional landowners which relate to the proposed sites. For this reason the Central Land Council asks that the Senate reject the Bill, and its amendments, in its entirety.

Recommendation 1.

The Central Land Council recommends that the Senate reject the *Commonwealth Radioactive Waste Management Bill, 2005*, and its amendments, in its entirety

2. Amendments to the *Commonwealth Radioactive Waste Management Bill, 2005* to allow for nomination of a potential site by the Chief Minister of the Northern Territory or a Land Council.

This part of the CLC submission seeks to demonstrate that the Amendment Bill is simply unworkable in respect of a possible nomination by a Land Council. The CLC does not support the amendment or the Northern Land Council’s original proposal.²

The object of the amendments was to enable either the Chief Minister of the Northern Territory Government to nominate an area of non-Aboriginal land, or a Land Council to nominate an area of Aboriginal land, other than one of the three sites named in Schedule 1 of the original Bill. The CLC submits that it is virtually impossible for a Land Council to comply with the requirements for nomination set out in clause 3B because sub-clause 3B(1)(e) requires that a nomination must contain evidence that:

....if there is a sacred site within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* on or near the land – contain evidence that the persons for whom the site is sacred or is otherwise of significance are satisfied that there is no substantial risk of damage to or interference with the sacred site as a result of the nomination or subsequent action under this Act.

² It is also noted that the amendment does not give effect to the resolution of the NLC as follows -

“The Northern Land Council supports an amendment to the Commonwealth Radioactive Waste Management Bill 2005 to enable a Land Council to nominate a site in the Northern Territory as a radioactive waste facility (sic), provided that:

- (i) the traditional owners of the site agree;
- (ii) sacred site and heritage are protected (including under current Commonwealth and NT legislation);
- (iii) environment protection requirements are met (including under current Commonwealth and NT legislation);
- (iv) Aboriginal land is not acquired or native title extinguished (unless with the traditional owners’ consent).”

Further, under sub-clause 3B(1)(g) a nomination by a Land Council is required to contain evidence that:

the traditional Aboriginal owners understand the nature and effect of the proposed nomination and **the things that might be done on or in relation to the land** under this Act if the Minister approves the nomination; and the traditional owners as a group have consented to the proposed nomination being made.

The main problem lies in the words “understand the nature and effect of the proposed nomination and the things that might be done on or in relation to the land under this Act”. Sub-clause 4(2) of the Bill empowers the Commonwealth, a Commonwealth entity or a contractor to do anything necessary for or incidental to the purposes of selecting a site. Similarly, sub-clause 4 (3) lists some of the things which might be done “whether or not on a site”. The list includes a number of activities which could desecrate a sacred site, such as drilling, constructing bores, road construction to access the nominated land and clearing vegetation. There may be other activities which could be conducted under the general power. Therefore, it is not possible for either a Land Council or the traditional Aboriginal owners of an area to know specifically **what** may be done pursuant to section 4 if a nomination is accepted, and it is not possible for them to know **where** the activities may be carried out, because they could be carried out at considerable distance from the nominated area.

Until an area is nominated not even the Commonwealth will know what needs to be done for the purpose of selecting a site, in relation to that specific area. It may not even know what needs to be done until some time after it accepts a nomination. Yet the traditional landowners are required to know all of that before they make the nomination. The ultimate consequence of a successful nomination could be the loss of all of their interests in the land and in any all weather access required, upon a declaration pursuant to clause 7. Thus it follows that it is virtually impossible for a Land Council to meet the requirements for nomination of an area of Aboriginal land, both as to the sacred site requirement and the informed consent requirement. To summarise: the informed consent requirement requires evidence of understanding of what might be done to the nominated area, and other areas. This will be impossible to satisfy when much of the activity will not be known until a future date, post-nomination.

Finally, the abrogation of procedural fairness by clause 8 means that an area unanticipated because a Land Council nomination is confined to a “potential site”, may be declared as all

weather road access [clause 7(2)] without any redress by or on behalf of the traditional Aboriginal owners, and regardless of the presence of sacred sites or other interests.

The present situation.

It is important to understand that even if the Bill was never introduced a Land Council could still have nominated a site to the Commonwealth for the purposes contemplated by the Bill. It could still do so.

A Land Council could only nominate a site on the instructions of the traditional landowners obtained in compliance with sub-section 23(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976*. What would happen thereafter would be a matter for agreement between the Land Council and the Commonwealth. Any agreement would need to record particulars of all that might be done by or on behalf of the Commonwealth in respect of the nominated site, or outside the site and in respect of any all-weather access to the site.

Should the nominated site prove suitable, the agreement would encompass the terms of the Commonwealth's acquisition of all necessary interests, and the circumstances of its final selection as a site. This would provide much greater protection to the rights of the traditional landowners than the Bill in the circumstances.

The above comments are provided to demonstrate the existing capacity for such matters to be addressed by agreement, and should not be interpreted to mean that the CLC in any way supports the exclusion of the operation of Commonwealth or Northern Territory legislation which will be effected if the Bill becomes law.

Finally, it is important to recognise that a process that involves landowners - whether Aboriginal or non-Aboriginal - nominating parcels of land as possible sites for a nuclear waste facility is not a scientifically rigorous process and can in no way be understood as a serious and considered best-practice approach to the siting of a nuclear waste facility in Australia.

For the reasons detailed above the Central Land Council believes that the amendments to the Bill remain unworkable and that better protection would be afforded to traditional landowners who may choose to nominate a site in accordance with the operations of the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Central Land Council does not support the Amendment Bill and calls on the Senate to reject the Bill in its entirety, including the Amendment Bill.

3. Site Selection under the Bill

The Central Land Council has a number of concerns about the site selection process detailed in the Bill. Choosing a waste site from one of three defence properties in the Northern Territory is simple political expediency. It is a fundamentally flawed approach to the siting of a long term facility which houses significant amounts of short lived and long lived radioactive waste. The Bill serves to armour this flawed process against any legislative or legal recourse - the result of which will lead inevitably to a very poor outcome. Established best practice for selecting a site for a waste facility has been abandoned.

Originally, two separate facilities were identified for storing low-level and intermediate level waste. The site selection process for the low level waste facility occurred over a 10 year period commencing in 1992, and involved public comment at three stages. Siting criteria were established by the National Health and Medical Research Council (NHMRC) in its 1992 *Code of practice for the near-surface disposal of radioactive waste in Australia*. Eight regions across Australia were identified for further assessment and Woomera finally chosen as the preferred site. Importantly, the Central Australian sites that have currently been proposed were not identified as part of this process.

The National Store Project, designed to store intermediate level waste, commenced in 2001 and according to Senator Minchin was “intended to be a transparent, nation-wide search for a suitable site [for long lived intermediate level waste] based on scientific and environmental criteria”. Senator Minchin ruled out co-location of low level and long lived intermediate level waste. It is not clear what happened to the National Store Project process. A *Code of practice for the pre-disposal management of radioactive waste* remains in draft and is unavailable.

The report of the National Store Advisory Committee was never widely released. However, a short-list of 22 Defence properties across Australia suitable for intermediate level store was produced. Again, the Central Australian sites were not on this short-list.

It is now proposed to co-locate low level waste with intermediate level waste. Co-location has never been proposed before and the scheduled sites were never identified by any previous assessment. Siting criteria for the facility are different and reflect the difference in the hazardous nature of the waste. With the increased risk of terrorist attack the ability to keep a long-lived intermediate site secure is paramount. It would be difficult to achieve the adequate level of security in Central Australia.

The object, according to the National Health and Medical Research Council's³ (NHMRC) 1992 *Code of practice for the near-surface disposal of radioactive waste in Australia* in establishing a waste disposal facility is:

to isolate radioactive waste in a way which ensures that there is no unacceptable risk to humans, and no long-term unacceptable detriment to other biota and the environment from the operation of the facility or following its closure (NHMRC 1992 p.9).

The CLC is concerned that the legislation forces a process that will mean this fundamental objective will not be met.

Aboriginal people will bear the brunt of such a flawed process and be placed at greatest risk. They live near the sites scheduled in the Bill. They utilise the areas and under their law they are responsible for that land. The perception that Central Australia is an empty land is working against Aboriginal people in a particularly dangerous and unjust way.

Failure to recognise and give weight to Aboriginal people's interest in land is a feature of colonisation and a source of much conflict with non-Aboriginal society. Legislation such as the Commonwealth's *Native Title Act 1993*, *Aboriginal Heritage Protection Act 1984* and the Northern Territory's *Sacred Sites Protection Act* has been enacted by parliaments to address disadvantage Aboriginal people face in maintaining their culture in contemporary society.

The Bill sweeps aside those Acts which give recognition of their legitimate interest in land and give Aboriginal people a say in decisions affecting them and their land. Should this legislation proceed the result will be that a facility is forced upon Aboriginal people with no regard to their social and cultural interests.

Site selection process

The Bill allows the Minister to declare one of three scheduled sites. There is no process in the Bill that requires the Minister, when declaring a site, to do anything or follow any process that would normally be required when making a decision of this magnitude.

Separate from the Bill, the CLC has become aware that the Government issued a Request for Tender on 4 October 2005. The tender document seeks a contractor to manage,

³ NHMRC is Australia's leading expert body promoting the development and maintenance of public and individual health standards. It is established under *National Health and Medical Research Council Act 1992*

coordinate and undertake technical assessment of the sites announced by the Minister on 15 July 2005 - being the sites that are scheduled in the Bill.

The purpose stated in the tender is to provide sufficient information to allow the Government to select a preferred site. The closing date for tenders was 8 November 2005. There is no requirement in the Tender document to survey the Aboriginal social and cultural interests in the sites and surrounding land.

The CLC assumes that in making a declaration under clause 7 of the Bill that the Minister intends to rely upon the assessment provided by the successful tenderer. There is however nothing in the Bill which requires him to take that information or any other information into account. The Minister's power under this Bill is absolute and there is no right of review or procedural fairness accorded to anyone.

Siting criteria under the NHMRC Code of Practice

The tender documents refer to generic and specific criteria for establishing nuclear facilities including the NHMRC Code of Practice. However, the overall purpose and objective of these guidelines and codes is already compromised because of the restriction to the three pre-determined sites.

Population density and a minimisation of the impact of exposure of people to radiation is a guiding principle in the code of practice. This involves:

ensuring the magnitude of individual radiation exposures, the number of people exposed and the likelihood of incurring the exposures is as low as reasonably achievable (ALARA) (NHMRC 1992 p.9).

Furthermore the NHMRC the Code of Practice on site selection states "the site should be in an area of low population density and in which the projected population growth or the prospects for future development area also very low" (NHMRC 1992 p.13- criteria e). Keeping the waste away from people is an effective way of reducing risk of radiation exposure.

While regional population density is low in Central Australia, compared to metropolitan areas, the scheduled sites are very close to communities and outstations where Aboriginal people live. In a direct line, the distance from the centre of the scheduled sites to the following communities is (see maps of each site, attached as Appendix 2):

From Alcoota/Harts Range site:

- 16 kms Engawala

From Mt Everard site:

- 4 kms Werre Therre
- 16 kms Athenge Lhere (16 Mile)
- 22 kms Iwepetake (Jay Creek) Aboriginal communities
- 23 kms Alice Springs

Aboriginal specific land use practices are not considered in the siting process

Aboriginal specific land use practices are not considered in the siting process. This can have a number of particular implications given the specific risks of exposure to humans from some of the by-products of radioactive waste. For example, one of the critical pathways for the risk of exposure to humans to radionuclides is the release of gas generated through the decay of the waste. The Environmental Impact Statement (EIS) prepared for the Department of Education, Science and Training (DEST) in 2002 in relation to the proposed low level waste repository near Woomera says radon will be continuously created by the decay of radium in waste inventory. “The initial inventory would contain radium and radium would also be produced by the decay of its precursor thorium and uranium isotopes in the inventory” (DEST 2002 p.70). The EIS points out that radon and its radioactive daughters are more toxic than other gases produced as they are alpha emitters and in contrast to other gases (such as tritium) “the quantity of Radon 222 that is produced from the repository could be considerable, owing to the substantial inventories of Uranium 238 and Radium 226 present in the repository” (App.E8 p.71).

Aboriginal people continue to hunt for animals and get bush tucker in the vicinity of sites. Kangaroo, goanna and perenties, bush banana, honey ants and witchetty grubs are foods that are regularly sourced from around the proposed sites. Understanding these practices and the understanding pathways for radionuclides to enter the food chain both need to be gained before a proper assessment of risk of exposure to humans can be made. At present these land use practices remain unconsidered in the site selection process.

Cultural significance of the site

Of the utmost importance to traditional landowners is the cultural significance of the sites being proposed. The cultural significance of the proposed sites has also been ignored by the Bill, in a way that contravenes the NHMRC Code of Practice on site selection. The Code of

Practice states that “the site should not be located in an area which is of special cultural or historical significance” ” (NHMRC 1992 p.14- criteria k). Similarly, the Commonwealth’s own discussion paper on the ‘National Store Project: Methods for choosing the right site’ lists “sites of special cultural and historical significance” as an important site selection consideration (Safe Storage of Waste 2001 p.16). That the Commonwealth has chosen, in their Bill, to abrogate their own site selection criteria in terms of assessment of the cultural significance of a site is of great concern to the CLC.

Traditional landowners have sacred sites on and around the scheduled sites. The dreaming stories or *altyerre* record the travels of the creation being and their travels and events are manifested in the landscape through sacred sites. The cultural significance of the scheduled sites can not be understood in the site selection process because there is no requirement in the tender document to identify and assess cultural significance.

It is noted that the tender document requires data to be collected on:

- past, current and potential future use in the vicinity and on-site
- population distribution in the vicinity of the land parcel and potential population growth
- demographic characteristics of nearby communities

The CLC is concerned the data obtained will fall short of the level of information required to understand the social and cultural significance of the affected land to the traditional landowners. An understanding of these aspects can only be gained through a detailed social and cultural study by appropriately qualified experts.

Recommendation 2

That the Commonwealth follow their own siting guidelines and that a thorough process be put in place to determine the siting of any nuclear waste facility in Australia. This process should follow best practice and in particular should include a detailed social and cultural study to take into account any particular Aboriginal land use practices and any culturally significant sites.

4. Implications for Native Title

Traditional owners have raised concerns about the lack of recognition of any rights they have in the relevant country. The Bill offends rights that may be held by traditional owners in two ways:

- i) The Bill allows the Minister to declare that any rights in a site be acquired without any consultation or process, and
- ii) The Bill takes no account of rights that may be affected in land surrounding a site.

Traditional owners / native title holders assert they have native title rights in both the Harts Range and Mt Everard sites. In both cases the land was acquired by the Commonwealth in 1978, without consultation or any agreement, and native title holders assert native title was not acquired. On 8 November 2005 native title holders lodged native title applications over both sites to seek recognition of their native title rights.

A declaration to select a site under clause 7 of the Bill would extinguish these rights without any consultation or other process, save for a right to ‘reasonable compensation’ once these rights are already extinguished. If the Government proposed to acquire these native title rights under the *Native Title Act 1993*, native title holders would be able to follow the ‘right to negotiate’ process: they would have the opportunity to provide a written submission to the Government and the Government would be required to negotiate in good faith [see [section 31\(1\)](#)]. Further, if native title holders requested land or other non-monetary compensation, the Government would be required to consider this request in good faith [see [section 24MD\(2\)\(d\)](#)]. Clause 10 of the Bill specifically provides that the *Native Title Act 1993* does not apply to a declaration under the Bill.

Traditional owners also hold rights in the country around both sites. In respect of the Harts Range site, Alcoota Pastoral Lease and the cattle operations on the lease are wholly owned by traditional owners and completely surrounds the Harts Range site. In respect of the Mt Everard site, two land trusts held under the *Aboriginal Land Rights (Northern Territory) Act 1976*, Athenge Lhere and Werre Therre, are in close proximity to the site, and the site is otherwise surrounded by pastoral land where traditional owners/ native title holders assert they hold native title rights.

This Bill offers no place for involvement of these interests in the site selection process even though there is a real threat of diminished enjoyment of these rights. The only possibility is

that a declaration for road access may give rise to a right to compensation for extinguishment of interests along that road access. Again, the *Native Title Act 1993* and its processes would not apply.

In all, the Bill provides no recognition or involvement for native title interests and specifically overrides the *Native Title Act 1993*. On 30 May 2005 the Prime Minister stated in his address at the National Reconciliation Planning Workshop that the Government “does not seek to wind back or undermine native title or land rights”. This Bill does exactly that and is unacceptable.

Recommendations 3 and 4.

That the *Native Title Act 1993* be followed in any site selection process.

That affected land interests be recognised and included in any site selection process.

5. Process issues

The Central Land Council remains concerned with a number of process issues raised by the Bill. Of most concerns is clause 8 of the Bill which remove any rights to procedural fairness or administrative justice that affected parties may have with respect to a Ministerial declaration under the Bill. This clause thus takes away any rights to appeal or review any declarations made by the Minister under the Bill. Such a clause takes away the administrative rights that parties are usually afforded, as a matter of principle, with respect to Ministerial decision making and, in effect, makes the Minister completely unaccountable to affected parties for any decision made under the Bill. Clause 8 must be interpreted in terms of the broader purpose of the Bill which is to “to put beyond doubt the Commonwealth’s power to do all things necessary” and the fact that the Bill has the effect of overriding a number of key pieces of legislation which may have been used to challenge decisions made under the Bill. The effect of the Bill is thus to abrogate due process and override a series of important considerations that should inform decision making with respect to the siting of a nuclear waste facility in Australia.

The Central Land Council also remains concerned about the process followed by the Senate in allowing the Senate Employment, Workplace Relations and Education References and Legislation Committees to hold an inquiry into the Bill. More specifically, the CLC is concerned that the extremely short one week timeframe for submissions, and the one day of hearings that is to be held by the committee, do not represent meaningful consultation with

respect to what is a significant issue to much of the population in the Northern Territory. The CLC is particularly disappointed that the committee was not able to hold hearings in the Northern Territory which would have allowed traditional owners to present their views and concerns.

6. Consultation with traditional landowners

The Central Land Council represents the traditional landowners of two of the proposed sites listed in Schedule 1 of the Commonwealth Radioactive Management Bill 2005. These sites are the Alcoota/Harts Range and Mount Everard sites.

The Central Land Council first became aware of the proposal to site a nuclear waste facility in the Central Land Council region on July 15 with the press release issued by Minister Nelson. This press release listed three possible sites for a nuclear waste facility one at Fishers Ridge, near Katherine, and two located in the Central Land Council region. This press release was followed by a letter from Minister Nelson also dated July 15 which sought advice as to how best to consult with the Aboriginal communities affected by the proposal.

On 26 July 2005 staff from the CLC met with staff from DEST to discuss the proposals and proposed assessment processes in some detail. DEST officers provided detailed information, and the CLC issued an invitation for DEST to present the proposal to a future meeting of traditional landowners for each site.

Using publicly available information from the DEST website, the CLC provided briefings to the Executive and Council.

On Thursday 20 October 2005 the CLC convened a meeting of the traditional landowners of both the Alcoota/Harts Range and the Mt Everard sites. The meeting was held adjacent to the Mt Everard site. The purpose of the meeting was to enable the Department of Education, Science and Training (DEST) and the Australian Nuclear Science and Technology Organisation (ANSTO) to present traditional landowners with the information needed to make an informed decision about the Australian government's proposal to site a nuclear waste facility at either the Alcoota/Harts Range or Mount Everard sites.

A detailed presentation was provided to traditional landowners by officers from DEST and ANSTO. The presentation by DEST and ANSTO included the need for the facility, nature of radiation and safety issues, site assessment and selection process, proposed infrastructure and on-going monitoring and management at the facility. The CLC provided an

experienced interpreter to translate the Commonwealth's presentation into Arrernte. Traditional landowners were well represented at the meetings and the CLC is satisfied that the nature of the proposals is well understood.

The outcome of this consultation meeting was clear. Traditional landowners for both the Alcoota/Harts Range and Mt Everard sites are strongly opposed to the Commonwealth radioactive waste management facility being located at either site or on any part of their country, and instructed the CLC to assist them to oppose such a facility from proceeding. Traditional landowners have many concerns about the proposal – these are detailed in section 7. below.

It is important to view traditional landowners rejection of the siting of the waste dump in the context of other meetings held. Earlier, on 26 August 2005, about 70 traditional owners associated with the Alcoota site also had the benefit of a briefing by the CLC on the Commonwealth proposals, following the AGM of the Alcoota Aboriginal Corporation. The association owns the Alcoota pastoral lease, and co-owns the Alcoota Aboriginal Cattle Company Pty Ltd which runs over 5000 head of cattle on the lease.

It is apparent that traditional landowners are also accessing information widely publicly available through the media. Some of the traditional landowners from both sites attended one of the two public information sessions DEST held in Alice Springs on 26 July and 3 September 2005. Our instructions are also consistent with other Aboriginal organisations operating independently that are expressing opposition to the waste facility, such as Lhere Artepe Aboriginal Corporation, which has released media statements and organised rallies to draw attention to traditional owners' concerns.

Traditional landowners' response in terms of rejecting the waste facility is not exceptional. Although it is informed by cultural considerations as well as other matters, it is similar to the responses of the Alice Springs Town Council, as well as state governments and community groups elsewhere.

A group of eight traditional landowners four from each of the two proposed sites travelled to Canberra on November 7 and 8 to voice their concerns direct to members of parliament. During these meetings with government and opposition members as well as members of minor parties, traditional landowners raised all of the concerns detailed below and made it clear that they did want the proposed nuclear waste facility sited on either of the central Australian sites. Unfortunately Minister Nelson was unable to meet with the traditional landowners.

7. Concerns of traditional landowners

Of primary concern to traditional landowners is the need to keep their country safe and healthy for present and future generations, and to be able to continue to use their country for hunting and getting food. Many traditional landowners feel that they fought hard to get their country back and they believe they should not be the ones to have to live with radioactive waste on their land. The views and concerns of traditional landowners are well summarised in the statement they made to the Prime Minister, see Appendix 1.

During consultations with ANSTO/DEST a number of traditional landowners raised concerns about the long-term dangers of storing nuclear waste. For example, Kathleen Martin asked:

your radioactivity...it has a long life. Once we get it in our midst it is there forever and a day. You are never going to actually get rid of your waste are you?...

What I am concerned about is the life of this radioactivity...This radioactivity is active at all times and is at a dangerous level isn't it?

Despite assurances that the radioactive waste will be carefully managed the view of traditional landowners is that the radioactive waste facility poses serious long-term risks to country and people.

Traditional landowners also raised concerns about the river systems located near the proposed sites. These concerns were raised a number of times during the consultation process and continue to be articulated as a major reason for concern. In a recent Media interview with ABC Radio traditional landowner, William Tilmouth commented that:

Both areas are catchments for rivers. Mt Everard is a catchment area for the Charles and Todd rivers. The Harts Range has a catchment area for The Sandover and the Plenty rivers, which ultimately run into the Georgina and ultimately into Lake Ayre.

Many Aboriginal people live near the sites in small communities and outstations and they are extremely concerned about the proposals to the extent that the very nature of their relationship to the land will be altered forever should a facility be built. They hold a special attachment to the land and simply cannot move to another place. As traditional landowner Margaret Kemarre said during the consultation meeting:

Well every people in the community, every outstation people got all that in their own communities and they look after all that and I

just did that where I come from, where my father's country, how we look after our own country...Hunting, water holes, trees, firewood and that's protective and that's how this land here is protected for all these families who live around here. If you look at that and see what this really means to us, it's that and it's some of the things you might look at and see to it here...And also for this, like we still get goannas and witchetty grubs all around here, honeyants and this is all based around this country.

Traditional landowners from the Mt Everard region have repeatedly stated that there is a sacred site on the designated waste dump land. During the consultation meeting with DEST/ANSTO Steven McCormack, a senior traditional landowner who lives within 5kms of the proposed Mt Everard site made the following comments:

You see this little paddock here, with the sign on, we got a sacred site there, big dreaming, see. See my cousin here, and my other cousin there living over there for Amoonguna, they are the owner for this area.

Recommendation 5.

That the Australian government recognise that traditional landowners has expressed grave concerns about the siting of a nuclear waste facility in central Australia and have repeatedly said that they do not want such a facility located on either the Mt Everard or Harts Range/Alcoota sites, or on any part of their country.

Appendix 1.

Statement by traditional Aboriginal landowners of the two sites in central Australia proposed for the construction of a nuclear waste dump to the Prime Minister of Australia

October 2005

A meeting of traditional landowners for both the Alcoota/Harts Range site and the Mt Everard site was held on country on Thursday 20 October 2005.

At that meeting traditional landowners agreed to send the following message to the Prime Minister, the Hon John Howard:

We are the traditional landowners of the country where your Government wants to build a nuclear waste dump.

We do not want your nuclear waste dumped on our country.

You and others in Canberra might think that our country is an empty place, that no people live here. We are telling you that there are communities and outstations close to the proposed sites – this is our home and unlike you we cannot move to another place.

We live on this country, we use it for hunting kangaroo and getting bush tucker like honey ants and bush bananas. Our country is alive – there are sacred sites and our law and ceremonies are strong.

We don't believe that this poisonous waste can be kept safely for thousand of years. You will be gone but our grandchildren will be left to worry. Can you tell us why we should be the ones to live with this risk? Why should Aboriginal people be dumped with this problem?

We know you have experts in Sydney. You should leave the waste safely there instead of bringing it here out of your sight. We will not let you turn our country into a waste land.

You talk a lot about economic development – telling us we should make money from our country. We run a successful cattle business on Alcoota station, and now you want to put this dump in the middle of it. Do you think people will still buy our beef if the nuclear waste dump is built here? We have ideas for tourism too – but tourists wont come to our country if we have a waste dump.

Your Government tells us to manage and care for our country. Putting this waste on our country is not caring for country, it might take a long time but one day it will poison our country.

We call on you, as the Prime Minister of Australia, to respect our law and culture, to respect our views as traditional landowners and to listen to our voice. We call on you to stop your plans to impose a nuclear waste dump on our country.

Appendix 2.

Maps of the proposed sites in central Australia – see attached documents.

Proposed Commonwealth Radioactive Waste Management Facility at Mount Everard

