Chapter 1

Government Senators' Report

Introduction

1.1 The Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006 was introduced into the House of Representatives on 2 November 2006. On 8 November 2006, the Senate referred the provisions of the bill to the committee for inquiry and report by 30 November 2006.

Conduct of the Inquiry

1.2 Notice of the inquiry was posted on the committee's website and advertised nationally and in the *NT News*. The committee also contacted relevant organisations nominated by committee members to notify them of the inquiry and to request submissions. The committee received sixty-three submissions of which around fifty were proforma submissions. A list of those who made submissions is at Appendix 1.

1.3 The committee conducted a public hearing in Canberra on Monday 27 November 2006. A list of the witnesses who gave evidence is at Appendix 2.

1.4 The committee thanks all those who contributed to the inquiry.

Overview

1.5 On 14 July 2004, the Prime Minister announced that the government would abandon the establishment of a national low level waste repository facility near Woomera in South Australia due to the effective failure of the states and territories to cooperate with the government in finding a national solution for the safe and secure disposal of low level radioactive waste.[1] In July 2005 the Minister for Education, Science and Training announced that a facility for the storage of radioactive waste from Commonwealth agencies would be located in the Northern Territory.[2]

1.6 As noted in the committee's previous report Australia produces, by international standards, small amounts of low level and short-lived intermediate level waste resulting from medical, industrial and research use of radioactive materials

---

1 The Hon. John Howard, MP, Prime Minster, 'Radioactive Waste Management', Media Release, 14 July 2004.

2 The Hon. Brendan Nelson, MP, Minister for Education, Science and Training, 'Responsible Management of Radioactive Waste in Australia', Media Release 1157/05, 15 July 2005.

which is currently stored in a large number of locations around the country, including hospital basements and universities. [3]

1.7 Since the introduction of the principal act in 2005 the government has undertaken discussions with the Northern Land Council (NLC) which has indicated that there may be interest, amongst Aboriginal groups in its region, in nominating land on the condition that certain additional areas of particular sensitivity for these indigenous groups are addressed.[4]

Provisions of the bill

1.8 There are two elements to the amendments proposed in this legislation:

- to provide for the return of nominated Aboriginal land to a land trust (or the body from which it was acquired), and for the return of rights and interests in Aboriginal land that were acquired for providing all-weather access to the site for the facility; and
- to bring the site nomination process into line with the site selection process by also removing access to previous procedures and/or judicial review.[5]

1.9 The committee dealt mainly with the amendments to sections 3B and 3D concerning site nomination rules and the entitlement to previous procedures relating to a site nomination.

1.10 Clause 1 of Schedule 1 amends the *Administrative Decisions (Judicial Review) Act 1977* ('ADJR Act') to include the decision to nominate a site as part of the class of decisions to which the ADJR Act can not apply. Clauses 3 and 5 provide for the nomination of a site, by either a chief minister or land council, to remain valid even if it fails to comply with the site nomination rules as outlined in the principal act under section 3B. Clause 4 amends the land nomination process to remove any entitlement to previous procedures in relation to a site nomination.

1.11 Clause 2 inserts a new definition of Land Trust to correspond with the definition under the Aboriginal *Land Rights Act (Northern Territory) 1976* ('ALRA)'.

1.12 Clause 6 provides for the return of nominated indigenous land and indemnity of the land trusts by the Commonwealth through:

- New sections 14A, 14B, 14C and 14D, provide for volunteered indigenous land to be returned to the traditional owners at the absolute discretion of the minister, once the site is no longer required and has been released from regulatory control. None of these sections cover the return of non-Aboriginal

---

3 Government Senators' Report, in Senate Employment, Workplace Relations and Education Committee, *Commonwealth Radioactive Waste Management Bill 2005*, November 2005, p. 5

4 ibid.

5 Department of Education, Science and Training, *Submission 51*, p. 5

land as the Commonwealth may deal with post-facility issues for non-Aboriginal land under existing provisions of the *Lands Acquisition Act 1989*.[6]

- New section 14H indemnifies the Land Trust(s) against any claims for damages arising from use of the land for a facility. It is identical in effect to the indemnity already granted to the Northern Territory Government under existing section 16A.
- New section 14J will allow regulations to be made to modify the Act to deal with transitional matters arising from the making of a declaration under section 14B or 14C, such as changes to the ALRA.

Site nomination process

1.13 Most of the submissions received by the committee were concerned with the provisions eliminating the obligation for site nominations to comply with the rules in section 3B and the removal of access to previous procedures and judicial review under the ADJR Act. Several submissions suggested that the removal of the need for community consultation and informed traditional owner consent would subsequently enable land councils, specifically the Northern Land Council (NLC), to nominate land within their boundaries irrespective of the traditional owners' consent.

1.14 The Central Land Council (CLC) submitted that the main purpose of the bill is to subvert proper process and remove the need to comply with procedures for consultation and would, in effect, deny traditional owners the basic entitlement to accountable and transparent process.[7]

1.15 The committee majority does not believe this to be the case. While the bill removes the legal obligation for a nomination to comply with the site nomination rules, the Minister has made assurances that a nomination would only be accepted if it produced evidence of consultation with traditional owners and their informed consent to the site nomination.[8] The Department of Education, Science and Training (DEST) have also advised the committee that the purpose of the bill is not to revoke traditional owners' rights or eliminate the need for consultation.

1.16 The difficulty faced by the government under the current provisions of the act, is that appeals processes are being used vexatiously to delay decisions that are required to be made quickly in the public interest. The government has never intended that its legislation to identify waste storage sites should be hostage to protracted legal proceedings. Current provisions in the act are intended to encourage consultation and education, yet it appears that some groups see these as allowing for a kind of

6 Department of Education, Science and Training, *Submission 5*, p. 3

7 Mr David Ross, *Committee Hansard*, 27 November 2006, p. 4

8 The Hon. Julie Bishop MP, Minister for Education, Science and Training, 'Second Reading Speech', Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006, *House of Representatives Hansard*, 2 November 2006, p. 1

permanent veto on the implementation of the waste management policy. DEST has already been made aware of a number of organisations that would attempt to challenge to a nomination process for the sole purpose of delaying the approval indefinitely.[9]

1.17 The committee also notes the NLC's position regarding spurious or politically motivated challenges.

> The balance that has always been drawn by the land rights act is that after those comprehensive processes…the grant of the mining lease and now a waste facility are valid. If that were not the case, you would have the alternative that happens under the Native Title Act…of inordinate and great delay. This is to the detriment of developers and the traditional owners of the land.[10]

1.18 The NLC also provides examples of delays which could have been averted had such measures been in place:

- the Bradshaw defence agreement was delayed for almost a year by spurious objections by three junior members of an 800 person group;
- the Cox Peninsula water easement agreement near Darwin was delayed for almost a year by a spurious objection by one member of a 1 200 person group;
- the Mary River National Park agreement has been delayed for almost two years since execution, pending completion of the objection process before the Tribunal (which has not yet been completed).

1.19 The NLC further noted that the proposed amendments to the land nomination process are not without precedent and that those objecting to this bill have made no suggestion to alter the ALRA at any time since its enactment in 1976. The NLC states that:

> This approach is consistent with the scheme of the *Land Rights Act*, which for over 30 years has provided that a lease of Aboriginal land or certain mining leases cannot be invalidated on the basis of lack of compliance by a Land Council with consultation requirements.[11]

1.20 The committee notes that the NLC has not yet undertaken any consultations regarding a site nomination for the reason that no such nomination has yet been made. If such a nomination were to be submitted to DEST the committee believes that the NLC would be obliged to undertake all consultations necessary.

---

9 Ms Jessie Borthwick, *Committee Hansard*, 27 November 2006, p. 26

10 Mr Ron Levy, *Committee Hansard*, 27 November 2006, p. 17

11 *Submission 57*, p. 4

Legal obligations of land councils

1.21 Many of the submissions in opposition to the bill expressed concern that these amendments would legally allow land councils to nominate any land within their jurisdiction irrespective of traditional owners' opposition and concerns, contrary to their statutory obligations under the ALRA.[12] The CLC have also supported this position, asserting that:

> These amendments would necessarily repeal the consultation provisions under sections 23 and 77A of the Land Rights Act and sections 203BC and 251B of the Native Title Act to the extent they apply to site nomination.[13]

1.22 The assertions have been contradicted by the NLC's principal legal officer. When asked if a land council could lawfully nominate land without the consent of the traditional owners, the NLC replied categorically:

> It is unlawful for a land council to nominate land as a waste facility unless it first has the consent of traditional owners.[14]

1.23 Several submissions have also been critical of the consultation process undertaken by the NLC so far and have questioned the likelihood of the NLC undertaking wide-ranging consultations. The committee therefore sought further clarification from the NLC about whether there has indeed been a site nomination and thus a subsequent consultation process. The NLC responded that as there has been no proposal to nominate a site:

> There is no need to go out and consult with the traditional owners. As long as there is no proposal on the table, there is nothing to consult about.[15]

1.24 NLC has subsequently shown that it is capable of discharging its legal obligation to consult on similar issues which cross land council borders. This ability was evidenced by recent consultations in connection with the Bootoo Creek manganese mine. This was a site very close to Muckaty Station which has generated considerable interest. The NLC advised the committee that they had held a further two meetings in Tennant Creek, in the CLC area, and about two meetings on site for other traditional owners, who were brought from Tennant Creek, Elliott and various other areas. The NLC concluded:

> It does not matter where the traditional owners live; it is where the land is. We will go outside of our area to hold meetings with those people so that they are consulted.[16]

---

12 Environment Centre of Northern Territory, *Submission 55*, p. 2

13 *Submission 56*, p. 2

14 Mr Ron Levy, *Committee Hansard*, 27 November 2006, p. 16

15 Mr John Daly, *Committee Hansard*, 27 November 2006, p. 14

16 Mr Mark Foy, *Committee Hansard*, 27 November 2006, p. 19

1.25 The committee also sought specific examples of the ability of the NLC to consult indigenous people on contentious issues that have affected traditional owners. The NLC cited examples of their first decision after the ALRA was passed 1976 regarding the Ranger uranium mine and the Bradshaw defence facility, stating that the Northern Land Council has easily one of the greatest track records in dealing with these difficult processes.[17]

Return of nominated land

1.26 Many of the submissions expressed concern that the provision for the return of land was merely a smokescreen for the true intention of the bill. Mr Elliot McAdam MLA noted that the return of a site was unlikely because of the radioactive waste.[18]

1.27 Further to this, the Central Land Council (CLC) submitted that the consultations they have undertaken within their boundaries found that all the traditional owners agreed that they would not ever want the land returned after it has been used for a radioactive waste facility.[19]

1.28 However, the NLC have informed DEST and the committee that some interested indigenous groups within their boundaries have strongly supported the principle of the return of land and that without such provisions traditional owners would not be willing to consider nominating land. The NLC further stated that the bill is likely to allay the concerns of traditional owners, giving them considerable confidence that any land used for a waste facility will subsequently be restored as Aboriginal land.[20]

1.29 The committee accepts the importance of this principle, as well as the practical measures to clear up former waste sites. The recent Switkowski review confirmed that safe disposal of low-level and short-lived intermediate-level-waste has been demonstrated at many sites throughout the world and already in Australia at the disposal facilities at Mount Walton East in Western Australian and Esk in Queensland.[21]

17 Mr Norman Fry, *Committee Hansard*, 27 November 2006, p. 16

18 *Submission 30*, p. 1

19 *Submission 56*, p. 3

20 *Submission 57*, p. 3

21 Department of Prime Minister and Cabinet, *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia?*, November 2006, p. 51 & p. 59

Conclusions and recommendations

1.30 It is widely acknowledged that Australia needs a radioactive waste management facility and that this facility must pass strict, time consuming, regulatory processes for completion before reprocessed fuel rods are returned from France in 2011.

1.31 The basis of opposition to this bill lies in the refusal of many people to accept the responsibility for the storage of nuclear waste. Questions of due process and appeal rights are minor and subsidiary issues. They arise from fear or ignorance of scientific developments, and the necessity to confront energy challenges that lie ahead for future generations. This is not to discount the importance of safe management of waste it is more a case of addressing an important national need.

1.32 In the face of the continued refusal on the part of state and territory governments to cooperate in selecting a site for a radioactive waste management facility there was no other course of action open to the government but to proceed with this legislation.

Recommendation

The committee recommends that the bill be passed.

Senator the Hon. Judith Troeth
Chairman