



AUSTRALIAN
CONSERVATION
FOUNDATION

**A submission to the Senate
Employment, Workplace Relations and
Education Committee Inquiry into the**

***Commonwealth Radioactive Waste
Management Legislation Amendment Bill
2006***

**Australian Conservation Foundation
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Dave Sweeney

Overview:

- The federal governments plan to impose a radioactive waste dump in the Northern Territory remains highly contested and controversial
- The plan and process is in clear breach of earlier government promises and lacks scientific, procedural and community credibility and consent
- The proposed amendments are in conflict with international best practice and policy and directly undermine indigenous decision making and rights

The Howard government is actively moving to impose a federal nuclear waste facility in the NT. This is in direct conflict with a “categorical assurance” given before the 2004 election and is happening through a process that is clearly inconsistent with best international practice and policy.

The plan is opposed by the federal ALP and minor parties, the NT Government, key indigenous groups including the Central Land Council, the ACTU and regional and national environment groups. It is also deeply unpopular among the NT community.

The current potential dump sites in the NT were not chosen on the basis of any objective, scientific criteria. None of the sites under consideration was short-listed when scientific and environmental criteria were used by the federal Bureau of Resource Sciences to assess alternative sites around in Australia for a repository for low-level waste and short-lived intermediate-level waste in the 1990s.

In December 2005 legislation to by-pass normal decision-making processes and to override any federal, State or Territory laws that could be used against the proposed nuclear waste facility passed federal parliament, despite opposition from the ALP and the minor parties.

The Commonwealth Radioactive Waste Management Act 2005 (CRWMA) undermines environmental, public safety and Aboriginal heritage protections. It prevents the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 from having effect during site investigation and excludes the operation of the Native Title Act 1993.

The Commonwealth Radioactive Waste Management Act is deeply undemocratic legislation that is in stark contrast to the international (IAEA) trend of acknowledging the importance of community consultation and consent in successful decision making regarding radioactive waste management.

In November 2006 the federal government has moved to further remove Indigenous community rights with a series of amendments to the CRWMA. These seek to remove the need for community consultation, informed traditional owner consent, procedural fairness and administrative review from any potential dump site that might be nominated by an NT Land Council, particularly the Northern Land Council.

The federal government has clearly decided to impose a nuclear waste dump on the NT because the NT has fewer legal and political powers than the states. The NT dump plan is profoundly flawed and an increasingly desperate example of policy on the run.

It is not a measured or responsible approach to the long term management of Australia’s radioactive waste and does not enjoy scientific, procedural or community credibility or license.

Concerns re proposed amendments:

Consultation and consent:

In December 2005 an amendment to the CRWMA was passed at this time that allowed for land to be nominated for assessment as a possible site for a federal radioactive waste facility by the NT Chief Minister or an NT Land Council.

This amendment included provisions that the process of nomination by a Land Council demonstrated evidence of:

- consultation with traditional owners
- that the traditional owners understand the nomination
- that they have consented as a group
- that any community or group that may be affected has been consulted and had adequate opportunity to express its view

The amendments currently before the Parliament directly undermine these reasonable conditions with the proposed amendments clearly stating that if the above conditions are not met this does not affect the validity of a nomination.

This is a profound change to the intention of the current legislation as it reduces the status of the current requirements for a nomination to a set of voluntary guidelines. This approach would allow a Land Council to nominate land for a Commonwealth dump without the need for community consultation and the informed consent of traditional owners. Such an approach would be inconsistent with both international best practise in relation to the management of radioactive waste and the statutory obligations of a Land Council under the Land Rights Act.

It is significant to explicitly note the implications for these amendments to the landmark Aboriginal Land Rights (NT) Act, which describes the functions of Land Councils. This Act requires Land Councils to act on behalf of Traditional Owners, however the CRWM Amendment Bill denies all parties procedural fairness and administrative review in relation to the nomination of Aboriginal land as the site for a nuclear dump.

Indeed, the CRWM Amendment Bill explicitly states that failure to meet the statutory obligations that exist under the current ALR Act would not affect the validity of any site nomination.

Land Councils obligations to consult under the ALRA are clear:

Part III – 23.(1)(c) to consult with traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council with respect to any proposal relating to the use of that land;

Part III – 23.(3) In carrying out its functions with respect to any Aboriginal land in its area, a Land Council shall have regard to the interests of, and shall consult with, the traditional Aboriginal owners (if any) of the land and any other Aboriginals interested in the land and, in particular, shall not take any action, including, but not limited to, the giving of consent or the withholding of consent, in any matter in connexion with land held by a Land Trust , unless the Land Council is satisfied that:

- (a) the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it and
- (b) any

Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.

Clearly section 3B (1)(g) of the CRWM (2005) Act was intended to reinforce these rights already present in the NT Land Rights Act.

The new provisions in the CRWM Amendment (2006) Bill which specify that failure to comply with 3B(1) would not invalidate a nomination by a Land Council - or declaration by the Minister - just as clearly are intended to revoke Traditional Owners existing rights.

It is extraordinary and profoundly shameful that in a matter as controversial and contested as the siting of a nuclear waste dump such long held and procedurally proper processes are being circumvented.

This approach is also in conflict with the NLC Full Council resolution of October 2005 which provided a mandate for the NLC's further dialogue on this issue.

"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, **provided that**:

- (i) the traditional owners of the site agree
- (ii) sacred sites 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 traditional owners' consent)."

(Emphasis added)

The current amendments before the Parliament directly negate this conditional approval.

Procedural fairness

The current CRWMA states that "no person is entitled to procedural fairness in relation to the Minister's approval of nomination". The amendment before the parliament extends this onerous provision to include the nomination process for waste dump sites, thus preventing any legal claims and challenges from traditional owners or other interested parties. The Amendments also apply to the Administrative Decisions (Judicial Review) Act 1977, for the Minister's stated purpose of "preventing politically motivated challenges to a land council nomination". Placing this process outside of range of judicial review is clearly a matter of political expedience and runs counter to transparency and the community expectation of a fair go.

Return of nominated land

The stated purpose of the bill is to allow for the eventual return of nominated land if a Commonwealth radioactive waste facility was built following any nomination. Given that there is no plan for the storage of Commonwealth waste beyond the "temporary"

site being proposed, and that the return of land would be at the discretion of ARPANSA, the relevant Minister and the land council that nominated the site, there is no guarantee that land acquired for the facility would ever be returned.

Further, given the nature of the facility being proposed, there is question as to what condition the land would be in. The Minister states in her speech for the second reading of the Bill that the Commonwealth “will not be returning a dirty or polluted site”. If there is environmental contamination or degradation from the facility the land will remain under the regulatory control of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and will not be released back to traditional owners.

ACF contends that it would be prudent to defer the consideration of these amendments until the federal government’s Uranium Mining, Processing and Nuclear Energy Review (the Switkowski Inquiry), which is specifically examining the issues of radioactive waste in Australia makes its final report.

Radioactive waste - a serious and continuing concern:

Radioactive waste is a serious issue that requires responsible and prudent management. Nuclear waste and nuclear waste management has been described by the UN’s International Atomic Energy Agency as “the most perplexing topic in nuclear technology today”. Despite massive effort and resources no country on Earth has yet developed an operational final disposal facility for high level, spent nuclear fuel or reprocessed nuclear waste. Radioactive waste management remains a major international issue and a key pre-occupation for the nuclear industry and its regulators.

There are extensive national and international codes of practise, industry standards, requirements and guidelines which all attempt to reduce the risk of people being exposed to radiation. These risks have been powerfully expressed in the United Nations Environment Programs (UNEP) position statement on nuclear risks:

“Radiation, by its very nature, is harmful to life. At low doses it can set off only partially understood chains of events which lead to cancer or genetic damage. At high doses it can kill cells, damage organs and cause rapid death. Radiation doses have to reach a certain level to produce acute injury – but not to cause cancer or genetic damage. In theory, at least, just the smallest dose can be sufficient. So, no level of exposure to radiation can be described as safe.”

(‘Radiation-doses, effects, risks’ United Nations Environment Program)

More than a low-level hazard:

The planned NT radioactive waste dump would house the highest level radioactive wastes in Australia. This is not a benign facility and an examination of government data on the dump shows that there are at least twelve categories of radioactive material that are almost certain to end up at any NT dump, including:

1. Approx. 50 cubic metres of highly radioactive waste produced from reprocessing more than a thousand existing and future spent reactor fuel rods (Lucas Heights) – arriving over the next 40 years in containers, probably via Darwin Harbour;
2. Approx. 130 drums per year of radioactive ‘compactable low level solid waste’, e.g. vials, gloves etc (Lucas Heights);

3. Approx 20 drums per year of drums of solidified radioactive 'sludge' produced in the treatment of reactor wastewaters (Lucas Heights);
4. Hundreds of tonnes of radioactive 'non-compactable contaminated items', inc. materials from the decommissioned old Lucas Heights reactor, pipes, machinery
5. A stockpile of over 5,000 drums of 'low level radioactive waste' (Lucas Heights);
6. A stockpile of over 200 cubic metres of 'intermediate level solid waste' some with 'unknown radioactive inventory' (Lucas Heights);
7. Over 800 drums of 'historical wastes' including radioactive thorium, beryllium and uranium (Lucas Heights);
8. Over 2000 litres of radioactive contaminated charcoal (Lucas Heights);
9. Hundreds of used air filters containing radioactive contamination (Lucas Heights);
10. Around ten cubic metres of highly dangerous solidified molybdenum 'long lived intermediate level waste' (Lucas Heights);
11. Over 2000 cubic metres of radioactive contaminated soil currently stored at Woomera;
12. Other Commonwealth Defence Department and CSIRO 'historic' radioactive waste.

It has also been confirmed by ANSTO and DEST that the reprocessed spent nuclear fuel destined to be stored at this dump will also contain plutonium – an extremely long lived toxic substance that poses serious management issues.

ACF believes that it is imperative to manage Australia's radioactive waste in a responsible, scientifically robust and transparent manner and the proposed amendments are not consistent with this.

The importance of community consent:

ACF believes that the current federal government approach to radioactive waste management in general – and these amendments in particular – is clearly inconsistent with best industry practise and standards.

There is a growing international consensus within the UN's International Atomic Energy Agency (IAEA) and other bodies over the importance of non-radiological factors and issues and transparent and inclusive community consultation processes.

An effective and credible national radioactive waste management framework requires a high degree of community confidence and license, as the IAEA states:

Recent experience suggests that broad public acceptance will enhance the likelihood of project approval. An important element in creating public acceptance is the perceived trust and credibility of the responsible organisation and the reviewing agency or agencies.

Establishing trust can be enhanced when an inclusive approach to public involvement is adopted from the beginning of the planning process to help ensure that all those who wish to take part in the process have an opportunity to express their views, and have access to information on how public comments have been considered and addressed.

Experience further suggests that trust is promoted by providing open access to accurate and understandable information about the development programme, conceptual design and the siting process at different levels of detail suitable for a broad range of interested parties.

In addition to the perceived credibility of the responsible organisation, other aspects of public acceptability can be location-specific, based on local requirements and cultural context.

(Socio-economic and other non-radiological impacts of the near surface disposal of radioactive waste, IAEA technical document, September 2002)

The current federal government approach to radioactive waste management is profoundly deficient in this area and the proposed amendments are in direct conflict with the approach recommended by the IAEA.

There are significant issues associated with the siting and operation of any proposed radioactive waste dump and the transport of waste to any such dump. The IAEA further notes that that nature of the facility 'may cause anxieties and fears in some individuals and groups that may result in potential human health impacts, especially during the early phases of the repository development process'.

Such impacts primarily arise at the local level and this is a further reason for a measured approach to this issue – something that is not evident in the current federal government approach or in the spirit of these amendments.

There is broad ranging and considered opposition and concern over the federal government's radioactive waste dump plans for the Northern Territory. Failing to genuinely address these unresolved issues undermines the projects credibility, alienates key and continuing stakeholders and is in direct conflict with best industry practice and standards.

ACF maintains that there is no justification and will be no long term beneficial outcomes if the federal government again uses a slender political majority to fast-track such a contested and divisive project. Any such action would be a coercive political act that lacks both scientific credibility and procedural integrity.

Conclusion:

ACF maintains that the amendments before the Parliament profoundly disadvantage Aboriginal people in relation to appropriate and inclusive decision making over the siting of a federal radioactive waste facility.

The amendments seek to remove the need for community consultation, informed traditional owner consent, procedural fairness and administrative review from any potential dump site that might be nominated by an NT Land Council, particularly the Northern Land Council and are inconsistent with international best practise, the statutory obligations of a Land Council under the Aboriginal Land Rights (NT) Act and the NLC Full Council resolution of October 2005. L.

These amendments are not a measured or responsible approach to the long term management of Australia's radioactive waste and do not enjoy scientific, procedural or community credibility or license.

ACF urges the Committee and the Senate to oppose the Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006.