Submission to Senate Employment, Workplace Relations and Education Committee Inquiry

Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006

Senate Employment, Workplace Relations and Education Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
eet.sen@aph.gov.au

Louise Morris

November 21, 2006

To the Senate Employment, Workplace Relations and Education Committee:

I am writing to express my absolute opposition to the Amendments proposed to the Commonwealth Radioactive Waste Management Legislation by the Minister for Science, Education and Training on November 2, 2006.

In December 2005, despite opposition from the Northern Territory Government, Territory residents and traditional owners, the Commonwealth Radioactive Waste Management Act (CRWMA) was passed, overriding NT legislation and effectively forcing a Commonwealth radioactive waste facility on the Territory. Three Commonwealth Department of Defense sites were then earmarked for assessment for suitability to host the facility.

An amendment to the CRWMA was also passed at this time, allowing for land to be nominated for assessment by the Chief Minister or a 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

Land Nomination

Less than one year after the CRWMA was passed, the Government is attempting to further weaken community input into radioactive waste management, with proposed amendments clearly stating that if the above conditions are not met this **does not affect the validity of a nomination.** The implications of this are extraordinary, as it reduces the former rules of nomination to guidelines, allowing Land Councils to nominate land for a Commonwealth dump irrespective of traditional owners' opposition and concerns, contrary to their usual, statutory obligations under the Land Rights Act.

This amendment removes the right for traditional owners to decide what activities occur on their homelands. Many groups have been involved in long and complicated processes to have their land returned, a fact acknowledged by the Minister in the second reading of the bill. It is shameful that this legislation would immediately remove these long fought for rights.

Procedural fairness

Under section 3D of the CRWMA, no person is entitled to procedural fairness in relation to the Minister's approval of nomination. The proposed amendment extends this 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 the ambit of judicial review is demonstrative of the bullying tactics being employed by the Federal Government to secure a site for its radioactive waste by any means possible, with blatant disregard for the opinions of affected communities.

Return of nominated land

The stated purpose of the bill is to allow for the eventual return of nominated land if the Commonwealth radioactive waste facility was built there as a result of a nomination. If the facility design includes shallow burial for low level waste, this will remain permanently on site. Given that there is no plan for the storage of long-lived intermediate level waste beyond the "temporary" site being proposed, and that the return of land would be at the discretion or 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". This means that if there is contamination of the environment from the facility, the land will remain under the regulatory control of ARPANSA (Australian Radiation Protection and Nuclear Safety Agency) and will not be released back to traditional owners. As the dump will be used for storage of long lived isotopes, it will certain the site will never be completely decontaminated.

It is extremely disconcerting that this amendment, if passed, will allow for land to be nominated for use as Commonwealth radioactive waste facility **without consent of traditional owners**. The Minister acknowledges that "Aboriginal people in the Northern

Territory fought hard for the right to own their land". Why then, is the Minister proposing legislation that will allow for these rights to again be overridden?

Recommendation:
The existing Commonwealth Radioactive Waste Management Act 2005 (CRWMA) undermines environmental, public safety and Aboriginal heritage protections.

The proposed amendments to the Act would further disadvantage Indigenous people by removing 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.

Such an approach is inconsistent with the international trend of acknowledging the importance of community consultation and consent in successful decision making regarding radioactive waste management.

These amendments are not based on 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.

While the provision to return land to traditional owners is to be encouraged, the fact that this process is not guaranteed and subject to conditions, including potentially forced acquisition of land, these amendments set a dangerous precursor for further undermining of indigenous rights and self determination and should be strongly opposed by the Committee.

I recommend that these amendments are strongly opposed by the Committee.