Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Commonwealth Radioactive Waste Management Amendment Bill 2006

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Committee Secretary,
Senate Employment, Workplace Relations and Education Committee

Darwin's No Waste Alliance is a community group of concerned individuals and representatives of stakeholder organisations. The Alliance formed in response to Dr Brendan Nelson's announcement in July 2005 that, contrary to federal government promises during the previous federal and NT elections, the Northern Territory has been targeted for a Commonwealth radioactive waste dump. The No Waste Alliance has since grown into a network of similar community groups around the Territory, and aims to give Territorians information and options for action in response to the unwanted long-lived pollution presented by the nuclear industry.

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process

As with the processes around the original Commonwealth Radioactive Waste Management (CRWM) Bill (2005), this inquiry has demonstrated an antipathy towards genuine community participation. The uncommonly and oppressively brief period for the inquiry, failure to visit the impacted regions, and minimal allocation for hearings ensure this inquiry fails to meet common standards, let alone the level of consultation and consideration befitting such a broad assault on the rights of Traditional Owners, the provisions of the NT Land Rights Act and the general principles of procedural fairness. The democratic credentials of this process are as impoverished as those which surrounded the introduction of the initial Bill in 2005.

The undemocratic nature of the inquiry reflects the nature of both its subject, and the original CRWM Bill (2005), which aim to sweep aside hard won and democratically endorsed protection of our shared environment, recognition of Indigenous rights and the authority of elected State and Territory governments. Indeed, the entire objective of forcing a nuclear dump upon the Territory, contrary to the repeated promises of federal politicians, is definitively anti-democratic.

The haste of this inquiry into the CRWM Amendment Bill (2006) has impacted upon this submission. The brief time allowed for public contributions has encouraged the author to draw heavily from the submission for the initial Bill. The lack of time for written submissions undoubtedly leaves all parties particularly keen to present further oral submissions to the inquiry. It is therefore once again a source of disappointment that the Committee will not be visiting the impacted regions, let alone the major cities, of the Northern Territory.

No justification or rationale has been presented for this unseemly haste; we can only speculate. One clear reason for rushing this Amendment through at high speed must be to evade unwanted scrutiny of it’s assault on the existing rights held by Traditional land Owners in the Northern Territory. Further, this haste denies impacted communities and electorates not only access to participation in, but also observation of the process.

Despite the oppressive schedule, the No Waste Alliance remains eager to participate in hearings of the inquiry, and will welcome any further opportunity to contribute to the investigation and assessment of the Bill.

CRWM Amendment (2006) Bill - Motivation

The Explanatory Memorandum of the original CRWM Bill (2005) stated that the : '*purpose of the Bill is to put beyond doubt the Commonwealth's power to do all things necessary for, or incidental to, the selection of specified Commonwealth land as a site for, and the establishment and operation of, a radioactive waste*' Dump.

The No Waste Alliance rejected the substance and the sentiment of the CRWM Bill in 2005, identifying a raft of objectionable incursions on social, environmental and Indigenous rights hitherto enshrined in State, Territory and Federal legislation, both overarching and specific, as well as common law. The No Waste Alliance called for the Federal policy makers to take the opportunity to break from a non-consultative strategy of 'announce and defend', and embark upon a genuine journey towards responsible management, based on the principle of social license through community engagement. However, the Committee – and the Federal Government, forgetting repeated pledges not to abuse their slim senate majority – chose instead to pursue the original goal of placing beyond doubt the Commonwealth's power to dump on us.

Yet twelve months later, the dust has settled, and somehow it seems that the radical objective of last year's legislation has not been met.

Some shortcoming or failure in the grand project of dumping unwanted nuclear waste on the Northern Territory has required the Federal Government to further amend their already radical, undemocratic and heavy handed legislation. Because, although the stated objective of the new 2006 Amendment Bill is to provide for the return to Traditional Owners of land nominated by a Land Council for the dump, the Bill is over-shadowed by a new set of anti-democratic clauses and provisions which seek to further nullify and override existing rights to Judicial Review, rights awarded under the Aboriginal Land Rights NT (ALRNT) Act 1976, and rights under common law.

These latest draconian additions include:

- Removal of the requirement that the Land Council consults with Traditional Owners over the nomination of a site by a Land Council;
- Removal of the requirement that Traditional Owners understand the effect of nomination of a site, and the actions this may lead to;
- Removal of the requirement that Traditional Owners consent to the nomination of a site by a Land Council;
- Removal of the requirement that the Land Council consults with and considers the views of other Aboriginal communities or groups which may be affected by the nomination of a site by a Land Council;
- Explicitly removing the right to procedural fairness in relation to the nomination of a site by a Land Council, or its subsequent approval by the Minister; and
- Adding nomination of a site by a Land Council, and its subsequent approval by the Minister, to the classes of decisions to which the Administrative Decisions (Judicial Review) Act does not apply

And yet we are told that the purpose of the Bill is to provide for return of a volunteer site to Traditional Owners once it is no longer required.

While this may be, by volume, the focus of the major body of text in the Bill, the weight of these anti-democratic amendments gives proof to the lie.

In her second reading speech, Ms Bishop fantasized:

> *"After claiming that the Australian government was imposing a radioactive waste facility on the Northern Territory against community wishes, I assumed that opponents of such a facility would welcome the construction of the facility on a site volunteered by the local landholders"*

In fact, as everyone knows, and the NLC has recently verified, no such local landholders have emerged, volunteering their home to host a nuclear dump. Indeed it is this very failure of the Federal Government to coerce any such community into sacrificing their land to the nuclear industry's wastes, that has resulted in this Bill.

The purpose of this Bill is quite clearly to further erode the legal rights Traditional Owners currently hold to oppose plans to dump nuclear waste on their land. This is an insulting, anti-democratic abuse of power that must be rejected.

Amendments to the CRWM Bill (2005)

When CLP MP David Tollner proposed amendments to the CRWM Bill, which in part proposed that Land Councils may nominate alternative sites, we made the following observation :

> *Tollner's addition of clauses inviting some parties to propose alternative sites may really be a cry for help. The federal government know they have failed to apply appropriate criteria to the selection of these sites. A DEST fact sheet ('About Locations, Assessment and Approval') tells us that the sites from Schedule 1 were selected purely on the basis of 'operational requirements' of Defence. Despite the existence of well established criteria from the IAEA, and a locally developed Code of Practice from the NHMRC, the scheduled sites have not benefited from the application of these standards, nor has their inclusion been filtered through any form of assessment for hydrological and geological characteristics. This fact was underscored in Senate Estimates hearings by Dr Ron Cameron of ANSTO who told the hearings on November 2nd that the sites had not been analysed or assessed against technical criteria.*
>
> *The NHMRC Code, incorporating these fundamentals of geology and hydrology, as well as ecological, cultural and other heritage significance, has been applied nationwide. The detailed, multi-stage process looked at only one of the three scheduled sites, and determined it to be unsuitable. Tollner should know for a fact that, by the government's own technical criteria, they've chosen the wrong sites. By presenting the option for some parties to propose alternatives, it is not at all clear whether he intends to throw us a lifeline or reach for one. Perhaps Tollner et al are furiously hoping someone can come up with an alternative proposal which may be more appropriate than the three listed in the Schedule.*

It would appear that, if this was the case, the original effort has fallen short, demanding more drastic legislation.

And so now we have before us a set of amendments which unravel every one of those protections and provisions for the rights of Traditional Owners which Mr Tollner had so proudly presented. As far as we can know, Mr Tollner was in all probability the epitome of sincerity when adding clauses to the Bill that would require a Land Council to consult, inform and ultimately seek consent from Traditional Owners before any volunteer site could be nominated. However with the 2006 Amendment Bill, all the good intentions of Tollner's sweetener to an otherwise disgusting abuse of power have been wiped away by the new Minister's proposal that failure to comply with that subsection (3B[1]) does not invalidate a nomination by a Land Council, or an approval by the Minister.

Surely this must offend the Honourable Member, who when tabling his amendments to the Bill, told the House on Tuesday 1st November 2005:

> *"These amendments have been flagged and drafted by the NT Country Liberal Party. They have been formulated in the best interests of Territorians and I am glad to propose them on behalf of all Territorians. The main rationale for these amendments is to ensure that, firstly, Territorians do have a say in the siting of the facility."*

Mr Tollner must be very disappointed to see the amendments he flagged and drafted, to ensure that Territorians have a say in the siting of the facility, have now been turned on their head by the new Minister, so that Traditional Owners can no longer be sure that they will even be informed, let alone consulted, and goodness forbid have power of consent, over decisions in relation to siting a nuclear waste dump on their land.

Battling disbelieving interjectors, Mr Tollner went on to say :

> *"The Country Liberal Party believes that Territorians should have this right."*

We can only assume that they do. We can only assume that in this latest round of anti-democratic law making, the Federal Government has rejected not only the authority and the laws of the elected government of the Northern Territory, but also the principles of their conservative allies in the Country Liberal Party.

Aboriginal Land Rights (NT) Act

Given that the Minister, in her second reading speech, reminded us that :

> *'the original Northern Territory land rights legislation was passed in this parliament under a coalition government'*

it is pertinent to note the implications of the CRWM Amendment Bill to the landmark ALRNT Act, which describes the functions of Land Councils.

In general terms, the ALRNT Act requires Land Councils to act on behalf of Traditional Owners. However the CRWM Amendment Bill seeks to deny all parties procedural fairness and administrative review in relation to the nomination of Aboriginal land as the site for a nuclear dump. In this way the Bill would appear to permit deviation from the general direction of the statutory role of Land Councils.

More explicitly, Item 3 and Item 5 of the scheduled amendments in the CRWM Amendment Bill render specific statutory obligations of Land Councils under the ALRNT Act, which are echoed in the CRWM Act, as mere guidelines. As a result, failure to comply with the obligations under the ALRNT Act :

> **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;*

and

> **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.*

which are echoed in Tollner's 2005 amendments 3B(1)(g) in the CRWM Act, would not invalidate a nomination by a Land Council – or subsequent declaration by the Minister – of Aboriginal land as a site for dumping the Commonwealth's unwanted nuclear waste.

Similarly, whereas 3B(1)(g)(iii) required that Traditional Owners consent as a group to nomination of a site in accordance with section 77(A) of the ALRNT Act, Item 3 and Item 5 of the scheduled amendments would relegate this requirement to a mere recommendation, such that failure to comply would not invalidate a nomination.

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

Just as clearly, those new provisions in the CRWM Amendment Bill which specify that failure to comply with 3B(1) would not invalidate a nomination by a Land Council (or declaration by the Minister) are intended to revoke those existing rights Traditional Owners hold to, as the Minister said:

> *"make their own decisions about infrastructure developments on their own land"*

and so it seems, the original Northern Territory land rights legislation may be unwound in Federal parliament under a coalition government.

The Minister, in her second reading speech, has given a personal assurance that

> *'should a nomination be made, I will only accept it if satisfied that these criteria have been met'*

Why, then, has the Minister proposed amendments which specifically state that failure to adhere to these criteria would not validate a nomination – or her declaration – of a site for a Commonwealth nuclear waste dump?

In the face of repeated lies and broken promises by Federal politicians on the various parameters of dumping nuclear waste in the Territory, this empty assurance rings as hollow as her colleague Senator Campbell's 'categorical assurance' that the NT would not be used to dump Commonwealth nuclear waste.

Return of a volunteer site

While the principle off returning land acquired for a nuclear dump to Traditional Owners seems to be generally agreeable, the processes outlined in the Bill once again describe something being done to, rather than with, Traditional Owners. Experience with the contaminated site at Maralinga show that Traditional Owners need to have a say in whether they accept that a contaminated site is in an appropriate condition to be relinquished by the Commonwealth. Otherwise we risk a situation where regulators can seek to wash their hands of unresolved issues which they must bear responsibility for. On these grounds alone, the current framework for return of the site must be rejected.

This concern is further exacerbated in consideration of the evolving nature of local and international guidelines for environmental protection from radiological pollution and ionising

radiation in general. The recently released draft report 'Opportunities for Australia?' from the Uranium Mining, Processing and Nuclear Energy (UMPNER) Review reports :

> *International radiation protection standards are primarily designed to protect human health. Until recently it has been assumed that these standards would incidentally protect flora and fauna as well. However, it is now agreed that additional standards and measures are required to protect other species, and a number of international organisations including the International Commission on Radiological Protection and the IAEA have established new work programs to this end.*

A recent Public Environment Report for new plans to dig over the abandoned and polluted Rum Jungle Uranium Mine near Darwin included an appendix from ANSTO which acknowledged :

> *The ICRP is developing recommendations to assess radiation effects on non-human species. The new objective is to safeguard the environment, by preventing or reducing the frequency of effects likely to cause early mortality or reduced reproductive success in individual flora and fauna, to a level, where any effects would have a negligible impact on conservation of species, maintenance of biodiversity, or the health and status of natural habitats or communities. The international scientific community is developing tools to facilitate this philosophy, for example via FASSET (Framework for Assessment of Environmental Impact) and ERICA (Environmental Protection from Ionising Contaminants (EPIC) programmes (http://www.erica-project.org/) funded within the European Community .*

So-called 'acceptable limits' for exposure to ionising radiation have been lowered a number of times in the brief history of the nuclear industry, including the not-so-distant past, and we can expect that ARPANSA, while in some other areas not currently even in accord with existing ICRP guidelines, can be expected to be called upon to adopt these new European standards for environmental protection as they gain international currency. This perspective raises a number of questions :

- Which standards will be applied by the regulator in assessing a decision to return ownership and rights over the site to Traditional Owners?
- If the rift between Australian standards for radiation protection and those employed elsewhere around the world grows, will Traditional Owners be able to call upon improved levels of protection which have been, or are being, instituted elsewhere?
- If land were to be relinquished under an inadequate set of standards, what recourse would Traditional Owners have once ARPANSA's standards for environmental protection are improved on the basis of developments around the world?

Evolving international standards for environmental protection are not the only variable at play. There's also the ever-shifting purpose of the NT dump site. While we are assured that legislation would prohibit the storage of high-level domestic waste, or long-lived international waste, in the NT dump, this Federal Government continues to demonstrate that when the law doesn't suit, they'll just change the law. The platitudes offered by Federal politicians have been demonstrated to be as valueless as assurances in (current) legislation to convince Territorians that the dump we're being threatened with today won't grow into a bigger monster tomorrow.

As the nation debates a new report from the UMPNER inquiry that floats a scenario of 25 reactors in Australia, producing thousands of tonnes of high-level radioactive waste, the Uranium Industry Framework has tabled this year's Steering Group report, which broaches the concept of Materials Stewardship, a philosophy which could see Australia take back some of the waste produced from uranium we export. These new policy proposals are emerging against a backdrop of broken promises from lying Federal politicians, and a legislative and regulatory environment that is shifting like quicksand. Territorians would be foolish not to consider that the dump described in the evolving CRWM Act may mutate beyond its current parameters in the very near future.

These variables aside, one stated design for the dump would involve permanent shallow burial of low-level wastes, and (potentially) temporary storage of long-lived wastes. The burial of wastes, if approved, would guarantee that the site is never returned to its original state. Any contamination from long-lived wastes would result in long-term pollution of the site. Just these risks alone, from the stated uses of the dump, could leave the site inappropriate for return to Traditional Owners. The broader risks of other potential configurations, including the likelihood of long term use of the site in the face of ballooning wastes from uranium leasing and a potential domestic nuclear power industry, would mean that the site would not be relinquished in the foreseeable future.

These scenarios and caveats demand attention, and greatly devalue the empty gestures made towards acknowledging the rights of Traditional Owners hold over their land.

Indemnity

The gestures towards indemnity offered in the amendments are of as little value as those in the original CRWM Act. All qualifications aside, the indemnity offered is clearly limited to immediate financial liability. Long term social impacts, and extremely long term environmental impacts of radioactive pollution evade such accounting.

For example, say an action in relation to the operation of a radioactive waste dump results in human health impacts; no federal politicians are going to take the dose. In the case of environmental pollution, it is the environmental values of the Northern Territory which would be impacted by radioactive pollution : these impacts cannot be simply transferred to Canberra, Sydney or Perth.

Nonetheless, one issue does arise which impacts both upon liability and the anticipated cost of the Bill. That is the implications of evolving standards for environmental protection from ionising radiation – in particular, ever-lowering limits of 'acceptable' radiological contamination. Further to the questions raised above, we must wonder :

- If "acceptable limits" as regulated by ARPANSA change before the return of the site, will environmental degradation be immediately recognised?
- Will liability immediately follow as a matter of course?
- What if those limits change not long after the return of the site?
- A hundred years after? A thousand years?
- Will 'continued indemnity' keep pace with the international regulatory bodies and their standards as we begin to recognise the long term, stochastic impacts of radiological pollution?

Recommendations for the committee

The CRWM Amendment Bill (2006) is as offensive as was the CRWM Act. This Bill must be rejected, and the Act must be repealed.

International standards and trends recognize the essential component of community consultation and consent in successful decision making regarding radioactive waste management. Both the existing Act and the proposed Bill fail on this important fundamental principle – indeed, they directly offend it.

Federal Science Minister Julie Bishop's second reading speech chided us that those

> *"who are in favour of Aboriginal people being able to make their own decisions about infrastructure developments on their own land, should support these amendments"*

however we believe the opposite is true. Those who are in favour of Traditional Owners being informed, consulted and granted power of consent over decisions about developments on their own land must oppose this attack on those pre-existing rights.

In principle, return of a volunteer site seems to be a desirable outcome, however the far reaching caveats, conditions, qualifications and exemptions to the provisions presented in the Bill do not constitute an acceptable form for pursuing this outcome. In a rapidly shifting policy environment, these provisions for relinquishment of the site do not carry much weight. Most significantly, it must be recognized that a framework for returning a contaminated site must engage Traditional Owners as participants, with the power to refuse to take on responsibility for contaminated land which they are neither equipped nor responsible to rehabilitate.

Towards responsible management

While this Bill may provide further legal shoring for the hole this Government is digging itself, the law remains only one force among many others, all of which are relevant to decision making regarding the generation and management of radioactive wastes.

The most prominent of these remains the force of public opinion.

As international standards regarding the siting and operation of nuclear waste facilities already recognise, a solution to the challenge of responsible management of radioactive wastes cannot be rammed down the throats of the communities who will host this responsibility. Rather, such a solution requires social license, which can only be achieved through informed participation by all parties.

The No Waste Alliance continues to firmly recommend that the way forward will be initially marked by the responsible steps of :

- phasing out the Lucas Heights nuclear reactor and nuclear fuel programs;
- full auditing of and accounting for radioactive wastes of all categories in all jurisdictions;
- development of national guidelines to control and limit the production of further wastes

Despite decades of attempts at various angles of the problem, the pressing concerns about a national stockpile which is vaguely defined and poorly controlled have represented an insurmountable hurdle. Recognising that waste minimisation is a cornerstone of the responsible management of any wastes, from greenhouse gases to landfill, it is essential that the reactor program and fuel enrichment experiments, which threaten to churn out more of the most highly radioactive, toxic and long-lived wastes made in Australia, are phased out and permanently decommissioned. These important advances will, to some extent, act to defuse the tension surrounding the challenge of responsibly managing radioactive wastes in Australia.

Only when these initial steps are followed will the Australian people, and our State and Territory Governments, be comfortable enough to take a deep breath, and embark in a measured but steady fashion, upon participatory processes to establish facilities for the interim management of our legacy of radioactive wastes.

Once again, the No Waste Alliance sees the failure of the committee to come to the Northern Territory for public hearings as a fatal flaw to the inquiry process. Despite this failing, we remain eager to participate in hearings of the inquiry, and welcome any further opportunity to participate in improved decision making regarding nuclear waste..