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Employment, Workplace Relations and Education Legislation Committee

Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006

Northern Land Council Submission

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SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE

COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT LEGISLATION AMENDMENT BILL 2006

1. Introduction

The Northern Land Council (NLC) welcomes the opportunity to provide a submission regarding the *Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006*.

The NLC recognises that the storage of radioactive waste from medical treatment and industrial use is clearly a matter of national importance - which requires a national solution.

Each year 400,000 Australians receive radiological medical treatment, and each Australian will likely receive such treatment in his or her lifetime.

Presently waste is stored in over 100 different locations in Australia, particularly in hospitals including Darwin hospital.

Although presently safe this is not ideal, and does not accord with international best practice.

Accordingly in 2005 the NLC supported the enactment of the Act,[1] bearing in mind amendments moved by Senator Nigel Scullion which restored the statutory 'right to negotiate' regarding land subject to native title claim and the statutory veto regarding land subject to claim under the *Land Rights Act*.

An important purpose of the Act was to maximise the prospect of agreed outcomes with traditional owners or other owners providing land for a radioactive waste facility.

The NLC also supports the Bill, which is both appropriate and far sighted.

The Bill increases the prospect of agreed outcomes through amendments which plainly benefit traditional owners, as well as ensuring that procedures are consistent with the scheme of the *Land Rights Act*.

Specifically the Bill comprises amendments to the *Commonwealth Radioactive Waste Management Act 2005* which:

- expressly provide that the Minister may restore land as Aboriginal land when it ceases to be required for a waste facility and has been rendered safe;
- indemnify the Land Trust in the unlikely event that any claim regarding previous waste storage arises after land is restored as Aboriginal land;
- ensure, consistent with the scheme of the *Land Rights Act*, that a Land Council's nomination of a site for a facility (and indirectly also the Minister's declaration) will be protected from challenge on certain procedural grounds.

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[1] The *Commonwealth Radioactive Waste Management Act 2005*.

2. Restoration of land as Aboriginal land upon safe cessation of waste facility

The Bill provides considerable confidence that, when the facility is no longer required and is safe, the country will be restored as Aboriginal land for the benefit of traditional owners' descendants.

Experience regarding land claims at Rum Jungle, Coronation Hill and Maralinga show that traditional owners will likely seek return of their land once it is rendered safe.

The Commonwealth Government's 2006 commitment of $7.3 million over four years to rehabilitate old uranium mines and related sites at Coronation Hill was broadly welcomed by Aboriginal people in the NLC's region, and had the general effect of alleviating concerns regarding uranium issues. In the case of Rum Jungle the NLC looks forward in due course to obtaining a commitment from Commonwealth to complete rehabilitation regarding longstanding pollution of river systems from acid leaching, thus enabling the grant of successfully claimed land under the *Land Rights Act*.

And there is no doubt that the land can be rendered safe. As stated in the draft report of the recent review conducted by Dr Ziggy Switkowski, “safe disposal of low-level and short-lived intermediate-level-waste has been demonstrated at many sites throughout the world”, with “over 100 sites in more than 30 countries” - including at Mt Walton near Kalgoorlie and Esk in south-east Queensland.

Of course the Minister retains a discretion as to whether or not to restore the land, in contrast to a lease where land must be returned to the owner at expiry.

The Commonwealth however has made clear that it requires freehold, rather than a lease – given public interest considerations regarding radioactive waste.

In these circumstances alternative options must be considered bearing in mind that traditional owners would likely be concerned at the prospect of relinquishing their country forever.

The Bill fulfils this purpose, and goes a long way to resolving potential concerns. The legislative basis and political complexion of this matter means that there can be considerable confidence that land used as a waste facility will subsequently be restored as Aboriginal land.

3. Indemnity of Land Trust

Importantly, the Land Trust will now be indemnified in the unlikely event that any claim regarding previous waste storage arises after the land is restored as Aboriginal land.

Again this amendment instils confidence, as well as showing that the Commonwealth is committed to a long term relationship with traditional owners who wish to participate in the economic and employment outcomes which can flow from the safe development of a waste facility on their country.

4. Protection of site nomination from spurious litigation or objection

It is appropriate that the Bill remove doubt and ensure that the nomination of a site for a waste facility by the Chief Minister or a Land Council be protected from challenge on certain procedural grounds.

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. Specifically, such lack of compliance:

- "does not invalidate" an agreement to subsequently grant a lease of Aboriginal land in the event that a land claim is successful (s 11A(6));
- "does not invalidate" the grant or transfer of a lease, or surrender of Aboriginal land, except where it was procured by fraud by the recipient of the lease (or land) (s 19(6));
- "does not invalidate" the grant of a head lease of Aboriginal land in relation to a community except where it was procured by fraud (s 19A(3));
- "does not invalidate" a mining agreement between the Commonwealth and a Land Council under the *Atomic Energy Act 1953* or other Act (s 48D).

This provides a total answer to claims that the Bill removes procedural protection otherwise available, or that it enables a Land Council to ignore or override traditional owners.

Relevantly those making these claims have not also called for the repeal of ss 11A(6), 19(6), 19A(3) and 48D of the *Land Rights Act*. No such suggestion was made in relation to the recent amendments to the statute, or in any previous review since its enactment in 1976.

Importantly this approach ensures that traditional owners and developers immediately benefit from agreements regarding Aboriginal land, without being subverted by spurious litigation or objection - particularly by disgruntled members of a traditional owning group or of adjacent groups.

Experience under the *Native Title Act 1993*, which since 1998 has allowed any individual to object to the registration of agreements (other than for mining) before the National Native Title Tribunal - and thus frustrate and hinder the position of the traditional owning group, underlines this point.

Specifically, the following examples regarding objections to registration of Indigenous Land Use Agreements under s 24CH(2)(d), provide examples which justify the Bill's approach:[2]

- 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).

Likewise this amendment also ensures, consistent with the purpose of the Act, that the Minister's declaration of a site and the public interest cannot be indirectly subverted - by spurious litigation or objection to the nomination of a site.

[2] The fault being with the process, not the Tribunal – which diligently and professionally performs its registration functions.