

**SUBMISSION TO SENATE EMPLOYMENT,
WORKPLACE RELATIONS AND
EDUCATION COMMITTEE INQUIRY**

**COMMONWEALTH RADIOACTIVE WASTE
MANAGEMENT LEGISLATION
AMENDMENT BILL 2006**

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Beyond Nuclear Initiative

Senate Employment, Workplace Relations and Education Committee
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The Arid Lands Environment Centre (ALEC) is a not for profit community organisation located in Alice Springs. For the last 9 months ALEC has employed a full time campaigner to coordinate education and community outreach initiatives in response to the proposed Commonwealth radioactive waste facility in the Northern Territory.

ALEC welcomes the opportunity to make a submission to the Senate Inquiry on proposed changes to the CRWMA (2005) but notes there was limited time to engage thoroughly with this process, and that the Senate Committee website had an incorrect link to information regarding the inquiry until late last week.

To the Senate Employment, Workplace Relations and Education Committee:

The Arid Lands Environment Centre strongly opposes the Amendments proposed to the Commonwealth Radioactive Waste Management Legislation on November 2, 2006 by the Minister for Science, Education and Training, The Honourable Julie Bishop.

Background

Before the 2004 election, the Federal Government gave an unequivocal guarantee that a Commonwealth radioactive waste dump would not be forced upon the Northern Territory.

On December 5, 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 prohibiting storage and transport of radioactive waste .

Three Commonwealth Department of Defense sites were then earmarked for assessment for suitability to host the facility. As none of these sites were short listed in the comprehensive study undertaken by the Federal Government to site a National dump, these sites were obviously not chosen by scientific or environmental criteria, but as political convenience. The NT does not enjoy the same opportunities as states to challenge Federal legislation and was thus an easy target.

An amendment to the CRWMA was also passed in December 2005, allowing for land to be nominated for assessment by the Chief Minister or a Land Council.

This amendment included a provision, section 3B(1), 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

Now, less than one year after the CRWMA was passed, the Government is attempting to further weaken community input into management of Commonwealth radioactive waste, 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 mere 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.

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](#) .

Section 3B (1)(g) of the CRWM (2005) Act was included to reinforce the rights of TO's and obligations of a Land Council as determined in the Aboriginal Land Rights (NT) Act.

The new provision in the CRWM Amendment (2006) Bill which specifies that failure to comply with 3B(1) would not invalidate a nomination by a Land Council (or the Chief Minister), just as clearly is intended to revoke traditional owners existing rights.

NLC resolution

The proposed legislation is in conflict with a resolution passed by the NLC Full Council on October 20, 2005 which was as follows (in full):

“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:** (emphasis added)

- (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 the traditional owners' consent).”

The current amendments before the Parliament directly negate this conditional approval which was the basis for NLC's further dialogue with TO's on this issue.

International Trends

Internationally it is accepted there must be some level of community consent for siting of a nuclear dump.

The International Atomic Energy Agency now recognises “that many non-radiological and non-technical factors and issues are also important in the repository development and implementation process from the initial planning stage” (Socio-economic and other non-radiological impacts of the near surface disposal of radioactive waste, IAEA technical document, September 2002) Early and sustained public participation is encouraged which is a clear contrast to the method of imposition being undertaken to locate the Commonwealth dump in the Territory.

The report released in June this year by the UK Committee on Radioactive Waste Management (CoRWM) recommends in Chapter 14 of their full report (www.corwm.org.uk/) that :

Recommendation 10: Community involvement in any proposals for the siting of long term radioactive waste facilities should be based on the principle of volunteerism, that is, an expressed willingness to participate.

Recommendation 12: Experience in the UK and abroad clearly demonstrates the failures of earlier ‘top down’ mechanisms (often referred to as ‘Decide-Announce-Defend’) to implement long-term waste management facilities. It is generally considered that a voluntary process is essential to ensure equity, efficiency and the likelihood of successfully completing the process. **There is a growing recognition that it is not ethically acceptable for a society to impose a radioactive waste facility on an unwilling community.** (emphasis added)

Clearly this proposed legislation is out of step with international trends and cannot duly be considered to be following international best practice.

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.

If the Minister is truly pursuing “Aboriginal people being able to make their own decisions about infrastructure developments on their own land” (CRWML second reading speech), then why is it necessary to legislate for an organisation to act without informed consent of the TO’s for that particular region?

This amendment removes the long fought for 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 when she acknowledged that “Aboriginal people in the Northern Territory fought hard for the right to own their land”. Why then, is the Minister proposing legislation allowing for these rights to again be overridden?

It is extremely disconcerting and shameful that this amendment, if passed, will allow for land to be nominated for use as Commonwealth radioactive waste facility **without consent of traditional owners.**

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 likely 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 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”. 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.

The Commonwealth waste currently stored around the country, and overseas at reprocessing facilities includes a range of radioactive materials, of differing half lives and mediums. The planned NT facility would house the highest level radioactive wastes in Australia, with the Australian Nuclear Science and Technology Organisation (ANSTO) and Department of Education, Science and Training (DEST) acknowledging that plutonium, an extremely toxic and long lived isotope with severe management issues would be among the materials that would be destined for the NT dump.

Owing to the longevity of the radioisotopes earmarked for an NT dump, it is crucial that communities likely to be affected have the opportunity of input into the site selection process, which is not allowed by this legislation.

Indemnity

The proposed change to the legislation reads that: The Commonwealth must indemnify Land Trusts in respect to any liability for claims arising from ionising radiation as a result of acts done or omitted in the management of the facility. (s14H)

The Minister, in her second reading speech, stated:

We will not be returning a dirty or polluted site... However, in the extremely unlikely event that contamination occurs as a result of use of the land for the facility, the traditional owners will be indemnified by the Commonwealth against any resultant claims

Commonwealth indemnity for any future claims would appear to make it more appealing for land councils to nominate land, as it mitigates future liability on their part.

Territory vs State Rights

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 an increasingly desperate example of policy on the run, with opposition and obstacles to dump location continually being circumvented by legislative changes instead of community consultation.

ARPANSA Draft Regulatory Guidance

The Australian Radiation Protection and Nuclear Safety Agency have informed ALEC they will be releasing their report “Draft Regulatory Guidance for Radioactive Waste Management Facilities: Near Surface Disposal Facilities; and Storage Facilities” in December this year. The Guidance is “intended to assist applicants in preparing the information that should be provided in any application to prepare a site for, construct and operate such facilities”. Given the obvious relationship between this report and the proposed NT facility and the inclusion of public comment and concerns in their findings, it would seem prudent to wait until the independent regulatory body has reported before passing further legislation to hasten the siting process of the Commonwealth facility.

Recommendation:

The existing Commonwealth Radioactive Waste Management Act 2005 (CRWMA) already 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.

These proposed 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.

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.

It is profoundly shameful that in a matter as controversial and important as the siting of a nuclear waste dump, long held and procedurally proper processes of consultation and informed consent are deliberately being circumvented.

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.

ALEC recommends that these amendments are strongly opposed by the Committee and Senate.