The Senate

Legal and Constitutional Affairs Legislation Committee

National Radioactive Waste Management Bill 2010 [Provisions]

May 2010

ISBN: 978-1-74229-277-9

This document was printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

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TABLE OF CONTENTS

ABBREVIATIONS

ACEL	Australian Centre for Environmental Law (Australian National University)
ACF	Australian Conservation Foundation
ADJR Act	*Administrative Decisions (Judicial Review) Act 1977*
ALEC	Arid Lands Environment Centre
ALRA	*Aboriginal Land Rights (Northern Territory) Act 1976*
ANSTO	Australian Nuclear Science and Technology Organisation
ARPANS Act	*Australian Radiation Protection and Nuclear Safety Act 1998*
ARPANSA	Australia Radiation Protection and Nuclear Safety Agency
the Bill	Radioactive Waste Management Bill 2010
CLC	Central Land Council
CRWM Act 2006	*Commonwealth Radioactive Waste Management Legislation Amendment Act 2006*
the current Act	*Commonwealth Radioactive Waste Management Act 2005*
the Department	Department of Resources, Energy and Tourism
ECA	Senate Environment, Communications and the Arts Committee
ECNT	Environment Centre (Northern Territory)
EM	explanatory memorandum
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999*
ESD	ecologically sustainable development
HPA Act	*Aboriginal and Torres Strait Islander Heritage*

	Protection Act 1984
IAEA	International Atomic Energy Agency
NLC	Northern Land Council
OECD	Organisation for Economic Co-operation and Development
Scrutiny Committee	Senate Standing Committee for the Scrutiny of Bills

RECOMMENDATIONS

Recommendation 1

3.122 The committee recommends that, as soon as possible, the Minister for Resources, Energy and Tourism undertake consultations with all parties with an interest in, or who would be affected by, a decision to select the Muckaty Station site as the location for the national radioactive waste facility.

Recommendation 2

3.123 The committee recommends that proposed section 21 of the Bill be amended to make the establishment of a regional consultative committee mandatory, immediately following the selection of a site for the radioactive waste facility.

Recommendation 3

3.126 The committee recommends that proposed sections 9 and 17 of the Bill be amended to require the Minister to respond in writing to comments received in accordance with the Bill's procedural fairness requirements.

Recommendation 4

3.131 The committee recommends that the Explanatory Memorandum be amended to include a detailed rationale for, and explanation of, the Minister's absolute discretion in relation to decision making under the Bill.

Recommendation 5

3.134 The committee recommends that the Bill be amended to include an objects clause.

Recommendation 6

3.135 The committee recommends that, subject to consideration of the preceding recommendations, the Senate pass the Bill.

CHAPTER 1

INTRODUCTION

Purpose of the Bill

1.1 On 4 February 2010, the Senate referred the provisions of the Radioactive Waste Management Bill 2010 (the Bill) for inquiry and report by 30 April 2010.

1.2 The committee presented an interim report to the Senate on 30 April 2010, indicating that it required further time to consider the evidence presented during the course of the inquiry, and that its final report would be tabled on 7 May 2010.

1.3 The purpose of the bill is to repeal the *Commonwealth Radioactive Waste Management Act 2005* and to substitute a new process to select and establish a facility for managing, at a single site, radioactive waste arising from medical, industrial and research uses of radioactive material in Australia.

Background[1]

Radioactive waste production

1.4 Different types of radioactive waste may be classified according to the International Atomic Energy Agency (IAEA) classification of radioactive waste. These are:

- Low level waste: contains enough radioactive material to require action for the protection of people, but not so much that it requires shielding in handling, storage or transportation.
- Short-lived intermediate level waste: requires shielding but needs little or no provision for heat dissipation, and contains low concentrations of long-lived radionuclides. Radionuclides generally have a half-life of less than 30 years.
- Long-lived intermediate level waste: requires shielding but needs little or no provision for heat dissipation. Concentrations of long-lived radionuclides exceed limitations for short-lived waste (as defined above).
- High level waste: contains large concentrations of both short- and long-lived radionuclides, and is sufficiently radioactive to require both shielding and cooling.[2]

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1 Parts of the following background are based on the December 2008 report of the Senate Standing Committee on Environment, Communications and the Arts, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, 18 December 2008.

1.5 Radioactive waste in Australia is produced by various sources, including uranium mining and processing operations, research activities (many of which are conducted at the Australian Nuclear Science and Technology Organisation (ANSTO) research reactor at Lucas Heights in New South Wales), and nuclear medicine. In his second reading speech, the Minister for Resources and Energy, the Hon. Martin Ferguson MP, observed:

> In terms of radioactive waste, Australia produces low-level and intermediate-level waste through its use of radioactive materials.
>
> Low-level waste includes lightly contaminated laboratory waste, such as paper, plastic, glassware and protective clothing, contaminated soil, smoke detectors and emergency exit signs.
>
> Intermediate-level waste arises from the production of nuclear medicines, from overseas reprocessing of spent research reactor fuel and from disused medical and industrial sources such as radiotherapy sources and soil moisture meters.[3]

1.6 The Minister noted that the production of low level and intermediate level radioactive waste is 'an unavoidable result of many worthwhile activities'.[4] The explanatory memorandum (EM) states that Australia's current radioactive waste inventory stands at just over 4020m^3 of low level and short-lived intermediate level radioactive waste, and approximately 600m^3 of long-lived intermediate waste.[5]

1.7 Currently, radioactive waste produced in Australia is not stored at a central repository, but across numerous sites. Dr Adrian Paterson, the Chief Executive Officer of the Australian Nuclear Science and Technology Organisation (ANSTO), advised the committee that:

> The current situation where radioactive waste is held in over 100 separate locations around Australia is not conducive to the safety and security of that material, nor is it consistent with international best practice.[6]

1.8 However, Mr Dave Sweeney from the Australian Conservation Foundation (ACF) questioned the extent to which the Bill would result in reducing the number of radioactive stores in Australia:

> A very important thing for senators to be mindful of in this is that every facility, every institute, every hospital, every place that currently uses or stores radioactive waste—with the exception of legacy waste, some Department of Defence waste—will continue to do so post the

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2 Standing Committee on Environment, Communications and the Arts, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, 18 December 2008, p. 2.

3 *House of Representatives Hansard*, 24 February 2010, p. 1649.

4 *House of Representatives Hansard*, 24 February 2010, p. 1649.

5 EM, p. 4.

6 *Proof Committee Hansard*, 30 March 2010, p. 23.

> establishment of a national facility, if one is established…We are not reducing by a vast number the number of sites around Australia, and to pretend that we are is not proper.[7]

1.9 Dr Paterson felt that a centralised national store would lead to a significant reduction in the number of dangerous used and/or orphaned radioactive sources currently stored across numerous sites. Dr Paterson commented that unused industrial sources posed the greatest risks:

> As [radioactive sources which are used for industrial purposes]…come to the end of their life cycle or as changes take place in the facilities that manage those sources, they can be stored in a way that memory loss about where they are stored and what their potential risks are takes place, and then they do tend to end up in places like filing cabinets or under stairs…
>
> So we are absolutely certain that the greatest radiological risk that the public faces is not from the Opal reactor but from the unmanaged access to these sources.[8]

1.10 Dr Paterson considered that a centralised national facility such as the Bill provides for would ameliorate the risks associated with the current approach to storage and management of unused industrial sources:

> The opportunity that this legislation provides is for that management practice to now be established at a national level and to be available nationally to all of the small holders of these used sources and the orphan sources in Australia.[9]

1.11 The ANSTO submission also noted that 'indefinite storage of radioactive waste by small holders is not consistent with international best practice'. The provision of 'central disposal facilities or stores' would minimise the risks arising from unwanted radioactive materials'.[10]

1.12 The EM to the Bill explains:

> Most existing stores were not specifically designed for long term radioactive waste storage. Centralisation minimises the risk of inadvertent loss or control of radioactive material with consequential safety and security risks.
>
> Radioactive waste management is governed by rigorous national and international standards. Extensive experience has been gained from over 100 low-level waste disposal facilities in more than 30 countries and a range of geographic conditions.[11]

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7 *Proof Committee Hansard*, 30 March 2010, p. 43.

8 *Proof Committee Hansard*, 30 March 2010, p. 28.

9 *Proof Committee Hansard*, 30 March 2010, p. 28.

10 *Submission 120*, p. 1.

11 EM, p. 4.

1.13 In a 2009 letter to the Minister, ANSTO observed that, given the ad hoc approach to waste management in Australia, it is only 'by good fortune that, to date, there have been no serious safety incidents involving [disused high-activity radiation sources].[12] ANSTO expressed the view that the potential risks associated with Australia's present approach to radioactive waste management – particularly in relation to high activity radiation sources – should be a critical factor in the government's consideration of the establishment of a national facility:

> …it would seem important to take this issue into account in the context of the government's current review of national radioactive waste management policy. In particular, the government might consider whether it would be preferable for a single national store – meeting appropriate safety and security standards – to be created, rather than waiting for the eight states and territories to site and construct facilities. Early attention to the attendant national security risk would be timely.[13]

History of effort to build a radioactive waste management facility in Australia

1.14 The process of identifying a site for storage or disposal of Australian radioactive waste began in 1978, when the state and territory health ministers requested that the Commonwealth co-ordinate a national approach to the management of radioactive waste.[14]

1.15 In 1985, the Commonwealth-State Consultative Committee on Radioactive Waste Management recommended that a 'national program be initiated to identify potentially suitable sites for a national near-surface radioactive waste repository'.[15] A national project to develop a site for disposal of low level and short-lived intermediate radioactive waste began in 1992, resulting in the selection of a site for the facility in South Australia in 2003, which the Commonwealth acquired under the *Lands Acquisition Act 1989*. However, in 2004, this acquisition was quashed by the Federal Court of Australia, which found that the Commonwealth had misused the urgency provisions of the *Lands Acquisition Act 1989* in acquiring the site.[16]

1.16 On 14 July 2004, the Commonwealth Government announced that the joint Commonwealth-state process would be abandoned. The government indicated that it would be examining (Commonwealth land) sites for the establishment of a facility to

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12 ANSTO, letter to Minister Ferguson (22 July 2009), tabled 30 March 2010, p. 2.

13 ANSTO, letter to Minister Ferguson (22 July 2009), tabled 30 March 2010, p. 2.

14 Standing Committee on Environment, Communications and the Arts, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, 18 December 2008, p. 3.

15 Standing Committee on Environment, Communications and the Arts, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, 18 December 2008, p. 3.

16 Parliamentary Library, 'Radioactive waste and spent nuclear fuel management in Australia', 1 January 2006, accessed 23 March 2010.

manage wastes that were the Commonwealth's responsibility, while leaving states and territories to manage their wastes. In July 2005, three (Defence) sites in the Northern Territory were identified as potential locations for the facility, and two pieces of legislation (the *National Radioactive Waste Management Act 2005* and the *Commonwealth Radioactive Waste Management Legislation Amendment Act 2006*) were subsequently passed to support the examination and selection of these sites.[17]

1.17 Over 2006-08, consultants Parsons Brinckerhoff (PB) undertook a preliminary study on the suitability of the three Defence sites (and Muckaty Station) as potential sites for the radioactive waste facility.

1.18 The objective of the *Commonwealth Radioactive Waste Management Act 2005* (the current Act) is to enable the Commonwealth to establish and operate a Commonwealth radioactive waste management facility in the Northern Territory by:

- providing legislative authority to undertake the various activities associated with the proposed facility;
- overriding or restricting the application of laws that might hinder the facility's development and operation; and
- providing for the acquisition or extinguishment of rights and interests related to land on which the facility may be located.[18]

1.19 The current Act was introduced partly as a response to the Northern Territory's *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004*, which made it an offence in the Northern Territory to 'construct or operate a nuclear waste storage facility', or to transport nuclear waste into the Northern Territory. However, it also aimed broadly to limit or suspend any Commonwealth, state or territory legislation that could prevent the establishment of the waste facility.

1.20 The *Commonwealth Radioactive Waste Management Legislation Amendment Act 2006* (the CRWM Act 2006) was introduced in order to facilitate nominations for the radioactive waste facility site by a Northern Territory land council. It did this by:

- creating a process whereby the land on which a facility is to be located can be handed back to traditional owners;
- exempting the process of such nominations from the application of the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act); and

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17 The PB report was finalised in February 2010, and was tabled in the Senate on 11 March 2010 pursuant to a Senate order for the production of documents on 25 February 2010. The report is available at http://www.ret.gov.au/resources/radioactive_waste/waste_mgt_in_aust/Pages/RadioactiveWasteManagementinAustralia.aspx

18 Parliamentary Library, 'Commonwealth Radioactive Waste Management Bill 2005', *Bills Digest*, 28 October 2005, p. 2.

- in the case of nominations put forward by a land council, stating that a failure to follow full consultation processes will not invalidate a nomination.[19]

1.21 In May 2007, the Northern Land Council (NLC) nominated a site for consideration under the current Act (that is, the *National Radioactive Waste Management Act 2005*), and on 27 September 2007, the then Minister for Education, Science and Technology, the Hon. Julie Bishop MP, accepted that nomination.

1.22 The nominated site, 120 kilometres north of Tennant Creek on Muckaty Station in the Northern Territory, became the fourth site under consideration, together with the three identified by the Commonwealth in 2005.[20]

1.23 Prior to the election of the Rudd Labor Government in 2007, the ALP committed to the repeal of existing legislation as part of its National Platform.[21] This pledge was highlighted in a joint press release by Senator the Hon. Kim Carr (the then Shadow Minister for Industry, Innovation, Science and Research), Northern Territory Senator Trish Crossin, and the Hon. Warren Snowden MP (the member for the electorate of Lingiari in the Northern Territory). The press release stated:

> Labor will legislate to restore transparency, accountability and procedural fairness including the right of access to appeal mechanisms in any decisions in relation the…[siting] of any nuclear waste facilities.
>
> Labor will ensure that any proposal for the siting of a nuclear waste facility on Aboriginal Land in the Northern Territory would adhere to the requirements that exist under the Aboriginal Land Rights, Northern Territory Act (ALRA).
>
> Labor will restore the balance and pending contractual obligation…will not proceed with the establishment of a nuclear waste facility on or off Aboriginal land until the rights removed by the Howard government are restored and a proper and agreed site selection process is carried out.[22]

1.24 On the introduction of the Bill to the Senate in February 2010, the Minister noted:

> The repeal of the current act meets a 2007 ALP Platform commitment.[23]

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19 Standing Committee on Environment, Communications and the Arts, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, 18 December 2008, p. 5.

20 See paragraph 1.9.

21 Australian Labor Party, *National Platform and Constitution 2007*, Chapter 5, 'Nuclear Waste Facilities', http://pandora.nla.gov.au/pan/22093/20071124-0102/www.alp.org.au/platform/chapter_05.html#5uranium

22 'Govt's waste dump fiasco, cont'd', 6 March 2007, p. 1.

23 *House of Representatives Hansard*, 24 February 2010, p. 1650; and EM, p. 2.

1.25 In 2008, the Senate Standing Committee on the Environment, Communications and the Arts conducted an inquiry into the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008, introduced by Senator Scott Ludlam (Australian Greens). The objective of the Bill was to repeal the current Act and the CRWM Act 2006.[24]

Conduct of the inquiry

1.26 The committee advertised the inquiry in *The Australian* and *Northern Territory News* newspapers on 3 and 10 March 2010, and invited submissions by 15 March 2010. The committee also wrote to a number of organisations and individuals inviting submissions. Details of the inquiry, the Bill and associated documents were placed on the committee's website.

1.27 The committee received 237 submissions, as well as a number of pro forma submissions (from 57 individuals), which were placed on the committee's website for ease of access by the public. These are listed at Appendix 1.

1.28 The committee held two public hearings, in Canberra on 30 March 2010 and in Darwin on 12 April 2010. Witnesses who appeared at the hearing are listed at Appendix 2. The *Hansard* transcript is available through the Internet at http://aph.gov.au/hansard

Acknowledgement

1.29 The committee thanks the organisations and individuals who made submissions and gave evidence at the public hearings. The committee also acknowledges and thanks those traditional owners who travelled to Canberra and Darwin in order to participate in the hearings for the inquiry.

Note on references

1.30 Submission references in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcripts.

24 Senator Scott Ludlam, *Senate Hansard*, 25 September 2008, p. 5588. The committee's report is available at http://www.aph.gov.au/senate/committee/eca_ctte/radioactive_waste/index.htm

CHAPTER 2

OVERVIEW OF THE BILL

Key provisions of the Bill

Repeal of the Commonwealth Radioactive Waste Management Act 2005

2.2 Schedule 1 (Part 1) of the Bill repeals the current Act.

2.3 Schedule 1 (Part 2) of the Bill amends the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to remove paragraph (zc) of Schedule 1 to that Act. Under that paragraph, key decisions under the current Act are not reviewable under the ADJR Act.

Retention of Muckaty Station site as an approved site

2.4 Schedule 2 of the Bill contains a saving provision which provides that, despite the repeal of the current Act, the site at Muckaty Station will remain an approved site for a radioactive waste management facility (this site was nominated and approved under the current Act in 2007).

2.5 The EM notes that the Bill does not introduce procedural fairness requirements in relation to the existing nomination and approval of the Muckaty Station site. However, procedural fairness requirements will apply to any decision to select the site as the site for a facility.[1]

Nomination of sites

2.6 Part 2 (proposed subsection 4(1)) of the Bill provides that a land council in the Northern Territory may nominate land as a potential site for a radioactive waste management facility. The EM notes that this provision enables the NLC to nominate other sites on Ngapa land (as it is entitled to do under the current Site Nomination Deed).

2.7 Part 2 (proposed section 6) also allows the Minister to open a nation-wide volunteer site-nomination process. However, in making this decision, the Minister must have regard to 'whether it is unlikely that a facility will be able to be constructed and operated on Aboriginal land that has been nominated as a potential site under [section 4]' (whether or not that land has in fact been approved as a site).[2]

2.8 Procedural fairness requirements will apply to any decision to approve a potential site (under proposed section 8) and to any decision to open the nation-wide

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1 EM, p. 2.

2 National Radioactive Waste Management Bill 2010, proposed section 5(2).

site-nomination process (proposed section 6). The procedural requirements that apply to these decisions are set out in proposed section 9, and the Bill provides that these are an 'exhaustive statement of the requirements of the natural justice hearing rule in relation to [these sections]'.

2.9 In effect, before making a decision under either of these sections, the Minister must satisfy certain notice requirements, and invite comments from relevant stakeholders. In making a decision under either of these sections, the Minister must 'take into account any relevant comments' received in response to an invitation to comment.

Selection of a site for the facility

2.10 Part 3 (proposed section 10) of the Bill allows relevant persons (such as Commonwealth employees or contractors) to conduct activities for the purpose of selecting a site for the radioactive waste management site. The section authorises such persons to 'do anything necessary for, or incidental to, the purposes of selecting a site on which to construct and operate a facility'.[3]

2.11 The EM states that 'certain state, territory and Commonwealth laws will not apply to activities under Part 3'.[4] Proposed section 11 provides that state or territory laws that relate to certain subjects or areas will have no effect to the extent that they would otherwise 'regulate, hinder, or prevent the doing of something authorised by proposed section 10'. Such laws include those relating to:

- the use or proposed use of land or premises, or the environmental consequences of any such use;
- the archaeological or heritage values of land or premises;
- controlled material, radioactive material or dangerous goods; and
- licensing in relation to employment or carrying on a particular business or undertaking.

2.12 Similarly, proposed section 12 provides that the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the HPA Act), and the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), will have no effect to the extent that they would otherwise 'regulate, hinder, or prevent the doing of something authorised by proposed section 10'.

2.13 Another law of a state, territory or the Commonwealth, or its provisions, may be prescribed by regulation (proposed subsections 11(2) and 12(2)).

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3 A non-exhaustive list of such activities is provided in proposed subsection 10(3). This includes, for example, operation of drilling equipment, water extraction, flora and fauna collection and clearing of vegetation.

4 EM, p. 3.

Conducting activities in relation to the selected site

2.14 Part 5 of the Bill preserves rules in the current Act allowing relevant persons to conduct activities in relation to the selected site. These activities include, for example:

- gathering or preparing information for a Commonwealth regulatory scheme relating to the construction or operation of a facility;
- preparing the selected site for a facility; and
- constructing, operating and maintaining a facility.

2.15 The EM notes that, as with the selection of the site, certain state, territory and Commonwealth laws will not apply to activities under Part 5 to the extent that they would regulate, hinder or prevent these activities. However, the *Australian Radiation Protection and Nuclear Safety Act 1998*, the EPBC Act and the *Nuclear Non-Proliferation (Safeguards) Act 1987* must be complied with at all times after a site has been selected.[5]

Acquisition or extinguishment of rights and interests

2.16 Part 4 of the Bill allows the Minister to select a site as the site for a facility, and also to identify an area of land required for providing all-weather road access to the selected site (proposed section 13). The EM notes that procedural fairness requirements will apply to these decisions (proposed section 17).[6]

2.17 The EM also notes that, after selecting a site for a facility, the Minister may establish a regional consultative committee.[7]

2.18 Proposed section 18 allows for the acquisition or extinguishment of rights and interests in relation to the selected site and land required for an access road. This proposed section is to have effect despite any other law of a state, territory or the Commonwealth, including the *Lands Acquisition Act 1989* and the *Native Title Act 1993* (proposed section 19).

2.19 Part 6 of the Bill preserves rules in the current Act which allow the Minister to grant rights and interests in land acquired under the Bill back to the original owners (this refers to land that was nominated by a land council before the opening of the nation-wide volunteer site-nomination process).[8]

2.20 Part 7 of the Bill provides for the payment of compensation to persons whose rights or interests are acquired, extinguished or otherwise affected by the selection of a

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5 EM, p. 3.

6 EM, p. 3. These requirements are essentially the same as those outlined above at paragraph 2.9.

7 EM, p. 3.

8 EM, p. 4.

site for a facility. It also preserves rules in the current Act, which confer certain advantages on the Northern Territory if the site selected is one nominated by a land council before the opening of the nation-wide volunteer site-nomination process. These rules state that the Commonwealth will indemnify the Northern Territory against any claims arising from the operation of the site, and that the Northern Territory will not be charged for the management of material that it generates which goes to the facility.[9]

9 EM, p. 4.

CHAPTER 3

KEY ISSUES

3.1 The committee notes that other Senate committees have previously conducted inquiries into radioactive waste management legislation (most recently in 2008). The reports of these committees covered a wide range of issues relating to the establishment of a national waste facility and to radioactive waste more generally.

3.2 In light of these previous opportunities for consideration of environmental and other issues relating to radioactive waste management in Australia, the focus of this report is on legal and constitutional matters, including issues relating to procedural fairness and the Bill's impacts on, and interaction with, state and territory legislation.

3.3 The key issues discussed below are:

- the preservation of the Muckaty Station site nomination;
- the Bill's preferencing of a Northern Territory site;
- consultation on the Bill and site selection;
- procedural fairness and judicial review; and
- other legal issues.

Preservation of the Muckaty Station site nomination

Introduction

3.4 As noted in Chapter 2, Schedule 2 of the Bill contains a saving provision which provides that, despite the repeal of the current Act, the site at Muckaty Station will remain a nominated site for a radioactive waste management facility (this site was nominated under the current Act in 2007).

3.5 The committee heard that, in its supplementary submission to the Senate Environment, Communications and the Arts Committee (ECA Committee) 2008 inquiry into the *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, the Northern Land Council (NLC) had requested that the Muckaty Station nomination be preserved if the *Commonwealth Radioactive Waste Management Act 2005* (the current Act) was repealed.[1]

3.6 Much of the evidence presented to the inquiry addressed this aspect of the Bill, raising issues that were also central to the 2008 ECA Committee inquiry. In particular, submitters and witnesses questioned the adequacy of consultations over the

1 Mr Kim Hill, Northern Land Council, *Proof Committee Hansard*, 30 March 2010, p. 15.

nomination of the Muckaty Station site, and whether or not the agreement underlying the nomination was supported by all relevant traditional owners.

3.7 As noted in the 2008 report, this issue goes to the question of who 'speaks for', or has the authority to make decisions concerning, the country on which it is proposed to site the facility. This is a matter of Indigenous rights and traditional law, as expressed by traditional owners.[2] Anthropological evidence is also relevant to identifying and determining the relationships of traditional owners to particular areas of land, particularly for the purposes of relevant Aboriginal land rights legislation.

3.8 The 2008 report cited the 1997 report of the Aboriginal Land Commissioner, which stated that, in terms of traditional ownership, it is usual or common for a number of Indigenous groups to possess certain rights and/or interests in a given area of land (although not necessarily having the ultimate authority or right to 'speak for' that country).[3] The report cited the following general description of the affiliations and responsibilities which pertain to Indigenous lands generally, and the Muckaty site in particular:

> The areas on which the separate groups focus are not necessarily completely separate. As is the case with Aboriginal land tenure systems in semi-arid areas, there tends to be a focus on sites of significance, which are often sites associated with the practicalities of survival in a dry environment. Sharply defined boundaries between the estates of different groups are unusual in such circumstances. There is a tendency for different groups to share some sites, with a consequential overlap between the areas claimed by those groups. There is also a tendency for land between sites to be the subject of overlapping claims, or for it to be unclear into the estate of which group it falls…
>
> The major dreamings involved in the present claim are travelling dreamings, some of which travel over quite long distances. Different parts of the tracks followed by dreamings belong to different people. A group will have responsibility for a defined part of dreaming track. The sites along that part of the track and the country surrounding them will belong to that group.[4]

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2 Senate Environment, Communications and the Arts Committee, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, December 2008, p. 19. The Bill considered in this report was a private senator's Bill, introduced by Senator Scott Ludlam (the Australian Greens). The purpose of the Bill was to repeal the current Act and a related Act, the *Commonwealth Radioactive Waste Management Legislation Amendment Act 2006* (introduced to facilitate site nominations by a Northern Territory Land Council).

3 Senate Environment, Communications and the Arts Committee, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, December 2008, p. 21.

4 Office of the Aboriginal Land Commissioner, *Report of Aboriginal Land Commissioner*, 1997, p. 38.

Consultation and agreement with relevant traditional owners

3.9 The related questions of whether all relevant traditional owners of the Muckaty Station site have been consulted over, and given their approval to, the Muckaty Station nomination were a highly contested feature of submissions to the inquiry.

Consultation

3.10 Some submitters were concerned that there had been inadequate consultation in relation to the proposal to locate a radioactive waste management facility at Muckaty Station. The Central Land Council (CLC), for example, submitted:

> The CLC has…had representations from traditional owners and affected Aboriginal people living in the Tennant Creek region within the boundary of the CLC area, regarding their opposition to the proposed site at Muckaty Station and their dissatisfaction with consultation processes undertaken under the current Act. The CLC is disappointed that this Bill validates the Muckaty nomination without acknowledging the dissent and conflict amongst the broader traditional owner group about the process and the agreement.[5]

3.11 Ms Natalie Wasley, from the Arid Lands Environment Centre (ALEC), also pointed to the apparent dissatisfaction of a number of traditional owners as an indication that there had been insufficient consultation on the nomination. In her view, the Commonwealth had failed to meet its obligations under the United Nations Declaration on the Rights of Indigenous Peoples, which states that:

> …no storage or disposal of hazardous materials shall take place in the lands…of indigenous peoples without free, prior and informed consent.[6]

3.12 Ms Diane Stokes, a traditional owner, submitted that the consultations conducted by the NLC had been inadequate and selective. She stated:

> About the NLC: we never, ever…have had a letter sent to us with maybe three weeks or two weeks notice. When we used to go to some of the NLC meetings, we used to have the list of names of all the members of the land trust. These days, they never use the names of those in the land trust. They just get a few people, whoever they trust, to go along for their meetings.[7]

3.13 However, Mr Ron Levy from the NLC asserted that 'as far as the consultations go, they were scrupulous and comprehensive'.[8] The NLC explained:

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5 *Submission 227*, p. 2.

6 *Proof Committee Hansard*, 12 April 2010, p. 21.

7 *Proof Committee Hansard*, 12 April 2010, p. 17.

8 *Proof Committee Hansard*, 30 March 2010, p. 17.

> The NLC's 2007 nomination was subject to a statutory requirement that there had been comprehensive consultations with the traditional Aboriginal owners and any Aboriginal community or group that may be affected, and that the traditional Aboriginal owners (as a group) had consented to the nomination. This requirement duplicated the same requirement as contained in various provisions in the *Aboriginal Land Rights (Northern Territory) Act 1976*.[9]

3.14 The committee notes that the NLC was equally emphatic on this point in its evidence to the 2008 inquiry, where it said that it had followed its 'usual procedures' and undertaken consultation with the relevant traditional owners—those with the right to 'speak for' the land concerned—and with a 'range of other people'.[10] The NLC was satisfied that there was 'overwhelming support for a [Muckaty Station] nomination after doing the comprehensive consultations'.[11]

3.15 The committee notes also that the NLC provided a supplementary submission to the 2008 inquiry in response to the claims that insufficient consultation had occurred. That submission provided significant detail on the history of the Muckaty nomination, meetings between the NLC and various groups of traditional owners, meetings between the Muckaty traditional owners and Commonwealth officers, and visits to the Lucas Heights reactor facility by traditional owners.[12]

Agreement with relevant traditional owners

3.16 At its Canberra hearing, the committee heard from Ms Amy Lauder, a representative of the Ngapa group which has entered into a deed of agreement concerning the Muckaty nomination with the NLC and the Commonwealth Government. Ms Lauder acknowledged that a number of groups had an interest or rights in relation to Muckaty lands, but asserted that the Ngapa group that she represented was entitled to 'speak for' the nominated site at Muckaty Station. Specifically, Ms Lauder stated:

> I am a Ngapa traditional owner of Muckaty Station and I represent them today; I have got other traditional owners behind me. We have got custodians: our children, their children and their grandchildren and so on. We nominated our land in 2007. There are other groups in the land. We have five clan groups on Muckaty land itself, but at this time as Ngapa traditional owners we are just concentrating on our Ngapa site on Muckaty. Yes, the other clan groups have got rights to make a proposal, but it is our

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9 *Answer to question on notice*, received 28 April, 2010, p. 3.

10 Senate Environment, Communications and the Arts Committee, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, December 2008, p. 24.

11 Senate Environment, Communications and the Arts Committee, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, December 2008, p. 24.

12 Senate Environment, Communications and the Arts Committee, *Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008*, December 2008, p. 24.

> decision; it is our land. Ngapa is the main dreaming site on Muckaty itself. It is our decision and it is our land, so we nominated our land for the government's consideration.[13]

3.17 Ms Lauder's claims were acknowledged and strongly endorsed by the NLC. Mr Kim Hill commented:

> To my knowledge, at this stage, not one traditional owner group is opposing the nomination for the NLC in support of the traditional owners—not one person is disputing that the area in question belongs to the Lauder clan.[14]

3.18 Similarly, Mr Levy advised:

> The reason there has not been a [legal] challenge is that there is no Aboriginal person or any other person disputing that this Ngapa group are the owners of that country.[15]

3.19 In contrast to these views, a number of submitters claimed that the Muckaty Station nomination was contested. A number of Indigenous people representing various family groups or clans either asserted their own right to be consulted over the nomination, or else disputed the right of Ms Lauder and the group she represents to 'speak for' the country relating to the site nomination. Ms Diane Stokes, a traditional owner, stated:

> …the Ngapa clan, the Amy Lauder mob, are not the only people for that Ngapa area there [at Muckaty Station]. That is not their land, but we are all connected to the land trust, the whole different group here today. There are five groups: Ngapa, Wirntiku, Milwayi, Yapa Yapa, all of us mob are connected to that area, so we all belong to the land trust. Amy is saying that she is only one who is the representative of the Ngapa. Her Ngapa is on the western side, so I do not believe that she has got land in there. I know that NLC is saying that she has got land in there, but she has not got any land.[16]

3.20 A submission prepared on behalf of a number of traditional owners explained:

> …the traditional owners of the site that we have taken evidence from, have never given their consent to…[the nomination]. They have continuously denied that the Lauder family has exclusive rights to say yes or no to the nomination of the site.
>
> This position is supported by the determination of the 1997 Land Commissioner's Report prepared for the original hand back of the Muckaty Land, as well as previous anthropological reports and of course their own detailed knowledge passed down to them by their ancestors.[17]

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13 *Proof Committee Hansard,* 30 March 2010, p. 15.

14 *Proof Committee Hansard,* 30 March 2010, p. 13.

15 *Proof Committee Hansard,* 30 March 2010, p. 17.

16 *Proof Committee Hansard,* 12 April 2010, p. 13.

17 *Submission 235*, p. 1.

3.21 Mr David Ross, from the CLC, emphasised the importance of Aboriginal custom in resolving disputes over traditional land rights:

> Until all the Aboriginal people are given that opportunity to meet together and sort out responsibilities within Aboriginal law, then you are never going to resolve this issue between Aboriginal people. You might resolve it at law under the land rights act and the Australian legal terms, but in terms of Aboriginal people sorting out their differences and resolving who has rights and responsibilities to the country, then Aboriginal people need to do that themselves.[18]

3.22 The questions around whether the consultations with, and consent of, traditional owners have been adequately achieved were complicated by claims relating to payments made to various Indigenous groups from monies received in relation to the Muckaty Station site nomination. Such payments may provide some evidence of both consultation with, and consent of, relevant groups of traditional owners.

3.23 Mr Levy from the NLC advised that 'no funds were retained, or used, by the NLC in relation to its administrative or other costs' from the monies paid on acceptance of the nomination of the Muckaty Station site. These funds had been distributed in compliance with the standard practices of the NLC. He explained:

> The way the [Muckaty nomination] agreement works is the way any major development works—a mining agreement, for example—in that there is usually a payment at the time of execution. In relation to this matter…[the] first trigger for payment was when the then minister, Julie Bishop, approved the nomination, and that occurred in 2007. That led to a $200,000 payment in 2008…to the Northern Land Council. The Northern Land Council's job under statute is to distribute those funds to or for the benefit of the traditional Aboriginal owners of the land. The way that that always proceeds…is by means of consultation—not only with the traditional owners of the relevant land but also, for a major matter of this nature, with other groups who are involved and other senior people. Those consultations were held in 2008 and the money was distributed.[19]

3.24 The NLC noted that the $200,000 represented the 'total amount of funds paid to the NLC under the [Muckaty Station] site nomination deed'. It noted that:

> Further payments will only occur if the nominated site is both approved by the Environment Minister after a comprehensive environmental impact process, and is declared as the facility site by the Resources Minister. Those further payments, if they occur, will be to a charitable trust fund.[20]

3.25 The committee heard that the $200,000 paid to date had been distributed amongst 'a number of other clan groups' through 'twenty-five senior persons'. The

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18 *Proof Committee Hansard*, 12 April 2010, p. 29.

19 *Proof Committee Hansard*, 30 March 2010, p. 16.

20 *Answer to question on notice*, received 28 April 2010, p. 5.

majority of the payees were in the Ngapa group (from both the Muckaty and other areas), but members of the Yapa Yapa and Milwayi groups also received payments.[21] Mr Levy advised that, in some cases, recipients of payments from the Muckaty nomination fund were identified in various petitions or letters as objectors to the proposal:[22]

> …a number of those signatories first attended NLC meetings in 2007 and expressly stated—they did not consent, because it was not their country—'We support the Ngapa traditional owners regarding their decision.' Those persons also, given their seniority, support and cultural connections, received a portion of that $200,000 and accepted it.[23]

3.26 However, this claim was disputed by some of the traditional owners opposed to the Muckaty Station nomination. Ms Stokes and a number of other Indigenous family representatives denied that their groups had received payments from the $200,000.[24]

Preferencing of a Northern Territory site

3.27 As noted above, the Bill preserves the Muckaty Station nomination under the current Act. In addition, Part 2 (proposed subsection 4(1)) of the Bill allows for a land council in the Northern Territory to nominate land as a potential site for a radioactive waste management facility. The Explanatory Memorandum (EM) notes that this provision enables the NLC to nominate other sites on Ngapa land (as it is entitled to do under the current site nomination deed).

3.28 Part 2 (proposed section 6) also allows the Minister to open a nation-wide volunteer site-nomination process. However, in making this decision, the Minister must have regard to 'whether it is unlikely that a facility will be able to be constructed and operated on Aboriginal land that has been nominated as a potential site under [section 4]' (whether or not that land has in fact been approved as a site).[25] A representative from the Department of Resources, Energy and Tourism (the Department) advised that the Bill was designed to allow the nomination of other sites in Australia, once the option of a 'volunteer site on Aboriginal land at Muckaty Station has become exhausted'.[26]

3.29 A number of submitters and witnesses noted that the Bill was, in effect, designed to favour or 'single out' Muckaty Station, or the Northern Territory more generally, as the site for the national radioactive waste facility. In particular, the

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21 *Proof Committee Hansard*, 30 March 2010, p. 16.

22 *Proof Committee Hansard*, 30 March 2010, p. 16.

23 *Proof Committee Hansard*, 30 March 2010, p. 16.

24 *Proof Committee Hansard*, 12 April 2010, p. 16.

25 *National Radioactive Waste Management Bill 2010*, proposed subsection 5(2).

26 *Proof Committee Hansard*, 30 March 2010, p. 10.

Northern Territory Government voiced strong concerns at the proposed site-selection process. The Northern Territory Chief Minister, the Hon. Paul Henderson, commented:

> We are opposed to this legislation and the process for the selection of the site, which singles out the Territory for differential treatment because its constitutional status is seen to minimise the risk of legal challenges to the selection of the site. Fundamentally, this bill does single out the Northern Territory fairly and squarely, to the exclusion of any other decision, unless the federal minister rules it out.[27]

3.30 Accordingly, the Northern Territory Government called for the Bill to be:

> …redrafted to allow the nomination of land in any State or Territory from the outset, and to remove the legislative bias towards the selection of a site in the Northern Territory.[28]

3.31 Ms Wasley from the ALEC also commented on the Bill's apparent targeting of the Northern Territory as the site for the proposed facility:

> What we see with this bill is not only the Northern Territory still targeted, but the Muckaty nomination the only area which will still be studied initially under the legislation. It is clearly the minister's intention to push through and carry on with Muckaty as the site for the radioactive facility.[29]

3.32 More generally, the CLC was critical of the principles underlying the site-selection process in the Bill:

> Choosing a waste site from one that is simply nominated by a landowner is a fundamentally flawed approach to the siting of a long term facility which houses significant amounts of short lived and long lived radioactive waste.[30]

3.33 The CLC concluded:

> It is simply not credible to pretend that a voluntary nomination process, presumably with considerable financial enticements, can replace a process that actually evaluates regions based on accepted scientific criteria.[31]

3.34 The Northern Territory Chief Minister shared this view:

> I find it incomprehensible that the Commonwealth…would choose to make this type of decision by asking a land council in the Northern Territory: 'Is there any part of your land on which you would accept a radioactive waste repository facility?'…If that process is [not successful]…the

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27 *Proof Committee Hansard,* 12 April 2010, p. 2.

28 *Submission 147*, p. 11.

29 *Proof Committee Hansard,* 12 April 2010, p. 20.

30 *Submission 227*, p. 4.

31 *Submission 227*, p. 5.

> Commonwealth is to then open up a process of asking other Australians to nominate their land…That is not the way to make a decision about where this facility should go…[32]

3.35 However, the Department disputed these perspectives. It submitted that the Bill 'does not single out the Northern Territory', and noted:[33]

> Under the Bill, if the Minister decides to open up the nation-wide volunteer site nomination process, any person with a sufficient interest in land in a State or Territory (not just land in the Northern Territory) may nominate that land as a site.
>
> Under the 2005 legislation, a facility can only be located in the Northern Territory.[34]

3.36 Further, the Department emphasised that the Bill involved a 'major change' from the current Act in respect of its emphasis on 'volunteerism'. A representative of the Department stated:

> …there is a major change in that there is an emphasis on volunteerism in terms of nomination or selection of sites or identification of sites, so all sites must be voluntarily nominated…[35]

3.37 The Department submitted that, unlike the position under the current Act, the Bill does not allow sites for the waste management facility to be imposed on a community. The Department observed:

> Under the Bill, a site must be voluntarily nominated by a person with a sufficient interest in that land.[36]

Transportation of waste

3.38 A number of submitters and witnesses raised concerns about the potential risks of transportation of waste to the Muckaty Station site in particular, and to the Northern Territory more generally (in the event that another site in the Northern Territory is nominated or selected as the site for the national radioactive waste facility).

3.39 The Northern Territory Government submission commented:

> The transport of radioactive waste by road…raises concerns relating to the security of the waste whilst in transit to the facility and the potential for a significant impact on transport routes as a result of an accident.[37]

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32 *Proof Committee Hansard*, 12 April 2010, pp 9-10.

33 *Submission 226*, p. 5.

34 *Submission 226*, pp 5-6.

35 *Proof Committee Hansard*, 30 March 2010, p. 2.

36 *Submission 226*, p. 5.

37 *Submission 147*, p. 18.

3.40 Ms Wasley from the ALEC observed that the Northern Territory posed particular risks by virtue of its remoteness and infrastructure:

> I would like to ask: what are the risks of transporting these materials thousands of kilometres through hundreds of communities? Territorians know very well the risks of transporting hazardous substances through remote areas. The Northern Territory government itself has said it has insufficient capacity to cope if a waste dump were built.[38]

3.41 A view shared by many submitters was that radioactive waste should be stored close to the point of its production, in order to minimise the risk of accidents while transporting waste materials. For example, a form letter received from 13 individuals commented that:

> Nuclear waste should be moved as little as possible, and should be stored above ground close to the point of production, close to centres of nuclear expertise and infrastructure.[39]

3.42 On this issue of waste transportation, the Department advised that the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), as the regulator, would be responsible for the safe transport of radioactive material, as governed by the *Australian Radiation Protection and Nuclear Safety Act 1998*.[40]

3.43 Dr Adrian Paterson, the Chief Executive Officer of the Australian Nuclear Science and Technology Organisation, observed that:

> Many…[radioactive waste management facilities] exist overseas, and the operation and transport of waste to them has an exemplary safety record.[41]

3.44 In terms of the particular risks associated with transportation of waste to a national facility in the Northern Territory, Dr Paterson commented:

> …the transport risk is low to very low. These industrial and medical sources in any event are transported every day for their normal use, for example, so they are by their nature transportable devices with the suitable protection added to them. In terms of waste shipments globally, there are probably now in the order of millions of shipments that have taken place of nuclear waste in different forms. Compared to other hazardous material shipments and transport, the levels of control, the strong role of the regulator, the arrangements and logistical infrastructure that is in place make the risk of shipments, and the risk to the public during those shipments, absolutely mitigatable to the highest level.[42]

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38 *Proof Committee Hansard,* 12 April 2010, p. 22.

39 *Form letter 1*, p. 2.

40 *Answer to question on notice*, received 12 April 2010, p. 9.

41 *Proof Committee Hansard,* 30 March 2010, p. 23.

42 *Proof Committee Hansard,* 30 March 2010, p. 28.

Consultation on the Bill and site selection

3.45 Separate to issues around consultation with traditional owners in relation to Muckaty Station, some submitters and witnesses criticised what they felt was a lack of consultation on the Bill with affected communities and the Australian people more broadly.

3.46 The Northern Territory Chief Minister argued that there had not been 'open and transparent consultation' with Territorians, and Australians, about the location of a radioactive waste management facility.[43] He criticised the approach taken as one based around a 'decide, announce, defend' strategy:

> The Commonwealth has decided it is going to go to Muckaty Station, it has announced it is going to go to Muckaty Station and we have a bill here to defend that position.[44]

3.47 The Northern Territory Government characterised this lack of consultation as being out of conformity with international best practice and the Commonwealth Government's own relevant code of practice. The Chief Minister stated:

> Full and proper consultation and communication with affected people is integral to the process and can result in a successful siting of the facility.
>
> Now, the Commonwealth government's own *Code of practice for the near-surface disposal of radioactive waste in Australia* sets out, under 'Public consultation'…[that site] selection shall include a suitable consultative process to establish public consent to the location of a disposal facility at the particular site.[45]

3.48 In contrast to the concerns outlined above, a representative of the Department advised that there are 'extensive opportunities for consultation' arising from the regulatory processes that will apply to the selection and operation of a radioactive waste facility:

> The first part of that consultation process takes place under the *Environment Protection and Biodiversity Conservation Act*, where there are opportunities for public input and public meetings.
>
> There are also public forums at all stages of the ARPANSA licensing process. That is a fairly intricate process. We have to get a site licence from ARPANSA. That will involve a public process. It may even involve an international expert forum. The same applies also for the construction and operating licence stages under the ARPANS Act. Of course, we are also subject, given the cost of the facility, to processes under the *Public Works Committee Act 1969*.[46]

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43 *Proof Committee Hansard*, 12 April 2010, p. 2.

44 *Proof Committee Hansard*, 12 April 2010, p. 2.

45 *Proof Committee Hansard*, 12 April 2010, p. 2.

46 *Proof Committee Hansard*, 30 March 2010, p. 4.

Ability to establish a regional consultative committee

3.49 The committee notes that the Bill also provides a discretion for the Minister to establish a regional consultative committee, following the selection of a site for the radioactive waste facility.[47] A departmental representative explained that the purpose of any regional consultative committee would be to allow for ongoing consultation with relevant local communities:

> The idea of this is that once a site is selected a committee of regional interests will be established so that the establishment of the facility and subsequently its operation will be a matter of consultation with regional interests. Obviously, any problems that arise as far as the local community are concerned can be addressed. There is a parallel to this established with the site selection process in South Australia for the Woomera site. There was a regional consultative committee involved there.[48]

3.50 The committee heard that, once a site is selected, the membership and structure of a regional consultative committee will be prescribed by regulation, taking into account the interests involved. A Department representative advised that any such committee would be a 'representative group of interests from the region in which the facility is sited'.[49]

Procedural fairness and judicial review

3.51 Much of the evidence received during the course of this inquiry focussed on procedural fairness. Submitters and witnesses discussed the issue of procedural fairness in relation to the preserved Muckaty Station site nomination and, more generally, in relation to the nomination and selection of other potential sites. The availability of judicial review for decisions under the Bill was also a prominent issue.

3.52 The submission from the Department advised that one of the main differences between the Bill and the current Act is that, under the latter, procedural fairness will apply to 'key decisions'. The Department noted also that decisions made under the proposed scheme will be reviewable under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act).[50]

3.53 The EM explains that the Bill provides a right to procedural fairness and review under the ADJR Act in relation to:

- a decision to approve the nomination of a site;
- a decision to open up a nation-wide voluntary site nomination process; and

47 Explanatory Memorandum, p. 3.

48 *Proof Committee Hansard*, 30 March 2010, p. 2.

49 *Proof Committee Hansard*, 30 March 2010, p. 8.

50 *Submission 226*, p. 5.

- a decision to select a site as the site for a facility.[51]

3.54 In relation to the Muckaty Station nomination, procedural fairness and the potential for review under the ADJR Act will apply to a decision to select the site as the site for the radioactive waste facility.[52] However, the EM notes that the Bill does not introduce procedural fairness requirements in relation to the existing nomination and approval of the Muckaty Station site.[53]

Muckaty Station nomination

3.55 A number of stakeholders expressed concern that the Bill does not institute procedural fairness and ADJR Act review rights in relation to the preserved nomination of the Muckaty Station site. For example, as Ms Wasley from ALEC commented:

> There is no credibility…[to] this bill when…the Muckaty nomination will not be subject to any of the provisions or measures that the minister is going to great pains to say are being reinstated—in particular, procedural fairness and access to judicial review. If the minister is so confident that this site selection process was done honestly, properly and fairly, then there should be no hesitation for this nomination of Muckaty to be subject to the standards which any further nomination would be subject to.[54]

3.56 The CLC stated that it was 'not acceptable' that access to procedural fairness continues to be excluded in relation to the Muckaty Station site nomination. The CLC submission commented:

> This confirms the CLC's view, put clearly in our submission to the senate inquiry into the current Act (2005) that better protection would be afforded to traditional landowners who chose to nominate a site in accordance with the operations of the Land Rights Act. The CLC believes that the processes for obtaining a nomination from a Land Council under the current Act are so flawed that the existing Muckaty station nomination and approval should not be preserved in the Bill.[55]

3.57 The Northern Territory Environment Centre (ECNT) submitted that, by not subjecting the Muckaty nomination to procedural fairness and judicial review, the Bill would perpetuate the uncertainties around the extent and adequacy of consultations with, and agreement of, traditional owners:

> …the nomination of the Muckaty site by the Northern Land Council …[which] sits at the heart of the development of the…Bill, occurred by

51 *Submission 226*, p. 6.

52 *Submission 226*, p. 6.

53 EM, p. 2.

54 *Proof Committee Hansard*, 12 April 2010, p. 20.

55 *Submission 227*, p. 2.

> way of a contentious agreement between the NLC and the former Federal government. The NLC/Federal government agreement was able to avoid public scrutiny due to special provisions in the [current Act] which explicitly denied procedural fairness and judicial review. Consequently, the Muckaty nomination is now strongly contested by many Muckaty Land Trust Traditional Owners who were not part of the agreement process.[56]

3.58 The ECNT was concerned that, because the Bill does not provide for procedural fairness or judicial review regarding Muckaty, 'there exists no legitimate means for resolving the contest [and] the nomination continues to be afforded protection from public scrutiny'.[57]

3.59 However, the NLC submitted that the retrospective application of procedural fairness provisions to the decisions relating to the existing nomination of the Muckaty Station site (and the acceptance of that nomination) would involve substantial unfairness:

> No basis exists for retrospectively applying, three years after the nomination, unspecified additional requirements (for example, as to notification of non-Aboriginal third parties), whereby the nomination and completed consultations may be challenged by reference to obligations and requirements which did not then exist. Such retrospectivity would give rise to substantive unfairness, particularly to the Ngapa traditional Aboriginal owners and other Aboriginal persons and groups supportive of the nomination.[58]

Nomination, acceptance and selection of other potential sites

3.60 As noted above, procedural fairness requirements will apply to all other 'key decisions' relating to the processes set out in the Bill for the nomination and selection of other potential sites for the radioactive waste facility.

Scope of procedural fairness requirements

3.61 Procedural fairness requirements will apply to any decision to approve a potential site and to any decision to open the nation-wide site nomination process. The procedural requirements that apply to these decisions are an 'exhaustive statement' of the requirements of the natural justice hearing rule in relation to the relevant decisions.[59] Before making any such decision, the Minister must satisfy certain notice requirements, and invite comments from relevant stakeholders. The Minister must then 'take into account any relevant comments' received in response to an invitation to comment. A representative from the Department explained that, in summary:

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56 *Submission 145*, p. 1.

57 *Submission 145*, p. 1.

58 *Answer to question on notice*, received 28 April 2010, p. 3.

59 See for example proposed section 9(7).

> When the minister is about to make a decision he must advertise that and people have the opportunity to make submissions to him and he will consider those submissions in reaching his decision.[60]

3.62 At the hearing in Canberra, the Department confirmed that the requirement for the Minister to receive and take into account submissions from interested parties is the only procedural fairness requirement included in the Bill:

> **Senator TROOD**—So the essence of the case for procedural fairness in relation to what is the preferred site is that the minister is required to receive submissions. Is that it?
>
> **Mr Davoren**—That is what I understand.
>
> **Mr Vazenios**—And take those comments into account.[61]

3.63 A number of submissions were critical of the limited scope of the procedural fairness requirements set out in the Bill. Dr James Prest, from the Australian Centre for Environmental Law at the Australian National University (ACEL), submitted:

> …the re-instatement of procedural fairness and judicial review rights proposed by the Bill is so very tightly constrained and limited by other provisions to the extent that the re-instatement exercise threatens to become largely symbolic and illusory, if not misleading and deceptive.[62]

3.64 Dr Prest stated that the procedural fairness provisions of the Bill offer only 'a very limited right of hearing in relation to particular ministerial declarations and approvals'.[63] He observed that, although the Minister would be required to invite comments from 'each nominator [of a site] and, via public notices in the *Gazette* and newspapers, from persons with a right or interest in the relevant land', any such comments would 'need only be taken into account by the Minister'. There would be no obligation on the Minister 'to respond to comments, or to publish a report containing the comments received'.[64]

3.65 The CLC also observed that the requirement for the Minister to 'take any relevant comments into account' was a 'very limited' requirement in terms of procedural fairness.[65]

3.66 Further, Dr Prest noted that the procedural fairness provisions would apply only to those with a right or interest in the land, which meant that:

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60 *Proof Committee Hansard*, 30 March 2010, p. 2.

61 *Proof Committee Hansard*, 30 March 2010, p. 10.

62 *Submission 229*, p. 2.

63 *Submission 229*, p. 9.

64 *Submission 229*, p. 9.

65 *Submission 227*, p. 3.

> …neighbours, those living in a community nearby, or the relevant State or Territory government do not have an opportunity to comment.[66]

3.67 The ECNT submission also criticised the limited scope of the procedural fairness provisions in the Bill:

> …[We express] strong disappointment in the limited opportunity for procedural fairness that the…Bill affords, particularly given the nature of the issue at hand…
>
> We question why the…Bill fails to align with the general progression and development of environment-related legislation here in Australia and around the world, which involves a widening of the scope for procedural fairness, particularly with respect to third parties.[67]

3.68 Responding to such concerns, the Department submitted:

> The purpose of the ADJR Act is to provide a form of judicial review that would be accessible to members of the public whose interests are affected by administrative decisions.
>
> A person aggrieved by a decision to which the Act applies is entitled to make an application under the ADJR Act. The Federal Court has held that the expression 'a person aggrieved by a decision' should not be construed narrowly; a person will be aggrieved by a decision if they have a 'special interest in the subject matter of the action'.[68]

3.69 In addition, the NLC observed that, as with the current Act, the Bill does not exclude rights to judicial review under section 75 of the Constitution and section 39B of the *Judiciary Act 1903*. It explained:

> …the current legislation (and the Bill) does not, and cannot, exclude review under s 75(v) of the Constitution, and also does not exclude review under s 39B(1) of the Judiciary Act 1903. These remedies concern where the exercise of a power is invalid due to a jurisdictional error, being where a decision maker has exceeded the authority or power conferred on them.[69]

Effect of ministerial discretion on judicial review

3.70 In relation to the application of the ADJR Act to decisions made under the Bill, Dr Prest noted that this would be of 'limited practical effect because the provisions empowering the minister to make a declaration of land as a selected site express the exercise of that power to be in the Minister's 'absolute discretion''.[70] As a

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66 *Submission 229*, p. 9.

67 *Submission 145*, p. 2.

68 Department of Resources, Energy and Tourism, *Answer to question on notice*, received 12 April 2010, p. 5.

69 *Answer to question on notice*, received 28 April 2010, p. 7.

70 *Submission 229*, p. 10.

result, there would be no obligation on the Minister 'to consider objective criteria such as the suitability of the site for a repository in terms of geology, geography [and] environmental protection'.[71] Dr Prest concluded:

> …[Because the] requirements set out by the Bill are not very onerous…in practical effect it will be very unlikely that the Minister might fail to comply.[72]

3.71 The ACF was also concerned about the lack of criteria for decision making under the Bill:

> The final key limitation from a procedural fairness perspective is the complete lack of matters prescribed in the bill that the minister must take into account when making a decision…[There] is absolutely no mention of a requirement to take into account what we have referred to in our submission as essential criteria, and they would be scientific, environmental, health, social, cultural and economic matters.[73]

3.72 However, a Departmental representative advised that the lack of criteria or benchmarks for the Minister in deciding whether to select Muckaty Station (or indeed any other site) as the site for the waste facility was because the considerations to which they might relate 'would be covered' by the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) as well as regulatory processes governed by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).[74] That is:

> [These] comments fail to separate the voluntary site selection process and the separate regulatory approval process for the establishment and operation of a facility on the selected site.
>
> Once a site has been selected as a site for the facility, regulatory approval under the *Environment Protection and Biodiversity Conservation Act 1999* and the *Australian Radiation Protection and Nuclear Safety Act 1998* must then be obtained.
>
> If regulatory approval cannot be obtained, a facility cannot be constructed or operated on the site.
>
> It is the Minister for the Environment, Water, Heritage and the Arts, rather than the Minister for Resources and Energy, who will consider the suitability of the site in terms of geology, geography and environment protection. These matters will also be considered by the Chief Executive of ARPANSA in deciding whether to issue a siting licence for the facility.[75]

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71 *Submission 229*, p. 10.

72 *Submission 229*, p. 10.

73 *Proof Committee Hansard,* 30 March 2010, p. 43.

74 *Proof Committee Hansard,* 30 March 2010, p. 7.

75 Department of Resources, Energy and Tourism, *Answer to question on notice*, received 12 April 2010 p. 5.

'No invalidity' clauses

3.73 Dr Prest also identified the inclusion of 'no invalidity' clauses in the Bill as reducing the opportunity for effective review of decisions under the ADJR Act. Such clauses, he explained:

> …are provisions of the Bill specifying that a failure to comply with its procedural and due process provisions does not invalidate decisions taken by the Minister [in proposed subsections 4(4), 5(5), 7(4), 8(6), 14(2) and 16(6)].[76]

3.74 The ACF also commented on this aspect of the Bill:

> …the bill does not require that the procedural fairness processes that have been applied for those decisions actually have to be complied with in order to maintain their validity. These invalidity provisions…are really problematic in terms of the due process provisions that have been introduced applying as conditions to validity of the minister's decisions.[77]

3.75 Dr Prest noted that, as a result of the elements of the Bill outlined above, 'the scope of review of the Minister's decision at general law or under the…ADJR Act is limited'.[78] He suggested that:

> …the available grounds of review may only include that the Minister exercised the power for an improper purpose, that the Minister took into account irrelevant considerations, or that the Minister's decision was so unreasonable that no reasonable decision maker could have made it.[79]

3.76 In response, the Department submitted:

> Parliament is the supreme branch of Government in the Australian constitutional system. Judicial review ensures that the power is exercised according to law with due attention to procedural fairness, rationally, and without bias. Administrative decisions are rarely reviewed on their merits, and only where power is given to the courts by legislation. Executive accountability through Parliament is a more appropriate means of ensuring that Ministers are making the best decisions on the merits.[80]

3.77 The NLC noted that the inclusion of 'no invalidity' clauses in the Bill was consistent with the scheme employed by the *Aboriginal Land Rights (Northern Territory) Act 1976*, which provides that a land council's 'nomination of a site for a

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76 *Submission 229*, p. 12.

77 *Proof Committee Hansard*, 30 March 2010, p. 43.

78 *Submission 229*, p. 10.

79 *Submission 229*, p. 13.

80 *Answer to question on notice*, received 12 April 2010, p. 4.

facility (and indirectly also the Minister's declaration) will be protected from challenge on certain procedural grounds'.[81] It explained:

> …for over 30 years the Land Rights Act 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.
>
> The purpose of the provision… is to provide certainty in land transactions and security in financing of developments, by ensuring that a lease of Aboriginal land cannot be invalidated years after the event due to an omission to comply with formal requirements.[82]

Other legal issues

Overriding of state and territory legislation

3.78 As noted in Chapter 2, proposed section 10 of the Bill allows relevant persons (such as Commonwealth employees or contractors) to conduct activities for the purpose of selecting a site for the radioactive waste management site. The section authorises such persons to 'do anything necessary for, or incidental to, the purposes of selecting a site on which to construct and operate a facility'.[83]

3.79 Proposed section 11 provides that that 'certain state and territory laws will not apply to activities' authorised under the Bill.[84] Any such law will be of no effect to the extent that it would otherwise 'regulate, hinder, or prevent' the doing of activities relating to the selection of a site for the radioactive waste management facility. Relevant state and territory laws include laws relating to:

- the use or proposed use of land or premises, or the environmental consequences of any such use;
- the archaeological or heritage values of land or premises;
- controlled material, radioactive material or dangerous goods; and
- licensing in relation to employment or carrying on a particular business or undertaking.[85]

3.80 Similarly, proposed section 12 of the Bill provides that the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and the EPBC Act will have no effect to the extent that they would otherwise 'regulate, hinder, or prevent' the doing of something authorised by proposed section 10.

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81 *Answer to question on notice*, received 28 April 2010, p.8.

82 *Answer to question on notice*, received 28 April 2010 p.8.

83 A non-exhaustive list of such activities is provided in proposed subsection 10(3). This includes, for example, operation of drilling equipment, water extraction, flora and fauna collection and clearing of vegetation.

84 National Radioactive Waste Management Bill 2010, proposed sections 10 and 12.

85 EM, p. 15.

3.81 The Bill employs essentially the same approach in relation to the conduct of activities relating to a selected site (that is, once a site has been selected). These activities include, for example:

- gathering or preparing information for a Commonwealth regulatory scheme relating to the construction or operation of a facility;
- preparing the selected site for a facility; and
- constructing, operating and maintaining a facility.[86]

3.82 The EM notes that certain state, territory and Commonwealth laws will not apply to activities under Part 5 to the extent that they would regulate, hinder or prevent those activities. However, the *Australian Radiation Protection and Nuclear Safety Act 1998*, the EPBC Act and the *Nuclear Non-Proliferation (Safeguards) Act 1987* must be complied with at all times after a site has been selected.[87]

3.83 The Department's submission noted that, before a site is selected, 'certain activities need to take place to ensure land is suitable for a radioactive waste management facility'. These may include:

- geological and geotechnical investigations;
- hydro-geological and hydrological evaluations;
- mineral prospectivity investigations;
- biological and environmental studies;
- meteorological analysis; and
- an evaluation of transportation capabilities to the site.[88]

3.84 The Department's submission states that, as a result of the potential for certain pieces of Commonwealth and state and territory legislation to regulate, hinder or prevent such activities, the approach taken in the Bill is necessary.[89] A representative from the Department explained:

> …when the Commonwealth government enacted the ARPANS Act in 1998, it had the power to establish facilities or to license facilities such as the one that we are contemplating here. A number of the states subsequently enacted legislation prohibiting the establishment of radioactive waste management facilities within their jurisdictions, so I think it was necessary for the Commonwealth to make certain of its powers to operate a facility in

86 EM, p. 14.

87 EM, p. 3.

88 *Submission 226*, p. 6.

89 *Submission 226*, pp 6-7.

> accordance with its international treaty obligations and also in accordance with existing legislation.[90]

Constitutional basis of the Bill

3.85 In relation to the legality of the Bill, the committee heard that the Department believes there are no concerns or issues in relation to the constitutional basis of the Bill:

> The Department has sought legal advice on constitutional issues regarding the National Radioactive Waste Management Bill 2010.
>
> The Department is confident that relevant heads of power under the Constitution have been taken into account in drafting the Bill.[91]

3.86 For example, the Department pointed to the external affairs power as a basis for Commonwealth legislative authority. It noted that such a power arises 'where international documents are ratified by Australia'.[92] In relation to the subject matter of the Bill, Australia has ratified the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management (which entered into force on 3 November 2003).

3.87 The committee notes also Dr Prest's view that there is 'little doubt' that the Commonwealth has the constitutional power to enact laws to displace the operation of both state and territory laws to establish a radioactive waste facility (in either a state or territory).[93] According to Dr Prest, any legislation would 'most likely' be based on the external affairs power, the corporations power, and the implied nationhood power.[94]

Creation of regulatory gaps

3.88 A number of submitters were concerned that the Bill's overriding of Commonwealth and state and territory legislation would create regulatory gaps in the areas covered by the displaced legislation.

3.89 In its submission, the Northern Territory Government listed 27 pieces of Northern Territory legislation which, in its view, would have no application to activities in relation to the selection of a site or to a selected site. The Northern Territory Government was concerned that ARPANSA, as the regulatory authority, would not have the necessary experience or expertise to regulate the areas covered by the displaced legislation.

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90 *Proof Committee Hansard*, 30 March 2010, p. 2.

91 *Answer to question on notice*, received 12 April 2010 p. 8.

92 *Answer to question on notice*, received 12 April 2010 p. 8.

93 *Submission 229*, p. 3; see also Northern Territory Government, *Submission 147*, p. 10.

94 *Submission 229*, p. 3.

3.90 Similarly, Dr Prest submitted that:

> …if State and Territory laws are excluded, and there are insufficient Commonwealth regulatory controls on the proposed activity, a regulatory void or vacuum is created.[95]

3.91 The ACF was also concerned about this aspect of the Bill:

> We have fundamental concerns that insufficient analysis might have been done in connection with the full implications of the exclusion by the bill of all state and territory laws that might otherwise apply.[96]

3.92 To address these perceived regulatory gaps, Dr Prest called for the Commonwealth to 'audit the proposed regulatory and risk management framework to ensure that important environmental protection aspects of state and territory laws are replaced'.[97] The Northern Territory Government called for the Commonwealth to:

> …identify the legislative or other means by which it proposes filling this substantial regulatory gap, so that State and Territory residents can feel assured that activities that are inherently hazardous are conducted according to appropriate standards.[98]

3.93 The Department, however, rejected the view that the overriding of state and territory legislation would create regulatory gaps:

> There is no regulatory void. [This view] has not taken into account the central role of ARPANSA as the Commonwealth's nuclear regulatory agency.[99]

3.94 The Department observed that the proposed facility 'will be subject to regulatory controls under the *Australian Radiation Protection and Nuclear Safety Act 1998* (ARPANS Act), and that 'separate licenses will need to be obtained…in order to site, construct, operate and close a facility'. Further, it noted that:

> ARPANSA is guided by the principles of best practice set out in documents such as the Australian National Audit Office Better Practice Guide for Administering Regulation, March 2007 as well as guidance from international regulatory approaches set out in key documents of organisations such as the International Atomic Energy Agency.[100]

3.95 ARPANSA advised the committee that, in addition to acting in conformity with international best practice—as established by international conventions and the

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95 *Submission 229*, p. 4.

96 *Proof Committee Hansard*, 30 March 2010, p. 44.

97 *Submission 229*, p. 4.

98 *Submission 147*, p. 12.

99 *Answer to question on notice*, received 12 April 2010 p. 2.

100 *Answer to question on notice*, received 12 April 2010 p. 3.

International Atomic Energy Agency (IAEA), the Organisation for Economic Co-operation and Development (OECD) Nuclear Energy Agency and the International Commission on Radiological Protection—it would undertake additional steps in its approach to regulating the construction and operation of the proposed facility. This will include public consultation and international peer review processes. With particular reference to public consultation processes, ARPANSA submitted:

> …there is significant information and literature in relation to best practice by regulatory bodies for involving and engaging stakeholders in the assessment and decision making process. This literature recognises that stakeholders have a key contribution to make to the decision making process…ARPANSA will work with stakeholders to arrive at the most informed decision. Stakeholder engagement will be facilitated by the provision of information to the public about…[an] application through electronic and other means; the conduct of public information and awareness campaigns and the convening of relevant fora, including public hearings.[101]

3.96 The Department also submitted that, despite the Bill's impact on state and territory legislation, it will nevertheless 'ensure that responsible measures are followed when undertaking these activities', insofar as it will provide that persons must:

- take all reasonable steps to ensure that the activities cause as little detriment and inconvenience, and do as little damage, as is practicable to the land and to anything on, or growing or living on the land;
- remain on the land only for such period as is reasonably necessary; and
- leave the land, as nearly as practicable, in the condition in which it was immediately before conducting the activities.[102]

Role of ARPANSA

3.97 Dr Prest submitted that a consequence of the Bill would be that ARPANSA would be both the regulator and the operator of the proposed national radioactive waste facility:

> ARPANSA will be the regulator of the facility if constructed. Licences for siting, construction and operation of the facility will need to be obtained from ARPANSA.
>
> However, ARPANSA is also likely to be the manager and operator of the facility. This potentially places ARPANSA in a conflict of roles position where it may be tempted to avoid difficult issues in the interests of smooth and uninterrupted day-to-day operation of the facility.[103]

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101 *Answer to question on notice*, received 30 March 2010, p. 2.

102 *Submission 226*, p. 7.

103 *Submission 229*, p. 6.

3.98 However, the Department strongly rejected this assertion:

> Under no circumstances can ARPANSA be the operator of the facility. ARPANSA has no authority under its legislation to manage and operate a facility, nor does the Bill create that authority.[104]

3.99 The committee notes that it is clear that ARPANSA will have regulatory oversight of the proposed national radioactive waste facility, and will not be the operator. The ARPANSA submission sets out the scope of its regulatory oversight of the facility, which will cover:

- preparation of a site for the facility;
- construction of the facility;
- operation, possession or control of the facility (ie licensing and regulating the operator); and
- decommissioning the facility.[105]

3.100 In relation to the operation and control of the facility, ARPANSA submitted:

> One key function…is to receive and consider applications for facility licence under the [ARPANS] Act…In particular, the [ARPANSA] CEO may receive an application for licence to prepare a site for, construct and operate a facility.[106]

Ongoing regulatory oversight of waste facility

3.101 The committee notes that ARPANSA's role as the regulator will extend for the entire life of the radioactive waste facility.

3.102 The Committee heard that the expected life of the waste facility would be approximately '300 or 200 years', based on the rate at which low-level radioactive waste returns to normal background radiation levels.[107]

3.103 ARPANSA advised the committee that its regulatory oversight function will be informed by its obligations under the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management, and by its commitment to 'keeping abreast of international best practice in radiation protection and nuclear safety'.[108] Further, the committee notes that ARPANSA's ongoing oversight of the operations of the radioactive waste facility will also be guided by the

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104 *Answer to question on notice*, received 12 April 2010, p. 3.

105 *Submission 175*, p. 1.

106 *Answer to question on notice*, received 30 March 2010, p. 1.

107 Department of Resources, Energy and Tourism, *Proof Committee Hansard*, 30 March 2010, p. 9.

108 *Answer to question on notice*, received 30 March 2010, p. 2.

various relevant international and national codes and guidelines, such as the Australian Code of Practice for the Safe Transport of Radioactive Material (2008).[109]

3.104 ARPANSA advised that, in 2006, it published a regulatory guidance document. This document outlines the broad principles – drawn from international guidance and national codes of practice – that would inform ARPANSA's regulatory functions at each stage of the development and in relation to ongoing operation of a national radioactive waste facility.[110]

Lack of an objects clause

3.105 The committee heard evidence from a range of submitters and witnesses in relation to the lack of an objects clause in the Bill. Dr Prest submitted:

> Surprisingly, the Bill does not contain any statutory objectives.
>
> At a minimum, the bill could include a statement similar to the objects of s.3 of the ARPANS Act: 'to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation'.[111]

3.106 In particular, Dr Prest felt it was 'remarkable' that the Bill did not contain a statutory objective of 'selection of the most suitable site on the Australian continent having regard to environmental, geological, geographical, and other scientific considerations, as well as infrastructure considerations'.[112] In his view, such an objective could be relevantly framed by Australia's obligations under the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Nuclear Waste Management, and by common principles in other environmental laws, notably ecologically sustainable development (ESD) and inter-generational equity.[113]

3.107 However, the Department expressed the view that the omission of an objects clause is not significant:

> Objects clauses are not necessary and are not routinely included in legislation – the majority of Acts do not have an objects clause.
>
> Objects clauses are sometimes included in legislation where the sponsors of the legislation consider that they may be useful to clarify the purpose of the legislation.

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109 ARPANSA website, Code of Practice for the Safe Transport of Radioactive Material (2008), http://www.arpansa.gov.au/Publications/codes/rps2.cfm, accessed 4/05/2010.

110 *Regulatory guidance for radioactive waste management facilities: near surface disposal facilities; and storage facilities*, December 2006, available at http://www.arpansa.gov.au/pubs/waste/rwmfacilities_reg_guid.pdf

111 *Submission 229*, p. 2.

112 *Submission 229*, p. 3.

113 *Submission 229*, p. 3.

> A decision to include an objects clause would be a drafting matter. Its presence (or absence) does not affect the scope of an Act.[114]

3.108 In relation to the lack of a statutory objective relating to site selection, the Department stated:

> …the Bill proposes that its purpose be achieved by selecting a site based on volunteerism by landowners, an approach which is fully in accordance with international best practice.[115]

3.109 Further, the Department noted that, according to the IAEA safety guide, *Siting of near-surface disposal facilities*:

> …it is not essential to locate the best possible site for a disposal facility. Rather, a proponent must demonstrate that the disposal system (site, facility design, waste packages, and institutional controls) complies with safety, technical and environmental requirements. Shortcomings in some site characteristics may be compensated for by engineered barriers, taking into consideration the entire disposal system's confinement and isolation capabilities.[116]

3.110 Similarly, the Department noted that the National Health and Medical Research Council code of practice for the near surface disposal of radioactive waste recognises that site selection involves a balancing of selection criteria and design factors:

> A potential site may not necessarily comply with all of these criteria. However, there should be compensating factors in the design of the facility to overcome any deficiency in the physical characteristics of the site.[117]

3.111 The Department also informed the committee that the Bill would ensure that the 'selected site will go through full environmental, heritage and nuclear regulatory processes'.[118]

Committee view

3.112 The committee notes that the history of attempts to establish a national radioactive waste management facility in Australia has been a difficult one. This is understandable, particularly given its often complex nature and the lack of understanding in relation to the issues involved. However, it must be recognised that the need for a national facility of this type in Australia is primarily driven by the

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114 *Answer to question on notice*, received 12 April 2010, p. 1.

115 *Answer to question on notice*, received 12 April 2010, p. 2.

116 *Answer to question on notice*, received 12 April 2010, p. 2.

117 *Answer to question on notice*, received 12 April 2010, p. 2.

118 *Answer to question on notice*, received 12 April 2010, p. 2.

production of low level and intermediate level wastes from beneficial sources, such as industrial applications and nuclear medicine.

3.113 The committee notes advice from the Department and ARPANSA that the establishment of a dedicated national facility for the management of radioactive waste will be in accordance with international best practice in relation to the management of such materials. While Australia produces relatively small amounts of low level and intermediate level radioactive waste annually, the storage of such materials in multiple sites is recognised as increasing potential risks, such as radioactive materials becoming 'orphaned'.

3.114 The committee is confident that a purpose-built facility, subject to appropriate regulation and oversight in relation to all facets of its operation, will represent a significantly better and safer approach to the current arrangements for the management of radioactive waste in Australia.

3.115 The committee acknowledges submissions from the Northern Territory Government and others on the extent to which the Bill preferences the Northern Territory as the location for a national radioactive waste facility. The Northern Territory Government, in particular, voiced its strong opposition to the preservation of the Muckaty Station nomination, and the restriction on the Commonwealth considering other sites in Australia unless and until it appears unlikely that a facility will be established on land nominated by a land council in the Northern Territory.

3.116 However, the committee notes that the Muckaty Station nomination, notwithstanding the issues in dispute, is a voluntary nomination. Its preservation was specifically requested by traditional owners through the relevant representative body, the NLC. In these respects, the preservation of the 2007 nomination is in keeping with the Bill's focus on voluntary processes, and with what might be called the legitimate or good faith expectations of the parties to the Muckaty Station nomination. The committee notes that the Bill's emphasis on volunteerism distinguishes it from the approach taken in the current Act, but acknowledges that appropriate consultative and regulatory processes will be needed to engender broader community understanding and acceptance of the facility, when a site is finally selected.

3.117 A major area of contention in the present inquiry, and in the inquiry by the ECA committee in 2008, is the extent to which all relevant traditional owners have been consulted over the nomination of Muckaty Station as a potential site for the waste facility. This issue also goes to the question of whether the consent to the Muckaty Station nomination was granted by traditional owners with the relevant authority to make decisions affecting, or to 'speak for', the land in question. The committee acknowledges the importance of these questions, and notes that the inquiry provided an opportunity for all stakeholders to put forward their views on these issues.

3.118 Despite this, the evidence received by the inquiry was not sufficient to allow the committee to reach a conclusion on these matters, which, fundamentally, must be determined by information which the committee does not have access to or is not

competent to assess. In particular, the committee did not have access to the deed of agreement relating to the Muckaty Station nomination, or to anthropological reports relating to the question of traditional ownership of that country.

3.119 Further, the committee does not consider that it is its role to determine whether the consultative processes around the Muckaty Station nomination were adequate or whether the approval of traditional land owners has been adequately sought according to legal and traditional requirements. These disputes revolve around issues to do with Indigenous cultural practice and its interaction with the *Aboriginal Land Rights (Northern Territory) Act 1976*. The committee believes that ultimately these matters must be resolved in a legal forum or through a mechanism that is competent to resolve such disputes between groups of traditional owners.

3.120 The committee notes that affected parties will have access to procedural fairness processes and to judicial review under the Bill, and there is provision for the establishment of regional consultative committees. Beyond the site at Muckaty Station, the committee notes that the Bill will remove from consideration as potential sites for the radioactive waste facility the three Defence sites, which are identified as potential sites in the current Act.

3.121 The committee acknowledges that the Bill proposes to introduce a discretion for the Minister to establish a regional consultative committee of relevant stakeholders following the selection of a site. The committee acknowledges the importance of ensuring that relevant stakeholders are given the opportunity to participate in consultative processes around decisions that affect their interests, particularly in relation to an issue as emotive as radioactive waste. Further, the committee considers that there would be few compelling reasons or circumstances not to establish such a committee, and that any decision not to establish a committee could create perceptions of a lack of transparency around the selection of a site. Given this, the committee's view is that the Minister should provide the opportunity for early consultations, and that the establishment of a regional consultative committee should be a mandatory requirement.

Recommendation 1

3.122 The committee recommends that, as soon as possible, the Minister for Resources, Energy and Tourism undertake consultations with all parties with an interest in, or who would be affected by, a decision to select the Muckaty Station site as the location for the national radioactive waste facility.

Recommendation 2

3.123 The committee recommends that proposed section 21 of the Bill be amended to make the establishment of a regional consultative committee mandatory, immediately following the selection of a site for the radioactive waste facility.

3.124 The committee also received a substantial amount of evidence relating to the issues of procedural fairness and judicial review, in relation to the preserved Muckaty Station nomination and to decisions to be made under the Bill more generally.

3.125 In relation to procedural fairness provisions applying to decisions to be made under the Bill, the committee heard significant criticisms that these requirements were insubstantial and likely to be ineffectual. While the committee accepts that the Bill introduces important procedural fairness requirements that are absent from the current Act, the committee notes concerns relating to the extent to which the Minister is required to consider comments received from interested or relevant parties in declaring a site, or in making a declaration to open the Australia-wide nomination process. Accordingly, the committee's view is that the Minister should be required to respond in writing to comments or submissions received as part of the procedural fairness processes proposed in the Bill. The committee considers that it is important that the Minister is required to demonstrate the extent to which he has taken into account the comments received under the Bill's procedural fairness provisions.

Recommendation 3

3.126 The committee recommends that proposed sections 9 and 17 of the Bill be amended to require the Minister to respond in writing to comments received in accordance with the Bill's procedural fairness requirements.

3.127 The committee also heard that the procedural fairness provisions of the Bill would be undermined by its 'no invalidity' clauses, which provide that a failure to comply with procedural requirements will not invalidate a decision. The committee notes that, given the highly contested and emotive nature of issues involving nuclear or radioactive materials, the Bill has sought to balance the introduction of procedural fairness against the need to have a process that is not able to be unduly frustrated by strategic or unmeritorious litigation. In this respect, it is important to note that 'no invalidity' clauses can ensure that major undertakings are not undone by a failure to adhere to mere formalities or minor aspects of process. Further, the committee notes that the approach taken in the Bill reflects the scheme of the *Aboriginal Land Rights (Northern Territory) Act 1976*. On the basis of these considerations, the committee agrees that the 'no invalidity' clauses are appropriate, taking into account the purpose and context of the Bill.

3.128 In relation to the issue of the application of the ADJR Act to the preserved Muckaty Station nomination and to decisions made under the Bill, the committee heard calls for the former to be made subject to the ADJR Act. However, as noted above, the committee is not convinced that the Government's undertaking, and the legitimate expectations of stakeholders in respect of the Muckaty nomination, should be frustrated by requiring the nomination to be accepted afresh, and/or retrospectively subject to review under the ADJR Act. The committee notes that, importantly, a decision to select Muckaty Station as the site for the facility will be subject to ADJR Act review according to the current terms of the Bill.

3.129 The committee notes the views of the Senate Standing Committee for the Scrutiny of Bills (the Scrutiny Committee) on the absolute discretion of the Minister in relation to the making of decisions under the Bill. The Scrutiny Committee expressed concern that this, in conjunction with the relatively limited requirements for procedural fairness, 'appears to make rights, liberties or obligations effectively dependant on non-reviewable decisions'.[119]

3.130 In addition, the Scrutiny Committee noted that the Explanatory Memorandum to the Bill is inadequate insofar as it 'fails to set out any justification for these measures'.[120] The committee agrees that the inclusion of a detailed justification for the approach taken in the Bill would inform and facilitate the Senate's deliberations on the Bill, as well as any future interpretation and application of its provisions.

Recommendation 4

3.131 The committee recommends that the Explanatory Memorandum be amended to include a detailed rationale for, and explanation of, the Minister's absolute discretion in relation to decision making under the Bill.

3.132 The committee considered numerous submissions on a range of legal issues. Many submitters and witnesses expressed concern about the consequences of the Bill overriding certain Commonwealth and state and territory legislation, insofar as this would result in regulatory gaps around the construction and operation of the proposed facility. However, the committee notes that the Bill only purports to override legislation that would otherwise regulate, hinder or prevent activities in relation to site selection, and to the construction and operation of the facility. Further, specified Commonwealth Acts will also apply to activities in relation to the selected site, notably the ARPANS Act and the EPBC Act. The committee also received substantial evidence on the regulatory role and processes of ARPANSA in relation to the proposed facility. The committee notes that these will be governed by relevant international and national codes, and based around substantial commitments to public consultation and international peer review.

3.133 Finally, the committee considered evidence concerning the lack of an objects clause in the Bill, particularly concerning specific objects going to the selection of a suitable site for the national radioactive waste facility. While the committee acknowledges the view of the Department that the inclusion of an objects clause is not strictly necessary, the committee notes that such clauses are relevant to judicial interpretation of legislation, insofar as an interpretation that would promote the purpose or object of an Act must be preferred to one that would not.[121] The committee

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119 Senate Standing Committee on the Scrutiny of Bills, *Alert Digest* (No. 3 of 2010), 10 March 2010, p. 10.

120 Senate Standing Committee on the Scrutiny of Bills, *Alert Digest* (No. 3 of 2010), 10 March 2010, p. 10.

121 *Acts Interpretation Act 1901* (Cth), section 15AA.

considers that the inclusion of objects clauses is a common feature of modern legislation, and that the inclusion of such a clause in the Bill could clarify the purposes underpinning the legislation. In stating this, however, the committee accepts that the particular form of an objects clause for the Bill involves drafting and policy considerations that are best addressed by the Government, and for this reason makes no comment on the specific form that such a clause should take.

Recommendation 5

3.134 The committee recommends that the Bill be amended to include an objects clause.

Recommendation 6

3.135 The committee recommends that, subject to consideration of the preceding recommendations, the Senate pass the Bill.

Senator Trish Crossin

Chair

Additional comments from Liberal Senators

1.1 Liberal Senators agree with the majority report's consideration of the evidence, and support the majority report's conclusions and recommendations. Liberal Senators understand the importance of establishing a national facility to ensure that Australia is in accordance with international best practice in relation to the management of radioactive waste materials.

ALP promises in relation to establishment of a national facility

1.2 However, Liberal Senators wish to make some additional comments in relation to the evidence of many submitters and witnesses who expressed the view that the Bill does not deliver on a number of promises made by the Australian Labor Party (ALP) concerning the establishment of a national radioactive waste facility, and particularly in relation to the Muckaty Station nomination.

1.3 These submitters and witnesses pointed to undertakings by the ALP – many of which were made while still in opposition – that, in government, it would seek the repeal of the current Act. Further, the ALP stated that it would put in place a new process for the selection of a site for the national radioactive waste facility, which would restore rights of procedural fairness, transparency and accountability.[1]

1.4 As noted in Chapter 1, prior to the election of the Rudd Labor Government in 2007, the ALP committed to the repeal of existing legislation as part of its National Platform. This pledge was highlighted in a joint press release by Senator the Hon. Kim Carr (the then Shadow Minister for Industry, Innovation, Science and Research), Northern Territory Senator Trish Crossin, and the Hon. Warren Snowden (the member for the electorate of Lingiari in the Northern Territory). The press release stated:

> Labor will legislate to restore transparency, accountability and procedural fairness including the right of access to appeal mechanisms in any decisions in relation the…[siting] of any nuclear waste facilities.
>
> Labor will ensure that any proposal for the siting of a nuclear waste facility on Aboriginal Land in the Northern Territory would adhere to the requirements that exist under the Aboriginal Land Rights, Northern Territory Act (ALRA).
>
> Labor will restore the balance and, pending contractual obligation, will not proceed with the establishment of a nuclear waste facility on or off Aboriginal land until the rights removed by the Howard government are restored and a proper and agreed site selection process is carried out.
>
> Labor will not arbitrarily impose a nuclear waste facility without agreement on any community, anywhere in Australia.[2]

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1 'Govt's waste dump fiasco, cont'd', 6 March 2007, p. 1.

2 'Govt's waste dump fiasco, cont'd', 6 March 2007, p. 1.

1.5 Liberal Senators note that a number of submitters and witnesses strongly questioned the extent to which the Bill honours the government's previous promises and undertakings concerning the establishment of a national facility and the Muckaty Station nomination. Particular concern was expressed in relation to the restoration of procedural fairness to the site selection process, and the transparency of the processes put in place by the Bill.

1.6 Liberal Senators acknowledge the evidence of submitters and witnesses in relation to this issue and note that the Labor Bill is in many ways consistent with the current Act, which was introduced by the Howard Government. This again confirms that Labor is willing to say one thing and then do another.

Impact on the Northern Territory

1.7 Liberal Senators also note the evidence of some submitters and witnesses regarding the Bill's impact on the Northern Territory.

1.8 The Northern Territory Government submitted that the establishment of a radioactive waste facility in the Northern Territory could impose a number of potential risks and costs.

1.9 The Northern Territory submission noted that the normal operation of the facility will have a 'significant impact on territory security and emergency management capacity and capabilities'. Further, a serious incident at, or transporting waste to, the facility could require the territory to provide additional resources in order to respond appropriately.[3]

1.10 In light of the potential impacts of locating the national radioactive waste facility in the Northern Territory, the Northern Territory Government expressed its concern that:

> …there may be significant financial implications arising should a decision be made to locate the facility in the Northern Territory. The Northern Territory should not be financially disadvantaged by a decision to locate a facility in the Northern Territory and appropriate financial arrangements would need to be implemented…[4]

Adequacy of regulatory oversight of national radioactive waste facility

1.11 Finally, Liberal Senators acknowledge the concerns of a number of stakeholders as to whether the legislative framework and regulatory oversight arrangements governing the construction and ongoing operation of the proposed facility are adequate. These concerns are particularly pertinent in light of the Bill's displacement of certain state and territory and Commonwealth Acts, and the expected

3 *Submission 147*, p. 4.

4 *Submission 147*, p. 5.

life span of the facility (approximately 300 years). Accordingly, Liberal Senators consider that the actual or perceived uncertainty as to the effectiveness of the legal and regulatory regimes that will govern a national facility should be addressed by an independent review, to be held at an appropriate time following the selection of a site. The focus of this review should be on the adequacy of the regulatory arrangements governing the facility, and ensuring that all facets of safety and security regulation reflect, and will continue to reflect, international best practice. As a minimum, the review body should contain representatives from relevant traditional owner and community groups, and representatives with relevant scientific, security, safety and technical expertise.

1.12 In recognition of the particular interests and concerns of the Northern Territory Government, as noted above, Liberal Senators also consider that an aspect of the review should be to consider the facility's impacts on the Northern Territory, in the event that the facility is located on a site in that territory.

Recommendation 1

1.13 That the Bill be amended to require that an independent review of the national radioactive waste facility and its operations be conducted within five years of the commencement of its construction; the review should consider the adequacy of the legal and regulatory regimes governing the safe and secure operation and effective management of the facility. A further independent review should be conducted within each ten years of the facility's operation.

Senator Guy Barnett **Senator Stephen Parry**

Deputy Chair

Senator Russell Trood

Dissenting Report by Australian Greens

Introduction

1.1 This deeply flawed Bill has been strongly criticised throughout this inquiry by the majority of submitters, and has no place on the Australian statute books. It is the view of the Australian Greens that it should not proceed.

1.2 Much of the evidence and the majority of submissions made to this inquiry registered deep disappointment that Resources Minister Martin Ferguson has reversed ALP policy and broken an explicit 2007 election promise on the most appropriate way to handle Australia's nuclear waste.

1.3 The Australian Greens share this disappointment because on nuclear waste policy our parties shared some common ground on the objective of: 'establish[ing] a consensual process of site selection, which looks to agreed scientific grounds for determining suitability and the centrality of community consultation and support.'[1]

1.4 The government has not delivered on the spirit or letter of this promise through this legislation. Instead it has set itself up for a divisive and entirely avoidable confrontation with a community unwilling to host the nation's radioactive waste. The government should take time to seriously consider the criticism and amendments offered by other parties, as well as senior members of its own party.

1.5 The legislation should be rejected on four grounds:

a) **An inadequate framework**, for managing radioactive waste, most notably the lack of procedural fairness or avenues for judicial review.

b) **Wholesale overriding of State and Territory laws**, suspension of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, exclusion of the Native Title Act 1993 and suspension of the Judicial Review Act is alarming and heavy handed.

c) **Failure to uphold international best practice** particularly in relation to securing social licence and community acceptance of a radioactive waste facility.

d) **Excessive discretionary power given to a Minister operating with an absolute minimum of transparency**, and the withholding of key documents.

1.6 After some introductory comments on the Committee's report, followed by a recent history of this legislation, this dissenting report will provide detail on these four grounds for rejecting the National Radioactive Waste Management Bill 2010.

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1 Statement by Shadow Science Minister, Senator Kim Carr, 27 September 2007.

The Committee's Report

1.7 Senate Committee process for reviewing legislation is a very important mechanism in the creation of Australian law because it provides an opportunity for experts and public opinion to register concern. Very often, Senate Committee processes are opportunities for legislation to be improved, particularly when the government actually wants legislation to be improved.

1.8 This Senate Committee report is imbalanced. Significant effort and investment was made in generating draft language suggestions and argumentation for the Committee to consider in order to address this imbalance. All but two typos and the deletion of 6 words were rejected with no explanation or opportunity for discussion, which is why I am appending my detailed contribution to this report.

The road to Muckaty

1.9 The government's handling of this legislation has been characterised by two years of delay, followed by extreme haste.

1.10 The ALP expressed outrage when Prime Minister John Howard rammed the much criticised Commonwealth Radioactive Waste Management Act (CRWMA) through the Senate in a matter of hours. At that time, the ALP called Howard's legislation 'extreme, arrogant, heavy-handed, draconian, sorry, sordid, extraordinary and profoundly shameful,' and promised to repeal it.

1.11 The ALP also opposed the Howard Government's 2006 amendments to the CRWMA which made it possible for a land council to nominate a site for a radioactive waste dump, which led directly to the nomination of a site on Muckaty Station, 120km north of Tennant Creek.

1.12 The CRWMA is now cited in legal textbooks as a case study of defective legislation.[2]

1.13 After winning Government, Prime Minister Kevin Rudd took the regrettable decision to transfer responsibility for radioactive waste management out of the science portfolio and into the resources portfolio, held by Minister Martin Ferguson. In the absence of the necessary background, expertise or willingness to follow through with the ALP's election commitments, the matter lapsed for several months.

1.14 In 2008, a government-dominated Senate Environment, Communications and the Arts Committee reported on an Australian Greens bill to repeal the CRWMA. It found that the CRWMA legislation was unfair and discriminatory, that consultations and decision making processes should reflect the interests of all clan groups in the

2 Australian Policy Handbook, cited in Mr. Dave Sweeney's evidence provided to the Committee hearing held 30 March 2010, p. 41.

immediate area, that a new foundation for building Australia's nuclear waste policy was needed, and that the legislation should be repealed.

1.15 The Senate Committee stated, 'The fact that the Muckaty nomination remains current is in itself a cause of community concern which overlays discussion about the future appropriate management of Australia's radioactive waste.'

1.16 After two years of stubborn silence and repeated calls on the government to uphold its election promise to repeal it, Minister Martin Ferguson eventually introduced virtual duplicate legislation which preserves the Muckaty nomination and introduces total Ministerial discretion over site selection.

1.17 This Bill was tabled in late February 2010, with the government proposing 11 working days in which to conduct an inquiry which would limit itself to legal and constitutional issues only.

1.18 After a demand from the Australian Greens for a credible deadline the Committee was eventually given more time to conduct this inquiry and issue this report.

1.19 It is extremely regrettable that the Committee refused to visit the proposed dump site, Tennant Creek or the Barkly region, despite the specific targeting of this area in the legislation.

The Muckaty Nomination

1.20 While its advocates frequently use the phrase 'international best practice', the government's approach fails many of these principles and basic standards, and ignores strong cautions arising from overseas experience.

1.21 One example is the UK Committee on Radioactive Waste Management's statement that, 'There is a growing recognition that it is not ethically acceptable for a society to impose a radioactive waste facility on an unwilling community.'

1.22 Instead, our government seeks to pass legislation that will allow precisely this to occur, to the people of the Barkly region north of Tennant Creek.

1.23 Muckaty Station exists on a floodplain and is an area of high seismic activity and great natural beauty. The ALP Member for Barkley, Gerry McCarthy offered to show the Committee:

> ...some of the best cattle country in the world, lands that are traversed by Indigenous and non-Indigenous people regularly, a site that has great water potential from aquifer sources, a site that has excellent grassland, a site that has an annual fire history and a site that, from 1998, has had a significant seismological history. It is a very habitable place. It is a very beautiful place.

1.24 When in Opposition, NT Senator Crossin stated that these lands in the Northern Territory are 'connected to indigenous people through their spirituality, so it's not exactly our land, I don't believe, to play around with.' She was right. The proposed dump site near Tennant Creek in the Northern Territory, the only option currently under consideration, is immediately adjacent to a sacred Milwayi men's site known as at Karakara.[3]

1.25 Senator Crossin also observed that the Howard government gave itself powers to, 'pretty much do what it wants and it seems like the interests of Aboriginal people here again are going to be denied.' Again, she was right.

1.26 A significant number of Aboriginal people with traditional obligations to the lands in question do not believe their views are being accurately represented by the statutory authority that has governance over their lands, the Northern Land Council. Their repeated and eloquent invitations for Minister Ferguson to visit their land have been ignored, over a period of several years. In one letter to the Minister which was subsequently tabled in Parliament, they state:

> …we want to see each other face to face where we can have a few questions to ask why you are not listening to the biggest forum of people… We want you to know that Traditional Owners are waiting to show you that the country means something to them. That is why we want you to come along and to see because we don't want that rubbish dump to be here in Muckaty area.

1.27 The people who signed this letter are from families listed in the 1997 Land Commissioners report that established the Muckaty Land Trust.

1.28 The 2008 Senate Inquiry into this matter elaborated at length on the importance of the Land Commissioners report because it granted title to five groups jointly, due the clearly interconnected ownership of the land and the overlapping dreaming shared by the Milwayi, Yapayapa, Ngarrka, Winrtiku and Ngapa people.

1.29 Stephen Leonard who made a submission for and on behalf of the Muckaty Traditional Owners emphasised the importance of this document:

> In 1997, after hearing years of tested evidence in a transparent and objective tribunal framework, the Aboriginal Land Commission found that there was clearly joint and interconnected 'ownership' between the five main groups in the Muckaty Land Trust where dreaming overlapped. This was a core reason why a single Land Trust was granted. Furthermore the Report clearly indicated that the nominated site was jointly 'owned' by at least 3 to 5 groups, the Milwayi, Yapayapa, Ngarrka and perhaps the Winrtiku and Ngapa.

1.30 The basis upon which the Muckaty Land Trust was established clearly recognised overlapping and group responsibilities for this country.

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3 Submission from Stephen Leonard, lawyer representing Muckaty Traditional Owners.

1.31 The current process isolates a number of people as the exclusive 'owners' in the white sense of having a title deed, imposing a framework which is convenient from a 'divide and rule' perspective but at odds with the way Aboriginal people approached land ownership under traditional law. In evidence to the committee, the Australian Public Health Association pointed out the health implications of this kind of divisive strategy.[4]

1.32 Consultants engaged by the NLC have produced a confidential anthropological report. The government refuses to table this document in the Senate, and is currently resisting producing it pursuant to my request under Freedom of Information laws. The Northern Land Council rests its entire case on this document but refuses to reveal it, even to other members of the Muckaty Land Trust whose country it concerns and whose family names are likely cited.

1.33 The Australian Greens do not support continued consideration of the Muckaty nomination, and believed it should be immediately withdrawn from the site selection process.

a) An inadequate framework

1.34 Considering this bill establishes the framework for the management of Australia's most dangerous industrial wastes for the next three hundred years, it is a breathtakingly flawed piece of legislation. The ANU's James Prest summarised the legislation accurately in his submission to the committee:

> …the re-instatement of procedural fairness and judicial review rights proposed by the Bill is so very tightly constrained and limited by other provisions to the extent that the re-instatement exercises threatens to become largely symbolic and illusory, if not misleading and deceptive.

1.35 **The Bill currently lacks an objects clause**, commonly included in legislation 'to guide decision makers in the event of statutory ambiguity and secondly, assisting courts and tribunals in the same situation if there is a problem with statutory ambiguity,' according to the evidence provided by ANU Lecturer Dr. James Prest. The Greens welcome the Committee has called for an objects clause to be inserted

1.36 **The Bill currently lacks detail about how this project will be financed over a period of several hundred year**s. The Bill as is, 'does not set out a framework for the future financial implications of running this facility, other than to essentially rely upon the Commonwealth to underwrite and provide appropriations.'[5]

1.37 **The Bill in no way restores procedural fairness to the process of selecting the Muckaty site**. Legal experts who provided evidence to the committee characterised this Bill as one that 'shifted the goalposts to essentially move the normal

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4 http://www.aph.gov.au/hansard/senate/commttee/S12917.pdf

5 Dr. Prest evidence given 30 March 2010, p 35.

apparatus of environmental law to one side and impose a special legislative regime for the approval of a particular project.' Such laws necessarily reduce or remove the common law concept that accords procedural fairness where an administrative decision affects rights, interests and legitimate expectations of affected persons.

1.38 Despite the words 'procedural fairness' being used repeatedly, the Bill does not reinstate procedural fairness, and the Muckaty nomination is insulated from it. As lawyers from the Northern Territory EDO stated:

> The claim that procedural fairness is reinstated is an intentional nonsense…

1.39 In the context of this uniquely defective piece of legislation, the term 'procedural fairness' is interpreted to mean the ability to make a submission to the Minister which he is then free to ignore, as the following exchange during the committee's hearings on 30 April established:

> **Senator TROOD**—So, if a decision were made to proceed with the Muckaty Station site, does this bill provide any more procedural fairness in relation to that site than was in the previous bill?
>
> **Mr Davoren**—I think it does in that the minister is obliged to accept submissions on decisions relating to that site. There was no such opportunity under the previous act.
>
> **Senator TROOD**—But he is not obliged to do anything other than receive those submissions, is he?
>
> **Mr Davoren**—And consider them.
>
> **Senator TROOD**—But that could be a two-minute exercise. He is not required to take evidence about them; he is not required to explore them. As your answers to Senator Ludlam made clear, he is not required to assess those submissions in relation to any particular criteria that this bill now provides that were not in the previous bill, is he?
>
> **Mr Davoren**—No, he is not.
>
> **Senator TROOD**—So the essence of the case for procedural fairness in relation to what is the preferred site is that the minister is required to receive submissions. Is that it?
>
> **Mr Davoren**—That is what I understand.

1.40 There are no rights for persons other than those 'with an interest in the land' to make a submission. It is likely that people will miss notification of the submission , given there is no requirement for any details to be provided in the notification that would identify what it is actually about in plain language. Forcing submissions to be made in writing is extremely prejudicial to Aboriginal people, and since there are no objectives or criteria in the Act, and nothing to guide the Minister's decision, it is impossible for a person to know what to make a submission about.

1.41 There is no right for a person to see information on which the Minister will base his decision (eg anthropological reports and evidence from Land Councils as to

compliance with the Aboriginal Land Rights Act), and in particular there is no right to see information adverse to a particular person's interests.

1.42 The Minister is free to literally make the decision on the flip of a coin if he chooses: nothing in this bill is designed to prevent the kind of entirely arbitrary decision making that seems to be Minister Ferguson's preferred mode of operation.

Judicial review

1.43 The claim that 'judicial review' is reinstated is misleading, as the Bill continues the intentional design feature of the 2005 Act in ensuring there are no grounds on which a judicial review can be based, and no access to information on which to base a review.

1.44 Access to judicial review depends in part on criteria against which to judge whether the Minister has upheld his or her obligations. As the committee established during the hearing on March 30:

> **Senator LUDLAM**—...My understanding of administrative law is that the minister's decision-making will be benchmarked against the criteria that are set, but you have just acknowledged that there are no criteria, so what form of review will be possible in that instance? On what grounds could you bring a claim that the minister did not do what he was supposed to do?
>
> **Mr Davoren**—There is the opportunity for people to give their views on the adequacy of the site.
>
> **Senator LUDLAM**—You cannot go into court with a view. If it is a judicial review you are seeking, you
>
> need to say the minister did not do what he should have done, but you have just said that there are not any criteria to guide him.
>
> **Mr Davoren**—No. The minister has to make a decision about whether to select the site and then proceed with its assessment.
>
> **Senator LUDLAM**—There is not really any process at all, is there, of actual site selection.

Recommendation 1

Procedural fairness and judicial review must be restored to the Muckaty Land Trust nomination.

b) Overriding State and Territory Laws

1.45 Legal experts have cautioned against the Commonwealth arbitrarily stripping powers from the States and Territories by suspending the application of all state and territory laws, environment protection and regulations, Aboriginal heritage laws, as well as health and safety standards. The Northern Territory Chief Minister and his government are firmly opposed, noting the obvious flaws in the Commonwealth's

strategy of suspending the operation of laws designed to safeguard public health, heritage and the environment.

1.46 Given there will be insufficient Commonwealth controls, personnel or infrastructure in any remote area dump, suspending the body of law designed to safeguard the public and the environment is simply dangerous and jettisons long established regulatory frameworks and standards for the protection of public health, the labour force, the environment, heritage, the receiving community and people along the transport corridor. It fails to take into consideration the fact that State or Territory emergency service personnel and infrastructure will be needed should an accident or incident arise, and that nuclear waste will be transported past the doors of many Australian homes, often on roads prone to accidents and extreme weather conditions, particularly flooding.

1.47 In their submission, lawyers from the Northern Territory EDO cautioned against excluding all laws which merely regulate or inhibit a radioactive waste dump, arguing that the Bill should be changed to ensure that State and Territory laws apply so as to assist to manage the environmental impacts and risks as thoroughly as possible. The EDO stressed the absurdity of suspending particularly any regulation of the transport of radioactive waste.

1.48 The EDO also pointed out the inadequacy of the Commonwealth laws that are being left in operation under this legislation – in particular the EPBC Act and the ARPANS Acts are frameworks that have *not* been designed to address the types of environmental, economic and social risks posed by a radioactive waste facility and associated activities it entails. The operation of the EPBC is flawed according to the Australian National Audit Office and the Hawke Review. It only relates to 'likely significant impacts on the environment' on a national scale, implying a reduced concern about local or regional impacts, economic of social impacts.

1.49 The ARPANS Act is based on the existence of complementary State and Territory regulation, and is not able to address issues not directly related to radioactivity. As the NT EDO stated:

> It is hypocritical to say that the ARPNS Act is a rigorous regime, when the core requirements of the ARPNS Act contained in the Code for Waste Disposal are for the site to be strategically selected from a range of options based on science – which has been effectively prevented by the 2010 Bill. This makes one of the main strengths of the ARPNS Act framework completely defunct.

1.50 The EDO noted the effect of the Commonwealths constitutional immunities and land acquisition to not limit the purported limits on the type or source of radioactive waste in the 2010 Bill's definition of facility'.

Recommendation 2

The Bill should be amended to ensure that State and Territory laws apply so as to assist to manage the environmental impacts and risks as thoroughly as possible.

c) International Best Practice

1.51 The Committee was provided a briefing in answer to questions on notice posed by Senator Feeney which described the international frameworks, best practice standards and details about the UK, Swedish and Hungarian case studies.

1.52 It is very difficult to miss the emphasis placed by the IAEA, by the OECD Nuclear Energy Agency, International Commission on Radiological Protection, EU, the UK and the Japanese on winning public confidence and obtaining social licence and community consent for the siting of radioactive waste facilities.

1.53 Australia is either a member of these institutions and treaties, or we have strong relationships with these countries considered to be like-minded on many fronts, which it makes it all the more regrettable that Australia is lagging behind on this aspect of international best practice.

1.54 The phrase 'international best practices' is used frequently by supporters of this legislation, but it appears to be very little understood. Certainly it was difficult to find an agency prepared to speak about the Australian government's understanding of internationally regarded principles on transparency, community participation, and stakeholder involvement in the decision making around nuclear waste.

1.55 ANSTO claimed, 'we are not experts on those matters…in the areas of public consultation on the matters that relate to this.' That is, despite ANSTO's CEO being ' charged with responsibility to take into account best international practice.'

1.56 **The UN Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Managem**ent – to which Australia is party – notes that 'public consultation on radioactive waste management strategies was not only a good practice to follow, but was also essential for the development of a successful and sustainable policy.'

1.57 **The IAEA** in 2007 noted examples of states which, having used undemocratic methods lacking public involvement and acceptance, have 'had to reconsider their programs'. One of the conclusions of the study was that 'reassessment can become necessary because past decisions were not reached through socially acceptable process.'[6]

6 IAEA, Factors Affecting Puablic and Political Acceptance for the Implementation of Geological Disposal (IAEA-TECDOC-1566) Vienna, October 2007.

1.58 According to the IAEA, there is a need for, 'a clear legal framework; a strong independent regulatory function; competent license or operators; clear lines of responsibility and accountability; public involvement in the decision making process; adequate financial provisions; clear, integrated, plans on how spent fuel and radioactive waste will be managed to ensure continued safety into the future, and as this could be for decades, to avoid creating a legacy situation that would impose undue burden on future generations…'[7]

1.59 **The OECD Nuclear Energy Agency** recognises that, 'the public, and especially the local public, are not willing to commit irreversibly to technical choices on which they have insufficient understanding and control'.

1.60 The Nuclear Energy Agency's report on the *Decommissioning and Dismantling of Nuclear Facilities, Status, Approaches, Challenges* stated, 'It is openly accepted that openness and transparency are essential for the winning of public approval…The local public is increasingly demanding to be involved in such planning and this may accelerate the introduction of concepts such as 'stepwise decision making'. The challenge for the future, therefore, will be satisfactory development of systems of consulting the public, and local communities in particular, and the creation of sources of information in which the public can have full confidence.'

1.61 **The European Union** requires member states to adhere to certain social principles in terms of site selection. The European Union *Inventory of Best Practice in the Decommissioning of Nuclear Installations*, 30 June 2006 concluded, 'Final waste repositories must be sited where local communities are willing to give their consent to these facilities for many generations. Experience has shown that, without this consent the project will sooner or later be cancelled, stopped or indefinitely delayed – one way or the other. Therefore siting must focus on three key issues: the safety of the repository system; the impact on local image and socio-economy, the importance of public acceptance and how it can be reached.'

1.62 **The UK Committee on Radioactive Waste Management** sets out a very detailed set of recommendations on how to proceed with the siting of a radioactive waste facility.

> *Recommendation 11:* Willingness to participate should be supported by the provision of community packages that are designed both to facilitate participation in the short term and to ensure that a radioactive waste facility is acceptable to the host community in the long term. Participation should be based on the expectation that the well-being of the community will be enhanced.

7 IAEA, The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management – Summary Report First Review Meeting of the Contracting Parties Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management 24 December 1997.

> *Recommendation 12*: Experience from the UK and abroad clearly demonstrates the failure 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.'

Recommendation 3

Establishment of Commission with its first task to conduct an inventory of international best practices to be used in the Australian context.

d) Total ministerial discretion

1.63 It is difficult to recall a piece of legislation that vests so much control in the hands of a single Minister. To be specific:

- the decision as to whether the Muckaty nomination proceeds is entirely in the hands of the Minister and no rights of appeal apply.
- no written criteria exist against which the Minister is to judge the suitability of the Muckaty site.
- No timeline exists on which the Minister is required to consider evidence or make a decision.
- no statement of reasons for the decision is required by the Minister there is no obligation to publish a list or summary of submissions received.

1.64 Sections 8 (1) and 13 (2) confer absolute discretion upon the minister to make key approvals and declarations without being required to take any criteria or other matters into account in approving a state nomination or selecting a site.

Recommendation 4

That the legislation be amended to provide clear guidelines, timelines, consultation obligations and reporting obligations on the Minister before the process of site assessment proceeds any further.

Scope of this inquiry

1.65 This inquiry sought opinions only on matters of legal and constitutional significance, intentionally sidelining the wide community interest in environmental, social, technical and ethical dimensions of the Government's policy.

1.66 This intentional narrowing of the terms of reference of the inquiry means that this report is silent on the most obvious question of all: why the Australian Government is so determined to place radioactive waste at a central 'remote' site.

1.67 The answer was provided most accurately by former Science Minister Brendan Nelson, who in 2005 asked 'why on earth can't people in the middle of nowhere have low level and intermediate level waste?' His successor in the Science portfolio, Julie Bishop, noted that all the sites on the Government's shortlist were 'some distance from any form of civilisation.'

1.68 It has been a profound shock to many supporters of the Australian Labor Party that coercive attempts to dump radioactive waste out in 'terra nullius' did not end with the election of the Rudd Government, but have in fact picked up exactly where the former Government left off. This government opened his first term with an apology. If this legislation is allowed to proceed, it will close his first term owing another apology to Aboriginal Australians.

1.69 The report of this committee has ignored the findings of the previous ECA committee report into the repeal of the CRWMA, which did take the time to investigate issues beyond a narrow constitutional focus. In evidence given in 2008, both ANSTO and the scientific peak body FASTS acknowledged that politics, not science or some vague notion of international best practice was driving the Government to dump waste in regional communities:

> **Mr McIntosh**—We cannot really comment upon that policy process. We understand, and I know that you say to leave politics aside, but politics frankly was the determining factor.
>
> ...
>
> **CHAIR**—So then why does Australia mainly look at remote sites?
>
> **Mr McIntosh**—I believe it is for political reasons, Senator.[8]
>
> …
>
> **Mr Smith**—It would appear to be that politically the pragmatics seem to be that that is the only viable site at the moment that I am aware of for a Commonwealth facility.

1.70 When questioned on the feasibility of returning the reprocessed spent fuel to the Lucas Heights facility in Sydney, ANSTO acknowledged that there were no technical barriers to doing so.

> **Senator LUDLAM**—....Can you turn to the question of the spent fuel or the reprocessed material that is to be returned from overseas. What would be the constraints on ANSTO should that material be returned to Lucas Heights rather than to a remote dump? What would you need to provide on-site?
>
> **Mr McIntosh**—We would have to build a facility similar in nature to the proposed store for the Commonwealth facility.

8 McINTOSH, Mr Steven, Senior Adviser, Government Liaison, Australian Nuclear Science and Technology Organisation.

Senator LUDLAM—Is there anything technical preventing that from occurring, leaving politics to one side?

Mr McIntosh—No.

Senator LUDLAM—Has ANSTO or any other agency ever done a full assessment of what that would look like?

Mr McIntosh—No. There is been a full assessment done of what it would look like at the Commonwealth site, and presumably it would look the same, but we have not done any planning for such an action on-site because we have been told by government—and at the end of the day we are directed by government—that this waste will not be returning to our site. Why would we waste resources planning for something we have been told will not happen?[9]

1.71 In additional comments to the 2008 report, I wrote the following:

The Greens do not believe that the nuclear industry – in Australia and around the world – has ever demonstrated that remote dumps are the most appropriate solution for the disposal of radioactive waste. At some time in the future this may become the case – if the industry is able to demonstrate, for example, that the waste can be safely contained for the long time periods in question.

However, for as long as the industry is unable to demonstrate that it has found a safe way of guaranteeing safe isolation of radioactive waste for tens of thousands of years, the Greens believe the material should remain on-site, close to the point of production, where it can be monitored, re-packaged as necessary, and subjected to as little transport and movement as possible.

This option essentially allows for the greatest future flexibility, and does not foreclose potential future management options which may arise as waste management technologies evolve (for example through synroc, nanotechnology, transmutation or some other technique).

This is not necessarily an argument for the long-term 'disposal' of this waste at the Lucas Heights facility either; ANSTO has acknowledged that the feasibility of this option has never been evaluated.

The essential point is that whatever process arises from the current debate over the repeal of the CRWMA, it should not simply repeat the mistakes of the past in proceeding to the foregone conclusion that a remote community will one day host a radioactive waste dump, and that it's simply a question of whom. A much broader field of options must be assessed, leaving open the possibility that in the light of a properly constituted deliberative process, the decision may be taken to forestall final 'disposal' until such time as the industry can prove such a facility will be safe.

9 McINTOSH, Mr Steven, Senior Adviser, Government Liaison, Australian Nuclear Science and Technology Organisation.

Nothing has happened since that time to change this view, apart from an obvious entrenchment of the Rudd Government's determination to repeat the divisive and failure-prone strategies of the past.

It is not scientific or engineering best practice lining up Muckaty station and its custodians for radioactive waste, but a more predatory political calculation. It is a strategy that could not have been better calibrated to spark determined opposition from people with nowhere else to go, who were not asked and did not consent to hosting this toxic intergenerational memorial site. Behind them has arisen a much broader coalition of Australians with a more fair-minded idea of what constitutes regional economic development. The Rudd Government will stand condemned for attempting this strategy of overruling a community when the basic outlines of a workable approach were laid out in the findings of the 2008 Senate inquiry.

There is still time for the Rudd Government to reconsider whether it wants the Muckaty campaign to end up in textbooks as a bruising example of 'world's worst practice' in radioactive waste management.

Senator Scott Ludlam

Australian Greens

APPENDIX 1 - Australian Greens

Timeline

In December 2005 the Howard Government passed the *Commonwealth Radioactive Waste Management Act* (CRWMA) through the Senate, overriding relevant NT legislation prohibiting radioactive waste dumping and identifying three sites for a proposed national waste dump. The legislation prevented the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 from having effect during investigation of potential dump sites, and it excluded the Native Title Act 1993 from operating at all. Procedural fairness was also extremely curtailed through the suspension of the Judicial Review Act.

In 2006 amendments were made to allow the act to override the Aboriginal Land Rights Act procedures requiring informed consent from all affected people and groups. These changes explicitly stated that site nominations from Land Councils are valid even in the absence of consultation with and consent from traditional owners.

On 6 March 2007, a media statement from Kim Carr, Trish Crossin and Warren Snowdon committed Federal Labor to:

- Legislate to restore transparency, accountability and procedural fairness including the right of access to appeal mechanisms in any decisions in relation the sighting of any nuclear waste facilities;
- Ensure that any proposal for the siting of a nuclear waste facility on Aboriginal Land in the Northern Territory would adhere to the requirements that exist under the Aboriginal Land Rights, Northern Territory Act (ALRA);
- Restore the balance and, pending contractual obligation, will not proceed with the establishment of a nuclear waste facility on or off Aboriginal land until the rights removed by the Howard government are restored and a proper and agreed site selection process is carried out; and
- Not arbitrarily impose a nuclear waste facility without agreement on any community, anywhere in Australia.

At the 45th ALP National Conference held 31 July – 2 August 2007 the ALP policy platform was agreed in Chapter 5 to:

- Repeal the Commonwealth Radioactive Waste Management Act 2005;
- Establish a process for identifying suitable sites that is scientific, transparent, accountable, fair and allows access to appeal mechanisms;
- Ensure full community consultation in radioactive waste decision-making processes; and
- Commit to international best practice scientific processes to underpin Australia's radioactive waste management, including transportation and storage.

In September 2007, under the amended process, Muckaty, 120 km north of Tennant Creek, was nominated by the Northern Land Council. The site was added to the short-list of potential sites, when former Science Minister Julie Bishop accepted the contentious nomination.

On 27 September 2007 then Shadow Science Minister, Senator Kim Carr, stated**:** 'Labor is committed to repealing the Commonwealth Radioactive Waste Management Act and establishing a consensual process of site selection. Labor's process will look to agreed scientific grounds for determining suitability. Community consultation and support will be central to our approach.'

December 2007 Minister Ferguson given portfolio carriage of this issue – no reason was given to explain the first ever shift by any federal government of this portfolio area from Science to Resources

February 2008, Estimates committee hearings reveal the Department of Resources is waiting for instructions from the Minister's office before proceeding.

In September 2008, Senator Ludlam tabled the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008 which was referred to an Inquiry of the Environment, Communication and the Arts Committee that received 103 submissions and held hearings in Canberra and Alice Springs.

October 2008, Estimates committee hearings reveal the Department of Resources is waiting for instructions from the Minister's office before proceeding.

In December 2008 the government dominated Committee reported exposing the extraordinarily coercive nature of the legislation, its deficiencies and consequences, the Committee has recommended that this discriminatory and flawed legislation be repealed in the first few Parliamentary sitting weeks of 2009. The Committee has also outlined an entirely new approach to finding a solution to this complex and long standing problem, a process founded on rigorous consultation, voluntary consent, environmental credibility, and which utilises best practice models tested internationally.

17 February 2009 the government votes against a motion in the Senate calling for repeal of the commonwealth Radioactive Waste Management Act and for implementation of the Senate Committee's recommendations and ALP policy.

12 May 2009 the government votes against a motion in the Senate calling for repeal of the commonwealth Radioactive Waste Management Act and for implementation of ALP policy.

2 June 2009 Estimates committee hearings reveal the Department of Resources is waiting for instructions from the Minister's office before proceeding.

January 2010 – Greens initiate Freedom of Information request for the secret anthropology report, Parsons Brinkerhoff reports and all correspondence and evidence of consultation relating to the Muckaty nomination

Feb 2010 Estimates committee hearings reveal the Department of Resources is waiting for instructions from the Minister's office before proceeding.

25 February 2010 – Government introduces National Radioactive Waste Management Bill, referred to Committee for reporting 30 April.

3 March 2010 – Senator Ludlam addresses public meeting in Tennant Creek with TOs, local business people, ALP reps and pastoralists; strong community opposition registered.

15 March 2010 – Greens order for production of documents forces government to hand over the technical surveys conducted by Parsons Brinkerhoff, including the final report submitted to the department on 18 March 2009 and several peer reviewed reports.

Easter 2010 – Greens attend Easter gathering in Tennant Creek, 300 strong demonstration, support legal consultation and challenge work begins.

12 April large presence at Darwin Senate Inquiry Hearing

APPENDIX 2 – Australian Greens

Efforts to address this imbalanced report

Senate Committee processes provide an important opportunity for legislation to be improved, and in many cases improvement does occur as a result of input from stakeholders and experts.

This is not one of those occasions. This report presents an unbalanced and closed-minded justification for a foregone conclusion. Significant effort and investment was made in generating draft language suggestions and argumentation for the Committee to consider in order to address this imbalance.

All but two typos and the deletion of 6 words were rejected with no explanation or opportunity for discussion. For this reason I am appending my detailed contribution to this report.

Recommendations:

Recommendation 3: The committee recommendations that proposed sections 9 and 17 of the Bill be amended to require the Minister ~~to respond in writing to~~ take into accounts comments received in accordance with the Bill's procedural fairness requirements.

Recommendation 4: The committee recommends that the ~~Explanatory Memorandum~~ Bill be amended to include ~~a detailed rationale for, and explanation of,~~ a set of objectives and criteria to guide the Minister's ~~absolute~~ discretion in relation to decision making under this Bill.

This recommendation is so weak as to be redundant. Instead of a justification for absolute Ministerial discretion in the Explanatory Memorandum, which is of extremely limited value to anyone, the Committee should argue for a simple set of objectives and measurable requirements to guide the Minister. Given minimal standards in legislation around significantly less toxic or volatile materials routinely elaborates such guidance and standards of accountability, it's absurd for the Committee to arrive at

Chapter 1

- The initial section identified as 'Purpose of the Bill' also combines some aspects of what goes often into Committee reports as a 'Referral to the Committee' section.

- I see some utility in separating out these two aspects and request that a Referral to the Committee section come first, incorporating paragraphs 1.22, 1.23 and 1.24 followed by a 'Purpose of the Bill' section that starts with current para 1.3 and adds the following additional paragraph containing factual purpose elements, drawn from the Bills Digest description of the Purpose of the Bill.

New paragraph suggestion: The Bill provides legislative authority to undertake the various activities associated with the proposed facility and overrides or restricts the application of all State, Territory laws that might hinder the facility's development and operation. The Bill will restore some review rights and procedural fairness rights to the decision making process for future site selection, with these rights not applying to a pre-existing nomination. Unlike the current Act, the Bill also allows for a site to be selected outside the Northern Territory.

Para 1.23 A citation here should be to the ALP National Platform, and given that it is referred to various times in the report, the full policy should be provided to readers either in the text or a footnote.

Insert text suggestion: 'Labor is committed to a responsible, mature and international best practice approach to radioactive waste management in Australia. Accordingly, a Federal Labor Government will:

· not proceed with the development of any of the current sites identified by the Howard Government in the Northern Territory, if no contracts have been entered into for those sites.

· repeal the Commonwealth Radioactive Waste Management Act 2005.

· establish a process for identifying suitable sites that is scientific, transparent, accountable, fair and allows access to appeal mechanisms. …

· ensure full community consultation in radioactive waste decision-making processes.

· commit to international best practice scientific processes to underpin Australia's radioactive waste management, including transportation and storage.

(ALP National Platform 2007, Chapter 5)

- 1.25 This is simply an insufficient recounting of a robust Senate Inquiry process, especially when this Committee is making recommendations that run quite counter to its findings. There should be a paragraph addressing that. After this para I request that the four recommendations be duplicated in full (text provided below) or at least a summary of the findings should be cited, such as

- **Suggested summary paragraph**' The government led Senate Environment, Communications and the Arts Committee found that Howard's legislation was unfair and discriminatory, that consultations and decision making processes should reflect the interests of all clan groups in the immediate area, that a new foundation for building Australia's nuclear waste policy was needed, and that Howards legislation should be repealed. The Senate Committee stated, 'The

fact that the Muckaty nomination remains current is in itself a cause of community concern which overlays discussion about the future appropriate management of Australia's radioactive waste.'

- para 3.19 please provide a figure for the total amount of pro forma letters received

Chapter 2

- 2.4 – 2.5. These two paragraphs do not adequately cover the subject heading. A fuller explanation of the implications is needed. My suggestion is that we take what is currently in brackets in 2.4 and make it into a stand alone sentence with the implications spelled out.

- **Suggested text:** This site was nominated and approved under the current Act in 2007 which did prevent the act of nomination itself, in addition to the Minister's decisions about such nominations, being subject to procedural fairness or legal challenge on the basis of absence of voluntary informed consent.

- 2.9 A fuller explanation of the implications is needed.

Suggested additional sentence for end of paragraph 2.9: However, he is not required to assess those submissions in relation to any particular criteria. (Quote from Senator Trood, Hansard p. 10)

Chapter 3

- 3.8 A lengthy but selective quote is taken from the Land Commissioner's report, but not the key finding of the Land Commissioner that the Land Trust must be held in common by 5 groups due to interweaving and overlapping associations and responsibilities for the land. I propose we insert:

- 'Another issue as to the primacy of responsibility arises because of the overlapping of dreaming tracks. This has resulted in a considerable number of shared sites and areas of land, to be found elsewhere in this chapter. Occurrences of this kind are common in semi-arid country in Central Australia. Different groups with different dreaming will often share sites because spiritual focus often coincides with the existence of the necessities of life, especially water. In the case of shared sites of land, no single group seeks to assert its pre-eminence over another. When witnesses were asked about who should speak for particular sites which are shared by more than one group, they would invariably respond by naming the senior people from each of the groups involved. As a result, it is possible to say that the members of each of the groups related to a shared site exercise primary spiritual responsibility for that site, with none attempting to exclude any other.'

One submitter provided a description that could also suffice: 'In 1997, after hearing years of tested evidence in a transparent and objective tribunal framework, the Aboriginal Land Commission found that there was clearly joint and interconnected 'ownership' between the five main groups in the Muckaty Land Trust where dreaming overlapped. This was a core reason why a single Land Trust was granted. Furthermore the Report clearly indicated that the nominated site was jointly 'owned' by at least 3 to 5 groups, the Milwayi, Yapayapa, Ngarrka and perhaps the Winrtiku and Ngapa. ' Stephen Leonard's submission.

- 3.18 **Suggested additional sentence after Mr. Levy's quote:** Other reasons explained as contributing to this situation is that the NLC have withheld access to any anthropological or other evidence, the NLC has not provided any legal advice or support to project critics, the Muckaty site was at this stage one of four under consideration (not the sole site as it is now), and because it is very difficult to take legal action pertaining to a hypothetical scenario.

- 3.36 – **Suggested additional sentence after the quote from the Department**: Critics of the Bill asserted that retention of the contested Muckaty nomination undermines the value of the Departments emphasis on voluntarism, which is not defined in the Bill.

- 3.48 – **Suggested additional sentence after the quote from the Department**: Critics of the Bill described the Departments definition of consultation as deeply flawed, asserting that consultation should commence before site nomination, not in a partial and modular fashion after the site has been nominated.

  Significant input was provided to the Committee from environmental law experts on the weaknesses of the EPBC, and the ARPANS Act, which should be cited.

  Suggested new paragraphs after conclusion of 3.48:

  Submissions received by the Committee questioned the ability of the EPBC and the ARPANS Act to fulfil all of the functions assigned. It was noted that the principle code the ARPANS Act adopts is the *Code of Practice for the Near-surface disposal of radioactive waters in Australia (1992)* is 18 years old, with many sections not applying to the selection of Muckaty regarding seismology, water , flora or fauna, cultural or historical significance, or consultation processes. There are no basic offences under the ARPNS Act for the release of radioactive material (i.e. pollution) into the environment which provides the absolute starting point of all pollution and contamination laws. The regulatory affect of this is that, to the extent that an activity or incident is not prohibited or controlled expressly in a license issued under that Act, it is allowed to occur.

The EPBC Act was also seen by legal experts to have diminished value in regulating radioactive waste as the Act only relates to 'likely significant impacts on the environment' on a national scale, making it unconcerned about local or regional impacts, economic and social impacts, and only concerned with identifiable likely impacts at time of conceptual design, not ongoing risk or compliance management. As highlighted by the Australian National audit Office (ANAO), there are significant shortfalls in the enforcement of the Act in its early years of operation. When ANAO conducted its first audit of the Act in 2002, there had been no prosecutions under the Act. When the ANAO conducted its second audit in 2006, there had only been one successful prosecution.

Concern was also noted regarding the findings of the 2007 Audit that found, 'Implementation of the compliance and enforcement strategy has been generally slow – particularly in regard to managing compliance with conditions on approval. The department did not have sufficient information to know whether conditions on the decision are generally met or not. There has been insufficient follow up on compliance by the department for those individual or organisations subject to the Act and little effective management of the information that has been provided. Consequently, the department has not been well positioned to know whether or not the conditions that are being placed on actions are efficient or effective. This is not consistent with good practice and does not encourage adherence to condition set by the Minister.

- 3.50 **Suggested additional sentence:** Critics of the Bill observed that a consultative committee should acknowledge the national dimension of the issue and noted federal Labor's commitment to a national approach, which should also address the legitimate concerns of transport corridor communities.

- 3.59 **Suggested additional sentence:** Critics of this Bill and the NLC's approach to site selection argued that perpetuating the Muckaty nomination perpetuates the worst oversights in a site selection process that lacked fairness. They noted that strong community interest and the unique nature of the nations first purpose built radioactive waste facility should raise, not lower, the bar on getting the policy framework right guided by international best practice.

- 3.62 **Suggested additional sentence:** Critics of this Bill expressed concern that this requirement was far too constrained, calling for the legislation to include benchmarks and criteria against which the Minister would be required to assess submissions.

- 3.72 **Suggested additional sentence:** Critics of this Bill argued that triggering the ARPANS and EPBC Acts after site selection comes at a late stage when project momentum towards an approval is well underway. They also noted that involving ARPANSA in the site nomination process would adhere to international best practice standards.

- 3.77 **Suggested additional sentence:** Critics of the Bill, including the Central Land Council argued that that 'no invalidity' clauses put more weight on the need for industry certainty than Traditional Owner consent.

- 3.84. **Suggested additional sentence**. Critics of the Bill argued that the site nomination process continues to be at odds with international best industry practice and a range of other instruments including Article 29 of the UN Declaration on the Rights of Indigenous Peoples.

- 3.92 **Suggested additional sentence:** The ACF called for, 'a comprehensive and publicly available matrix of risks posed by the siting, construction and operation of the Facility (including the transportation of hazardous waste) and an analysis of how the laws that are saved by the Bill (including controlled facility licence conditions issued under the ARPANS Act) will address those risks in the absence of the displaced laws. Without this, affected communities cannot have confidence that the risks are adequately addressed.'

- 3.95 International best practice was discussed by many submitters, and was the subject of a paper provided to the committee in response to a question on notice. Given how much the phrase is used, I propose that the Committee's handling of international best practice be much more detailed.

-

  Suggested text: The Committee was provided a briefing in answer to questions on notice posed by Senator Feeney which described the international frameworks, best practice standards and details about the UK, Swedish and Hungarian case studies.

  The UN Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management – to which Australia is party – notes that 'public consultation on radioactive waste management strategies was not only a good practice to follow, but was also an essential for the development of a successful and sustainable policy.'

  The IAEA in 2007 noted examples of states which, having used undemocratic methods lacking public involvement and acceptance, have 'had to reconsider their programs' one of the conclusions of the study was that 'reassessment can become necessary because past decisions were not reached through socially acceptable process'[10] According to the IAEA, there is a need for, 'a clear legal framework; a strong independent regulatory function; competent license or operators; clear lines of responsibility and accountability; public involvement in the decision making process; adequate financial provisions; clear, integrated, plans on how spent fuel and radioactive waste will be managed to ensure

10 IAEA, Factors Affecting Public and Political Acceptance for the Implementation of Geological Disposal (IAEA-TECDOC-1566) Vienna, October 2007.

continued safety into the future, and as this could be for decades, to avoid creating a legacy situation that would impose undue burden on future generations…'[11]

The OECD Nuclear Energy Agency recognises that, 'the public, and especially the local public, are not willing to commit irreversibly to technical choices on which they have insufficient understanding and control'. The Nuclear Energy Agency & OECD's report on the *Decommissioning and Dismantling of Nuclear Facilities, Status, Approaches, Challenges* stated, 'It is openly accepted that openness and transparency are essential for the winning of public approval…The local public is increasingly demanding to be involved in such planning and this may accelerate the introduction of concepts such as 'stepwise decision making'. The challenge for the future, therefore, will be satisfactory development of systems of consulting the public, and local communities in particular, and the creation of sources of information in which the public can have full confidence.'

The European Union requires member states to adhere to certain social principles in terms of site selection. The European Union *Inventory of Best Practice in the Decommissioning of Nuclear Installations*, 30 June 2006 concluded, 'Final waste repositories must be sited where local communities are willing to give their consent to these facilities for many generations. Experience has shown that, without this consent the project will sooner or later be cancelled, stopped or indefinitely delayed – one way or the other . Therefore siting must focus on three key issues: the safety of the repository system; the impact on local image and socio-economy, the importance of public acceptance and how it can be reached.'

The UK Committee on Radioactive Waste Management sets out a very detailed set of recommendations on how to proceed with the siting of a radioactive waste facility. Recommendation 11: Willingness to participate should be supported by the provision of community packages that are designed both to facilitate participation in the short term and to ensure that a radioactive waste facility is acceptable to the host community in the long term. Participation should be based on the expectation that the well-being of the community will be enhanced. Recommendation 12: Experience from the UK and abroad clearly demonstrates the failure 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

11 IAEA, The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management – Summary Report First Review Meeting of the Contracting Parties Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management 24 December 1997.

acceptable for a society to impose a radioactive waste facility on an unwilling community.'

- 3.108 **Suggested additional sentence**: Critics of the Bill emphasised the extent to which the nomination of Muckaty fails to meet key benchmarks recognised as international best practice, and that evidence of contestation indicates that the Muckaty nomination has achieved an insufficient degree of volunteerism.

- 3.109 **Suggested additional sentence**: Critics of the Bill emphasised that science should drive the process of the best possible site selection and be given more weight than the convenience of nominations.

- 3.112 **Suggested additional sentence after the second sentence:** The committee notes criticism of the current approach particularly with regards to limited transparency and secret documents that impedes an increased understanding by key stakeholders.

  It is necessary in this paragraph to qualify the proportions of the waste arising from 'beneficial sources' such as industrial applications and nuclear medicine, and that half of the total Commonwealth proportion of waste is 2,000 cubic metres of contaminated soil from the CSIRO.

  Suggested additional sentence: The Committee notes that critics of the Bill expressed a view that there is time to improve the policy architecture given that 95% of Australia's radioactive waste is currently in secured storage at two Commonwealth sites and the portions of waste to be received from Europe (35 cubic metres) is a small amount compared to 530 cubic metres at Lucas Heights and the CSIRO's 2,000 cubic metres of contaminated soil.

- 3.113 **Suggested sentence after first sentence**: The Committee notes criticism that these standards were not upheld for the Muckaty nomination.

  Suggested sentence at the conclusion of the paragraph: The committee notes that with the exception of historic legacy wastes, all other sites currently using and storing waste will continue to do so past the development of any national facility as the sources will continue to emanate from those hospitals and labs.

- 3.114: I believe the language in this paragraph is too strong given the relative brevity of this inquiry, and the acknowledged restrictions placed by the Committee on its terms of referenced focused almost exclusively on the legal and constitutional aspects of this Bill . Given these restrictions, on what basis does the committee assert this omnibus statement?

- 3.116 There should be reference in this paragraph to the fact that this finding is contrary to the findings of the Senate Committee Environment Communications Committee.

Suggested text to be inserted after the first sentence 'While the Senate Committee Environment Communications Committee found that, 'The fact that the Muckaty nomination remains current is in itself a cause of community concern which overlays discussion about the future appropriate management of Australia's radioactive waste', the Legal and Constitutional Committee notes that it's preservation was specifically requested…continue paragraph

- 3.117 Suggest striking much of the last sentence of this paragraph, The Committee acknowledges the importance of these questions. ~~and notes that the inquiry provided an opportunity for all stakeholders to put forward their views on these issues.~~

  While the Committee's process was longer than the government initially intended, the short time frame for submission was a limiting factor on all stakeholders putting forward their views. The Committee also had a restricted terms of reference to legal and constitutional issues, which was a limiting factor on all stakeholders putting forward their views. The Committee was repeatedly called to go to Tennant Creek and was unwilling to do so. Had it done so it would have helped to compensate for the fact that providing rights to Aboriginal people to be heard in written form only is prejudicial. The failure to visit Muckaty or hold a hearing in Tennant Creek reduces claims about the process engaging all stakeholders.

- 3.118 The committee notes that it did not have access to the deed of agreement relating to the Muckaty Station nomination, or to anthropological reports relating to the question of traditional ownership of that country.

- **Suggested additional sentence:** These documents have been requested through a Senate Order for the Production of Documents and an FOI request by a member of the Committee.

- Between 3.116 and 3.117 there is a leap of logic the Committee may wish to rectify in redrafting the logic of arguments presented. Given how key these documents are to establishing the extent to which the site nomination was genuinely voluntary, how then is it possible for the Committee to arrive at the conclusion expressed in 3.103 that this is a voluntary nomination? On what factual basis?

- 3.119 The committee should indicate that it intends to stand aside from these questions at an earlier stage of the report. It would be preferable and more honest for the content in 3.105 and 3.106 to appear in the 'Referral to the Committee' component of the report to flag the Committee approach is restricted to the legal components and that the Committee stands aside from making comment on Indigenous cultural practice and the adequacy consultation process.

- **If reference to legal challenge remains in this part of the report suggested additional sentence:** The committee notes that the lack of procedural fairness requirements for the existing Muckaty nomination makes any legal challenge difficult, compounded by the fact that any such challenge would be actively opposed rather than supported by the challenger's representative body, the NLC, whose strongly held position on the nomination of Muckaty makes any other 'competent' or meaningful resolution mechanism unlikely.

- 3.121. The Committee should reconsider the argumentation in defence of no invalidity clauses in this paragraph. The current language is patronising and fails to reflect the seriousness of this issue within the legal and constitutional terms of reference adopted by the Committee, or the procedural irregularities surrounding the Muckaty nomination, which amount to far more than ' a failure to adhere to mere formalities or minor aspects of process.'

- 3.128 **Suggested additional sentence:** The committee notes that recourse to an ADJR appeal after a siting decision has been made increases the burden on those opposed to the nomination than if they were able to challenge the site nomination itself.

- 3.132 **Suggested addition to second last sentence in the paragraph:** … The committee also received substantial evidence on the regulatory role and processes of ARPANSA in relation to the proposed facility, [add: although it notes objection to ARPANSA not being included at the site nomination stage].

Full text of the Recommendations of the 2008 Inquiry

Recommendation 1

Noting there is a current nomination put forward by some Ngapa traditional owners seeking to have a facility sited on their country, the committee recommends that with regard to this nomination the process from this point forward should comply with the *Code of Practice for the Near-Surface Disposal of Radioactive Waste in Australia*. The process should: Not rely on the suspension by the current Act of any of the procedural rights of other interested parties; and Not proceed any further until those pieces of Commonwealth legislation suspended from operation by the Commonwealth Radioactive Waste Management Act again apply.

Recommendation 2

The committee recommends that the Act be repealed and replaced with legislation founded on the principles outlined in Recommendation 3. The committee recommends that this legislation should be introduced into the Parliament in the Autumn 2009 sittings. A new policy on radioactive waste should provide a fair, transparent and

scientifically sound foundation on which Australia can conduct radioactive waste management. The committee believes that the evidence it has received, and international best practice, support several key features of this new policy approach.

Recommendation 3

The committee recommends that radioactive waste policy be placed on a new footing, relying on five key founding principles:

- It should be built on a foundation of trust through engagement with governments, stakeholders and communities;
- It should place an emphasis on voluntary engagement rather than coercion;
- It should be grounded in sound science and best technological and engineering practice;
- It should look to national solutions for national waste management challenges; and
- It should have a fair, equitable and transparent Commonwealth legislative foundation.

Recommendation 4

The committee recommends that legislation to replace the existing Act should have at least the following three key differences from the existing Act:

- It should not remove procedural rights and opportunities afforded to affected parties;
- It should not suspend the operation of relevant Commonwealth laws; and
- It should not discriminate against or target one jurisdiction over others.

APPENDIX 1

SUBMISSIONS RECEIVED

Submission Number	Submitter
1	Mr Paul Langley
2	Elaine Anderson
3	Nicola Apps
4	Anna Beilharz
5	Helene Bender
6	Christine Bennett
7	Sonia Bertram
8	Michel Beuchat
9	Max Bound
10	Joseph Brock
11	Tara Brooks
12	Angela Chambers
13	Rufus Coffield-Feith
14	Hugh Colman
15	Lisa Costello
16	Matthew Dowd
17	Louise Edmunds
18	Doug Everingham
19	Greer Allen
20	Marolyn Hamilton
21	Sarah Haynes

22	Rob Henderson-Hare
23	George Hess
24	Judy Horsfall
25	Judith Hudson
26	Heather Hunt
27	Lynda Hutchison
28	Tully McIntyre
29	Mr Tony Redmond
30	Mr Hal Duell
31	Jess Abrahams
32	Jacinda Jamieson
33	Mario Jaspers
34	Juanita Johnston
35	Sophie La Canna
36	Jo McRae
37	Meggs Meggs
38	Oscar Metcalfe
39	Anna Michalik
40	Angela Munro
41	Tracey Nixon
42	Natalie Paapaa
43	Calogero Panvino
44	Domenico Pecorari
	Supplementary Submission A
45	Alice Pepper
46	Miguel Pez

47	Di Powell
48	Garry Reed
49	Joy Ringrose
50	Ben Rose
51	Tiffany Schultz
52	Beth Shelley
53	Joanna Smartt
54	Shaaron Smith
55	Daniel Spencer
56	Margery Street
57	Ross Street
58	Margaret Walsh
59	Bill Sallur
60	Signe Westerberg
61	Noel Will
62	Ms Kristina Vine
63	Michael Brereton
64	Karen Buick
65	Keith Dawson
66	Ms Louise Flaherty
67	Kerin Fogarty
68	James Hitchcock
69	Mr Rodney Angelo
70	Jessica Jones
71	Brenda Pasamonte
72	Amy Quinton

73	Cotti Radonyi
74	Daniel Rosen
75	Sue Tilman
76	Benny Zable
77	Ms Marlene Hodder
78	Mr Gregory Parkin
79	Mrs Dawn McCarthy
80	Mr. Michael Beasley
81	Kat Taylor
82	Leonie Stubbs
83	Rev John Flaherty
84	Saskia Birkinshaw
85	Mr Gerry McCarthy MLA
86	Mrs Jocelyn Gray
87	Mr Grant Keady
88	Dr Lois Achimovich
89	Ms Kylie Benton-Connell
90	Ms Jayne Alexander
91	Ms Judy Whistler
92	Mr John Owen
93	Ms Klara Marosszeky
94	Ms Dawn Jecks
95	Ms Sara Hanggi
96	Ms Latoya Voogt
97	Ms Liz Denborough
98	Ms Margaret McHugh

99	Ms Honour Leigh
100	S Skutz
101	Mr Alex Pickburn
102	Ms Edwina Howell
103	P de Laney
104	Ms Jane Clark
105	Ms Lisa Hall
106	Ms Dora Aitken
107	Ms Liisa Rusanen
108	Mr Ian Sweeney
109	Mr Scott Foyster
110	Mr John Poppins
111	Ms Penny Campton
112	Daniel Jones
113	Miss Coral Franklin
114	Name Withheld
115	Dr Geoffrey Evans
116	Mr Edan Baxter
117	Mr Geoff Murrell
118	Ms Carol Sheehy
119	Medical Association for Prevention of War
120	Australian Nuclear Science and Technology Organisation
121	Ngoppon Together Inc
122	Sisters of St Joseph SA Reconciliation Circle
123	People for Nuclear Disarmament (WA)
124	Australian Student Environment Network

125	Friends of the Earth, Australia
126	Public Health Association of Australia
127	Social Responsibilities Committee Synod, Anglican Diocese of Melbourne
128	Arid Lands Environment Centre, Inc.
129	Australian Nuclear Association
130	Just Peace Queensland
131	Rev Elizabeth Warschauer
132	Chester Graham
133	Gerry Harant
134	Bob Madell
135	Neylan Aykut
136	Ms Ruth Greble
137	Ms Sarah Goner
138	Dr Patrick Emerton
139	CONFIDENTIAL
140	Ms Ktima Heathcote
141	Alice Springs Town Council
	Attachment A
142	Ms Christa Schwoebel
143	Friends of the Earth, Brisbane
144	No Waste Alliance
145	Environment Centre NT
146	Mr Greg Chapman and Diana Rickard
147	Northern Territory Government
	Attachment A

	Attachment B
	Attachment C
	Attachment D
148	Social Education and Research Concerning Humanity (SEARCH) Foundation
149	Ms Marisol Salinas
150	Ms Anna Barnes
151	Ms Helene Collard
152	Ms Miwa Tominaga
153	Amelia
154	Mr Benedict Coyne
155	Mr Jaden Harris
156	Mr Noel Wauchope
157	Ms Susanna Pearson
158	Ms Inge Arnold
159	Dr Cassi Plate
160	Ms Dee-Ann Kelly
161	Ms Nadine Williams
162	Ms Madeline Hudson
163	Ms Amanda Rowe
	Attachment A
164	Ms Michaela Stubbs
165	Mr Shane Drew
166	Ms Kate Holmes
167	Mr Hans-Peter Schnelboegl
168	Daniel Bourchier

169	Mr Dave Price
170	Ms Fiona Ninnes
171	Mr Simon Ashworth Wood
172	Mr Michael Mardel
173	Ms Kim Low
174	Kate Smith
175	Australian Radiation Protection and Nuclear Safety Agency
176	Women's International League for Peace and Freedom
177	Lynne Saville
178	Nick Rose
179	Julius Timmerman
180	Celia Bevan
181	Malinda Swain
182	Ken Rumsby
183	Beverly and John Inshaw
184	Susan McDougall
185	Henry Seccombe
186	Elizabeth Hamilton
187	Rosh Sharma
188	Brigitte Boell
189	Catherine Kippist
190	Joan McColl
191	Flavie Moloney
192	Ange Parrish
193	Anthony Amis
194	Roger Richards

195	Ruth Rosenhek
196	Lynn McLeavy
197	Tim Jones
198	Barrie Griffiths
199	Stacey Kendall
200	Robyn Hopkins
201	Vern Hardie
202	Irene Schardijn
203	James Courtney
204	Guy Stoddart
205	Mr Martyn Swain
206	Sharyn Munro
207	Lesley Barker
208	Peggy Whittington
209	John Darby
210	Kathy Teakle
211	Graham Green
212	Clae Hicking
213	Mary Cusack
214	Mr Pete Allsop
215	Mr Norm Keegel
216	Mr Mark Gilligan
217	Mr Peter Tuckey
218	Ms Karen Saffin
219	Ms Michelle Munz
220	Dr Laurence Cox

221	Pixie Barrett
222	Mr Steve Raffa
223	Mr Harry Creevey
224	Mr Ian Maguire
225	Australian Conservation Foundation
226	Department of Resources, Energy and Tourism
227	Central Land Council
228	Environmental Defender's Office (NT)
229	Dr James Prest
230	Northern Land Council
231	Mr Nick Pastalatzis
232	Ms Julie Matheson
233	Susan and Andrew Raff
234	Mr Kevin Shaw
235	Muckaty Traditional Owners
236	Queensland Government
237	Ms Tricia Gurry

Form Letters Received

Form letter received by 13 individuals, attachment includes form letter and list of submitters

Form letter received by 2 individuals, attachment includes form letter and list of submitters

Form letter received by 36 individuals, attachment includes form letter and list of submitters

Form letter received by 6 individuals, attachment includes form letter and list of submitters

TABLED DOCUMENTS

1. Document tabled at public hearing by Northern Land Council in Canberra on Tuesday, 30 March 2010.

2. Document tabled at public hearing by Australian Nuclear Science and Technology Organisation (ANSTO) in Canberra on Tuesday, 30 March 2010.

3. Documents tabled at public hearing by Arid Lands Environment Centre in Darwin on Tuesday, 12 April 2010.

ADDITIONAL INFORMATION RECEIVED

1. Answer to Question on Notice provided by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) on 30 March 2010.

2. Answers to Questions on Notice provided by the Department of Resources Energy and Tourism on 12 April 2010.

3. Answer to Question on Notice provided by the Arid Lands Environment Centre on 27 April 2010.

4. Answers to Questions on Notice provided by the Northern Land Council on 28 April 2010.

5. Answer to Question on Notice provided by the Northern Territory Government on 7 May 2010.

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Canberra, 30 March 2010

BUSH-BLANASI, Mr Samuel, Deputy Chairman, Northern Land Council

CHENOWETH, Mr Julian, General Counsel, Australian Conservation Foundation

DAVOREN, Mr Patrick, Manager, Radioactive Waste Management Section, Department of Resources, Energy and Tourism

DIMITROVSKI, Mr Lubi, Manager, Waste Operations, Australian Nuclear Science and Technology Organisation

EVANS, Ms Rhonda, Director, Regulatory and Policy Branch, Australian Radiation Protection and Nuclear Safety Agency

HILL, Mr Kim, Chief Executive Officer, Northern Land Council

LARSSON, Dr Carl-Magnus, Chief Executive Officer, Australian Radiation Protection and Nuclear Safety Agency

LAUDER, Ms Amy, Full Council Member and Ngapa Traditional Owner, Northern Land Council

LEVY, Mr Ron, Principal Legal Officer, Northern Land Council

McINTOSH, Mr Steven, Senior Policy Adviser, Australian Nuclear Science and Technology Organisation

MOORE, Adjunct Professor Michael, Chief Executive Officer, Public Health Association of Australia

PATERSON, Dr Adrian, Chief Executive Officer, Australian Nuclear Science and Technology Organisation

PREST, Dr James, Lecturer, Australian Centre for Environmental Law, Australian National University.

SWEENEY, Mr Dave, Nuclear Campaigner, Australian Conservation Foundation

VAZENIOS, Mr Nicholas, Assistant Manager, Department of Resources, Energy and Tourism

WUNUNGMURRA, Mr Wali, Chairman, Northern Land Council

Darwin, 12 April 2010

HENDERSON, The Hon. Paul Raymond, Chief Minister, Northern Territory Government

LANE, Mr Mark

McCARTHY, Mr Gerald, Member for Barkly, Northern Territory Parliament

NABURRULA, Ms Bunny

PHILLIPS, Ms Penelope

ROSS, Mr David, Director, Central Land Council

SAMBO, Mr Robert

SHIELDS, Mr Alastair, Executive Director Policy, Policy, Coordination and Implementation Divisions, Department of the Chief Minister, Northern Territory

STOKES, Ms Diane

WASLEY, Ms Natalie, Beyond Nuclear Initiative Project Coordinator, Arid Lands Environment Centre

WEEPERS, Ms Jayne, Senior Policy Officer, Central Land Council