

Women's International League for Peace and Freedom

Consultative Status with United Nations ECOSOC, UNCTAD and UNESCO

Special Consultative Relations with FAO, ILO and UNICEF

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Submission to Senate Inquiry on the National Radioactive Waste Management Bill 2010

This submission is made on behalf of the Australian Section of the Women's International League for Peace and Freedom henceforth referred to as WILPF. The National Radioactive Waste Management Bill 2010 will mostly be referred to as "the Bill".

We thank the Committee for the opportunity to put forward our views on this Bill.

Introduction

We understand that, in repealing the Commonwealth Radioactive Waste Management Act 2005 and introducing an amendment to the Administrative Decisions (Judicial Review) Act 1977, the present Bill enables a site to be nominated as a location for a national nuclear waste repository. We also understand that the Aboriginal settlement on Muckaty station approximately 120 kilometres from Tenant Creek in the Northern Territory is the preferred site for this proposed national nuclear waste repository. The selection of Muckaty is highly contested by many, including by many of those likely to be most closely affected, that is, by members of the Muckaty Aboriginal community.

Inadequate Timeframe

We believe that the Minister and the Government are acting with undue haste with the introduction of this Bill.

While we appreciate the additional week given by the Committee's Secretary to allow WILPF to make this submission, nevertheless we must register our regret that the Committee's Inquiry has been so rushed. The Bill was referred to the Committee on 25 February with public submissions closing on 15 March,

allowing less than a month to make public submissions. If the Minister genuinely wished to hear from the public on this issue, a greater window of opportunity would need to have been provided to allow members of the public to make submissions. Had an adequate amount of time been available to the public, it is likely that many more submissions would have been received by the Committee. Conversely, given the very tight timeframe, it appears that there is in actual fact little desire to avail the community sector of the opportunity to make submissions and thus to contribute to Government's decision on this issue.

In the circumstances, we are left with the question as to why this inquiry has been so rushed, and it is hard to avoid the conclusion that there is no genuine desire to engage the community sector. Indeed, the very tightness of the timeframe would suggest the Minister is more interested in managing what he perceives as a "difficult problem", apparently wishing it to be swept away before the effect of more widespread public debate and probing examination can be brought to bear.

In passing, let us note that, under the Howard Government, we were accustomed to this kind of rushed time frame, and we believed then that the frequently rushed time frames amounted to arrogance on the part of that Government.

As a final word on this point, it is our hope that such arrogance will not continue to characterise the Rudd Government's actions. In future, we urge the Committee to allow the public sufficient time to undertake the necessary research and to draft less rushed submissions.

Is a National Nuclear Waste Repository Necessary At All?

While we understand that the present inquiry does not specifically relate to the question of whether a national nuclear waste repository is in fact needed, we cannot exclude comment on this matter.

From information that has come to our organisation, we understand that the amount of waste produced by nuclear medicine is relatively small, and that most nuclear waste in Australia is derived from the reactor at Lucas Heights¹. Yet, in his public statements, the Minister has repeatedly argued for the need for a national nuclear waste repository on the grounds that medical radioactive waste material presently housed in hospitals around the country requires one national location. For instance, in an interview with Julia Christensen on ABC radio², the Minister said: "We need a repository. We need nuclear medicine. All Australians benefit from the outcome of establishing a low and medium level repository in Australia, because half a million Australians a year demand access to nuclear medicine."

¹ Radio interview by nuclear radiologist, Peter Karamoskos, ABC Radio Darwin, 5 March 2010

² Interview March 3rd 2010

In the face of these assertions from Minister Ferguson, nuclear radiologist Peter Karamoskos has explained that nuclear medicine does not in general produce waste that requires long-term storage. In this regard, Peter Karamoskos has said: "I think the Minister is probably a little bit confused about what he refers to as nuclear medicine.... nearly all nuclear medicine involves short-acting radio isotopes which usually decay on site, and then are disposed of into the normal environment. The amount of waste is commensurately small when compared to the vast bulk of the waste which will be stored at the repository, which is the nuclear fuel waste."

In short, the Lucas Heights nuclear reactor run by ANSTO is by far the biggest single source of Australian nuclear waste.

There is widespread agreement that safest procedure is to move nuclear waste as little as possible. Storage at the point of production is considered the safest option because, with nuclear experts readily at hand, the waste materials can be regularly monitored. The Australian Nuclear Science and Technology Organisation, the Australian Radiation Protection and Nuclear Safety Agency, the Australian Nuclear Association and even Minister Ferguson's own department have previously advised storing all nuclear waste *in situ* at Lucas Heights.

In light of these considerations, we conclude that the national waste repository is intended to house waste from the reactor at Lucas Heights, and WILPF remains firmly of the view that, given the many potential hazards³ in transporting nuclear waste, it is preferable to store such waste as close as possible to the site where it is produced.

Comparing the National Radioactive Waste Management Bill 2010 and the Commonwealth Radioactive Waste Management Act 2005

Since Part 3 - Section 11 of the new Bill effectively excludes any State or Territory laws that would hinder site selection, the National Radioactive Waste Management Bill 2010 (NRWM Bill) is very similar to the CRWMA 2005 in that it limits or overrides State and Territory laws that may "hinder" site selection.

Thus the new Bill overrides or excludes both the Aboriginal Land Rights Act and the Native Title Act 1993.

Although section 11 of the new Bill does state that only certain types of State and Territory laws are excluded, nevertheless the range of laws mentioned is "so wide that the Bill is likely to give almost complete coverage."⁴ Indeed, even if a State or Territory law fell outside the type listed in new subsection 11(1), the law could be excluded by regulation.

³ These hazards include the potential for spillage through accident or human error as well as the increased risk of terrorist intervention during transport.

⁴ From Angus Martyn's Digest on the National Radioactive Waste Management Bill 2010, 9 March 2010, no. 125, 2009

New section 12 in the Bill is the same as section 6 in the CRWMA 2005. Thus, in regard to any site selection, Part 3 - Section 12 of the new Bill would provide that two Commonwealth laws “have no effect”⁵, namely the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and the Environment Protection and Biodiversity Conservation Act 1999. Thus, by specifically overriding these laws, both Aboriginal interests and environmental interests may easily be excluded from protection under the new Bill.

It is hardly surprising that Section 13 eliminates property rights of an individual in the path of the waste repository or its access corridors.

This new Bill does make some changes in regard to consultation since its new section 21 allows for the establishment of a “regional consultative committee”. We note however the conditionality of the establishment of such a committee, as discretion lies completely with the Minister: the Minister **may** establish such a committee. In other words, if it does not suit the purposes of the Minister, he is at liberty not to establish such a committee.

Nomination of Muckaty and Adequate Expression of the Will of the Traditional Owners

We are aware that Part 2 section 4 of this Bill allows for nomination of potential sites on Northern Territory Aboriginal land by the relevant Land Council. We are also aware that the Northern Land Council has nominated a site on Muckaty station as a possible site for a national nuclear waste repository. Nevertheless, while many other traditional owners have expressed firm opposition to the use of the site at Muckaty for this purpose, the process of consultation remains flawed.

Traditional owners opposing the use of Muckaty for the purpose of a national nuclear waste repository feel that their concerns have not been given adequate weight. We refer in particular to letters sent to Minister Ferguson in May 2009 which were signed by twenty-five Ngapa traditional owners, and thirty-two traditional owners from other Muckaty groups in which the signatories expressed strong opposition to the use of their land for the purpose of a nuclear waste repository. These traditional owners have expressed a strong desire for their homeland to remain unscarred, undamaged and uncontaminated by nuclear waste.

Since Ministers⁶ other than Minister Ferguson have publicly recognised the opposition and distress of many Muckaty traditional owners relating to this issue, the Minister’s own position in continuing to override the clearly expressed will of so many traditional owners bespeaks a high degree of arrogance:

⁵ Again from Angus Matyn’s Digest on this Bill

⁶ Ministers such as Jenny Macklin, Kim Carr, Peter Garrett and Warren Snowdon.

"All along we have said we don't want this dump on our land but we have been ignored. Martin Ferguson has avoided us and ignored our letters but he knows very well how we feel. He has been arrogant and secretive and he thinks he has gotten away with his plan but in fact he has a big fight on his hands."⁷

Since it is apparent that two very different views are being expressed by the Aboriginal community in the designated area, it is most regrettable that the Minister appears to be depending on the old coloniser's tactic of "divide and rule".

We remain convinced that any site selection should be based firmly in the principle of voluntarism, and that the power of the Minister ought to be curtailed in line with this principle. In ceding discretion to the Minister in the way it does, the present Bill delivers an inordinate amount of power to the Minister. We therefore regard the Bill as "top-heavy" and urge that it be rejected on these grounds.

In addition, although we remain convinced that a national nuclear waste repository is unnecessary, if any such site were to proceed, then it is our view that a potential nuclear waste repository site selection process ought to be based on scientific and environmental siting criteria. When the Federal Bureau of Resource Sciences conducted a national repository site selection study in the 1990s, WILPF understands that the Muckaty area did not even make the short-list as a "suitable" site.

We also note the experience of the Howard Government in 2003 when the South Australian State Government rejected the Federal Government's proposal for a nuclear waste repository in that state. Rejection of the nuclear waste repository by the State's politicians was warmly and vigorously supported by South Australians. This experience of the Howard Government would tend to lead to the conclusion that overriding State and Territory laws should be avoided if governments wish to maintain trust with members of the public.

In summary, we believe Muckaty is being proposed as the site for a national nuclear waste repository at this time because it is seen as easy to override the local Aboriginal communities and the Northern Territory Government by the Federal Government's exercise of discretionary powers that are unfair and unjust.

Australian Labor Party's Broken Election Promise

Before concluding, we must register our disquiet that, in proceeding down this path, the Rudd Government appears to have broken a firm pre-election promise on this matter.⁸

⁷ From a letter by Muckaty Traditional Owner, Dianne Stokes

⁸ We also draw to the Committee's attention the unanimous resolution of the Northern Territory

Because we understood the ALP to have undertaken to ensure that the siting of any nuclear waste repository on Aboriginal land would adhere to the requirements of the Aboriginal Land Rights Act, the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, and the Native Title Act 1993, we regard Labor's introduction of this Bill as a broken promise.

Conclusion

We believe that the process of site selection and related matters should comply with the laws of the States and Territories. While the present Bill may appear to restore some procedural fairness and judicial review rights to the process, the "consultation" provided under this Bill is at best cosmetic in nature since the Ministerial discretion provided under the Bill is paramount. WILPF believes that no Minister should have the power to override such important legal protective mechanisms.

The process of site selection envisaged in this Bill as well as the rushed nature of the present inquiry lead us to believe that the Minister is conducting an exercise in political calculation and cynicism, and WILPF strongly urges the rejection of this Bill.

We thank the Committee once again for the opportunity to put forward our views on this important matter.

Submission prepared by Ruth Russell and Cathy Picone

For WILPF (Australian Section) March 2010

Australian Labor Party Conference, April 2008 which called on the Federal Government to exclude Muckaty on the grounds that the nomination "was not made with the full and informed consent of all traditional owners and affected people and as such does not comply with the Aboriginal Land Rights Act. "