

**Submission to:
Senate Inquiry into Commonwealth Radioactive Waste Management
(Repeal and Consequential Amendment) Bill 2008**

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I write to the Senate Inquiry into Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008 with deep and grave concern for the pending repeal of the Commonwealth Radioactive Waste Management Act 2005 (CRWMA) which legislates serious violations of human rights and Indigenous rights.

The provision within the CRWMA that removes mandatory consultation and/or consent from Traditional Owners, affected communities and the NT Government directly breaches Australia's international human rights obligations under both the **International Covenant on Civil and Political Rights (ICCPR)** and **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**.

As stated in Tom Calma's Social Justice Report 2007 (p.241), Human Rights and Equal Opportunity Commission:

- ***Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives, including participation and partnership in program planning, development, implementation and evaluation.***
- ***ICERD has been interpreted as requiring that governments ensure that members of Indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent (Committee on the Elimination of All Forms of Discrimination, General Comment XXIII on the rights of indigenous peoples, 1997, in HRI/GEN/1/Rev.8, para 4(d), p256)***
- ...
- ***The right to development encompasses the following issues for Indigenous peoples:***
 - ***requires free and meaningful participation by affected indigenous people in defining the objectives of development and the methods used to achieve these objectives;***
 - ***is directed towards the goal of realizing the economic, social, and cultural rights of indigenous people;***
 - ***facilitates the enjoyment of indigenous peoples' cultural identity, including through respects the economic, social and political systems through which indigenous decision-making occurs; and***
 - ***is self-determined development, so that peoples are entitled to participate in the design and implementation of development policies to ensure that the form of development proposed on their land meets their own objectives and is appropriate to their cultural values.***
- ***Rights to participate have also begun to find expression in the policies of the UN agencies and the decision making of UN treaty bodies as the principle of free, prior and informed consent. Procedurally, this requires processes that allow and support meaningful and authoritative choices by indigenous peoples about their development paths, doing so on the basis of accurate and accessible information, and following consultation undertaken in good faith, and on the basis of full and equitable participation.***

The CRWMA explicitly removes all rights to “procedural fairness” and removes rights of appeal under the Administrative Decisions (Judicial Review) Act. This also breaches Australia’s international human rights obligations under the **International Covenant on Civil and Political Rights**:

Article 2

3. *Each State Party to the present Covenant undertakes:*

1. *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his rights thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
2. *To ensure that the competent authorities shall enforce such remedies when granted.*

Furthermore, the CRWMA prevents the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 from having effect during investigation of potential dump sites, and excludes the Native Title Act 1993 from operating at all.

It is the responsibility of this Senate Inquiry to advocate for the immediate repeal of CRWMA and the restoration of human rights and specifically Indigenous rights (pursuant to the UN Declaration on Rights for Indigenous People) as the highest priorities in any future legislation development.

It is the responsibility of this Senate Inquiry to insist that the Federal Government honour its human rights commitments and engage in genuine consultation over time with Traditional Owners, in which their concerns and demands are given absolute priority and action when making decisions for their Sovereign Aboriginal Lands.

In the absence of the above, **fierce public campaigns**, with direction from Traditional Owners, will be launched against the Federal Government to expose such extreme human rights and Indigenous rights abuses. Such campaigns will be launched nationally and internationally and will shame the Rudd Government into compliance with Australia’s international human rights obligations and lobby for the implementation of the UN Declaration on Rights for Indigenous Peoples to protect Australia’s sovereign peoples and lands from such aggressive legislation and human rights abuses.

Of even further concern is that none of the sites currently under assessment for the dump were short-listed in the national study to find a national radioactive dump site (completed in 1997). This indicates that **none of the nominated sites are scientifically appropriate for the radioactive waste depository and must be abandoned immediately to preserve the safety of current and future human populations and environments** surrounding those sites.

I trust that the individuals conducting this Senate Inquiry will have the **integrity** and the intelligence to transcend political pressure and not only ensure that human rights and Indigenous rights are central priorities in Government process but also give absolute precedence to the scientific evidence which deems all four nominated sites absolutely unsuitable for a radioactive waste depository. I trust that the individuals conducting this Senate Inquiry **WILL REPEAL** the Commonwealth Radioactive Waste Management Act 2005.

Olivia Nigro