31 October 2008

ATTENTION: Senate Committee on Environment Communications and the Arts

RE: Commonwealth Radioactive Waste Management (Repeal and Consequential Ammendments) Bill 2008

The No Waste Alliance is a community group of concerned individuals and representatives of stakeholder organisations. The Alliance formed in response to Dr Brendan Nelson's announcement in July 2005 that, contrary to federal government promises during the previous federal and NT elections, the NT has been targeted for a radioactive waste dump. The No Waste Alliance aims to give Territorians information and options for action in response to the unwanted long-lived pollution presented by the nuclear industry.

The No Waste Alliance appreciates this opportunity to object to support the repeal of undemocratic CRWM Act, and to encourage a responsible approach to dealing with Australia's burden of nuclear waste, that is rooted in foundations of scientific assessment and social licence.

The No Waste Alliance actively opposed the Act and its subsequent ammendments. Those formal objections are attached as appendices.

Recognising the need to rediscover some democracy in this area, it is significant to note that repeal of the Act is an expectation from the change of government delivered at the last election. It is national ALP policy to repeal the Act, NT Labor's annual conference this year passed a resolution in opposition to the previous federal government's dump process, and the NT Government has continued to strongly oppose the use of the powers in the Act to impose nuclear waste on vulnerable NT communities.

The CRWM Act deliberately sought to bypass principles of consultation, previous scientific and technical investigations, NT law, relevant federal laws for environment and heritage protection, standard avenues for legal redress , the hard earned rights of Traditional Owners as enshrined in the Aborginal Land Rights Act (NT) and indeed any legal or procedural impediment to the former government's plans to dump nuclear waste in the NT.

The No Waste Alliance maintains that such an approach can never arrive at a decision that will stand the test of time.

The No Waste Alliance urges the committee to consider international best practice in the processes that define Australia's decision making on these important issues.

It would be grossly inappropriate for the new government to repeal the old law, but pursue plans for a nuclear dump at one of the sites identified through that process. Recent statements by the

Resources minister suggest that this government remains interested in the site evaluation reports commissioned by the previous government. To repeal the Act, but retain the bad outcomes it has produced, would be a perversion of the new government's election promise. Rather than continuing to pursue any of the three sites scheduled in the initial Act, or the nomination by the NLC of Muckaty Station, as allowed for by the Act and further shored up by the subsequent Amendments, we call upon the committee to recommend that the government begin anew a set of decision making tools and processes regarding Australian nuclear waste that :

- gives due consideration to the primary imperative of waste minimisation;
- commits to appropriate consideration of scientific and technical criteria; and
- recognises the need for full community engagement in order to earn public licence

As a first step in the right direction, we urge the committee to come to the Territory in the course of this inquiry and meet with Traditional Owners and other community members from the sites impacted by this legislation.

Australia does have a small but significant legacy of long-lived nucler waste. We need to carefully make some sensible decisions about how will prepare future generations to manage that waste. But these are decisions that need to last as long as the waste itself : beyond the forseeable future. These decisions must be well grounded in science, and well accepted by impacted comunities, if they are to have a hope at longevity. There is no 'solution' to nuclear waste, only decisions of varying utility. It is in the interests of working towartds a genuine useful decision that the No Waste Alliance recommends not only the repeal of the CRWM Act, but a clean break away from the former government's failed approach to this important decision making.

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Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Commonwealth Radioactive Waste Management Bill 2005

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Friday 18 November, 2005

The Chair : Senator Judith Troeth
Senate Employment, Workplace Relations and Education Committee

Darwin's No Waste Alliance is a community group of concerned individuals and representatives of stakeholder organisations. The Alliance formed in response to Dr Brendan Nelson's announcement in July 2005 that, contrary to federal government promises during the previous federal and NT elections, the NT has been targeted for a radioactive waste dump. The No Waste Alliance aims to give Territorians information and options for action in response to the unwanted long-lived pollution presented by the nuclear industry.

The No Waste Alliance wholeheartedly and utterly rejects the proposed Commonwealth Radioactive Waste Management Bill. We call upon this committee to report that the Bill is wildly undemocratic, and as such is unacceptable to Territorians and Australians alike. We call upon the senate to reject this Bill outright.

This Bill offends the authority of the elected government and the laws of the Northern Territory. It offends Territorians, and it offends the very ethic of responsible waste management that the federal government so cynically pays lip-service to.

In fact the very objective of the Bill is offensive. The determination of the federal government to coerce the people of the Northern Territory into hosting the nation's growing stockpile of radioactive wastes has been characterised by an antipathy to information, let alone consultation or, dare we suggest, participation at any level. DEST provided Territorians with a presentation, which graced Alice Springs (twice), Darwin and Katherine, and became known in the media as 'Scullion's Circus'. Beyond this, the minister and his federal coalition colleagues have been at pains to assure Territorians that our views are irrelevant, our concerns will not be accounted for and our voices will not be heard.

Now, with this Bill, Dr Nelson adds to this list the insult that our laws will be subverted. Regardless of the detail of this Bill, any proposal for an Act which would seek blanket powers to force such an unwanted imposition upon any community should be rejected.

This assessment is endorsed upon inspection of the Bill, which has been criticised by the Senate Scrutiny of Bills Committee for multiple trespasses on personal rights and liberties; granting absolute, non-reviewable ministerial discretion; and abrogation of procedural fairness. The Bill also features numerous attempts to wipe out specific standing legislation of the States, Territories and Commonwealth; repeated attempts to override case law and common law; a claim to exemption form the Administrative Decisions (Judicial Review) Act 1977; and extraordinarily unbounded executive powers to prescribe undefined (even as-yet non-existent) State, Territory and Federal laws ‘required or permitted … necessary or convenient’ for this Bill.

Such broad reach, across all jurisdictions, from existing laws designed to protect the environment to any future laws which get in the way of the Dump, is both notable and exceptional. Whether designed to give the Minister unbridled authority to control radioactive materials as he or she sees fit, or whether just presented in an attempt to frighten Territorians into submission, this Bill is an anti-democratic abuse of power that makes a mockery of this government's repeated pledges not to abuse the recently attained slim upper-house majority.

process

This senate inquiry has been embarked upon and conducted with the same sledge-hammer diplomacy that has characterised the issue so far. By setting an uncommonly and oppressively brief period for the inquiry, failing to visit the impacted regions, and only allocating one day for hearings, this inquiry falls far short of common standards and best practice. So far, in fact, as to virtually nullify the democratic credentials that this exercise should carry. With this assessment, the inquiry looks like an inappropriately brief fig-leaf that won't quite manage to hide Senator Scullion's shame, if he fails to vote against this Bill.

There has been no rational explanation for the extraordinary haste with which this exercise is being conducted. It seems that another month, or two, would not upset development timelines for the Dump or the Lucas Heights projects. That extra time, however, would allow more individuals to engage with the process, and would allow for more information to be compiled for the resulting report. It appears, then, that the constrictive schedule is driven not by any pressing deadlines, but rather by a desire to limit democratic access to the senate's process.

This evaluation is in accord with the spirit in which the Dump has been presented to Territorians. Dr Brendan Nelson, when announcing the Dump last July, told Territorians to take a 'reality check', saying 'there is absolutely no room for mucking about now.' Scullion's Circus (the DEST travelling show) clearly communicated that there was to be no consultation, just an information pack : the department representatives declined to take feedback to their minister.

More significantly, the undemocratic nature of this inquiry reflects the anti-democratic nature of the Bill itself, which aims to sweep aside hard won and democratically endorsed protection of our shared environment, and recognition of Indigenous rights. The Bill also seeks to subvert the authority of elected State and Territory laws and governments, to force upon us a Dump which federal politicians repeatedly promised would not be coming to the Territory.

In light of this restrictive schedule, which has severely limited this submission, the No Waste Alliance would value the opportunity to present further oral submissions to the inquiry. It is therefore a further source of frustration that the senate committee will not be visiting the impacted regions, let alone the major cities, of the Northern Territory. This restricts not only access to participation in, but also more broadly observation of the process. All this aside, the No Waste Alliance remains eager to participate in hearings of the inquiry, and will seize any further

opportunity to contribute to the discussion and assessment of the Bill.

indigenous territorians

The Bill presents a particular assault on legislation designed to protect the values, rights and interests of Indigenous Territorians. There is a general claim to nullify any State and Territory law or provision which relates to the significance of land in the traditions of Indigenous people, and explicit reference to powers to extinguish any native title rights that may get in the way of the Dump. The Bill explicitly seeks to eliminate any protection in the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and the Native Title Act 1993 that might regulate, hinder or prevent the site selection, construction and operation of the Dump.

These legal protections particularly serve many of the community stakeholders who live in the neighbourhoods of the scheduled sites. These laws and legal provisions are the hard-won result of prolonged and often painful struggle, and are particularly valued by the people of the Northern Territory. Territorians as a whole prize the wealth of cultural heritage and values that live on in our large Indigenous population. We recognise the significance of the many intact cultural groups who maintain strong ties to country in the NT. We highly value the assets embodied in the living culture and traditional values of our Indigenous populations.

None of the significance of this broad assault on the legal protection, recognition and rights of Indigenous people, land, culture and values will be missed by Territorians. These clear and explicit elements of the Bill underscore the long held recognition that traditional Australian rights and values are incompatible with, and at times may be subservient to, the nuclear industry.

environmental protection

An alarming feature of this Bill is the explicit and specific attack on our established legal tools and frameworks for environmental protection. In particular, section 6(1)(b) seeks to eliminate any protection in the EPBC Act 1999 that might obstruct or impede the siting of the Dump.

This fundamental legislation specifically addresses ‘nuclear actions’, with detailed reference to controlling the establishment of a facility for the storage or disposal of radioactive waste. These actions are held by the Act to be ‘matters of national environmental significance’. And for good reason : radioactive materials present tangible risks to the environment, human health and indeed all life. The long-lived radioactive wastes from reprocessed nuclear fuels, which we are told are destined for a Dump in the NT, are highly dangerous materials, which must be handled with extreme caution. It is in recognition of the dangerous and sensitive nature of these materials that both the NT and the Commonwealth have enacted radiation protection legislation, and it is for this precise reason that the overarching federal environmental protection laws specifically address the risks to the environment presented by radioactive materials and nuclear actions.

More broadly, this legislation provides the framework for environmental impact assessment, and institutes controls and procedures designed to help protect the integrity of our shared natural environment.

If this legal cornerstone of environmental protection is allowed to be so effortlessly ignored for a proposal such as this, which presents highly significant environmental risks and clear inter-generational impacts, what is the true value of this law? What can be said for the federal government's commitment to the principles of ecologically sustainable development, if the legal implementation of this objective is so effortlessly evaded? What faith can we have for the integrity of this important legal protection in the face of other proposals which present environmental harm and dangers?

Beyond this outrageous dismissal of fundamental commonwealth environmental protection legislation, the Bill seeks to eliminate protection provided by any State or Territory laws that relate to controlled material, radioactive material, dangerous goods and the environmental consequences of land use in the siting, construction, operating and maintenance of a Dump. Not only is the authority of Northern Territory laws and government challenged by this grab for power, but so too are the general principles of environmental protection and radiation safety. The Bill doesn't merely seek to transfer administrative power to the Commonwealth, or to supersede Territory controls, standards and procedures with federal alternatives, but rather aims to eradicate such measures altogether. So far as these could regulate, hinder or prevent activities relating to the Dump, such laws and provisions may have no affect if this Bill stands as law.

Notably, the people of the Northern Territory are so concerned about the environmental risks and long term impacts of the transportation and storage of radioactive materials, that the NT government recently introduced new laws to control such actions, and apply tight radiation protection measures and standards. This popular expression of the clear will of the people of the Northern Territory would be dismissed by the enactment of this Bill.

other jurisdictions

The federal government, through their local mouthpiece, CLP Senator Nigel Scullion, have attempted to convince Territorians that the reason we're being dumped on is that we have failed to achieve statehood. Our status as a Territory, and not a State, is repeatedly invoked to convince Territorians that we have no chance of stopping long-lived radioactive waste from being dumped on us.

However closer inspection of this Bill reveals that it attempts (on questionable constitutional grounds) to exert a similar reach over all state jurisdictions. Recognising that other states may not be too happy with having radioactive waste produced, temporarily stored in and transported through their communities, the federal government wishes to use this Bill to override any state laws which would regulate, hinder or impede such actions. Section 5, which relates to the selection of a site, has as much bearing upon any other jurisdiction as it does on the NT. Sections

12 and 13, which relate to the operation of a Dump, have similar scope. It might clarify the matter if this inquiry's report could detail the consultation with the states that has been pursued, both by the federal government and this committee.

Most alarmingly, the Bill seeks to override specific fundamental Commonwealth legislation. In addition to specifying :

- The Aboriginal and Torres Strait Islander Heritage Protection Act 1984
- The Environment Protection and Biodiversity Conservation Act 1999
- The Administrative Decisions (Judicial Review) Act 1977
- The Lands Acquisition Act 1989
- The Native Title Act 1993

Section 14 gives the minister the power to prescribe almost any Commonwealth law which might regulate, hinder or prevent the construction and operation of the Dump.

This broad assault on the established laws of all Australian jurisdictions extends well beyond the much-discussed assault on Territory rights. Far from merely exercising the power differential evident in the Self Government Act, this Bill is an attempted abuse of the government's slim senate majority to override the established Federal, State and Territory legislative frameworks.

ammendments

Particular attention is warranted for the proposed amendments, put forward by CLP MP David Tollner. Putting the revised definitions and other legalese aside, Tollner's amendments display a level of cynicism which is becoming a regular feature of this debate.

Part 1A proposes that the NT Government or Land Councils may nominate alternative sites.

Some commentators have characterised these new sections of Tollner's as a specious feint towards reasonable negotiation. Recognising that the same broad environmental harm and dangers presented by long-lived radioactive materials will be relevant regardless of the location of the proposed Dump, it becomes clear that this proposal, while seeming to offer some parties some choice in the matter, represents the rearrangement of deckchairs. This 'choice' merely gives some parties a formal opportunity to propose a different location for the epicentre of these risks, threats and impacts.

However, we see more to these sections. Tollner's addition of clauses inviting some parties to propose alternative sites may really be a cry for help. The federal government know they have failed to apply appropriate criteria to the selection of these sites. A DEST fact sheet ('About Locations, Assessment and Approval') tells us that the sites from Schedule 1 were selected purely on the basis of 'operational requirements' of Defence. Despite the existence of well established criteria from the IAEA, and a locally developed Code of Practice from the NHMRC, the scheduled sites have not benefited from the application of these standards, nor has their inclusion been filtered through any form of assessment for hydrological and geological

characteristics. This fact was underscored in Senate Estimates hearings by Dr Ron Cameron of ANSTO who told the hearings on November 2nd that the sites had not been analysed or assessed against technical criteria.

The NHMRC Code, incorporating these fundamentals of geology and hydrology, as well as ecological, cultural and other heritage significance, has been applied nationwide. The detailed, multi-stage process looked at only one of the three scheduled sites, and determined it to be unsuitable. Tollner should know for a fact that, by the government's own technical criteria, they've chosen the wrong sites. By presenting the option for some parties to propose alternatives, it is not at all clear whether he intends to throw us a lifeline or reach for one. Perhaps Tollner et al are furiously hoping someone can come up with an alternative proposal which may be more appropriate than the three listed in the Schedule. Regardless of the intention, it is clear that the scheduled sites would be found unsuitable if the standing international or national criteria were applied, and this amendment attempts to put the onus onto the Northern Territory to find a location which better fits these criteria.

Clause 16A, which offers limited indemnity to the Northern Territory against claims arising from ionising radiation relating to the Dump, is a further worthless offering. Regardless of the cautious hedging, such indemnity is limited to immediate financial demands. The long term social impacts, and extremely long term environmental impacts of radioactive pollution will evade such accounting. For example, if such an action relates to human health impacts, no federal politicians are going to take the dose. In the case of environmental pollution, it is the environmental values of the Northern Territory which would be impacted by radioactive pollution : these impacts cannot be simply transferred to Canberra. Further, this clause fails to clarify any process for quantifiable impacts suffered by the Northern Territory Government itself.

When stacked against those risks and impacts which cannot be quantified, or are unlikely to result in action against the NT Government, this section appears severely limited. When convolved with the fact that some of these wastes have a half-life of hundreds of thousands of years (uranium-238 has a half-life of 4,460,000,000 years : that’s right, nearly 4.5 billion years) this guarded offer of indemnity pales.

down-stream impacts

The siting of a Dump in the NT will have broader impacts than those presented by the immediate proposal. Territorians recognise that this Dump could be the thin edge of a wedge, as voices including mining company Areva, nuclear industry consultant Bob Hawke and federal conservative parliamentarian Jackie Kelly propose that Australia hosts the world’s nuclear waste.

Many Territorians, and other Australians, oppose the threat of a Dump because it would open the door to further expansion of the nuclear industry, with all the dangers and unwanted impacts this would bring. Whether it is a national Dump for Australian waste, or it expands to take international waste, the Dump could provide the illusion of a solution to the growing problem of long-lived

radioactive waste. This may be all the cover the nuclear industry requires to pursue massive global expansion in spite of this unresolved growing global problem.

Domestically, if ANSTO can convince ARPANSA that a national Dump is progressing, they may receive a license to operate the new OPAL reactor. The establishment of a Dump could, in a careless policy environment, open the door for nuclear power reactors in Australia. A recent report in The Australian newspaper (Friday 11 November 2005) reported that ANSTO is considering signing on to the 'Generation IV International Forum' as a step towards gaining the necessary expertise to build Australia's first nuclear power plant. Further, if this Dump is expanded to meet international pressure to take the world's nuclear waste here in Australia, this could open the door to the establishment of further nuclear reactors around the world.

By providing the illusion of a solution to pollution, and thereby opening the door to more reactors both in Australia and possibly around the world, the Dump would present a number of specific dangers and impacts. Perhaps the best recognised dangers of the nuclear cycle are those involving damage to or malfunction of the reactor core of a nuclear power plant, as occurred at (among others) Windscale, Three Mile Island and (most famously) Chernobyl. The risk of catastrophic radioactive release is an unavoidable feature of nuclear power generation. The more reactors, the greater the likelihood of another accident.

This real risk of catastrophic radioactive release aside, it must be recognized that nuclear power stations represent an unsustainable burden on both public health and the immediate environment due to the deliberate release of radiation into the skies and surrounding waters. All nuclear power plants are responsible for emissions of radiation and some waste materials. Liquid waste may be discharged into drains and waterways; gaseous waste is released into the atmosphere. The HIFAR reactor at Lucas Heights has had a contentious history of controversial planned and unplanned emissions.

A further downstream risk, which would be presented were the Dump to take international waste, and thereby hold the door open for the construction of more reactors around the world, is that of weapons proliferation. New nuclear powers have emerged, including Israel, Pakistan and India, who among others have developed nuclear weapons capabilities through supposedly 'peaceful' nuclear programs. This phenomenon has betrayed the international non-proliferation treaties as mechanisms which actually facilitate, rather than prevent, the transmission of nuclear weapons technologies and capabilities. This analysis is endorsed by world leaders such as U.S.(A.) president George Bush and UN Secretary General Kofi Annan, both of whom have recently made public pleas for new mechanisms to control the international proliferation of nuclear weapons.

where to from here?

The Explanatory Memorandum asserts that the '*purpose of the Bill is to put beyond doubt the Commonwealth's power to do all things necessary for, or incidental to, the selection of specified Commonwealth land as a site for, and the establishment and operation of, a radioactive waste*'

Dump.

One could conclude that the federal government has been plagued with doubts so unsettling as to invoke this extreme and extraordinary legislative response. This severe and far-reaching Bill demonstrates significant concerns that the Northern Territory maintains sufficient legal standing for opposing the Dump. This may come as a surprise to anyone who has paid attention to Dr Nelson's tough talking and Senator Scullion's hand-wringing. These federal politicians have tried to convince us that the decision is out of our hands; that we have no power without statehood; and that the smart thing to do in the circumstances is to get the best deal available.

Alternatively, it may be recognised that this Bill is just another instalment in that stream of heavy handed propaganda, designed to convince Territorians our fight is un-winnable.

As such, it is doomed. The harder the Commonwealth government try, the more we're going to do. While the Bill may or may not give the Commonwealth the legal power sought, the law remains only one force among many others which are pertinent to this escalating debate about the generation and management of radioactive wastes.

Among the most prominent of these stands the force of public opinion. A solution to the challenge of responsible management of radioactive wastes cannot be forced down the throats of the regions and communities who will host this responsibility. Rather, such a solution requires social license, which can only be achieved through informed participation by all parties.

The No Waste Alliance recommends that such a way forward will require the responsible steps of

- phasing out the Lucas Heights nuclear reactor and nuclear fuel programs;
- full auditing of and accounting for radioactive wastes of all categories in all jurisdictions;
- development of national guidelines to control and limit the production of further wastes

Despite decades of attempts at various angles of the problem, the pressing concerns about a national stockpile which is vaguely defined and poorly controlled have represented an insurmountable hurdle. Recognising that waste minimisation is a cornerstone of the responsible management of any wastes, from greenhouse gases to landfill, it is essential that the reactor program and fuel enrichment experiments, which threaten to churn out more of the most highly radioactive, toxic and long-lived wastes made in Australia, are phased out and permanently decommissioned. These important advances will, to some extent, act to defuse the tension surrounding the challenge of responsibly managing radioactive wastes in Australia.

Only when these initial steps are followed will the Australian people, and our State and Territory Governments, be comfortable enough to take a deep breath, and embark in a measured but steady fashion, upon participatory processes to establish facilities for the interim management of our legacy of radioactive wastes.

As stated previously, the No Waste Alliance sees the failure of the committee to come to the Northern Territory for public hearings as a fatal flaw to the inquiry process. Despite this failing, we remain eager to participate in hearings of the inquiry, and for that matter any further opportunity to help work towards the rejection of this Bill.

Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Commonwealth Radioactive Waste Management Amendment Bill 2006

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Wednesday 22 November, 2005

Committee Secretary,
Senate Employment, Workplace Relations and Education Committee

Darwin's No Waste Alliance is a community group of concerned individuals and representatives of stakeholder organisations. The Alliance formed in response to Dr Brendan Nelson's announcement in July 2005 that, contrary to federal government promises during the previous federal and NT elections, the Northern Territory has been targeted for a Commonwealth radioactive waste dump. The No Waste Alliance has since grown into a network of similar community groups around the Territory, and aims to give Territorians information and options for action in response to the unwanted long-lived pollution presented by the nuclear industry.

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process

As with the processes around the original Commonwealth Radioactive Waste Management (CRWM) Bill (2005), this inquiry has demonstrated an antipathy towards genuine community participation. The uncommonly and oppressively brief period for the inquiry, failure to visit the impacted regions, and minimal allocation for hearings ensure this inquiry fails to meet common standards, let alone the level of consultation and consideration befitting such a broad assault on the rights of Traditional Owners, the provisions of the NT Land Rights Act and the general principles of procedural fairness. The democratic credentials of this process are as impoverished as those which surrounded the introduction of the initial Bill in 2005.

The undemocratic nature of the inquiry reflects the nature of both its subject, and the original CRWM Bill (2005), which aim to sweep aside hard won and democratically endorsed protection of our shared environment, recognition of Indigenous rights and the authority of elected State and Territory governments. Indeed, the entire objective of forcing a nuclear dump upon the Territory, contrary to the repeated promises of federal politicians, is definitively anti-democratic.

The haste of this inquiry into the CRWM Amendment Bill (2006) has impacted upon this submission. The brief time allowed for public contributions has encouraged the author to draw heavily from the submission for the initial Bill. The lack of time for written submissions undoubtedly leaves all parties particularly keen to present further oral submissions to the inquiry. It is therefore once again a source of disappointment that the Committee will not be visiting the impacted regions, let alone the major cities, of the Northern Territory.

No justification or rationale has been presented for this unseemly haste; we can only speculate. One clear reason for rushing this Amendment through at high speed must be to evade unwanted scrutiny of it’s assault on the existing rights held by Traditional land Owners in the Northern Territory. Further, this haste denies impacted communities and electorates not only access to participation in, but also observation of the process.

Despite the oppressive schedule, the No Waste Alliance remains eager to participate in hearings of the inquiry, and will welcome any further opportunity to contribute to the investigation and assessment of the Bill.

CRWM Amendment (2006) Bill - Motivation

The Explanatory Memorandum of the original CRWM Bill (2005) stated that the : '*purpose of the Bill is to put beyond doubt the Commonwealth's power to do all things necessary for, or incidental to, the selection of specified Commonwealth land as a site for, and the establishment and operation of, a radioactive waste*' Dump.

The No Waste Alliance rejected the substance and the sentiment of the CRWM Bill in 2005, identifying a raft of objectionable incursions on social, environmental and Indigenous rights hitherto enshrined in State, Territory and Federal legislation, both overarching and specific, as well as common law. The No Waste Alliance called for the Federal policy makers to take the opportunity to break from a non-consultative strategy of 'announce and defend', and embark upon a genuine journey towards responsible management, based on the principle of social license through community engagement. However, the Committee – and the Federal Government, forgetting repeated pledges not to abuse their slim senate majority – chose instead to pursue the original goal of placing beyond doubt the Commonwealth's power to dump on us.

Yet twelve months later, the dust has settled, and somehow it seems that the radical objective of last year's legislation has not been met.

Some shortcoming or failure in the grand project of dumping unwanted nuclear waste on the Northern Territory has required the Federal Government to further amend their already radical, undemocratic and heavy handed legislation. Because, although the stated objective of the new 2006 Amendment Bill is to provide for the return to Traditional Owners of land nominated by a Land Council for the dump, the Bill is over-shadowed by a new set of anti-democratic clauses and provisions which seek to further nullify and override existing rights to Judicial Review, rights awarded under the Aboriginal Land Rights NT (ALRNT) Act 1976, and rights under common law.

These latest draconian additions include:

- Removal of the requirement that the Land Council consults with Traditional Owners over the nomination of a site by a Land Council;
- Removal of the requirement that Traditional Owners understand the effect of nomination of a site, and the actions this may lead to;
- Removal of the requirement that Traditional Owners consent to the nomination of a site by a Land Council;
- Removal of the requirement that the Land Council consults with and considers the views of other Aboriginal communities or groups which may be affected by the nomination of a site by a Land Council;
- Explicitly removing the right to procedural fairness in relation to the nomination of a site by a Land Council, or its subsequent approval by the Minister; and
- Adding nomination of a site by a Land Council, and its subsequent approval by the Minister, to the classes of decisions to which the Administrative Decisions (Judicial Review) Act does not apply

And yet we are told that the purpose of the Bill is to provide for return of a volunteer site to Traditional Owners once it is no longer required.

While this may be, by volume, the focus of the major body of text in the Bill, the weight of these anti-democratic amendments gives proof to the lie.

In her second reading speech, Ms Bishop fantasized:

> *"After claiming that the Australian government was imposing a radioactive waste facility on the Northern Territory against community wishes, I assumed that opponents of such a facility would welcome the construction of the facility on a site volunteered by the local landholders"*

In fact, as everyone knows, and the NLC has recently verified, no such local landholders have emerged, volunteering their home to host a nuclear dump. Indeed it is this very failure of the Federal Government to coerce any such community into sacrificing their land to the nuclear industry's wastes, that has resulted in this Bill.

The purpose of this Bill is quite clearly to further erode the legal rights Traditional Owners currently hold to oppose plans to dump nuclear waste on their land. This is an insulting, anti-democratic abuse of power that must be rejected.

Amendments to the CRWM Bill (2005)

When CLP MP David Tollner proposed amendments to the CRWM Bill, which in part proposed that Land Councils may nominate alternative sites, we made the following observation :

> *Tollner's addition of clauses inviting some parties to propose alternative sites may really be a cry for help. The federal government know they have failed to apply appropriate criteria to the selection of these sites. A DEST fact sheet ('About Locations, Assessment and Approval') tells us that the sites from Schedule 1 were selected purely on the basis of 'operational requirements' of Defence. Despite the existence of well established criteria from the IAEA, and a locally developed Code of Practice from the NHMRC, the scheduled sites have not benefited from the application of these standards, nor has their inclusion been filtered through any form of assessment for hydrological and geological characteristics. This fact was underscored in Senate Estimates hearings by Dr Ron Cameron of ANSTO who told the hearings on November 2nd that the sites had not been analysed or assessed against technical criteria.*
>
> *The NHMRC Code, incorporating these fundamentals of geology and hydrology, as well as ecological, cultural and other heritage significance, has been applied nationwide. The detailed, multi-stage process looked at only one of the three scheduled sites, and determined it to be unsuitable. Tollner should know for a fact that, by the government's own technical criteria, they've chosen the wrong sites. By presenting the option for some parties to propose alternatives, it is not at all clear whether he intends to throw us a lifeline or reach for one. Perhaps Tollner et al are furiously hoping someone can come up with an alternative proposal which may be more appropriate than the three listed in the Schedule.*

It would appear that, if this was the case, the original effort has fallen short, demanding more drastic legislation.

And so now we have before us a set of amendments which unravel every one of those protections and provisions for the rights of Traditional Owners which Mr Tollner had so proudly presented. As far as we can know, Mr Tollner was in all probability the epitome of sincerity when adding clauses to the Bill that would require a Land Council to consult, inform and ultimately seek consent from Traditional Owners before any volunteer site could be nominated. However with the 2006 Amendment Bill, all the good intentions of Tollner's sweetener to an otherwise disgusting abuse of power have been wiped away by the new Minister's proposal that failure to comply with that subsection (3B[1]) does not invalidate a nomination by a Land Council, or an approval by the Minister.

Surely this must offend the Honourable Member, who when tabling his amendments to the Bill, told the House on Tuesday 1st November 2005:

> *"These amendments have been flagged and drafted by the NT Country Liberal Party. They have been formulated in the best interests of Territorians and I am glad to propose them on behalf of all Territorians. The main rationale for these amendments is to ensure that, firstly, Territorians do have a say in the siting of the facility."*

Mr Tollner must be very disappointed to see the amendments he flagged and drafted, to ensure that Territorians have a say in the siting of the facility, have now been turned on their head by the new Minister, so that Traditional Owners can no longer be sure that they will even be informed, let alone consulted, and goodness forbid have power of consent, over decisions in relation to siting a nuclear waste dump on their land.

Battling disbelieving interjectors, Mr Tollner went on to say :

> *"The Country Liberal Party believes that Territorians should have this right."*

We can only assume that they do. We can only assume that in this latest round of anti-democratic law making, the Federal Government has rejected not only the authority and the laws of the elected government of the Northern Territory, but also the principles of their conservative allies in the Country Liberal Party.

Aboriginal Land Rights (NT) Act

Given that the Minister, in her second reading speech, reminded us that :

> *'the original Northern Territory land rights legislation was passed in this parliament under a coalition government'*

it is pertinent to note the implications of the CRWM Amendment Bill to the landmark ALRNT Act, which describes the functions of Land Councils.

In general terms, the ALRNT Act requires Land Councils to act on behalf of Traditional Owners. However the CRWM Amendment Bill seeks to deny all parties procedural fairness and administrative review in relation to the nomination of Aboriginal land as the site for a nuclear dump. In this way the Bill would appear to permit deviation from the general direction of the statutory role of Land Councils.

More explicitly, Item 3 and Item 5 of the scheduled amendments in the CRWM Amendment Bill render specific statutory obligations of Land Councils under the ALRNT Act, which are echoed in the CRWM Act, as mere guidelines. As a result, failure to comply with the obligations under the ALRNT Act :

> **Part III – 23.(1)(c)** *to consult with traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council with respect to any proposal relating to the use of that land;*

and

> **Part III – 23.(3)** *In carrying out its functions with respect to any Aboriginal land in its area, a Land Council shall have regard to the interests of, and shall consult with, the traditional Aboriginal owners (if any) of the land and any other Aboriginals interested in the land and, in particular, shall not take any action, including, but not limited to, the giving of consent or the withholding of consent, in any matter in connexion with land held by a Land Trust, unless the Land Council is satisfied that:*

> **(a)** *the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it; and*
>
> ***(b)*** *any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.*

which are echoed in Tollner's 2005 amendments 3B(1)(g) in the CRWM Act, would not invalidate a nomination by a Land Council – or subsequent declaration by the Minister – of Aboriginal land as a site for dumping the Commonwealth's unwanted nuclear waste.

Similarly, whereas 3B(1)(g)(iii) required that Traditional Owners consent as a group to nomination of a site in accordance with section 77(A) of the ALRNT Act, Item 3 and Item 5 of the scheduled amendments would relegate this requirement to a mere recommendation, such that failure to comply would not invalidate a nomination.

Clearly, section 3B(1)(g) of the CRWM Act was intended to reinforce these rights already present in the NT Land Rights Act.

Just as clearly, those new provisions in the CRWM Amendment Bill which specify that failure to comply with 3B(1) would not invalidate a nomination by a Land Council (or declaration by the Minister) are intended to revoke those existing rights Traditional Owners hold to, as the Minister said:

> *"make their own decisions about infrastructure developments on their own land"*

and so it seems, the original Northern Territory land rights legislation may be unwound in Federal parliament under a coalition government.

The Minister, in her second reading speech, has given a personal assurance that

> *'should a nomination be made, I will only accept it if satisfied that these criteria have been met'*

Why, then, has the Minister proposed amendments which specifically state that failure to adhere to these criteria would not validate a nomination – or her declaration – of a site for a Commonwealth nuclear waste dump?

In the face of repeated lies and broken promises by Federal politicians on the various parameters of dumping nuclear waste in the Territory, this empty assurance rings as hollow as her colleague Senator Campbell's 'categorical assurance' that the NT would not be used to dump Commonwealth nuclear waste.

Return of a volunteer site

While the principle off returning land acquired for a nuclear dump to Traditional Owners seems to be generally agreeable, the processes outlined in the Bill once again describe something being done to, rather than with, Traditional Owners. Experience with the contaminated site at Maralinga show that Traditional Owners need to have a say in whether they accept that a contaminated site is in an appropriate condition to be relinquished by the Commonwealth. Otherwise we risk a situation where regulators can seek to wash their hands of unresolved issues which they must bear responsibility for. On these grounds alone, the current framework for return of the site must be rejected.

This concern is further exacerbated in consideration of the evolving nature of local and international guidelines for environmental protection from radiological pollution and ionising

radiation in general. The recently released draft report 'Opportunities for Australia?' from the Uranium Mining, Processing and Nuclear Energy (UMPNER) Review reports :

> *International radiation protection standards are primarily designed to protect human health. Until recently it has been assumed that these standards would incidentally protect flora and fauna as well. However, it is now agreed that additional standards and measures are required to protect other species, and a number of international organisations including the International Commission on Radiological Protection and the IAEA have established new work programs to this end.*

A recent Public Environment Report for new plans to dig over the abandoned and polluted Rum Jungle Uranium Mine near Darwin included an appendix from ANSTO which acknowledged :

> *The ICRP is developing recommendations to assess radiation effects on non-human species. The new objective is to safeguard the environment, by preventing or reducing the frequency of effects likely to cause early mortality or reduced reproductive success in individual flora and fauna, to a level, where any effects would have a negligible impact on conservation of species, maintenance of biodiversity, or the health and status of natural habitats or communities. The international scientific community is developing tools to facilitate this philosophy, for example via FASSET (Framework for Assessment of Environmental Impact) and ERICA (Environmental Protection from Ionising Contaminants (EPIC) programmes (http://www.erica-project.org/) funded within the European Community .*

So-called 'acceptable limits' for exposure to ionising radiation have been lowered a number of times in the brief history of the nuclear industry, including the not-so-distant past, and we can expect that ARPANSA, while in some other areas not currently even in accord with existing ICRP guidelines, can be expected to be called upon to adopt these new European standards for environmental protection as they gain international currency. This perspective raises a number of questions :

- Which standards will be applied by the regulator in assessing a decision to return ownership and rights over the site to Traditional Owners?
- If the rift between Australian standards for radiation protection and those employed elsewhere around the world grows, will Traditional Owners be able to call upon improved levels of protection which have been, or are being, instituted elsewhere?
- If land were to be relinquished under an inadequate set of standards, what recourse would Traditional Owners have once ARPANSA's standards for environmental protection are improved on the basis of developments around the world?

Evolving international standards for environmental protection are not the only variable at play. There's also the ever-shifting purpose of the NT dump site. While we are assured that legislation would prohibit the storage of high-level domestic waste, or long-lived international waste, in the NT dump, this Federal Government continues to demonstrate that when the law doesn't suit, they'll just change the law. The platitudes offered by Federal politicians have been demonstrated to be as valueless as assurances in (current) legislation to convince Territorians that the dump we're being threatened with today won't grow into a bigger monster tomorrow.

As the nation debates a new report from the UMPNER inquiry that floats a scenario of 25 reactors in Australia, producing thousands of tonnes of high-level radioactive waste, the Uranium Industry Framework has tabled this year's Steering Group report, which broaches the concept of Materials Stewardship, a philosophy which could see Australia take back some of the waste produced from uranium we export. These new policy proposals are emerging against a backdrop of broken promises from lying Federal politicians, and a legislative and regulatory environment that is shifting like quicksand. Territorians would be foolish not to consider that the dump described in the evolving CRWM Act may mutate beyond its current parameters in the very near future.

These variables aside, one stated design for the dump would involve permanent shallow burial of low-level wastes, and (potentially) temporary storage of long-lived wastes. The burial of wastes, if approved, would guarantee that the site is never returned to its original state. Any contamination from long-lived wastes would result in long-term pollution of the site. Just these risks alone, from the stated uses of the dump, could leave the site inappropriate for return to Traditional Owners. The broader risks of other potential configurations, including the likelihood of long term use of the site in the face of ballooning wastes from uranium leasing and a potential domestic nuclear power industry, would mean that the site would not be relinquished in the foreseeable future.

These scenarios and caveats demand attention, and greatly devalue the empty gestures made towards acknowledging the rights of Traditional Owners hold over their land.

Indemnity

The gestures towards indemnity offered in the amendments are of as little value as those in the original CRWM Act. All qualifications aside, the indemnity offered is clearly limited to immediate financial liability. Long term social impacts, and extremely long term environmental impacts of radioactive pollution evade such accounting.

For example, say an action in relation to the operation of a radioactive waste dump results in human health impacts; no federal politicians are going to take the dose. In the case of environmental pollution, it is the environmental values of the Northern Territory which would be impacted by radioactive pollution : these impacts cannot be simply transferred to Canberra, Sydney or Perth.

Nonetheless, one issue does arise which impacts both upon liability and the anticipated cost of the Bill. That is the implications of evolving standards for environmental protection from ionising radiation – in particular, ever-lowering limits of 'acceptable' radiological contamination. Further to the questions raised above, we must wonder :

- If "acceptable limits" as regulated by ARPANSA change before the return of the site, will environmental degradation be immediately recognised?
- Will liability immediately follow as a matter of course?
- What if those limits change not long after the return of the site?
- A hundred years after? A thousand years?
- Will 'continued indemnity' keep pace with the international regulatory bodies and their standards as we begin to recognise the long term, stochastic impacts of radiological pollution?

Recommendations for the committee

The CRWM Amendment Bill (2006) is as offensive as was the CRWM Act. This Bill must be rejected, and the Act must be repealed.

International standards and trends recognize the essential component of community consultation and consent in successful decision making regarding radioactive waste management. Both the existing Act and the proposed Bill fail on this important fundamental principle – indeed, they directly offend it.

Federal Science Minister Julie Bishop's second reading speech chided us that those

> *"who are in favour of Aboriginal people being able to make their own decisions about infrastructure developments on their own land, should support these amendments"*

however we believe the opposite is true. Those who are in favour of Traditional Owners being informed, consulted and granted power of consent over decisions about developments on their own land must oppose this attack on those pre-existing rights.

In principle, return of a volunteer site seems to be a desirable outcome, however the far reaching caveats, conditions, qualifications and exemptions to the provisions presented in the Bill do not constitute an acceptable form for pursuing this outcome. In a rapidly shifting policy environment, these provisions for relinquishment of the site do not carry much weight. Most significantly, it must be recognized that a framework for returning a contaminated site must engage Traditional Owners as participants, with the power to refuse to take on responsibility for contaminated land which they are neither equipped nor responsible to rehabilitate.

Towards responsible management

While this Bill may provide further legal shoring for the hole this Government is digging itself, the law remains only one force among many others, all of which are relevant to decision making regarding the generation and management of radioactive wastes.

The most prominent of these remains the force of public opinion.

As international standards regarding the siting and operation of nuclear waste facilities already recognise, a solution to the challenge of responsible management of radioactive wastes cannot be rammed down the throats of the communities who will host this responsibility. Rather, such a solution requires social license, which can only be achieved through informed participation by all parties.

The No Waste Alliance continues to firmly recommend that the way forward will be initially marked by the responsible steps of :

- phasing out the Lucas Heights nuclear reactor and nuclear fuel programs;
- full auditing of and accounting for radioactive wastes of all categories in all jurisdictions;
- development of national guidelines to control and limit the production of further wastes

Despite decades of attempts at various angles of the problem, the pressing concerns about a national stockpile which is vaguely defined and poorly controlled have represented an insurmountable hurdle. Recognising that waste minimisation is a cornerstone of the responsible management of any wastes, from greenhouse gases to landfill, it is essential that the reactor program and fuel enrichment experiments, which threaten to churn out more of the most highly radioactive, toxic and long-lived wastes made in Australia, are phased out and permanently decommissioned. These important advances will, to some extent, act to defuse the tension surrounding the challenge of responsibly managing radioactive wastes in Australia.

Only when these initial steps are followed will the Australian people, and our State and Territory Governments, be comfortable enough to take a deep breath, and embark in a measured but steady fashion, upon participatory processes to establish facilities for the interim management of our legacy of radioactive wastes.

Once again, the No Waste Alliance sees the failure of the committee to come to the Northern Territory for public hearings as a fatal flaw to the inquiry process. Despite this failing, we remain eager to participate in hearings of the inquiry, and welcome any further opportunity to participate in improved decision making regarding nuclear waste..