

31 October 2008

Submission to the Senate Standing Committee on Environment, Communications and the Arts Inquiry into the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008

The Australian Conservation Foundation (ACF) is committed to inspiring people to achieve a healthy environment for all Australians. We work with the community, business and government to protect, restore and sustain our environment.

ACF has a long involvement in the issues surrounding radioactive waste management in Australia and has been directly and consistently engaged in this policy area for many years, including the entire period of the Howard government. ACF has previously presented written and verbal evidence to the Senate on the profound flaws in this legislation and these are attached for the Committee's information and use.

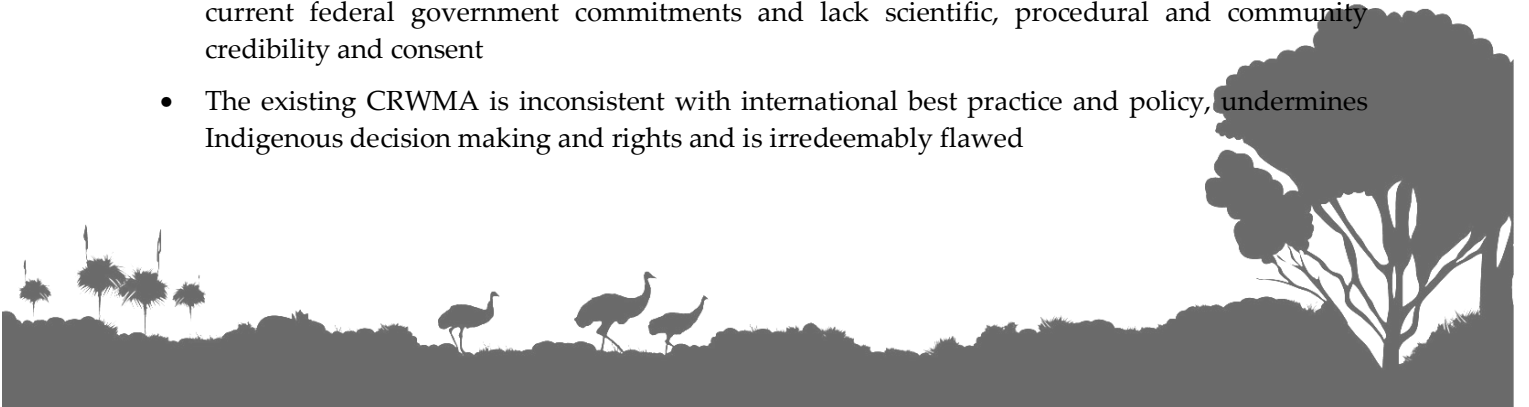
ACF welcomes this opportunity to further the discourse on this important issue and strongly supports the immediate and unconditional repeal of the Commonwealth Radioactive Waste Management Act (CRWMA) as a pivotal first step in the development of an agreed, credible and effective national radioactive waste management strategy.

The previous Federal Government's plan to impose a radioactive waste facility on the Northern Territory community was undemocratic and inconsistent with international best practice and policy.

The 2007 Federal Election commitments of the Rudd Government and the impetus provided by the Commonwealth Radioactive Waste Management (Repeal and Consequential Amendment) Bill 2008 and this Inquiry provide an important opportunity for the long overdue development of a responsible and measured approach to radioactive waste management.

Heavy handed, undemocratic and unscientific: Problems with the existing CRWMA

- The former Federal Government's plan to impose a radioactive waste dump in the Northern Territory remains highly contested and controversial
- The NT dump plan and process and the CRWMA that facilitates this are in clear breach of current federal government commitments and lack scientific, procedural and community credibility and consent
- The existing CRWMA is inconsistent with international best practice and policy, undermines Indigenous decision making and rights and is irredeemably flawed



Northern Territory and NT local government opposition to the proposed imposition of a radioactive waste facility in the NT was overruled by the passage of the Commonwealth Radioactive Waste Management Act (2005). This may have been seen by the then government as politically expedient however it is neither acceptable nor consistent with best practice.

The radioactive waste facility promoted under existing legislation is also opposed by many Indigenous groups and communities including the Central Land Council, the ACTU, public health and medical groups and all local, regional and national environment groups. It is also deeply unpopular among the wider NT community.

The current identified potential dump sites in the NT were not chosen on the basis of any objective, scientific criteria. None of the sites under consideration were short-listed by the earlier Federal Bureau of Resource Sciences' National Repository Project in the 1990s which assessed alternative sites around Australia for a repository for low-level and short-lived intermediate-level waste.

The Howard government move to impose a federal nuclear waste facility in the NT was in direct conflict with a "categorical assurance" given before the 2004 election.

In December 2005 legislation to by-pass normal decision-making processes and to override any Federal, State or Territory laws that could be used against the proposed nuclear waste facility passed federal parliament, despite opposition from the ALP and minor parties.

The Commonwealth Radioactive Waste Management Act 2005 (CRWMA) undermines environmental, public safety and Aboriginal heritage protections. It prevents the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 from having effect during site investigation and excludes the operation of the Native Title Act 1993.

The CRWMA is in stark contrast to the accepted international (International Atomic Energy Agency, UK Commission on Radioactive Waste Management et al) acknowledgment of the profound importance of community consultation, consent and confidence in successful decision making regarding radioactive waste management.

In November 2006 the Federal Government moved to further remove Indigenous community rights with a series of amendments to the CRWMA that removed the need for community consultation, informed traditional owner consent, procedural fairness and administrative review from any potential dump site that might be nominated by a NT Land Council, particularly the Northern Land Council. These amendments directly undermined the far more robust and inclusive consultation and consent provisions of the long standing Aboriginal Land Rights Act.

The former Federal Government clearly decided to impose a nuclear waste dump on the NT because the NT has fewer legal and political powers than the states. The former government's nuclear dump plan was deeply flawed with scant scientific, procedural or community credibility or license – no aspect of this approach, including the onerous legislation that made it possible – should be inherited or maintained by the current Federal Government.

A new approach is needed. Community confidence, citizen rights, procedural and regulatory integrity, transparency, inclusive, contemporary and scientifically robust methodology all need to be restored in the process of building a mature and effective approach to radioactive waste management in Australia.

A new government – a new opportunity

Labor commitments on radioactive waste

- Labor was right to oppose the passage of the CRWMA in Opposition. Now it has both the ability and the responsibility to immediately and unconditionally repeal it in Government.

In opposition Federal Labor opposed the process and the passage of the CRWMA. The Labor Senators dissenting report into the CRWM Bill (November 2005) identified many serious deficiencies and flaws including: inadequate consultation and unrealistic timelines; the pattern of override and subsequent failure that characterised the Howard governments approach to radioactive waste management; lack of scientific rigour and independence; increased risks to the health, safety and rights of communities; the removal of procedural fairness and access to recourse; disregard for the views of Traditional Owners; uncertainty over the project's urgency; and the legislation's clear non compliance with international best practise.

The dissenting report pointedly and correctly described the CRWMA as *deeply flawed, and a heavy handed and unwarranted exercise of Commonwealth power....a display of arrogance on the Commonwealth Government's part....based on political expediency....and declared: This is extreme and excessive legislation and cannot be justified by a democratic Government.*

ACF agrees absolutely with these sentiments and looks forward to the immediate and unconditional repeal of this legislation.

After a decade where the issue of radioactive waste management was characterised by attempts to override community concern ACF welcomes the opportunity provided by this Inquiry to start a new chapter in mature policy development and discourse.

The current Federal Labor platform on this area provides the opportunity to make a clean break from the failed policies of the past and begin the pivotal process of restoring community trust, scientific and social credibility and procedural integrity to this difficult policy area.

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)

Further to this platform position Federal Labor has committed to:

- ...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
- ...ensure any proposal for the siting of a nuclear waste facility on Aboriginal Land in the Northern Territory adheres to the requirements that exist under the Aboriginal Land Rights,

Northern Territory Act (ALRA).

- Restore the balance and pending contractual obligation and 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
- Not arbitrarily impose a nuclear waste facility without agreement on any community, anywhere in Australia

(Senator Kim Carr, Shadow Minister for Industry, Innovation, Science and Research, Warren Snowdon, Member for Lingiari and Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs, Senator Trish Crossin, ALP Senator for the NT. Media Release 06/03/07, "Govt's waste dump fiasco").

On 27 September 2007 then Shadow Science Minister, Senator Kim Carr reinforced this clear federal election commitment stating:

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.

In April 2008, the Northern Territory Labor Party Conference resolved:

Conference understands the nomination of Muckaty as a potential radioactive dump site, made under the CRWMA legislation, 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 (ALRA).

Conference calls for the Muckaty nomination to also be repealed when the CRWMA legislation is overturned.

ACF notes and agrees with the position by NT Labor. We see no reason to continue the controversial radioactive waste site assessment process initiated by the former federal government for Muckaty Station.

The Muckaty Station site nomination was put forward by the Northern Land Council and accepted as valid under the provisions of the CRWMA despite clear and public opposition from many Traditional Owners and affected Aboriginal people. The process of consultation and consent required to satisfy the CRWMA is far less than that required under the provisions of the Aboriginal Land Rights Act. It is unacceptable that such a significant decision with long term implications can be fast tracked against the clear wishes of many Indigenous landowners and custodians.

This is not only a matter of due process, good policy development, respect for Indigenous rights and full, prior and informed consent in decision making – it is also an eminently practical pre-condition to the successful management of radioactive waste. If a planned waste facility does not

enjoy community confidence or support it will not be successful. This is the experience internationally and has been clearly demonstrated closer to home with the former federal government's failure to impose this facility on an unwilling South Australian community.

The Muckaty site is highly contested. The CRWMA was designed to carpet over or crash through community concern and contest. Its application – and the Muckaty site – should have no place in the current thinking on how to best manage Australia's radioactive waste.

Beyond Repeal: A way forward for radioactive waste management in Australia

ACF believes that this Inquiry offers a very real opportunity for government to do things differently and far better in relation to radioactive waste management. Such an approach should include:

- the immediate and unconditional repeal of the CRWMA
- commissioning an independent public Inquiry into options and strategies for radioactive waste management in Australia

ACF recommends that following full repeal of the Commonwealth Radioactive Waste Management Act 2005 the Government should undertake a public Inquiry, potentially under the provisions of the Environment Protection and Biodiversity Conservation Act 1999, into the management of radioactive waste in Australia based on the foundation principles of non-imposition of radioactive waste transport and dumping and respect for Traditional Owners' rights and interests. Funding currently allocated for assessment of the radioactive waste facility during 2008-2010 would be better used to undertake the Inquiry.

There is no reason why this process needs to be rushed. The contract between the Australian Nuclear Science and Technology Organisation (ANSTO) and the French nuclear group COGEMA states the nuclear waste from the Lucas Heights nuclear reactor must be returned to Australia from reprocessing in France and Scotland by 31 December 2015. This was confirmed recently (*Question on Notice No. 737 (13 October 2008)*). Other, non public instruments including letters of agreement or understandings inherited from the former government should not be seen as a reason to rush this return.

Radioactive waste management is a complex policy area and radioactive waste will remain a significant environmental hazard and legacy for many years into the future. It is prudent, responsible and efficient to take the time required now in order to get the fundamental long term management principles right.

It is time for the federal Labor government to clearly demonstrate that the divisive and failed policies of the past have been consigned to the past however there is growing community and cross-sectoral unease and concern over Labor's lack of defining and differential action on this issue. Piecemeal information flows and an apparent quiet continuation of the policies and style of the former government are in direct conflict with the approach needed to address this important issue. The Federal Government now has a window where community goodwill and openness to mature policy development exists and ACF urges the government to move to take best advantage of this opportunity.

To honour its federal election and National Platform commitments relating to radioactive waste management in Australia and to set the basis for a policy that actually delivers an outcome rather than further protracted contest the Federal Government should:

Repeal the CRWMA – immediately and unconditionally

Remove the four current potential sites in the Northern Territory from any further consideration

Review (i) commission an independent public Inquiry into options for the future management of radioactive waste in Australia (ii) in a parallel process conduct an audit/upgrade of the current status and management of radioactive waste in Australia (potentially adopting a joint federal/state agency approach)

Restore community confidence, scientific and procedural integrity and best practise compliance in relation to radioactive waste management decision making.

Conclusion

ACF strongly urges the Committee to recommend:

- the immediate and unconditional repeal of the CRWMA;
- the withdrawal of the four current potential Northern Territory dump sites from any further consideration
- the adoption of the above staged process in relation to radioactive waste management in Australia.

For more information, please contact

Dave Sweeney **Phone:** 03 9345 1130 **Mobile:** 0408 317 812 **Email:** d.sweeney@acfonline.org.au

The Australian Conservation Foundation is committed to achieve a healthy environment for all Australians. We work with the community, business and government to protect, restore and sustain our environment.

www.acfonline.org.au