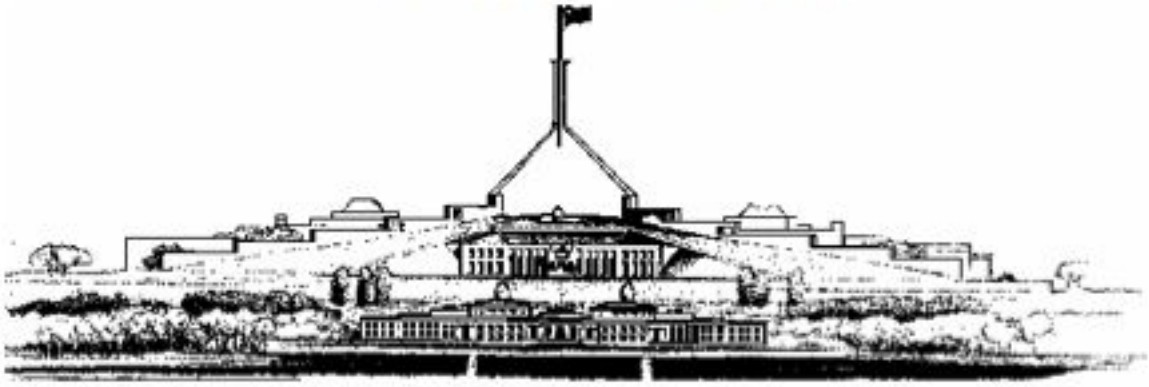
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

National Radioactive Waste Management Bill 2010

Second Reading

SPEECH

Tuesday, 14 June 2011

BY AUTHORITY OF THE SENATE

SPEECH

Date	Tuesday, 14 June 2011	**Source**	Senate
Page	2615	**Proof**	No
Questioner		**Responder**	
Speaker	Xenophon, Sen Nick	**Question No.**	

Senator XENOPHON (South Australia) (13:27): I want to say at the outset that I acknowledge and appreciate the importance that the mining industry plays in Australia's wealth. There will be debate later this year in this chamber about whether a mining tax is appropriate and whether the design of that tax is appropriate. I am not implacably opposed to nuclear power, but I have very grave reservations about it. I think what we have seen recently in Japan at Fukushima indicates we need to be very wary about the safeguards that are in place for nuclear power. I note that Germany will be shutting down a number of its nuclear power reactors in years to come. A conservative government effectively in Germany has made the decision to wind up nuclear power in that country. The National Radioactive Waste Management Bill 2010 is not about whether you are for or against mining or for or against nuclear power; it is a question of process—it is a question of treating the traditional owners at Muckaty Station with respect.

Not so long ago in this chamber we debated the wild rivers bill, which was a piece of legislation to overturn the Queensland government's wild rivers legislation. I know my colleagues in the Greens have a different view on this, as does the government, but I thought the key principle in that bill, which was introduced by Senator Scullion and by the opposition leader in the other place, was to ensure that there was genuine consent given before a wild rivers declaration was enacted in Queensland. In other words, that legislation would have overridden the Queensland legislation. I supported that legislation, and still do, because it is about honouring and respecting the traditional owners of the land. It is about ensuring that they have some real say in terms of self-determination. That is what the Queensland wild rivers legislation does not do. It is completely disrespectful of Indigenous owners in that it seeks to make declarations affecting the economic viability of the land and the self-determination and the economic destiny of Indigenous Australians in Queensland. As a result, that Queensland legislation is a very shabby piece of legislation. And I see some parallels to what is being proposed here by the federal government which is in effect picking up what the former government wanted to do in relation to this. I am disappointed that the government has opted to put this bill on the program this week when the legislation includes a proposed location for a radioactive waste dump that is currently the subject of a Federal Court challenge. This is about respecting traditional owners. This is about process first and foremost. It seems extraordinary when there is a challenge before the Federal Court, when there are matters that are still before the court, when there has been significant litigation about this—and I will go to that shortly—that the government is seeking to overturn a process that has already begun in the courts.

The bill specifically names one site in the Northern Territory, Muckaty Station, to be assessed as the location of a radioactive waste dump where nuclear waste from the states and territories will be deposited. The government claims that this is okay because the site was volunteered. But that is not the case. The Senate should wait until the Federal Court has made its findings as to whether those who claim to be the owners of Muckaty Station and who volunteered the site are the correct parties to do so. This is a live issue before the courts; it is a significant issue before the courts. It is an issue that must not and cannot be ignored. It concerns me that the government is seeking to just wipe away the Federal Court process, to ignore it, and to effectively say: 'We know better. We'll ignore the matters that are before the Federal Court in relation to this.'

I have heard very often from the government that they cannot support certain amendments until the outcome of a review, for example. That is what they do to me, to my fellow crossbenchers and to the opposition all the time by saying: 'We need to review this. We don't have enough information.' Yet today the government want to vote through legislation that is currently the subject of a Federal Court case. When the House of Representatives Standing Committee on Climate Change, Environment and the Arts inquired into this bill it noted the dispute between the Federal Court and concluded it would be inappropriate to inquire into a matter currently before the courts. In fact, the committee said in its report that it would be improper for it to do so. It is inappropriate; it is improper and the Senate should not vote on this bill today.

I want to give some further details in relation to this. The Australian Conservation Foundation do much good work—I do not agree with them on all issues, but they do some good work. I think it is important to put on

the record what the Australian Conservation Foundation has said. It has described as cynical and irresponsible the introduction to the Senate of this bill aimed at fast-tracking a nuclear waste dump in the Northern Territory. This bill will seek to override state, territory and local government concerns and exempt the federal government from meeting key environmental and Aboriginal heritage rules—this is what we are debating today. I agree with Australian Conservation Foundation campaigner Dave Sweeney who said:

This heavy-handed legislation is a cut-and-paste of a deeply unpopular Howard era law—it is not a credible or mature basis for managing Australia's radioactive waste.

It is being challenged … by traditional owners of the region.

I agree with Mr Sweeney and again I am not implacably opposed, as some are, to nuclear power. We should have a discussion and debate about it, but after Fukushima I think we should be even more wary about nuclear power. I think Mr Sweeney made a good point when he said:

Radioactive waste lasts a lot longer than a politician's promise so we need to get its management right.

He went on to say:

This dump plan is a cynical attempt to find a short term political fix to a long term environmental and human health hazard.

Mr Sweeney made the point that with key questions around consultation, consent and ownership currently before the Federal Court it is improper for Minister Ferguson to be trying to fast-track this legislation which is based on a false premise and a broken promise. I agree with that. I agree that this legislation is deeply flawed; it is deeply flawed because the Federal Court process is still proceeding.

Let us go into some of the details of the Federal Court case which really shows the folly as to this legislation being dealt with in the Senate today. The Federal Court case is around the ownership of the land in question. It is also about the obligation of the Northern Land Council as a statutory authority to consult with all groups. I emphasise all groups because that is a very serious concern. I think that there are some concerns about the propriety of those purporting to have ownership in terms of the decisions made. The land commissioner that established the Muckaty Land Trust, the site in question, recognised shared interests in group structures. He recognised interweaving songlines and ceremonial relationships—that is what the land commissioner stated—to that land amongst five community groups, not one but five groups, over the whole area covered by the trust. Those groups are Ngapa, Milwayi, Wirntiku, Ngarrka and Yapa Yapa. I apologise to any of those groups for mangling any pronunciation.

Senator Bernardi: Say it in Greek.

Senator XENOPHON: Senator Bernardi said 'Say it in Greek'. I think that would just make things worse, Senator Bernardi! Stephen Leonard who made a submission for and on behalf of the Muckaty traditional owners emphasised the importance of this document. He said this:

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

The current process isolates a small number of people as exclusive owners of a patch of land within the trust. This determination has been made through a secret anthropology report commissioned by the Northern Land Council. I think the Northern Land Council has a lot of explaining to do in relation to its behaviour with respect to this. I think that the Northern Land Council ought to be subject to a lot more scrutiny in this and other decisions. It is an area of deep concern to me that the Northern Land Council has taken the action that it has. The Northern Land Council rests its entire case on this document but refuses to reveal it, even to other members of the Muckaty Land Trust, whose country concerns and family names are likely cited. The documents recently found in the National Archives further underline how far at odds the Northern Land Council's advice is with the Land Commissioner's findings. What has the Northern Land Council got to hide here? What deal has been done to reach the decision

that has been reached? Consent was purportedly given, but in fact a whole range of other groups have not been consulted in relation to this. I think it is important that the Northern Land Council come clean and disclose those documents before this matter is considered any further. I think it is important that the Northern Land Council be subject to rigorous scrutiny before this matter is considered further. The Northern Land Council is a beneficiary of significant public moneys. I think its behaviour in this case leaves a lot to be desired, and it leaves many unanswered questions.

The Senate committee was not provided with the Northern Land Council's anthropology report, its written submission or the transcripts of evidence from the Muckaty land claim—in other words, the documents recently found in the National Archives. Nor was the committee allowed to see the so-called new 2007 anthropology report which concluded that the Lauders were the exclusive traditional owners of the nominated site, because, as the Northern Land Council told the committee, the report contained culturally sensitive information. As such, the Senate committee had to rely on what it was told. This is not adequate. It reeks of a bungled process; it reeks of secrecy; it reeks of a complete failure of appropriate due process, fairness and natural justice. We are being asked to vote on a bill whose genesis is fundamentally flawed.

Further to that, reading the 1993 Northern Land Council anthropology report from the Muckaty land claim, which was submitted by the Northern Land Council to Justice Gray, the authors could not be more clear in asserting that the three Napa family groups 'shared the same sites' and had 'commonality of land interests' on Muckaty Station, although each group had different emphases for land off Muckaty Station. Justice Gray accepted that in his report. The Senate committee was not told of the evidence in the Muckaty land claim from Geoffrey Lauder and the other senior men that the Karakara was a Yapa Yapa aka Japurla Japurla site, nor was it told that Justice Gray accepted this evidence and specifically identified Karakara as a Yapa Yapa dreaming site in his report.

In the circumstances, and in view of the trenchant opposition of Dick Foster and other non-Lauder Ngapa leaders to the Muckaty site nomination, the authors of the NLC submission to the Senate—in which the Muckaty land claim evidence and the conclusions of Justice Gray were literally turned on their head—have an awful lot of explaining to do. It has been a deeply flawed process, a process which we ought not to be part of. I understand from Senator Ludlam that the mediation for the Federal Court matter is due to proceed in just two months time—sometime in August. That is only eight weeks away. What is the rush? Why won't we let the Federal Court do its work? Why are we insisting on dealing with a piece of legislation where there is already a process in place—that is, Federal Court litigation—so that those matters can be fairly dealt with under the rules of discovery, under the court processes and rules of procedure of the Federal Court, so that we can get to the truth of this?

I am deeply suspicious of the processes involving the Northern Land Council. There are too many unanswered questions. There are too many inadequate explanations given by the Northern Land Council. I think it is fair to say that this Muckaty plan is a bad deal, and it is important that we do not allow it to be a done deal.

In the committee stages of this bill, I would like to ask my friends, my colleagues in the coalition: in terms of getting the genuine consent of the traditional owners, how is this different from the coalition's wild rivers bill? I believe that is a noble piece of legislation because it is doing the right thing by Indigenous people and treating them with respect. But here I think we are not doing the right thing by traditional owners. These are not just the broad assertions of some owners saying, 'You haven't consulted me.' They have actually taken this a step further. They have actually issued proceedings in the Federal Court of Australia because they are so deeply concerned about the fate of process, about the deals that have been done behind people's backs, and about the secrecy on the part of the Northern Land Council. I am not sure how much the Northern Land Council gets in taxpayer funds each year, but I would hazard to say that it is in the millions of dollars. There needs to be some accountability for that organisation in what they do, because they have effectively marginalised some of their own people. They are supposed to be representing them, but they have not done so. The Northern Land Council ought to be held to account for their actions in relation to this.

I am not opposed to the concept of having an appropriate nuclear waste dump. I am not opposed to dealing with this in a way that is fair, reasonable and driven by process. But what we are seeing here is a piece of legislation which will in effect entrench a deeply flawed process, a damaged process, a process which leaves many unanswered questions. For those reasons, I cannot in good conscience support this bill being dealt with at this time. I will be supporting my Greens colleagues in any move to have this legislation adjourned, for this bill to be postponed until the Federal Court has done its work. I think it is shameful if we effectively vote to

destroy any legal rights of traditional owners currently before the Federal Court of Australia, and that should be resisted at all costs.