

## Opposition Senators' Report

2.1 Opposition senators begin this dissenting report into the *Commonwealth Radioactive Waste Management Bill 2005 and Commonwealth Radioactive Waste Management (Related Amendments) Bill 2005* by objecting to the Government's mishandling of this inquiry. A one-day inquiry held in Canberra did not allow the committee to visit the Northern Territory and the people most affected by this bill. Hearings in Katherine, Alice Springs and Darwin would have been appropriate. Less than a week was allowed for lodging submissions. The hearing was held three days later allowing little time to scrutinise the 231 submissions. This report was scheduled for a week after the hearings, leaving manifestly inadequate time to prepare considered reports by either Government or Opposition Senators. This subversion of the Senate's democratic processes and effective law making reflects the Commonwealth's intentions in this bill.

2.2 As the Chief Minister of the Northern Territory, the Hon. Clare Martin MLA noted:

Had the hearing been conducted in the Territory, either in Darwin or in the regional centres closest to the proposed sites of Katherine and Alice Springs, I can assure the committee there would be significantly more Territorians in the room today.<sup>1</sup>

2.3 Opposition Senators thank those who contributed to the inquiry, despite the obstacles placed in their way by the Commonwealth Government.

2.4 In introducing this bill, the Commonwealth Government has unilaterally abandoned the previously bipartisan approach to selecting a site for a national nuclear waste dump. That approach was based on the careful selection of a site on the basis of sound scientific principles and other carefully developed criteria. The approach announced by the Minister for Education, Science and Training, Dr Brendan Nelson on 15 July 2005, lacks any scientific rigour, and is based on political expediency.

2.5 Dr Nelson's decision was in direct contravention of promises given to Northern Territorians prior to the 2004 federal election by the Federal Environment Minister Senator Ian Campbell on 30 September 2004 that the Commonwealth was not pursuing any options for the radioactive waste dump anywhere on the mainland or in the Northern Territory.

The Commonwealth is not pursuing any options anywhere on the mainland, so we can be quite categorical about that, because the Northern Territory is on the mainland.<sup>2</sup>

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1 Proof Committee Hansard, p. 1.

2 ABC radio, Northern Territory, 30 September 2004.

2.6 This bill is a heavy handed and undemocratic imposition of Commonwealth power over its citizens and democratically elected State and Territory governments, particularly in the Northern Territory. As the Chief Minister of the Northern Territory pointed out during the public hearing:

It is the adoption of a process that has been described as ‘decide, announce, defend’. It is about backroom decisions being made without consultation and without discussion. It is about the imposition of the nation’s radioactive waste on Territorians without their or their representatives’ involvement in any shape or form.<sup>3</sup>

2.7 The Government's sudden decision to impose a nuclear waste dump on the Northern Territory follows a long and ultimately unsuccessful series of attempts to force South Australia to host this facility. As the Australian Conservation Foundation observed in its submission:

Despite having targeted SA since late 1997 the federal government ultimately had to recognise the electoral and political difficulty in imposing the dump facility against strong community will. This lesson has not been lost for Territorians facing nuclear dumping or on those communities across Australia concerned over the proposed transport of reactor waste through their region.<sup>4</sup>

2.8 Opposition Senators find themselves in agreement with the Australian Conservation Foundation's assessment that the decision to site the waste dump in the Northern Territory increases risk to the health, safety and rights of communities across Australia. As such, it is critical that community consultation and careful scientific consideration underpin site selection and nuclear waste transportation.

2.9 The process that led to the three Northern Territory sites being identified lacked any rigour. It was carried out by officials from the Department of Defence using what appear to have been the broadest of criteria, as acknowledged by officers from the Department of Education, Science and Training (DEST):

The department looked at the sites for their suitability according to these criteria in a general sense, but we were also provided with information on sites by the Department of Defence. We had very broad criteria that did not require a high-level technical committee. Criteria were applied such as proximity to infrastructure, proximity to population centres where you might get some infrastructure support for the facilities, Defence’s plans for the future use of the site, and likely growth constraints on sites. Defence’s operating requirements were also important.<sup>5</sup>

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3 Proof Committee Hansard, p. 1.

4 Australian Conservation Foundation, *submission 125*, p. 1.

5 Proof Committee Hansard, p. 72.

2.10 In an extraordinary admission, DEST officers explained that they had sought no independent expert advice whatsoever to aid site selection.

Senator CROSSIN—In the *Hansard* for the estimates I read that the selection of sites was done with advisers. Are you saying that that is predominantly Department of Defence officials?

Mr Davoren—It is mainly officials, yes.

Senator CROSSIN—Mainly officials from the Department of Defence?

Mr Davoren—Yes.

Senator CROSSIN—So there was no-one else with a nuclear science or an environmental science background?

Mr Davoren—My section have credentials in those areas.

Senator CROSSIN—I take it from that that it might have been external advice from outside your department.

Mr Davoren—No, we did not have a panel of external advisers. There was nothing like the store committee, for instance.<sup>6</sup>

2.11 DEST officials attempted to justify this rushed process as being driven by the return of reprocessed fuel rods from France in 2011, and the time it would take to work through the Australian Radiation Protection and Nuclear Safety Agency's (ARPANSA) regulatory processes. This argument is weak and assumes that independent expert advice or community consultation would have hindered the site selection process.

2.12 The site announcement was also made before ARPANSA had completed finalising what will undoubtedly be relevant and useful guidelines that should have informed the site selection process:

ARPANSA is currently preparing regulatory guidance to assist applicants in preparing the information that should be provided in any application to prepare a site for, construct and operate radioactive waste management facilities - that is, a radioactive waste disposal facility, near surface, and a radioactive waste store. This guidance will draw upon high-level, current international guidance that represents international best practice in radiation protection and nuclear safety for such facilities. The draft guidance will be published shortly for a period of public comment prior to its finalisation in the new year.<sup>7</sup>

2.13 The low level waste repository is a permanent facility likely to house waste needing protection for between 100 to 300 years. The intermediate waste stored at the site will need management for thousands of years. Given these timelines, the haste in arbitrarily imposing a site in the Northern Territory for this facility is

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6 Proof Committee Hansard, p. 72.

7 Proof Committee Hansard, p. 32.

unacceptable. A proper scientific process should be followed in conjunction with the States and Territories.

2.14 These bills are designed to quash all opposition to the Government's plans to impose a nuclear waste dump on Northern Territorians and transport nuclear waste across Australia. In order to do this, the bills exclude State and Territory laws where they would 'regulate, hinder or prevent' investigation of the sites, construction of the nuclear waste dump and transportation of nuclear waste. They similarly prevent the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and the *Environment Protection and Biodiversity Conservation Act 1999* from having effect during investigation of the sites. These bills exclude the *Native Title Act 1993* and the *Lands Acquisition Act 1989* from operating at all.

2.15 The Senate Scrutiny of Bills Committee has expressed serious concern that the *Commonwealth Radioactive Waste Management Bill 2005* overrides all State and Territory legislation that gets in the way of the nuclear waste dump. The committee said:

The Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of the principle 1(a)(i) of the Committee's terms of reference.<sup>8</sup>

1(a)(i) asks the Committee to examine all bills before the Parliament and report to the Senate whether such bills '*trespass unduly on personal rights and liberties.*'

2.16 The Scrutiny of Bills Committee is also concerned that the bill removes people's rights because it gives the Minister total power over selecting a site for the waste dump. The Committee has demanded that the Science Minister justify '*the inclusion of this absolute ministerial discretion and for the abrogation of procedural fairness.*'<sup>9</sup>

2.17 This is extreme and excessive legislation and cannot be justified by a democratic Government. This Scrutiny of Bills Committee report is a further blow to the legitimacy of the waste dump legislation.

2.18 Similarly, the Arid Lands Environment Centre was concerned that these bills set a dangerous precedent by over-riding well-tested legislative protections:

The proposed legislation removed critical protections offered to the public by existing legislation... These well-tested and well-understood instruments are the result of years of debate and consideration by the public and their representatives. The whole point of these protections is to protect and

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8 Senate Scrutiny of Bills Committee report, Alert Digest Number 13, 9 November 2005, p. 19.

9 Senate Scrutiny of Bills Committee report, Alert Digest Number 13, 9 November 2005, p. 20.

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defend against activities that threaten the values we cherish in our society, as expressed in a clear mandate from our society.<sup>10</sup>

2.19 The bills, if passed, will over-ride Territory legislation in a way not seen before. As the Chief Minister explained:

This bill that we are discussing today totally overrides any aspect of the Territory's laws that it chooses, particularly in relation to the siting of a nuclear waste facility and the transportation of anything to that nuclear waste facility. It overrides Territory laws that were put in place to prevent this from happening and takes away any aspect of review that we could do or any challenge that we could make to those laws. It really reinforces, from a Territory point of view, our total impotence about this. We have had a serious look at it legally and there is no capacity for us to challenge this at all.<sup>11</sup>

2.20 The second bill in the package, the Commonwealth Radioactive Waste Management (Related Amendments) Bill 2005, also adds the Commonwealth Radioactive Waste Management Act 2005 to the classes of decisions that are not decisions to which the *Administrative Decisions (Judicial Review) Act 1977* applies.

2.21 This means that once the Minister has exercised absolute discretion to declare one of the sites nominated as the future site for the nuclear dump, and extinguished all non-commonwealth rights and interests in the relevant land, the decision is not subject to any form of judicial review. It would not be possible for example to launch a challenge along the lines of that successfully pursued against the compulsory acquisition of land in South Australia. It is noteworthy that the decision in that case was based, at least in part, on the lack of procedural fairness. Effectively, this means that no persons affected by the Commonwealth's decision have any redress if they believe the decision to be unfair.

2.22 The second bill, along with the proposed removal of procedural fairness provisions in the site selection process, mean that the Commonwealth Government is removing transparency and accountability from the site selection process altogether. This unprecedented exercise of power coupled with the arrogance of the Commonwealth Government in overriding community concerns is unacceptable behaviour for a democratically-elected government.

2.23 Not only do the bills specifically prevent the application of these important Acts, they also allow the Commonwealth, by regulation, to exclude other as-yet unspecified Commonwealth laws and regulations from hindering investigations. In short, in seeking passage of these bills, the Commonwealth is seeking virtually unfettered power to do as it wishes during the process of site assessment and waste

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10 *Submission 69.*

11 Proof Committee Hansard, p. 5.

transportation, with no recourse to legal action possible by any affected parties. As noted by the Environment Centre NT Inc:

Under the legislation the Minister would have the power to unilaterally add further pieces of State or territory legislation to the list of laws to be overridden in pursuit of the waste dump.<sup>12</sup>

### **Lack of consultation**

2.24 From the evidence received by the Committee, there was no prior notice given to the Government of the Northern Territory, Land Councils or residents that the Government had selected the three sites in the Territory as possible dump sites. As the Chief Minister told the Committee, the first she heard of it was the press release from the Minister:

The next we heard was in a press release from Brendan Nelson, as the responsible minister, saying that three sites had been selected in the Northern Territory. They were three sites simply that were Defence land. There was no science; there was no consultation with Territorians. It was just a kind of pre-emptive strike from Canberra saying to the Territory, 'There's not actually been much truth in what we've said to you so far, because we've changed our minds radically and now we're choosing the Northern Territory.' Territorians quite reasonably were very angry about it.<sup>13</sup>

2.25 Similarly, the Alice Springs Council told the Committee that the first the Mayor heard of the proposal was on a local radio broadcast.<sup>14</sup> Alderman van Haaren told the Committee that this lack of consultation had not been rectified:

The lack of consultation with local government has continued. At this point in time we still have not been briefed in particular about the consequences of siting such a facility within close proximity of Alice Springs or local government. We anticipate that there may be some implications and some planning that we need to take into account, or even to a degree there may be a burden on local government that we are not aware of. We have not had any particular briefing on those issues at all.<sup>15</sup>

2.26 Mr Barry and Mrs Val Utley, owners of the property adjacent to one of the sites identified in the bill, Fishers Ridge near Katherine, were also not given any advance notice, and found out about the proposal virtually by accident:

...a friend rang us that night and said, 'Did you happen to get the newspaper?' We do not often get the newspaper. 'It mentions that Fishers

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12 *Submission 127*, p.3

13 Proof Committee Hansard, p. 4.

14 *Submission 123*.

15 Proof Committee Hansard, p. 40.

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Ridge is to be one out of three sites chosen for a nuclear waste dump.’ The news turned our world upside down.<sup>16</sup>

2.27 Mr Bill Daw, Alderman of Katherine Town Council, highlighted the Commonwealth Government’s real intentions in his submission:

There is a fine line between strong leadership and arrogance, and it would seem that this line is about to be crossed on this issue by a mile.<sup>17</sup>

2.28 The failure to consult with, or even give advance notice to those who were likely to be affected, including individuals, traditional owners and the Northern Territory Government, demonstrates at best a lack of simple courtesy, and at worst a blatant pre-emption and deception of the communities most affected by this Commonwealth Government decision.

### **Disregard for the views of Traditional Owners**

2.29 The views of traditional owners, who control much of the Northern Territory, have been disregarded in this process. The Central Land Council (CLC) was particularly strong in its rejection of the proposal:

Traditional landowners for both the Alcoota/Harts Range and Mt Everard sites are strongly opposed to the Commonwealth radioactive waste management facility being located at either site or on any part of their country, and instructed the CLC to assist them to oppose such a facility from proceeding.<sup>18</sup>

2.30 It is clear from the submissions of both the Central and Northern Land Councils that the traditional owners they represent wish to retain a right to veto specific sites on environmental or sacred site grounds. This is not provided for in the bill.

2.31 It is noteworthy that the CLC regards the amended provisions of the bill allowing for a land council to propose a site as unworkable. The Land Council must show that traditional owners of a proposed site understand the nature and effect of the nomination and the things that might be done on or in relation to the land. However the CLC submission notes:

Until an area is nominated not even the Commonwealth will know what needs to be done for the purpose of selecting a site, in relation to that specific area. It may not even know what needs to be done until some time after it accepts a nomination. Yet the traditional landowners are required to know all of that before they make a nomination. The ultimate consequence of a successful nomination could be the loss of all their interests in the land

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16 Proof Committee Hansard, p. 12.

17 *Submission 39.*

18 *Submission 144*, p. 3.

and in any all weather access required, upon a declaration pursuant to clause 7. Thus it follows that it is virtually impossible for a land council to meet the requirement for nomination of an area of Aboriginal land, both as to the sacred sites requirement and the informed consent requirement.<sup>19</sup>

2.32 It appears that traditional owners in North Eastern Arnhem land also oppose the proposal to site the nuclear dump on their land, despite the statements of the NLC. Mr Wirilma Mununggur, who identified himself as the senior traditional owner of the Djapu clan, submitted that:

Mr Yunupingu and the NLC have no right or authority, traditional or otherwise, to call for a nuclear waste facility in our region, unless they have consulted with, and have the consent of all the other traditional owners whose land estates would also be affected by such a facility.

...

As the senior traditional owner of the Djapu clan, I say I do not want such a facility anywhere that might affect our land, rivers or sea country. We are very concerned about the safety and environmental impacts of such a facility and the transport of wastes. We are also concerned how the security and surveillance that must accompany such a facility may impact on our lives and region.<sup>20</sup>

### **Environmental impacts**

2.33 The original site selection criteria established after the search for a site recommenced in 1992 included the following:

- low rainfall, free from flooding, good surface drainage, stable geomorphology;
- a generally stable hydrogeological setting and a water table at least 5 metres below the buried waste;
- geology and hydrogeology amenable to modelling groundwater and radionuclide movements;
- away from known or anticipated tectonic, seismic or volcanic activity that could destabilise disposal structures or affect the containment of the waste;
- no groundwater that is potable or suitable for agriculture can be contaminated;
- low population density with little prospect for increase or development; and

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19 *Submission 144*, p. 6.

20 *Submission 231*.



- geochemical and geotechnical properties that inhibit radionuclide migration and facilitate repository operations.<sup>21</sup>

2.34 From these criteria, it is clear that environmental considerations were crucial to selecting a site. These considerations have been ignored in the selection of the three sites. The selection of the Katherine site is particularly worrying, as it is in the highest rainfall zone in the Northern Territory, and is over a major aquifer, the Tindal aquifer. This aquifer is important in providing water for several local horticultural developments. Groundwater and flooding are also significant issues in relation to the Harts Ridge site. As the Chief Minister noted:

Publicly available information shows that the underground water beneath the Fishers Ridge site is directly connected to the deeper Tindal Limestone aquifer. Katherine's water supply and many commercial horticulturalists depend on bores in this aquifer. The aquifer drains into the Katherine-Daly river system all year round. The location of a radioactive waste facility at Fishers Ridge raises concerns for the town's water supply, the environment and tourism. These issues should immediately have removed Fishers Ridge from contemplation on even the most cursory scientific analysis.<sup>22</sup>

2.35 In relation to the Katherine site, Ms Sharon Hillen of the Katherine Nuclear Dump Action Group told the Committee that the site is also prone to both wildfire and flooding:

Flooding and fire is a phenomenon in this country, particularly in Fishers Ridge. I will start with fire. We live in a country that has a very large fuel load of long grass, or spear grass, and fires happen every year...

Flooding is something of a problem as well. Every year we have a flood. ...As Mrs Utley said, the country here acts as a sponge and it retains a lot of water. When you get a big fall of rain, you can expect a large amount of ponding and run-off of water, simply because the water table and the soil above it are saturated. This has been particularly so in the last 10 years, when we have had major rainfall events.<sup>23</sup>

2.36 In relation to the Harts Range site, the Chief Minister suggested that the underground water beneath this area has sediments that are likely to be highly permeable.

Looking at the second site, Harts Range, the underground water beneath this area has sediments that are likely to be highly permeable. There is significant ground water in the area which feeds into surrounding creeks. The site is between two very active waterways, the Ongeva and the Anamarra creeks, and a rare megaflood has the potential to damage any

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21 *A Radioactive Waste Repository for Australia: Methods for Choosing the Right Site*, p. 5.

22 Proof Committee Hansard, p. 3.

23 *ibid.*, p. 13.

radioactive storage facility. Again, a scientific analysis would probably have removed Harts Range from consideration at a very early stage.<sup>24</sup>

2.37 Without engaging in the scientific basis of these arguments, Opposition Senators regard it as unacceptable that the Government did not seek any independent scientific expertise before identifying these three sites.

2.38 The Australian Conservation Foundation also drew the Committee's attention to previous serious shortcomings in the Commonwealth's proposals for the disposal of nuclear waste in South Australia, and to concerns raised by the South Australian Government which were still not addressed at the post Environmental Impact Statement stage in the Licensing Application to ARPANSA:

The Committee should be aware of serious shortcomings in previous federal government proposed siting, design and studies for the burial of radioactive waste. The concerns expressed earlier by the SA government have an importance resonance in relation to the federal proposal for an NT dump and the current draft legislation.

*"I reiterate this Government's strong opposition to the establishment of this facility in South Australia and reaffirm that we can not, and will not, provide support to the establishment or operation of the facility, particularly when the Commonwealth has failed to adequately prescribe the design of a facility which could result in detrimental environmental outcomes."*

(Letter from John Hill, SA Environment Minister to Dr David Kemp, then federal Environment and Heritage Minister, October 2002.)<sup>25</sup>

### **Medical Necessity**

2.39 Members of the Commonwealth Government have attempted to justify the urgency of this bill by inferring medical need. In a 13 October 2005 press release, the Member for Solomon and Senator Nigel Scullion suggested that Australia would not have access to radio-pharmaceuticals after April 2006 if the siting decision about nuclear dump were to be delayed:

A decision on the final site for the waste management facility must be made by April and a Territory Government legal challenge would take us well beyond that time.

If a decision is not made within a matter of months Australia will no longer be allowed to produce radioactive isotopes used in hospitals throughout the country.

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24 Proof Committee Hansard, p. 3.

25 From Australian Conservation Foundation, submission 125, p. 6.

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Australians must be guaranteed continued access to lifesaving radiopharmaceuticals. The Government has acted to ensure those in need do not lose that access. At some stage in their life, every Australian is likely to benefit from the use of radiopharmaceuticals.<sup>26</sup>

2.40 The Medical Association for the Prevention of War (MAPW) disputes the argument that medical isotopes would not be available thus endangering lives, if the waste dump were delayed. The Lucas Heights reactor already shuts down for 4-6 weeks for maintenance purposes on a regular basis. During scheduled shutdowns, the key isotopes are imported from overseas. MAPW suggests that it is emotionally manipulative to draw a direct link between the waste dump and isotope production.

The “medical necessity” is worse than fallacious: it is deliberately misleading. It is a particularly contemptible manipulation of the emotions of the sick and dying.<sup>27</sup>

2.41 Further Dr Nelson conceded that there is no specific end date by which the existing reactor at Lucas Heights must cease production in favour of the new construction currently under construction.

Ms Macklin – That is not to do with my question. I am asking about the date for the current reactor.

Dr NELSON – Yes. The chief executive of ARPANSA is not constrained as to when he makes his decision on the ARPANSA operating licence. ANSTO is working with ARPANSA on the expectation that a decision will be reached around April 2006, and the HIFAR—

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Ms Macklin – There is not an actual end date?

Dr NELSON – There is no specific end date. There is no doubt, from the government’s point of view, that the chief executive of ARPANSA would be seriously stretching his own credibility, and that of ARPANSA, if he were to allow HIFAR to continue much beyond the end of 2006. As I emphasised earlier in the debate, in 2011 the first shipments of reprocessed fuel will arrive back from the UK and France.<sup>28</sup>

2.42 It is irresponsible and unacceptable for the Commonwealth Government to resort to emotional blackmail.

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26 Nigel Scullion/David Tollner media release, 13 October 2005.

27 *Submission 210*, p. 11.

28 *House of Representatives Hansard*, 2 November 2005, p. 34.

## Developing Community Confidence

2.43 Opposition Senators note that the International Atomic Energy Association (IAEA) itself has emphasised the importance of a transparent and inclusive community consultation process in gaining community acceptance of controversial decisions such as the siting of waste disposal facilities:

Recent experience suggests that broad public acceptance will enhance the likelihood of project approval. An important element in creating public acceptance is the perceived trust and credibility of the responsible organisation and the reviewing agency or agencies.

Establishing trust can be enhanced when an inclusive approach to public involvement is adopted from the beginning of the planning process to help ensure that all those who wish to take part in the process have an opportunity to express their views, and have access to information on how public comments have been considered and addressed.

Experience further suggests that trust is promoted by providing open access to accurate and understandable information about the development programme, conceptual design and the siting process at different levels of detail suitable for a broad range of interested parties.

In addition to the perceived credibility of the responsible organisation, other aspects of public acceptability can be location-specific, based on local requirements and cultural context.<sup>29</sup>

2.44 It is clear that the process proposed by the Government in these bills does not in any way try to implement IAEA guidelines. This failure to properly consult with the affected community is evidence of the Commonwealth Government's failure to take into account, or to comply with, international best practice as set out by the international regulatory and advisory body responsible for policy in this area.

## Conclusions

2.45 Opposition Senators consider that the bills are deeply flawed, and a heavy handed and unwarranted exercise of Commonwealth power. The best interests of the Northern Territory and the Australian community would be better served if the Government commenced a rigorous site selection process that is inclusive of affected communities.

2.46 Opposition Senators accept the need for a nuclear waste dump to manage the radioactive waste produced by the Lucas heights reactor and from other sources. However Opposition Senators do not accept the Commonwealth Government's arguments about the necessity of this heavy-handed legislation. The Government has

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29 IAEA, Socio-economic and other non-radiological impacts of the near surface disposal of radioactive waste, IAEA technical document, September 2002. Quoted from Australian Conservation Foundation, *submission 125*, p. 8.

not made a compelling case for the urgency or heavy-handedness of the legislation. These bills are a display of arrogance on the Commonwealth Government's part and must be scrapped in favour of a proper consultative, scientific and inclusive process for a nuclear waste dump.

2.47 Opposition Senators urge the State and Territory Governments to recommence a co-operative process in order to resolve the issue of storage and management of nuclear waste in this country and to find the best possible site for this.

### **Recommendation**

**Opposition Senators recommend that the bills be rejected.**

**Senator Trish Crossin**

**Senator Anne McEwen**

