

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the Commonwealth Radioactive Waste Management Bill 2005**

---

**Submitter:** Susanna Bady

**Organisation:** Alice Action

1-800-137-2707

---

---

## INTRODUCTION

Alice Action is a community organisation open to all members of the public. Alice Action organises public meetings and actions relating to issues of social concern in the Alice Springs community and environs. This submission is endorsed by the organising committee of Alice Action.

## SUMMARY

Alice Action is concerned the bill overrides any relevant Northern Territory and Commonwealth legislation, including important environmental and native title laws. The Minister is not required to follow any site selection process whatsoever and to date the Government has only considered Defence operational requirements.

The Government has not provided any sound justification for the necessity of a waste dump nor the urgency of this bill. Further, the Government has provided no basis for imposing a waste dump against all its own planning and protection laws.

The Government's own nuclear watchdog, ARPANSA, is in no hurry to issue a licence for a waste dump. Nor has it indicated on-site storage of waste will be an impediment to issuing a licence the new reactor at Lucas Heights. There is no threat to the supply of medical radiopharmaceuticals to the Australian community as the old reactor may be extended or radiopharmaceuticals purchased overseas.

Alice Action believes the bill is an unprincipled and expedient fix to a complex issue.

## RECOMMENDATIONS

- ▶ The bill not be passed in its current form.
- ▶ Any future law for a radioactive waste dump incorporate a rigorous process for site selection, including community consultation.
- ▶ Any future law for a radioactive waste dump not override any other laws, including environmental and native title laws.

### 1. CONCERNS ABOUT THE COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT BILL

**Clauses 5(1)(b), 13(1)(b)** eliminate the protection of any Territory laws that relate to the environmental consequences of the use of land in the siting, constructing, operating, or maintaining of a facility.

**Clauses 5(1)(c), 13(1)(c)** eliminate the protection of any Territory laws that relate to the heritage values of land, premises or objects, including significance in the traditions of indigenous people, in the siting, constructing, operating, or maintaining of a facility.

**Clauses 5(1)(d), 13(1)(d)** eliminate the protection of any Territory laws that relate to controlled material, radioactive material, or dangerous goods in the siting, constructing, operating, or maintaining of a facility.

These are laws which citizens and legislators of the Northern Territory have seen fit to make. The construction of a national nuclear waste storage facility in the Northern Territory which does not follow the regulations as laid out in the relevant laws is done in opposition to the expressed will of the people of the Northern Territory.

**Clause 6(1)(a)** eliminates any protection in *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* that might regulate, hinder, or prevent activities involved in siting the facility.

Many of the rights of the community stakeholders who live in close proximity to the proposed sites are enshrined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, designed for “protection of significant Aboriginal areas and objects.” We highly value the protection of these areas and objections, as we do the preservation and promotion of Aboriginal culture. Aboriginal people live on homelands and stations in close proximity to the proposed dump sites. They are striving to make a reasonable living and a significant improvement in the lot of their people in the region. They deserve in return respect for their culture and the land and objects associated with it. We are dismayed to see the Howard government attempting to disregard these rights which were bitterly fought for and enshrined in Commonwealth law.

**Clause 6(1)(b)** eliminates any protection in the *Environment Protection and Biodiversity Conservation Act 1999* that might regulate, hinder or prevent activities in selecting a site for the facility.

The EPBC Act has a specific section regarding ‘nuclear actions’ which includes ‘transporting spent nuclear fuel or radioactive waste products arising from reprocessing, establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing; establishing or significantly modifying a large-scale disposal facility for radioactive waste.’

Under the EPBC Act nuclear actions are held to be ‘matters of national environmental significance’. To obtain approval the action must undergo a rigorous environmental assessment and approval process, including the formulation of an Environmental Impact Statement.

We are concerned as to why the Government needs to circumvent these protections. We are concerned to what extent Commonwealth protections for ‘matters of national environmental significance’ will be maintained, and we are concerned that the Bill in question makes this a matter for the discretion of the Minister.

**Clause 7(1) and (2)** allows the Minister, in his or her absolute discretion, to select a site for the facility.

We are concerned that this power means the Minister can select a site without reference to any site selection criteria or process whatsoever. See below for detailed comments on this aspect.

**Clauses 10(2)(a) and (b)** state that the Commonwealth will acquire or extinguish any rights to the land it chooses to site the dump despite any possible protection under the *Lands Acquisition Act 1989* or the *Native Title Act 1993*.

The *Lands Acquisition Act 1989* regulates the power of the Commonwealth Government to acquire land, and outlines the process to be followed, including determination of any compensation.

The *Native Title Act 1993* recognizes the rights and interests over land possessed by Indigenous people in Australia. It is the result of the High Court decision in *Mabo (No 2) v Queensland*. It is designed to be a guarantee of rights hard fought for by the nation's most disadvantaged people. Only this year the Prime Minister said that the Government 'does not seek to wind back or undermine native title'. Yet this bill will push aside the Native Title Act and the 'special right to negotiate' it provides to Indigenous people. The rights enshrined in the Native Title Act are held dear by the residents of the Northern Territory particularly, where (unlike in so many other parts of the nation) there remain intact cultural groups with strong ties to their country. We are deeply suspicious of the Government's pre-emptive move to override rights so highly valued.

**Schedule 1 of the Commonwealth Radioactive Waste Management (Related Amendment) Bill** eliminates any appeal under the *Administrative Decisions (Judicial Review) Act 1977* for a site selection declaration.

We are concerned that that not only will any site selection decision have no reference to established criteria, it will not be reviewable. This would mean that this bill will sit alongside the various tax and spy acts as non-reviewable decisions. This bill is of a different character and should not be exempt from judicial review.

## **2. CONCERNS ABOUT THE PROCESS FOR SITE SELECTION**

As noted, the bill waives any need for a site selection process.

Previously, there has been an extensive process of site selection for a low level waste dump in the past. It began with the National Health and Medical Research Council developing a *Code of Practice for Near-surface Disposal of Radioactive Waste in Australia* from International Atomic Energy Agency (IAEA) criteria in 1992. The criteria included the depth of the water table, the suitability of groundwater for human consumption or other use, ecological significance, and cultural or historical significance. The final phase of this process produced a document in 1998 called *A Radioactive Waste Repository for Australia: Site Selection Study – phase 3 Regional Assessment*. This document presents a list of 8 suitable sites for the location of a national radioactive waste repository. None of the sites currently under consideration were listed in this report.

In July 2001 a discussion paper was published by the then Department of Industry, Science and Resources to initiate a 'transparent, nationwide' process to select a site for a medium level waste dump according to 'environmental and scientific criteria'. While specific guidelines were not finalised a long list of sites was developed in 2004, including many Defence sites. None of the sites currently under consideration were listed in this report.

The proposed sites in this bill have not been selected in accordance with the NHMRC's *Code of Practice*, the DISR discussion paper, nor any rigorous process. Dr Cameron of ANSTO stated at Senate Estimate hearings on 2 November 2005 that 'there was no analysis undertaken by ANSTO of those three sites and no advice provided to the Department on those three sites against technical assessment criteria'.

According to the Department of Education, Science and Training's fact sheet 'About Locations, Assessment and Approval', the current proposed sites were selected only with reference to the 'operational requirements' of the Department of Defence.

We are concerned at the circumvention of any proper planning, consultative and investigative process for site selection. A couple of public meetings in Alice Springs after the fact is not proper planning and consultation. Under this bill the Government is not required to follow any process for site selection, let alone the Code of Practice developed by the NHMRC or the discussion paper developed by DISR. We are also concerned that if the sites currently under consideration were examined according to appropriate criteria, including those previously used by the Government, they would be found to be unsuitable.

### **3. CONCERNS ABOUT THE TIMING AND JUSTIFICATION OF THE BILL**

The Government has argued that this bill is required urgently in order to obtain the license for the proposed reactor at Lucas Heights by next April, and in turn ensure the supply of radiopharmaceuticals to the Australian community. The Government has also argued in parliament that storage at Lucas Heights is nearing capacity and that the threat of terrorism demands a secure waste dump location.

None of these reasons demand the urgency the Government is pressing. And none of them even suggest a waste dump is required half way across the country in the Northern Territory.

Dr Loy from ARPANSA stated at Senate Estimates hearings in November 2005 that ARPANSA's guidelines for the issue of the first license to prepare the site will not be ready even in draft form until the end of this year. They will then be open to public submission for a period of several months. So ARPANSA's licensing requirements for the site will not be ready until mid-next year. As any site selected by the Government will have to be licensed by ARPANSA, it is trite to insist that the site must be chosen before the licensing criteria have even been composed.

Further, at Senate Estimate hearings on 2 November 2005, in relation to licencing for the new reactor, Dr Cameron stated that ANSTO 'have indicated very clearly [to ARPANSA] that we have the capabilities of handling waste safely on site'.

Dr Cameron also stated that ARPANSA 'have not raised with us significant issues to do with the information we provided on waste and spent fuel'. So apparently there is no rush and no necessity according to the Government's own nuclear agency ARPANSA. In any event, ANSTO may apply for a licence extension to continue operating the old reactor beyond 2006 and any waste resulting from the new reactor will be taken by the USA for the first 10 years.

The Medical Association for the Prevention of War has put out a comprehensive response to the Government's claim that the supply of radiopharmaceuticals will be threatened without the waste dump and licence for the new reactor. Suffice to say, even without any new reactor or waste dump, Australia would be able to purchase sufficient radiopharmaceuticals for its medical requirements.

The Government has not explained why a waste dump is a terrorist threat and if so why a waste dump in the Northern Territory would be less of a threat.

In short, the Government has offered no compelling case to rush this bill through to build a waste dump in the Northern Territory. And the Government has not explained why Commonwealth waste cannot continue to be stored at Lucas Heights with its established infrastructure and scientific expertise. We are concerned that this bill is the first step in a nuclear industry where the selected site may in future become a national waste dump which may also accept high level and international waste. In September 2004 Senator Ian Campbell gave a 'categorical assurance' that there would not be a nuclear waste dump in the Territory. How do we know the Government will not change its mind again and expand the dump in future?

#### **4. CONCERN ABOUT THE INQUIRY**

Finally, while we welcome the opportunity this inquiry presents to submit our views on the bill, we are dismayed at the limited amount of time the committee has been able to devote to it. We understand that the same committee is also examining the Work Choices Bill and can therefore only devote limited time to this bill. This time pressure prevents the committee from inquiring thoroughly, and from receiving submissions and presentations of evidence from all concerned parties. Such a truncated inquiry on a complex issue can only be described as a veneer of democracy and not a genuine attempt to consult people and listen to their views.