

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

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

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**Submitter:** Mr Justin Tutty

**Organisation:** Darwin No Waste Alliance

**Address:** 56 Alawa Cres  
ALAWA NT 0810

**Phone:** 08 8948 3339

**Fax:**

**Email:** [Darwin@no-waste.org](mailto:Darwin@no-waste.org)

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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.*

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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 from 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.

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*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.*