

# NATIONAL RADIOACTIVE WASTE MANAGEMENT ACT

## Undemocratic Nuclear Waste Legislation Should Be Dumped

Nuclear-free Campaign – Friends of the Earth Australia

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*"The disposal of radioactive waste in Australia is ill-considered and irresponsible. Whether it is short-lived waste from Commonwealth facilities, long-lived plutonium waste from an atomic bomb test site on Aboriginal land, or reactor waste from Lucas Heights. The government applies double standards to suit its own agenda; there is no consistency, and little evidence of logic."*

– Nuclear engineer Alan Parkinson

A report released in 2017 points to serious problems with Commonwealth legislation governing the push to establish a national nuclear waste dump in South Australia. The report – written by Monash University fifth-year law student Amanda Ngo (who has since graduated) – concerns the National Radioactive Waste Management Act 2012 (NRWMA).

The NRWMA gives the federal government the power to extinguish rights and interests in land targeted for a radioactive waste facility. In so doing the relevant Minister must "take into account any relevant comments by persons with a right or interest in the land" but there is no requirement to secure consent – or to back off if consent is not forthcoming.

Aboriginal Traditional Owners, local communities, pastoralists, business owners, local councils and State/Territory Governments are all disadvantaged and disempowered by the NRWMA.

The NRWMA goes to particular lengths to disempower Traditional Owners – in this case, Adnyamathanha Traditional Owners who are strongly opposed to a nuclear dump being established at the proposed site in the Flinders Ranges, and Barnjarla Traditional Owners who are unanimously opposed to a nuclear dump being established at the proposed sites near Kimba on the Eyre Peninsula.

The nomination of a site for a radioactive waste facility is valid even if Aboriginal owners were not consulted and did not give consent. Federal Labor MPs complained long and loud about similar provisions in the Howard government's legislation, describing it as 'extreme', 'arrogant', 'draconian', 'sorry', 'sordid', and 'profoundly shameful'. At its 2007 national conference, Labor voted unanimously to repeal the legislation.

But it took five years for Labor Resources Minister Martin Ferguson to repeal the legislation, and Labor's NRWMA isn't much different to the legislation it replaced. It states that consultation should be conducted with Traditional Owners and consent should be secured – but that the nomination of a site for a radioactive waste facility is valid even in the absence of consultation or consent.

The NRWMA has sections which nullify State or Territory laws that protect the archaeological or heritage values of land or objects, including those which relate to Indigenous traditions. The Act curtails the application of Commonwealth laws including the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and the Native Title Act 1993 in the important site-selection stage. The Native Title Act 1993 is expressly overridden in relation to land acquisition for a radioactive waste facility.

Adnyamathanha Traditional Owner Regina McKenzie, who lives near one of the sites being targeted for a nuclear dump, said: "The NRWMA is a political attack on Adnyamathanha women's spiritual beliefs. The destruction of our culture and significant woman's sites is a form of assimilation and thus breaches the UN Declaration on the Rights of Indigenous Peoples."

Adnyamathanha Traditional Owner Enice Marsh said: "Native Title and the Aboriginal Heritage Act are not protecting our land. This needs a complete review or a Royal Commission. The Barndioota site in the Flinders Ranges must be struck off as a potential radioactive waste dump site and the National Radioactive Waste Management Act needs to be amended to give us the right to say 'no'."

The NRWMA has been criticised by Senate Inquiries and during a Federal Court challenge to an earlier federal government attempt to impose a national radioactive waste facility at Muckaty in the Northern Territory.

The NRWMA also puts the federal government's radioactive waste agenda above environmental protection as it seeks to curtail the application of the *Environment Protection and Biodiversity Conservation Act 1999*.

Successive governments have taken baby-steps towards a fair, responsible approach to radioactive waste management. The NRWMA outlines a process for land-owners to volunteer land for a waste facility. That's clearly an improvement on earlier, failed

attempts to impose facilities on unwilling communities. But land-owners weren't required to consult neighbours or local communities or councils before nominating their land. Thus the process led to acrimonious disputes at many of the nominated sites. The Flinders Ranges site was nominated by a formal Liberal Party politician and the nomination was accepted by the federal Coalition government despite overwhelming opposition from Traditional Owners, including those living near the proposed dump site.

The government has revised its process such that it will not accept any future nominations of land for a radioactive waste facility unless the applicant can demonstrate some degree of local consultation and support. Again, that's a welcome step towards a consent-based process. But the government still holds a very big stick behind its back – the NRWMA – which allows it to override opposition from communities, councils, Traditional Owners and state/territory governments.

A senior government official told a public meeting in Hawker, near the proposed dump site, that the NRWMA is based on 'world's best practice'. That's a lie. The legislation systematically disempowers local communities and Traditional Owners and weakens environmental protections. It needs to be radically amended or replaced with legislation that protects the environment and gives local communities and Traditional Owners the right to say 'no' to radioactive waste facilities.

**The full report is posted at  
[www.nuclear.foe.org.au/nrwma](http://www.nuclear.foe.org.au/nrwma)**