

NORTHERN TERRITORY OF AUSTRALIA

**NUCLEAR WASTE TRANSPORT, STORAGE AND DISPOSAL
(PROHIBITION) ACT 2004**

As in force at 28 February 2019

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 28 February 2019

NUCLEAR WASTE TRANSPORT, STORAGE AND DISPOSAL (PROHIBITION) ACT 2004

An Act to prohibit the transport into the Territory, and the storage and disposal in the Territory, of certain nuclear waste, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004*.

2 Definitions

In this Act, unless the contrary intention appears:

Code of Practice means the Code of practice for the near-surface disposal of radioactive waste in Australia (1992) approved by the National Health and Medical Research Council and published by the Australian Government Publishing Service as Radiation Health Series No. 35 (ISBN 0 644 28673 3).

executive officer, of a body corporate, means a person who is concerned with, or takes part in, the management of the body corporate, (whether or not the person is a director or the person's position is given the name of executive officer), and includes a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or a State or Territory.

nuclear plant means a nuclear reactor, radioisotope enrichment plant involved in the enrichment of uranium or plutonium, nuclear reprocessing plant or nuclear weapons facility, whether or not it is a place to which this Act applies.

nuclear waste means:

- (a) Category A, B, C or S radioactive waste within the meaning of the Code of Practice; or

- (b) waste material that contains radioactive material derived from:
 - (i) the operation or decommissioning of a nuclear plant;
 - (ii) the testing, use or decommissioning of nuclear weapons;
or
 - (iii) the conditioning or reprocessing of spent nuclear fuel.

nuclear waste storage facility means an installation for the storage or disposal of nuclear waste.

radioactive material means any material that spontaneously emits ionising radiation as a consequence of nuclear transformation.

3 Objects

The objects of this Act are to protect the safety, health and welfare of the people of the Territory and the environment in which they live by prohibiting:

- (a) the construction or operation of a nuclear waste storage facility in the Territory; and
- (b) the transportation of nuclear waste into the Territory for storage at a nuclear waste storage facility in the Territory.

4 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

5 Application of Act

- (1) A provision of this Act relating to the transport, storage or disposal of nuclear waste does not have any effect to the extent it is inconsistent with a law of the Commonwealth but the provision must not be taken to be inconsistent with that law if it can be complied with without contravention of that law.
- (2) Subject to this section, this Act applies in relation to all nuclear waste, whether originating inside or outside the Territory.
- (3) This Act does not apply in relation to the following:
 - (a) nuclear waste that was lawfully stored in the Territory before the commencement of this Act;

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- (b) nuclear waste produced in the Territory that is stored or disposed of in accordance with the *Radiation Protection Act 2004*;
 - (c) mining activity in the Territory related to uranium ores or uranium oxide (U₃O₈) under the *Mining Management Act 2001*;
 - (d) the possession, packaging, storage or transportation of uranium ores or uranium oxide (U₃O₈) under the *Radioactive Ores and Concentrates (Packaging and Transport) Act 1980*;
 - (e) nuclear waste produced incidentally from the operation or maintenance of a pipeline in the Territory conveying petroleum or other energy-producing hydrocarbons;
 - (f) nuclear waste produced incidentally from the exploration for, or the recovery or exploitation of, petroleum or other energy-producing hydrocarbons in the Territory.
- (4) This Act does not apply in relation to nuclear waste transported into the Territory if the nuclear waste is produced incidentally from:
- (a) the operation or maintenance of a pipeline conveying petroleum or other energy-producing hydrocarbons into the Territory; or
 - (b) the exploration for, or the recovery or exploitation of, petroleum or other energy-producing hydrocarbons at a prescribed project that:
 - (i) delivers significant economic and social benefits to the Territory; and
 - (ii) is located in a prescribed sedimentary basin within an offshore area or within 800 km seaward of the closest point on the Territorial Sea Baseline.
- (5) In this section:

offshore area, see section 7 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth).

Territorial Sea Baseline means the baseline in relation to the Northern Territory, from which the breadth of the territorial sea is measured, determined in accordance with sections 7, 10, 11 and 12 of the *Seas and Submerged Lands (Territorial Sea Baseline) Proclamation 2016*, made under section 7 of the *Seas and Submerged Lands Act 1973* (Cth).

Part 2 Prohibition of certain nuclear activities

6 Constructing or operating nuclear waste storage facility prohibited

- (1) A person must not construct or operate a nuclear waste storage facility.
- (2) An offence against subsection (1) is an environmental offence level 1.

7 Importing nuclear waste prohibited

- (1) A person must not transport nuclear waste into the Territory for storage at a nuclear waste storage facility in the Territory.
- (2) An offence against subsection (1) is an environmental offence level 1.

Part 3 Enforcement and legal proceedings

8 Injunctions

- (1) The Minister may apply to the Supreme Court for an injunction to prevent a person from doing anything that:
 - (a) would involve the construction or operation of a nuclear waste storage facility in the Territory;
 - (b) would involve the use of any place in the Territory for the storage or disposal of nuclear waste;
 - (c) would involve the transport of nuclear waste into the Territory for storage at a nuclear waste storage facility in the Territory;
or
 - (d) would facilitate or provide help in relation to anything mentioned in paragraph (a), (b) or (c).
- (2) It is not necessary for the Minister to prove the act or failure sought to be prevented by the injunction has previously occurred or would, if the injunction were not granted, be likely to occur or continue.
- (3) An interim injunction may be granted before final determination of the application.
- (4) The Court must not require, as a condition of granting an interim injunction, that an undertaking be given for damages or costs.

- (5) The taking of a proceeding against a person for an offence under this Act is not affected by:
- (a) the making of the application for an injunction;
 - (b) the grant or refusal of an injunction on the application; or
 - (c) the rescission, variation or expiry of an injunction granted on the application.

9 Minister may authorise action to be taken

An employee, agent or contractor of the Territory authorised by the Minister may do one or more of the following:

- (a) remove a nuclear waste storage facility constructed or operated in contravention of this Act;
- (b) make good any environmental harm resulting from the construction or operation of the facility;
- (c) prevent or mitigate any future environmental harm resulting from the construction or operation of the facility.

10 Conduct of representatives

- (1) If, in a proceeding for an offence against this Act, it is necessary to establish a person's state of mind in relation to particular conduct, it is sufficient to show:
- (a) the conduct was engaged in by a representative of the person, within the scope of the representative's actual or apparent authority; and
 - (b) the representative had that state of mind.
- (2) For a proceeding for an offence against this Act, conduct engaged in on behalf of a person by a representative within the scope of the representative's actual or apparent authority is taken to have been engaged in also by the person.
- (3) However, a natural person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) or (2) had not been enacted.
- (4) In this section:

engaging in conduct includes failing or refusing to engage in conduct.

representative means:

- (a) of a body corporate – an executive officer, employee or agent of the body corporate; or
- (b) of a natural person – an employee or agent of the person.

state of mind of a person includes:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

11 Liability of executive officers of body corporate

- (1) If a body corporate commits an offence against this Act, each of the executive officers of the body corporate are taken to have committed the same offence.
- (2) However, it is a defence for an executive officer to establish:
 - (a) the body corporate would not have been found guilty of the offence because it would have been able to establish a defence;
 - (b) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed; or
 - (c) the defendant exercised due diligence to prevent the commission of the offence.
- (3) A proceeding for an offence against this Act may be brought against an executive officer of a body corporate whether or not a proceeding for the offence is brought against the body corporate.
- (4) A person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) had not been enacted.

12 Additional court orders

- (1) If, in a proceeding for an offence against this Act, a court finds the defendant guilty of the offence, in addition to any penalty it may impose, the court may make one or more of the following orders:
 - (a) an order that the defendant take stated action to do one or more of the things mentioned in section 9;

- (b) if the Territory has incurred costs and expenses in taking action to do anything mentioned in section 9 – an order that the defendant pay the Territory the reasonable costs and expenses decided by the court;
 - (c) if a person suffers injury or loss or damage to property because of the commission of the offence – the reasonable compensation decided by the court.
- (2) In addition, the court may make another order it considers necessary or convenient for the enforcement of an order under subsection (1).

Part 4 Miscellaneous provisions

13 Public moneys not to be used for prohibited activities

Despite any other Act or law to the contrary, public moneys of the Territory or moneys of a Territory authority must not be expended, granted or advanced to any person for, or for encouraging or financing any activity associated with, the development, construction or operation of a nuclear waste storage facility in the Territory.

14 Public inquiry into impact of nuclear waste storage facility

If a licence, exemption or other authority to construct or operate a nuclear waste storage facility is granted under a law of the Commonwealth, a Committee of the Legislative Assembly nominated by the Minister must inquire into, consider and report on the likely impact of the facility on the cultural, environmental and socio-economic wellbeing of the Territory.

15 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may provide for penalties for offences against the Regulations not exceeding 100 penalty units for a natural person and 500 penalty units for a body corporate.
- (2A) The Regulations may specify examples of significant economic and social benefits for section 5(4)(b)(i).

- (3) The Regulations may:
- (a) make different provision in relation to:
 - (i) different persons or matters; or
 - (ii) different classes of persons or matters; or
 - (b) apply differently by reference to stated exceptions or factors.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004 (Act No. 58, 2004)

Assent date	4 November 2004
Commenced	4 November 2004

Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Act 2019 (Act No. 2, 2019)

Assent date	27 February 2019
Commenced	28 February 2019 (s 2)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1 and 5.

4 LIST OF AMENDMENTS

s 2	amd No. 2, 2019, s 4
s 5	amd No. 2, 2019, s 5
s 15	amd No. 2, 2019, s 6