Anti-Terrorism or Environmental Injustice?  
Social Exclusion of Indigenous and Urban Communities through Australia’s Nuclear Policies and Anti-Terrorist Legislation

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Abstract

Australia’s nuclear industry has an associated history of human rights and environmental justice abuses. The mining of uranium, the testing of nuclear weapons and the dumping of nuclear waste on indigenous land, without agreements from the traditional owners, are unresolved human rights issues. An inter-related concern is the construction of a nuclear reactor in a fast-growing and highly populated area of Sydney, against the wishes of the local community. These issues highlight the struggle for ecological democracy. Legislative changes to the Intelligence Services and Security Organisations Acts in 2003 severely restrict the rights of communities to protest, and even comment on, nuclear policy matters in Australia. We will discuss, in the context of environmental justice, the threat these legislative changes pose to the democratic right to protest against such actions.

Introduction

The mining of uranium, the testing of nuclear weapons and proposals for the dumping of nuclear waste on indigenous land, without agreements from the traditional owners, are examples of the Australian nuclear industry’s associated history of human rights and environmental justice abuses. A related concern is the construction of a nuclear reactor in a fast-growing and highly populated area of Sydney, against the wishes of the local community. These issues highlight the struggle for ecological democracy. At a time when Australian citizens most need to be able to expose concerns about these issues, legislative changes to the Australian Nuclear Non-Proliferation Act (1987) have severely restricted the rights of communities to protest, and even comment on, nuclear policy matters in Australia, and have also shielded Australian nuclear facilities from public scrutiny.

In the context of environmental justice, we will show that the combined effect of these legislative changes is the stifling of effective protest. Our focus is on two communities involved in a struggle of opposition to Australia’s nuclear industry: the Kupa Piti Kungka Tjuta in South Australia, opposing a nuclear waste dump, and the residents of Sutherland Shire in Sydney, NSW, opposing a new nuclear reactor in the suburb of Lucas Heights.
The communities opposing the nuclear reactor and the waste dump are linked not only by virtue of being part of the same chain of nuclear production, but also because the Lucas Heights Hifar reactor was a ‘gift’ to Australia from the British government - a thank you present for supporting the British nuclear weapons program - and was constructed under the **Defence Projects Protection Act**. And the legacy of that gift is the unresolved problem of where to locate the nuclear waste generated by the reactor. Until a July 2004 decision by the Howard government, it appeared that the waste from the new reactor at Lucas Heights would be transported to a shallow burial repository near Woomera, where members of the same Aboriginal communities who had experienced the Maralinga tests would once again be expected to deal with the after-effects of Australia’s involvement in the nuclear industry.

**Environmental justice or radioactive racism?**

The core concern of the Environmental Justice Movement (EJM) is that some groups in society are disproportionately at risk from, and adversely affected by, environmental degradation. Hence it takes up the relationship of class, race and gender to environmental hazards such as toxic waste dumps, uranium mining and polluting industry, and argues that the location of these risks is inequitably distributed. That is, that the poor (and, by association, women), indigenous and people of colour bear the brunt of the effects of environmental degradation because of where they are forced to work, live and play.

The central demands of the members of the EJM are for more equitable distribution of, and a reduction in, exposure to environmental problems, recognition of their position in relation to the inequitable distribution of hazards, and for participation in the development of environmental policy (Dryzek and Schlosberg, 1998). The EJM is characterised by the challenges it poses to mainstream environmental organisations and government, its leadership by women in many cases, and by its reliance on local, grassroots networking as its basis for organising.

Australia has no formal, recognisable environmental justice movement such as exists in the USA, where EJM activists mobilise via the Internet and utilise legal avenues to prove racially motivated environmental injustices (Ageyman, 2002). Informally, however, questions about justice, rights and equity are increasingly entering Australian environmental and sustainability policy debates. In particular, environmentalists taking on the nuclear industry have come to recognise not only the ecological damage potentially caused by that industry, but also its exploitation of Aboriginal people.

Aboriginal communities have been affected by the nuclear industry since Australia first permitted the British Government to use the South Australian desert as a test site for nuclear weapons throughout the 1950’s and 1960’s. Until relatively recently, the human rights issues associated with those tests have been treated separately from those of environmental degradation. The explosions at Maralinga and Emu Junction not only directly exposed Aboriginal people to high levels of radioactive fallout, but also contaminated their land - their source of food and water. The effects of the nuclear industry are largely borne by Aboriginal communities - the testing of weapons, uranium mining and the storage of radioactive waste have all taken place on Aboriginal land. Environmentalists are taking up the injustice of this inequitable distribution of risk.

Environmental activists have strongly supported the successful campaign by the *Kupa Piti Kungka Tjuta* to oppose the construction of a nuclear waste repository near Woomera in South Australia. These campaigns comprised senior Aboriginal women and environmental activists affiliated with established green groups, in particular Friends of the Earth (FOE) and the Australian Conservation Foundation (ACF). Throughout that campaign ‘greenies’ took on board
the issue of cultural heritage and Aboriginal land rights in a campaign which they would historically have fought on the basis of classical green principles. That is, arguments such as the risks of radioactive contamination associated with uranium mining and radioactive waste.

The increasing inclusion of social justice issues by the environmental movement is indicated by the fact that senior women elders of both the Kupa Piti and the Mirrar (who successfully opposed the construction of the Jabiluka uranium mine on their land), fighting to protect their culture and resist the effects of that oppression, have been awarded the Goldman Prize - a prestigious, international environmental award.

**Concerned communities, community concerns**

Communities affected by nuclear projects have had concerns about Australia’s nuclear industry for many years. There is a rich and varied tradition of opposition to nuclear policies from Australians engaged in the Peace and Environment movements (Garrett, 2002). Surveys of public opinion in Australia conducted by the federal government, Greenpeace and community organisations all consistently show that between 75% and 90% of Australian citizens are opposed to the nuclear industry, and do not believe that the federal government should build a new nuclear reactor in suburban Sydney (Keys Young, 1997; Insight Research, 2000; BBC Consulting Planners, 1997). There has been a strong local campaign against the new nuclear reactor and a growing awareness among Australian environmental groups of the need to campaign against this government proposal. However, even in a middle class suburb of Sydney, the overwhelming opposition of the community opinion has not been enough to stop a government determined to proceed with a nuclear facility.

There was some opposition to the reactor when it started operating in the 1950s, but the campaign really gained momentum in the mid-1970s with the federal government’s proposal to build a new nuclear research reactor. In 1976, FOE set up a camp at Lucas Heights which attracted the interest of local peace activists. Two local nurses and a doctor, aware of the health impacts of radiation through their involvement in the Peace Movement, decided to examine more closely the federal government’s activities at the reactor site. There appeared to be high rates of childhood leukaemia in the area, and they campaigned to have the health effects of radiation releases from the reactor and isotope production examined. So began the Sutherland Residents Action Group.

This group, now known as People Against a Nuclear Reactor (PANR), has been through several evolutionary stages since then, but has remained committed, first, to finding out accurate information about the activities associated with the reactor and, secondly, to stopping the construction of a new reactor. Its members have expressed fear that their health may be detrimentally affected by on-going exposure to radiation emissions from either the operations of the reactor or radioactive waste stored on site. Initially, these fears related to concerns regarding exposure to unacceptable levels of radiation as a result of eating food or drinking milk contaminated by radiation from the reactor at a time when the local community relied on locally produced vegetables and goats’ milk. For example, one of the community nurses involved in the establishment of the campaign against the reactor talks about realising that there may be a risk of radioactive contamination of their local produce. She noticed that the Australian Nuclear Science and Technology Organisation (ANSTO), the authority which administers the reactor, was conducting tests in areas surrounding the reactor.

Before we had made-up soybean mixtures that are now readily available on the market we often fed allergic babies on goats milk. It all came from Menai - all the goats in the district were from Menai, all the goats’ milk was sold up in Sutherland from a little
delicatessen shop. And we had goats ourselves. Quite a few people had goats, we used to milk them ourselves... When that happened I thought, you know, there’s something wrong up here, the goats were grazing right up to the fence - they were free-range goats and when you looked at these reports you realised they were testing grass, and wattle trees and gum trees and various sorts of vegetation and weed in the river. So they were all sources of food.¹

Such fears were later found to be realistic when high levels of strontium were found in a study of the milk at Menai (Rice, 1993). Along with concerns regarding health and safety, members of both communities have questioned the reliability of the information available to them regarding the risks associated with the nuclear industry. Another Sutherland Shire resident questions the idea that they should believe there are ‘acceptable’ levels of risk, particularly for developing children, in an area of burgeoning residential development.

I mean, if you go along for x-rays they say, if you’re pregnant, notify the doctor and don’t have them. So, with the younger families moving into the area, I was concerned that there would be a lot of pregnant women living in the area, and very young children who are extremely vulnerable to radiation. And so, how could any level be acceptable?²

The Kupa Piti Kungka Tjuta also have questions about the trustworthiness of government and industry reassurances regarding the level of risk. They have already lived through the effects of radioactive contamination, and government officials had assured them then that they would not be adversely affected. That was not their experience, however.

All of us were living when the government used the country for the bomb. We were living at Twelve Mile, just out of Coober Pedy. The smoke was funny and looked hazy. Everybody got sick. Other people were at Mabel Creek and they got sick. Some people were living at Wallatinna. Other people got moved. Whitefellas and all got sick. When we were young, no woman got breast or any other kind of cancer. Cancer was unheard of with men either. And no asthma. People without sickness. The government thought they knew what they were doing then. Now again, they are coming along and telling us poor blackfellas “oh, there’s nothing that’s going to happen, nothing is going to kill you.” And that will still happen, like that back there. (Crombie et al, 1998).

With that background, it is understandable that government assurances are treated with some suspicion, and that there is a low level of community trust in the nuclear industry. In that climate, fears relating to the risk of a nuclear accident at the reactor, as well as the threat of terrorism associated with it, also motivated some community members to speak out.

It just seemed that there is this air of secrecy and cover-up with the nuclear industry all around the world, and we’ve seen lots of examples of it where people have said things are perfectly safe and then they weren’t. You know, Three Mile Island happened and Chernobyl happened, and all these things happened, have happened, in the world, associated with nuclear facilities. And always the people that built them or ran them always said they were safe. Until something happened! And so, you know, that became a concern to me.³

The Kungkas’ campaign
The *Kupa Piti Kungka Tjuta* (the *Kungkas*) put a call out to environmentalists in August 1998, expressing similar concerns to those of the Lucas Heights Study Group in the 1970’s. In a letter addressed to ‘the Greenies’, and distributed via the Internet, the *Kungkas* asked for help to resist the nuclear waste dump because of their fears it would contaminate their water and food supplies. They wrote:

> We’ve got underground water - that’s why we’re worrying about the water. It would be different if we had water coming from a pipe somewhere, but we depend on the underground water. We don’t want the poison from the dump leaking into the underground water. And we’re worried about the animals. We eat kangaroo, emu, they already poisoned the rabbit, *ungkata* [cadney], *goanna*, *ngintaka* [perentie], porcupine, *kipara* [wild turkey]. We worried about all the beautiful native birds. We worried that any of these animals/birds become poisoned and we’ll become poisoned in our turn.

When the *Kungkas* sent out their call, greenies responded. FOE established strong links with them and, in 2002, began actively campaigning against the waste dump and the transport of nuclear waste. A group of women environmentalists worked with the *Kungkas* to develop a campaign known as *Irati Wanti* (which means ‘the poison, leave it’). The *Irati Wanti* campaign effectively publicised the potential effects the waste dump would have on the Aboriginal people involved. Travelling along the transport route from Lucas Heights to South Australia, activists lobbied political representatives at all three levels of government, and raised the awareness of community members via community meetings and the use of the local press. In 2000, the *Kungkas* visited the Lucas Heights reactor, establishing a strong link between their communities, and in 2003 they travelled along the transport route *Kungkas* used to accept their Goldman award. Their clear message was ‘don’t send your poison to our land’.

In the lead-up to the 2004 federal election, the ACF campaigned strongly alongside the South Australian state government, and FOE did likewise with the local Adelaide community. Their efforts succeeded: the federal government decided against locating the waste dump in South Australia in the face of the potential loss of three marginal seats in South Australia.

**National security: a secret affair**

As in the nuclear programmes of other countries, secrecy has been a feature of government nuclear bodies since the 1950s when the reactor was built under the *Defence Act*. Until 1987 the operations of the Australian Atomic Energy Commission and the Lucas Heights reactor remained subject to Australian Commonwealth law secrecy provisions. Under these provisions, staff revealing information relevant to the site were subject to penal provisions, including imprisonment of up to twenty years. Residents passing on such information could be jailed for seven years.

During the 1980s a campaign was waged against these provisions with the support of the NSW Council for Civil Liberties. Gareth Evans, then Minister for Science, was responsive to this civil liberties campaign and, in 1987, these penal provisions were repealed under the *Australian Nuclear Science and Technology Organisation Act* (1987) (the ANSTO Act). This legislation replaced the AAEC with ANSTO, and gave the new organisation a specific charter to be more outward-looking, and to develop closer links with industry and the community (Ford, 1987). However, in 1992, when Sutherland Shire Council (SSC) won a case in the NSW Land and Environment Court to stop the dumping of nuclear waste at Lucas Heights, the Labor government fast tracked amendments to ensure that SSC could not take the Commonwealth to
court again. This was claimed to be necessary to ensure that the Commonwealth government retained control of the transportation of nuclear materials.

The growing local awareness and concern about the impacts of the existing reactor has been heightened by the proposal to build a new reactor. Anti-reactor activists have contested government information, presented alternative assessments of the need for the reactor, and also disputed the safety of the facility. The multi-faceted nature of the issue has been a complicating factor for the community’s ability to challenge government decisions. As expressed by one of the community activists, for example, the scientific and medical arguments regarding the need for the reactor have often been used to obfuscate the diplomatic one.

One of the things we had trouble dealing with as well was this hidden argument, not a hidden argument, but a sub-textual argument, if you like, that on the one hand there was an argument about whether we should have a research reactor for, for research purposes, for scientific purposes, but behind all that as well the whole foreign, the whole diplomatic community, the Australian diplomatic community was arguing we should have a research reactor so we maintain our position on the board of the IAEA. (International Atomic Energy Agency)4

The local community has also regularly challenged the level of government secrecy over planning proposals which are quite inconsistent with modern urban planning practices. In September 1997, prior to the formal announcement of its intention to build a new nuclear reactor, the federal government embarked on a strategy of refusing to meet the public’s demand for information. A senior member of the federal Science Minister’s staff indicated that it was an explicit government strategy to “starve the public of oxygen, that is, refuse to answer their letters so they had nothing to go on” (ABC Radio, 1998). There is evidence, however, that the secrecy simply took on a different form. In February 2000, for example, ANSTO staff were required to sign a confidentiality undertaking that they will not make any statements concerning the work of ANSTO external to the organisation. In May 2001, an Australian Senate Committee conducted an inquiry into the contracts that have been signed between Argentina and Australia to build the new reactor. The Senate Committee was particularly critical of the Coalition Government and ANSTO for their secrecy. It noted:

The Committee is highly critical of ANSTO’s attitude which seeks to make a parliamentary committee subordinate to the whims of a government agency and prevents that committee from exercising its responsibility to scrutinize the executive. The Committee therefore appreciates the frustration experienced by the Sutherland Shire Council and members of the public who have experienced a similar attitude. (Commonwealth of Australia, 2001)

Legislative amendments

In late November 2003, the Australian Parliament passed laws to amend the existing Nuclear Non-Proliferation (Safeguards) Act (1987) (NNPA). A number of these changes were strongly criticised for their potential to restrict public scrutiny of nuclear developments, particularly in relation to the operations of the ANSTO’s Lucas Heights Nuclear Facility (Blight, 2004). The new laws create offences for entering an area, vehicle, aircraft or ship that is designated as restricted, and also for communicating information considered to prejudice the security of nuclear material or associated items. There are unresolved concerns over the definitions and interpretation of these new laws and their impact on peaceful protest activity, media scrutiny and
protection of industry whistle blowers. National environment groups, the Democrats, the Australian Greens and the NSW Council for Civil Liberties have condemned the restrictions to scrutiny of nuclear activities by the media and the community that these laws bring about (Greenpeace and ACF, 2003; Malkin, 2003).

The imposition of an institution that is said to be necessary for Australia’s national security can only be achieved, it seems, by taking away the democratic rights of the local community where it is to be imposed. Anti-terrorist laws which have been introduced since September 11 threaten the ability of activists to oppose pro-nuclear policies, as the laws further limit the rights of groups to demonstrate their opposition to government policies. Many Australians are not aware of the further impacts that the November 2003 changes to Australia’s Nuclear Non-Proliferation legislation have had on the rights of the public to question or challenge nuclear facilities, or of the historical background to the draconian effects of these changes.

The changes to the NNPA were introduced by the government under the guise of improving security for nuclear materials in our ‘current terrorist alert’. The revised legislation again imposes draconian penalties on citizens, non-government organisations, whistle blowers and media wishing to scrutinise or oppose nuclear facilities, uranium mines, radioactive waste dumps and nuclear waste transports. This legislation, which the federal government claims increases national security at nuclear facilities, actually does the opposite by effectively silencing any public scrutiny of our nuclear facilities, a point taken up by Greenpeace Australia Pacific. Their submission to the Foreign Affairs, Defence and Trade Committee review in September 2003 stated:

While the bill purports to strengthen Australia’s efforts to prevent proliferation, provisions under section one will not only inhibit public access to information relating to the nuclear industry, it could actually facilitate Australia’s ongoing sponsorship of nuclear activities that undermine commitments to non-proliferation. (Greenpeace, 2003)

Naturally, community activists, who successfully opposed the earlier legislation, believe that they are yet again to be silenced.

We did, I think our campaign probably got the Atomic Energy Act and the Defence Project Protection Act repealed. Now we’ve lost that one again because they’ve used terrorism to introduce a whole lot of really repressive legislation which was passed in the Senate, I’m sorry to say. They said “oh well, we got a lot of amendments,” but the Bill that went through was dreadful. Absolutely repressive.5

Rather than affecting terrorist organisations, the domestic changes to the NNPA impact on non-government organisations (NGOs), community groups, media representatives and industry whistle blowers.

The changes have quite extensive and profound implications for the media, environment and community groups and residents living near nuclear facilities or proposed nuclear transport routes. For example, Section 26A creates an offence for communication that may prejudice the security of nuclear material or an associated item. This is undefined and will potentially discourage industry insiders, whistle blowers or media representatives from speaking out in the public interest.

Under the ANSTO Act a whistle blower could, ‘with reasonable excuse’, pass on information about the construction and operation of a nuclear reactor and associated facilities. On many occasions, ANSTO workers have advised community activists or media representatives regarding safety concerns that were not being met at Lucas Heights because of
budget constraints or a poor safety culture. Making these matters public can improve safety conditions for workers and the public. The level of scrutiny an industry is subjected to is often equated with improved performance and reduced safety risks. The ‘reasonable excuse’ provision has now been abolished and, if discovered, whistle blowers, community members and journalists can face fines of up to $5,000 and two-years jail, whilst corporations can be fined $25,000.

The community newspaper that serves the area around the reactor, the *St George and Sutherland Shire Leader*, is often the only newspaper prepared to cover this issue. Its editorial referring to the passage of the Nuclear Non-Proliferation legislation stated:

Last week in the dying days of the parliamentary year, a little more of Australians’ freedom of expression was snuffed out. Politicians are often accused of being out of step with their community. This draconian legislation demonstrates that well. (Anon, 2003)

Even when whistle blowers and community members are willing to risk speaking out, the media may refuse to print because it is either intimidated by, or just wishes to avoid, the added complications of the threat of prosecution. The current media under-reporting on nuclear issues affecting Sydney will only be exacerbated by such an approach.

The new Penalties and Powers section creates a new offence: that of unauthorised access to restricted areas. This has significant domestic political implications, especially given that this offence applies to any designated ‘area, vehicle, aircraft or ship’. This provision seems to be specifically designed to restrict protests against the transport of radioactive waste and spent nuclear fuel rods, and at the Lucas Heights nuclear reactor (Sweeney and Smith, 2003). In the 2003 federal budget, the government funded a $20 million increase in security measures at the front entrance. Community members were concerned that increased security at Lucas Heights would restrict access to an adjacent grassed area that has traditionally been used for lawful protest. Subsequently, the government agreed to allow access to this space under certain conditions (Joint Committee on Public Works, 2003).

During the extensive parliamentary debate on the NNPA, no rationale was provided regarding the potential inadequacies in existing laws (for example, trespass) with respect to such events, thus leading to the question as to why a new offence is needed (Sweeney and Smith, 2003). This concern is further compounded by proposed increased powers of arrest without warrant and the extended use of in-camera legal proceedings. Some Sutherland Shire residents describe these provisions as being motivated not by the events of 9/11, but rather by those of 12/17 - the date in 2001 when thirty-six Greenpeace protesters spectacularly invaded the reactor, clearly demonstrating the lack of real security at the Lucas Heights facility. Ironically, on the very same day, federal government authorities informed a regulatory forum in Sydney that the site was impenetrable (ARPANSA, 2001).

**Ecological democracy and the right to protest**

The right to question the reasons for a nuclear reactor in the first place, and to resist the construction of a new one, is seen as an important aspect of living in a democracy for many of those activists involved. They believe that their past activism, which involved questioning government policy, lobbying and protesting, led to positive legislative change, and that the new legislation can only restrict their right to protest against an industry they believe is a threat to the health and safety of their communities. The words of one of the long-term members of the Sutherland Residents Action Group express the sense of both pride and loss felt by the community with respect to the legislative changes they have witnessed.
We took some credit for the change to that Act [the *Atomic Energy Act*] because we campaigned for about eight years to have the Act changed, so that it took out the really draconian provisions that were included in that Act. That if you reported an accident you could be jailed, and if you revealed information and so forth. And the new legislation that has just been brought in is worse - we’ve actually lost all that ground that we gained.\(^6\)

Both the Sutherland community and the *Kungkas* have utilised protest strategies that are commonly employed by social activists around the world and which, in most democracies, are considered to be an acceptable means of expressing dissent and have brought about positive social change. They publicly questioned government decisions, conducted mass protests, and sought access to industry information regarding matters they believe are likely to influence their lives.

The conservative Australian government introduced the above legislative changes in a reactionary climate following the attacks in Washington and New York on 11 September 2001. The implied rationale is that the changes are required because there is a need for increased security measures at sites considered to be at increased risk of terrorist attack since then. That the reactor is a potential target for terrorist attack is not in question; in fact, PANR argue that is precisely one of the reasons the new reactor should not proceed. However, any restriction of the right to know about, to comment on, or to protest against the effects of such a toxic industry is a threat to democracy. When the history of oppression of Aboriginal people associated with the nuclear industry is considered in the light of environmental justice, such restrictions can only be interpreted as environmental injustice - as radioactive racism.

The words of the *Kupa Piti Kungka Tjuta*, following the federal government’s backdown on their plans to build a national radioactive waste dump in South Australia, are an illuminating reminder of the need to uphold a fundamental democratic right - the freedom to protest.

People said that you can’t win against the government. Just a few women. We just kept talking and telling them to get their ears out of their pockets and listen. We never said we were going to give up. Government has big money to buy their way out, but we never gave up. We told Howard you should look after us, not try and kill us. Straight out. We always talk straight out. In the end he didn’t have the power, we did. He only had money, but money doesn’t win. Happy now - *Kungka* winners. We are winners because of what’s in our hearts, not what’s on paper. About the country, bush tucker, bush medicine and *Inma* [traditional songs and dances]. Big happiness that we won against the government. Victorious. And the family and all the grandchildren are so happy because we fought the whole way. And we were going away all the time. Kids growing up, babies have been born since we started. And still we have family coming. All learning about our fight. (*Kupa Piti Kungka Tjutas*, 2004)

**References**


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2 Interview by Monica Nugent with Mary McGregor at the PANR office in Sutherland, 23 July 2004.
3 Ibid.
4 Interview by Monica Nugent with Paul Ellercamp at his home in Haberfield, 28 June 2004.
5 Interview with Heather Rice, op cit.
6 Ibid.