



Commonwealth Radioactive Waste Management Act 2005

No. 145, 2005

**An Act to make provision in relation to the
selection of a site for, and the establishment and
operation of, a radioactive waste management
facility, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 14 December 2005]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Commonwealth Radioactive Waste Management Act 2005*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Definitions

In this Act:

Aboriginal land means Aboriginal land within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Commonwealth contractor means:

- (a) a person who is a party to a contract with the Commonwealth or a Commonwealth entity; or
- (b) a person who is a subcontractor for a contract with the Commonwealth or a Commonwealth entity.

Commonwealth entity means:

- (a) a body corporate established for a public purpose by or under an Act; or
- (b) a company in which a controlling interest is held by any one of the following persons, or any 2 or more of the following persons together:
 - (i) the Commonwealth;
 - (ii) a body covered by paragraph (a).

controlled material means controlled material within the meaning of the *Australian Radiation Protection and Nuclear Safety Act 1998*, but does not include high level radioactive material or spent nuclear fuel.

facility means a facility for the management of controlled material generated, possessed or controlled by the Commonwealth or a Commonwealth entity.

high level radioactive material means material which has a thermal energy output of at least 2 kilowatts per cubic metre.

Land Council means a Land Council within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

site means:

- (a) a site specified in Schedule 1; or
- (b) a site approved by the Minister under Part 1A.

spent nuclear fuel means material that:

- (a) is or was capable of producing energy by a self-sustaining chain process of nuclear fission; and
- (b) has been irradiated in, and permanently removed from, a nuclear reactor (which is a structure containing material to which paragraph (a) applies in such an arrangement that a self-sustaining chain process of nuclear fission can occur in the structure without an additional source of neutrons).

subcontractor, for a contract, means a person who is a party to:

- (a) a contract with a Commonwealth contractor (within the meaning of paragraph (a) of the definition of **Commonwealth contractor**); or
- (b) a contract with another subcontractor (under a previous application of this definition).

traditional Aboriginal owners means traditional Aboriginal owners within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

Part 1A—Nomination of sites

3A Who may make nominations

- (1) The Chief Minister of the Northern Territory may nominate land in the Northern Territory (other than Aboriginal land) as a potential site.
- (1A) The Chief Minister of the Northern Territory must not nominate land under subsection (1) unless the Chief Minister has, at least 3 months before making the nomination, given written notice to the Land Council for the area in which the land is situated of the Chief Minister's intention to nominate the land.
- (2) A Land Council may nominate Aboriginal land in the area of the Land Council as a potential site.

3B Rules about nominations

- (1) A nomination must:
 - (a) be in writing; and
 - (b) be made to the Minister; and
 - (c) specify the land nominated by reference to portion number (if any), survey points (if available) and geographical coordinates; and
 - (d) contain evidence of all interests in the land; and
 - (e) if there is a sacred site within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* on or near the land—contain evidence that the persons for whom the site is sacred or is otherwise of significance are satisfied that there is no substantial risk of damage to or interference with the sacred site as a result of the nomination or subsequent action under this Act; and
 - (f) if the land is nominated by the Chief Minister of the Northern Territory—contain evidence of consent to the nomination by all persons holding interests in the land; and

- (fa) if the land is nominated by the Chief Minister of the Northern Territory and there is a registered native title claimant (within the meaning of the *Native Title Act 1993*) in relation to the land or any part of it—contain evidence of the consent to the nomination by the claimant; and
 - (fb) if:
 - (i) the land is nominated by the Chief Minister of the Northern Territory; and
 - (ii) the land or any part of it is the subject of an application of the kind mentioned in paragraph 50(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* that was made before 5 June 1997; and
 - (iii) the traditional land claim the subject of that application has not been finally disposed of;contain evidence of the matters mentioned in subsection (1B); and
 - (g) if the land is nominated by a Land Council—contain evidence that:
 - (i) the Land Council has consulted with the traditional Aboriginal owners of the land; and
 - (ii) the traditional Aboriginal owners understand the nature and effect of the proposed nomination and the things that might be done on or in relation to the land under this Act if the Minister approves the nomination; and
 - (iii) the traditional Aboriginal owners as a group have consented to the proposed nomination being made (that consent as a group being determined in accordance with section 77A of the *Aboriginal Land Rights (Northern Territory) Act 1976*); and
 - (iv) any Aboriginal community or group that may be affected by the proposed nomination has been consulted and has had adequate opportunity to express its view to the Land Council.
- (1A) The reference in paragraph (1)(f) to persons holding interests in land includes any registered native title body corporate (within the meaning of the *Native Title Act 1993*) in relation to the land or any part of it.

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- (1B) For the purposes of paragraph (1)(fb), the nomination must contain evidence that:
- (a) the Land Council for the area in which the land is situated has consulted with the traditional Aboriginal owners of the land; and
 - (b) the traditional Aboriginal owners understand the nature and effect of the proposed nomination and the things that might be done on or in relation to the land under this Act if the Minister approves the nomination; and
 - (c) the traditional Aboriginal owners as a group have consented to the nomination being made (that consent as a group being determined in accordance with section 77A of the *Aboriginal Land Rights (Northern Territory) Act 1976*); and
 - (d) the Land Council has consulted with any Aboriginal community or group that may be affected by the proposed nomination and the community or group has had adequate opportunity to express its view to the Land Council, and that the Chief Minister of the Northern Territory has considered any such view.
- (2) The Minister may request further information from a nominator.
- (3) A nomination is not a legislative instrument.

3C Approval of nominated land

- (1) The Minister may, in his or her absolute discretion, approve in writing nominated land or a specified part of nominated land as a site.
- (2) The Minister does not have a duty to consider a nomination.
- (3) An approval has effect at the time specified in the approval (which must not be earlier than the time the approval is made).
- (4) A copy of an approval must be published in the *Gazette* within 7 days of the approval being made.
- (5) Failure to comply with subsection (4) does not invalidate an approval.

- (6) Failure to comply with subsection 3B(1) does not affect the validity of an approval.
- (7) An approval is not a legislative instrument.

3D Procedural fairness in relation to approvals

No person is entitled to procedural fairness in relation to a Minister's approval.

Part 2—Selecting the site for a facility

4 Authority to conduct activities

- (1) This section applies to:
 - (a) the Commonwealth; and
 - (b) a Commonwealth entity; and
 - (c) a Commonwealth contractor; and
 - (d) an employee or agent of a person mentioned in paragraph (a), (b) or (c).
- (2) A person to whom this section applies may, in the Northern Territory, do anything necessary for or incidental to the purposes of selecting a site on which to construct and operate a facility.
- (3) Without limiting subsection (2), the person may do any or all of the following under that subsection (whether or not on a site):
 - (a) gain access to and enter land and drive vehicles or fly aircraft to and from it;
 - (b) in order to drive vehicles to and from land—use existing roads or construct roads on, or grade, land;
 - (c) construct or rehabilitate bores;
 - (d) operate drilling equipment;
 - (e) extract water;
 - (f) collect samples of flora and fauna;
 - (g) place monitoring equipment (including meteorological and hydrological measuring equipment);

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- (h) build structures to protect bores, monitoring equipment or other things;
 - (i) move or extract sand, gravel, soil, mineral and rock samples;
 - (j) conduct seismic or geological investigations;
 - (k) conduct archaeological or heritage investigations;
 - (l) clear vegetation.
- (4) A person doing a thing under this Part on land that is not a site within the meaning of paragraph (a) of the definition of *site* in section 3 must:
- (a) take all reasonable steps to ensure that the doing of the thing causes as little detriment and inconvenience, and does as little damage, as is practicable to the land and to anything on, or growing or living on, the land; and
 - (b) remain on the land only for such period as is reasonably necessary; and
 - (c) leave the land, as nearly as practicable, in the condition in which it was immediately before the thing was done.

5 Application of State and Territory laws

- (1) A law, or a provision of a law, of a State or Territory (whether written or unwritten), so far as it relates to:
- (a) the use or proposed use of land or premises; or
 - (b) the environmental consequences of the use of land or premises; or
 - (c) the archaeological or heritage values of land, premises or objects (including the significance of land, premises or objects in the traditions of Indigenous people); or
 - (d) controlled material, radioactive material or dangerous goods; or
 - (e) licensing (however described) in relation to:
 - (i) employment; or
 - (ii) carrying on a particular kind of business or undertaking; or
 - (iii) conducting a particular kind of operation or activity;

has no effect to the extent that it would, apart from this section, regulate, hinder or prevent the doing of a thing authorised by section 4.

- (2) The regulations may prescribe a law, or a provision of a law, of a State or Territory for the purposes of this subsection. The prescribed law or provision has no effect to the extent that it would, apart from this subsection, regulate, hinder or prevent the doing of a thing authorised by section 4.
- (3) Regulations made for the purposes of subsection (2) may prescribe a law, or a provision of a law, whether or not it is a law or a provision of a kind described in subsection (1).
- (4) The regulations may prescribe a law, or a provision of a law, of a State or Territory for the purposes of this subsection. The prescribed law or provision has effect despite anything else in this section.

6 Application of Commonwealth laws

- (1) The following laws have no effect to the extent that they would, apart from this section, regulate, hinder or prevent the doing of a thing authorised by section 4:
 - (a) the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*;
 - (b) the *Environment Protection and Biodiversity Conservation Act 1999*.
- (2) The regulations may prescribe another law, or a provision of another law, of the Commonwealth for the purposes of this subsection. The prescribed law or provision has no effect to the extent that it would, apart from this subsection, regulate, hinder or prevent the doing of a thing authorised by section 4.

Part 3—Acquisition or extinguishment of rights and interests

7 Minister's declarations

- (1) The Minister may, in his or her absolute discretion, declare in writing that one, or a specified part of one, of the sites is selected as the site for a facility. If the declaration relates to a site within the meaning of paragraph (b) of the definition of *site* in section 3, the declaration may specify all or some of the rights or interests in the site (or part of the site).
- (2) The Minister may, in his or her absolute discretion, declare in writing that all or specified rights or interests in land in the Northern Territory specified in the declaration are required for providing all-weather road access to the selected site (or selected part of a site).
- (3) A declaration has effect at the time specified in the declaration (which must not be earlier than the time the declaration is made).
- (4) A copy of a declaration must be published in the *Gazette* within 7 days of the declaration being made.
- (5) Failure to comply with subsection (4) does not invalidate a declaration.
- (6) The Minister must not:
 - (a) make more than one declaration under subsection (1); or
 - (b) make more than one declaration under subsection (2).
- (7) A declaration is not a legislative instrument.

8 Procedural fairness in relation to Minister's declarations

No person is entitled to procedural fairness in relation to the Minister's making of a declaration.

9 Acquisition or extinguishment

- (1) If the declaration under subsection 7(1) relates to a site within the meaning of paragraph (a) of the definition of *site* in section 3, then at the time the declaration has effect, any rights or interests in the selected site (or selected part of a site) that have not already been acquired by the Commonwealth, or extinguished, are by force of this section:
- (a) acquired by the Commonwealth or extinguished; and
 - (b) freed and discharged from all other rights and interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.
- (1A) If the declaration under subsection 7(1) relates to a site within the meaning of paragraph (b) of the definition of *site* in section 3, then at the time the declaration has effect, the rights or interests in the selected site (or selected part of a site) that are specified in the declaration are, by force of this section:
- (a) acquired by the Commonwealth or extinguished; and
 - (b) freed and discharged from all other rights and interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.
- (2) To avoid doubt, the rights and interests acquired under or extinguished by subsection (1) include:
- (a) rights to minerals (if any); and
 - (b) native title rights and interests (if any).
- (3) At the time the declaration under subsection 7(2) has effect, the rights or interests in the specified land that are specified in the declaration are, by force of this section:
- (a) acquired by the Commonwealth or extinguished; and
 - (b) freed and discharged from all other rights and interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.

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- (4) To avoid doubt, rights and interests specified in a declaration under subsection 7(1) that relates to a site within the meaning of paragraph (b) of the definition of *site* in section 3 or the declaration under subsection 7(2) may include any of the following:
- (a) rights to minerals;
 - (b) native title rights and interests;
 - (c) an interest that did not previously exist in relation to the land;
 - (d) an easement in gross.

10 Application of Commonwealth and Northern Territory laws

- (1) Section 9 has effect despite any other law of the Commonwealth or the Northern Territory (whether written or unwritten).
- (2) Without limiting subsection (1), section 9 has effect despite the following laws of the Commonwealth:
- (a) the *Lands Acquisition Act 1989*;
 - (b) the *Native Title Act 1993*.

11 Notice to Registrar-General

- (1) The Secretary of the Department may lodge with the Registrar-General for the Northern Territory (or other appropriate officer) a copy of a Minister's declaration under section 7, certified by writing signed by the Secretary.
- (2) The officer with whom the copy is lodged may deal with and give effect to it as if it were a grant, conveyance, memorandum or instrument of transfer of relevant rights and interests done under the laws of the Northern Territory.

Part 4—Conducting activities in relation to selected site

12 Authority to conduct activities

- (1) This section applies to:
 - (a) the Commonwealth; and
 - (b) a Commonwealth entity; and
 - (c) a Commonwealth contractor; and
 - (d) an employee or agent of a person mentioned in paragraph (a), (b) or (c).

- (2) A person to whom this section applies may, in relation to the selected site (or selected part of a site), do anything necessary for or incidental to any or all of the following:
 - (a) gathering or preparing information for a Commonwealth regulatory scheme that relates to:
 - (i) the construction or operation of a facility; or
 - (ii) anything done in preparation for the construction or operation of a facility;
 - (b) conducting activities that relate to gathering or preparing information for such a regulatory scheme;
 - (c) preparing the selected site (or selected part of a site) for a facility;
 - (d) preparing to construct and operate a facility;
 - (e) constructing a facility;
 - (f) constructing roads on, or grading, land in the Northern Territory;
 - (g) erecting fences and other access controls on land specified in the declaration under subsection 7(2);
 - (h) operating a facility;
 - (i) maintaining a facility;
 - (j) keeping a facility safe;
 - (k) decommissioning a facility.

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- (3) Without limiting subsection (2), the person may, under that subsection, do a thing mentioned in subsection 4(3) in relation to the selected site (or selected part of a site).
- (4) Subsection (2) extends to doing things outside the selected site (or selected part of a site).
- (5) A person to whom this section applies may, in relation to the selected site (or selected part of a site):
 - (a) transport (including through a State or Territory) people and materials (including controlled material) to or from a facility; and
 - (b) use transport infrastructure for that transport.

13 Application of State and Territory laws

- (1) A law, or a provision of a law, of a State or Territory (whether written or unwritten), so far as it relates to:
 - (a) the use or proposed use of land or premises; or
 - (b) the environmental consequences of the use of land or premises; or
 - (c) the archaeological or heritage values of land, premises or objects (including the significance of land, premises or objects in the traditions of Indigenous people); or
 - (d) controlled material, radioactive material or dangerous goods; or
 - (e) licensing (however described) in relation to:
 - (i) employment; or
 - (ii) carrying on a particular kind of business or undertaking; or
 - (iii) conducting a particular kind of operation or activity;has no effect to the extent that it would, apart from this section, regulate, hinder or prevent the doing of a thing authorised by section 12.
- (2) A law, or a provision of a law, of a State or Territory (whether written or unwritten), so far as it relates to the transport of controlled material, radioactive material or dangerous goods, has

no effect to the extent that it would, apart from this section, regulate, hinder or prevent transport authorised by section 12.

- (3) The regulations may prescribe a law, or a provision of a law, of a State or Territory for the purposes of this subsection. The prescribed law or provision has no effect to the extent that it would, apart from this subsection, regulate, hinder or prevent the doing of a thing authorised by section 12.
- (4) Regulations made for the purposes of subsection (3) may prescribe a law, or a provision of a law, whether or not it is a law or a provision of a kind described in subsection (1) or (2).
- (5) The regulations may prescribe a law, or a provision of a law, of a State or Territory for the purposes of this subsection. The prescribed law or provision has effect despite anything else in this section.

14 Application of Commonwealth laws

- (1) The regulations may prescribe a law, or a provision of a law, of the Commonwealth for the purposes of this subsection. The prescribed law or provision has no effect to the extent that it would, apart from this subsection, regulate, hinder or prevent the doing of a thing authorised by section 12.
- (2) The regulations must not prescribe any of the following laws, or any provision of the following laws:
 - (a) the *Australian Radiation Protection and Nuclear Safety Act 1998*;
 - (b) the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (c) the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

Part 5—Miscellaneous

15 Compensation

- (1) If rights or interests are acquired, extinguished or otherwise affected under section 9, the Commonwealth is liable to pay a reasonable amount of compensation to a person whose right or interest has been acquired, extinguished or otherwise affected.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

16 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

16A Indemnity by Commonwealth

- (1) The Commonwealth must indemnify the Northern Territory, and keep the Northern Territory indemnified, against any action, claim or demand brought or made against the Northern Territory in respect of any liability arising from, or damage caused by, ionising radiation from any act done or omitted to be done by or on behalf of the Commonwealth in relation to the transport of controlled material to or from, or the management of controlled material at, a facility on the selected site (or selected part of a site).
- (2) The amount of the indemnity is reduced to the extent to which any fault on the part of the Northern Territory, or its employees, agents or contractors, contributed to the liability or damage.
- (3) Subsection (1) does not apply in relation to an action, claim or demand unless:
 - (a) the Northern Territory notifies the Commonwealth, in writing, of the action, claim or demand as soon as practicable; and
 - (b) the Northern Territory follows any directions of the Commonwealth in relation to the action, claim or demand.

16B Management of Northern Territory controlled material free of charge

If controlled material that is generated by activities in the Northern Territory is managed at a facility, the Commonwealth must not charge the Northern Territory for the management.

17 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Sites

Note: See the definition of *site* in section 3.

1 Mt Everard site

The land being Northern Territory Portion 1502 delineated on Survey Plan S74/123.

2 Harts Range site

The land being Northern Territory Portion 1503 delineated on Survey Plan S74/124.

3 Fishers Ridge site

The land being Northern Territory Portion 3260 delineated on Survey Plan S86/252.

*[Minister's second reading speech made in—
House of Representatives on 13 October 2005
Senate on 7 November 2005]*

(168/05)

