THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Education, Science and Training the Hon Dr Brendan Nelson MP)
COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT BILL 2005

OUTLINE

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 management facility.

Existing or future State and Territory laws may purport to prohibit, regulate or hinder things that the Commonwealth may do during the process of selecting a site for the establishment of a facility.

On 15 July 2005 the Government announced that it would proceed with its waste management policy by investigating three Commonwealth sites in the Northern Territory. The Bill specifies three sites which are to undergo further investigations.

The Bill provides that the Minister may declare one, or a specified part of one, of the specified sites, as the place where a facility may be established and operated. The Bill also provides that the Minister may declare land to provide for suitable road access to the declared site.


The Bill effects the acquisition or extinguishment of all interests in the site, or part of the site, chosen for a facility that the Commonwealth has not already acquired or extinguished (if any), and provides for any affected parties to be compensated. The Bill also effects the acquisition or extinguishment of specified interests in land chosen as the route to the site, or part of the site, that the Commonwealth has not already acquired or extinguished (if any), and provides for any affected parties to be compensated.

A number of existing State and Territory laws purport to prohibit or regulate the things the Commonwealth may do to establish and operate a facility and/or transport radioactive material. States and Territories jurisdictions may introduce further legislation purporting to prohibit, regulate or hinder the Commonwealth doing these things.

Notwithstanding any State or Territory legislation, the Bill provides the Commonwealth with the express authority to do anything necessary for, or incidental to, establishing or operating a Commonwealth facility at the selected site, and transporting radioactive waste to the facility.

FINANCIAL IMPACT

Overall, the financial impact is considered to be negligible.

Provision for any costs, such as any liability of the Commonwealth for compensation for any acquisition or extinguishment of rights or interests, would be made through the existing administered appropriation for Outcome 3 of the Department of Education, Science and Training.
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NOTES ON CLAUSES

Part 1—Preliminary

Clause 1 - Short title

Provides for the Act to be cited as the Commonwealth Radioactive Waste Management Act 2005.

Clause 2 - Commencement

Provides for the Act to commence on the day after it receives the Royal Assent.

Clause 3 - Definitions

Contains definitions of the terms and expressions used in the Act.*

*Note: The clauses in the Bill will become sections of the Act on Royal Assent. In this Explanatory Memorandum only the first reference to a clause or subclause uses that terminology. Subsequent references use the terms “section” or “subsection” as appropriate.
Part 2—Selecting the site for a facility

Clause 4 Authority to conduct activities

Provides identified persons and classes of persons with the authority to do certain things as part of the process of selecting one of three identified sites in the Northern Territory, or a specified part of one of those sites, for a Commonwealth radioactive waste management facility.

Subclause 4(1) has the effect of providing that section 4 applies to the Commonwealth, a Commonwealth entity and a Commonwealth contractor as well as an employee or agent of these persons.

Subclause 4(2) has the effect of providing that a person to whom section 4 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.

Subclause 4(3) has the effect of providing that, without limiting subsection 4(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);
(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.

Subsections 4(2) and (3) are intended to be interpreted broadly and, in particular, the authority to do the things mentioned in paragraphs 4(3)(a) to (k) is not confined to doing those things on a site.

Subclause 4(4) has the effect of providing that a person doing anything under Part 2 on land that is not a site must:

- take all reasonable steps to ensure that it 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
- remain on the land only for such period as is reasonably necessary; and
- leave the land (as nearly as practicable) in the condition in which it was immediately before the thing was done.
Clause 5  Application of State and Territory laws

Limits the application of State and Territory laws in specified ways.

Subclause 5(1) has the effect of providing that a law (or provision of a law) of a State or Territory (whether written or unwritten) so far as it relates to:
  • the use or proposed use of land or premises; or
  • the environmental consequences of the use of land or premises; or
  • 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
  • controlled material, radioactive material or dangerous goods; or
  • licensing (however described) in relation to employment, carrying on a particular kind of business or undertaking or conducting a particular kind of operation or activity.

has no effect to the extent that it would (apart from section 5) regulate, hinder or prevent the doing of a thing authorised by section 4.

Subclause 5(2) provides that the regulations may prescribe a law (or provision of a law) of a State or Territory for the purposes of subsection 5(2) and that the prescribed law or provision has no effect to the extent that it would (apart from subsection 5(2)) regulate, hinder or prevent the doing of a thing authorised by section 4.

Subclause 5(3) provides that the regulations made for the purposes of subsection 5(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 5(1).

Subclause 5(4) provides that the regulations may prescribe a law (or provision of a law) of a State or Territory for the purposes of subsection 5(4). The prescribed law or provision has effect despite anything else in section 5.

Clause 6  Application of Commonwealth laws

Subclause 6(1) has the effect of overriding the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and the Environment Protection and Biodiversity Conservation Act 1999 to the extent that these Commonwealth laws would (apart from section 6) regulate, hinder or prevent the doing of a thing authorised by section 4.

Subclause 6(2) provides that the regulations may prescribe another law (or provision of another law) of the Commonwealth for the purposes of subsection 6(2). The prescribed law or provision has no effect to the extent that it would (apart from subsection 6(2)) regulate, hinder or prevent the doing of a thing authorised by section 4.
Part 3—Acquisition or extinguishment of rights and interests

Clause 7 Minister’s declaration

Subclause 7(1) provides that 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.

Subclause 7(2) provides that he 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).

Subclause 7(3) provides that a declaration has effect at the time specified in the declaration, which must not be earlier than the time that the declaration is made.

Subclause 7(4) provides that a copy of a declaration must be published in the Gazette within 7 days of it being made.

Subclause 7(5) provides that a failure to comply with subsection 7(4) does not invalidate the declaration.

Subclause 7(6) provides that the Minister must not make more than one declaration under subsection 7(1) or subsection 7(2).

Subclause 7(7) provides that a declaration is not a legislative instrument. This provision is included to assist readers, as a declaration made under the Act is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

Clause 8 Procedural fairness in relation to Minister’s declarations

Provides that no person is entitled to procedural fairness in relation to the Minister’s making of a declaration.

Clause 9 Acquisition or extinguishment

Provides for the acquisition or extinguishment of any rights or interests in the selected site (or the selected part of a site) or for the purposes of providing all-weather road access to the selected site (or selected part of a site) that have not already been acquired by the Commonwealth, or extinguished.

Subclause 9(1) has the effect of providing that, at the time a declaration under subsection 7(1) 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 section 9, acquired by the Commonwealth, or extinguished, and are freed and discharged from all other rights and interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.
Proposed paragraph 9(1)(b) is intended to only apply to any rights and interests not already acquired or extinguished by the Commonwealth and therefore does not affect the Commonwealth’s existing rights and interests in relation to the land or contracts with the Commonwealth in relation to the Commonwealth’s current use of the land.

Subclause 9(2) has the effect of providing that, to avoid doubt, the rights and interests acquired under, or extinguished by, subsection 9(1) include rights to minerals (if any) and native title rights and interests (if any).

Subclause 9(3) has the effect of providing that, at the time the declaration under subsection 7(2) has effect, the rights or interests in the specified land set out in the declaration are, by force of section 9, acquired by the Commonwealth or extinguished and freed and discharged from all other rights and interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.

Subclause 9(4) has the effect of providing that, to avoid doubt, rights and interests specified in the declaration under subsection 7(2) may include any of the following:

- rights to minerals;
- native title rights and interests;
- an interest that did not previously exist in relation to the land;
- an easement in gross.

Proposed paragraphs 9(1)(b) and 9(3)(b) are intended to only apply to any rights and interests not already acquired or extinguished by the Commonwealth and therefore do not affect the Commonwealth’s existing rights and interests in relation to the land or contracts with the Commonwealth in relation to the Commonwealth’s current use of the land.

**Clause 10  Application of Commonwealth and Northern Territory laws**

Subclause 10(1) provides that section 9 has effect despite any other law of the Commonwealth or the Northern Territory (whether written or unwritten).

Subclause 10(2) has the effect of providing that, without limiting subsection 10(1), section 9 has effect despite the *Lands Acquisition Act 1989* and the *Native Title Act 1993*. This also means that the effect of section 9 is that it is not necessary for the Commonwealth to comply with any and all provisions of those Acts relating to preliminary processes for the acquisition or extinguishment of rights and interests in relation to land.

**Clause 11  Notice to Registrar-General**

Subclause 11(1) provides that 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.

Subclause 11(2) provides that 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

Clause 12 Authority to conduct activities

Provides identified persons and classes of persons with the authority to do certain things in relation to the selected site for a facility or on land acquired for the purposes of providing all-weather road access to the selected site (or selected part of a site).

Subclause 12(1) has the effect of providing that section 12 applies to the Commonwealth, a Commonwealth entity and a Commonwealth contractor as well as an employee or agent of these persons.

Subclause 12(2) has the effect of providing that a person to whom section 12 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:

- gathering or preparing information for a Commonwealth regulatory scheme that relates to the construction or operation of a facility or anything done in preparation for the construction or operation of a facility;
- conducting activities that relate to gathering or preparing information for such a regulatory scheme;
- preparing the selected site (or selected part of a site) for a facility;
- preparing to construct and operate a facility;
- constructing a facility;
- constructing roads on, or grading, land in the Northern Territory;
- erecting fences and other access controls on land specified in the declaration under subsection 7(2);
- operating a facility;
- maintaining a facility;
- keeping a facility safe;
- decommissioning a facility.

A Commonwealth regulatory scheme mentioned in subsection 12(2) includes, but is not limited to, the *Environment Protection and Biodiversity Conservation Act 1999* and the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Subclause 12(3) provides that, without limiting subsection 12(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).

Subclause 12(4) provides that subsection 12(2) extends to doing things outside the selected site (or selected part of a site).

Subclause 12(5) provides that a person to whom section 12 applies may, in relation to the selected site (or selected part of a site), transport (including through a State or Territory) people and materials (including controlled material) to or from a facility; and use transport infrastructure for that transport.
Clause 13  Application of State and Territory laws

Limits the application of State and Territory laws in specified ways.

Subclause 13(1) has the effect of providing that a law (or a provision of a law) of a State or Territory (whether written or unwritten) so far it relates to:

- the use or proposed use of land or premises; or
- the environmental consequences of the use of land or premises; or
- 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
- controlled material, radioactive material or dangerous goods; or
- licensing (however described) in relation to employment, carrying on a particular kind of business or undertaking or conducting a particular kind of operation or activity.

has no effect to the extent that it would (apart from section 13) regulate, hinder or prevent the doing of a thing authorised by section 12.

Subclause 13(2) provides that a law (or 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 section 13) regulate, hinder or prevent transport authorised by section 12.

Subclause 13(3) provides that the regulations may prescribe a law (or provision of a law) of a State or Territory for the purposes of subsection 13(3) as a law or provision that has no effect to the extent that it would (apart from subsection 13(3)) regulate, hinder or prevent the doing of a thing authorised by section 12.

Subclause 13(4) provides that regulations made for the purposes of subsection 13(3) may prescribe a law (or a provision of a law) whether or not it is a law or provision of a kind described in subsection 13(1) or (2).

Subclause 13(5) provides that the regulations may prescribe a law (or provision of a law) of a State or Territory for the purposes of subsection 13(5) The prescribed law or provision has effect despite anything else in section 13.

Clause 14  Application of Commonwealth laws

Subclause 14(1) provides that the regulations may prescribe a law (or provision of a law) of the Commonwealth for the purposes of subsection 14(1) as a law or provision that has no effect to the extent that it would (apart from subsection 14(1)) regulate, hinder or prevent the doing of a thing authorised by section 12.

Subclause 14(2) provides that the regulations must not prescribe any of the following laws, or any provision of the following laws:

- the *Australian Radiation Protection and Nuclear Safety Act 1998*;
- the *Environment Protection and Biodiversity Conservation Act 1999*;
- the *Nuclear Non-Proliferation (Safeguards) Act 1987*. 
Part 5—Miscellaneous

Clause 15  Compensation

Subclause 15(1) provides that, 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. That is, subsection 15(1) provides compensation for effects under paragraphs 9(1)(a) and (b).

Subclause 15(2) provides that 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.

Clause 16  Compensation for acquisition of property

Subclause 16(1) provides that, if the operation of the 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.

Subclause 16(2) provides that, 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.

Subclause 16(3) defines acquisition of property, and just terms for the purposes of section 16. These terms are defined as having the same meaning as in paragraph 51(xxxi) of the Constitution.

Clause 17  Regulations

Provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed (or necessary or convenient to be prescribed) for carrying out or giving effect to the Act.
Schedule 1—Sites

Items 1 to 3 of the Schedule describe in detail three sites in the Northern Territory for the purposes of the definition of site in section 3. They are the Mt Everard site, the Harts Range site and the Fishers Ridge site.