

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL RADIOACTIVE WASTE MANAGEMENT BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Energy,
the Honourable Martin Ferguson AM, MP)

NATIONAL RADIOACTIVE WASTE MANAGEMENT BILL 2010

Outline

The purpose of the Bill is to establish a facility for managing at a single site, radioactive waste currently stored at a host of locations across the country.

It will ensure the safe and responsible management of this waste arising from medical, industrial and research uses of radioactive material in Australia.

The Bill ensures the Commonwealth's power to make arrangements for the safe and secure management of radioactive waste generated, possessed or controlled by the Commonwealth.

This legislative framework is based on volunteerism. No site can be considered as a potential location for a radioactive waste management facility without the voluntary nomination of that site and agreement of persons with relevant rights and interests.

The Bill repeals the *Commonwealth Radioactive Waste Management Act 2005* and applies a decision making process based on natural justice. Natural justice puts in place a code of fair procedure. At its core is "the hearing rule"; a right to be heard by the Minister before a decision is reached.

The Bill also reinstates the *Administrative Decisions (Judicial Review) Act 1977*. This will allow a person aggrieved by a decision to apply for judicial review and ensure a higher level of accountability for decisions.

A facility will not be established unless it meets environmental and regulatory approvals under the *Environment Protection and Biodiversity Conservation Act 1999*, the *Australian Radiation Protection and Nuclear Safety Act 1998* and the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

A regional consultative committee will also be established to communicate with local communities during the environmental and regulatory approval process, construction and operational stages of the project. This open and informed process will help raise awareness through dialogue, address local concerns and ensure government transparency when establishing a national radioactive waste management facility.

Part 1 – Preliminary

Part 1 of the Bill outlines preliminary details and the object of the Bill. The objects clause states that the Bill will provide for the selection of a site for a radioactive waste management facility on volunteered land in Australia. The establishment and operation of a facility on the selected site will ensure that radioactive waste generated, possessed or controlled by the Commonwealth or a Commonwealth entity is safely and securely managed.

Part 2-Nomination of sites

Part 2 of the Bill provides that a Land Council in the Northern Territory may nominate land as a potential site. Under the existing Site Nomination Deed, the Northern Land Council is entitled to nominate other sites on Ngapa land. This provision maintains that entitlement.

The Minister may also open a nation-wide volunteer site nomination process. In deciding whether to initiate this process, the Minister must have regard to whether it is unlikely that a facility will be able to be constructed and operated on Aboriginal land that has been nominated as a potential site under clause 5, whether or not that land has been approved as a site under clause 9. Certain persons, including certain native title holders may also volunteer their land as a potential site.

Procedural fairness requirements will apply to any decision to approve a potential site and to any decision to open the nation-wide site nomination process.

Part 3-Selecting the site for a facility

Part 3 of the Bill allows relevant persons to conduct activities for the purpose of selecting a site.

Certain State, Territory and Commonwealth laws will not apply to activities under Part 3 to the extent that they would regulate, hinder or prevent these activities.

Part 4-Acquisition or extinguishment of rights and interests

Part 4 of the Bill allows the Minister to select a site as the site for a facility and also to identify an area of land required for providing all-weather road access to the selected site.

Procedural fairness requirements will apply to these decisions.

Part 4 of the Bill allows for the acquisition or extinguishment of rights and interests in relation to the selected site and land required for an access road.

Part 4 of the Bill provides that the Minister must establish a regional consultative committee immediately after a site has been selected for a facility.

Part 5-Conducting activities in relation to selected site

Part 5 of the Bill preserves rules in the current Act allowing relevant persons to conduct activities in relation to the selected site.

Certain State, Territory and Commonwealth laws will not apply to activities under Part 5 to the extent that they would regulate, hinder or prevent these activities. However, the *Australian Radiation Protection and Nuclear Safety Act 1998*, the *Environment Protection and Biodiversity Conservation Act 1999* and the *Nuclear Non-Proliferation (Safeguards) Act 1987* must be complied with.

Part 6-Granting of rights and interests in land to original owners

Part 6 of the Bill preserves rules in the current Act allowing the Minister to grant rights and interests in certain land acquired under the Bill back to the original owners. This refers to land that was nominated by a Land Council before the nation-wide volunteer site nomination process.

Part 7-Miscellaneous

Part 7 of the Bill provides for the payment of compensation to persons whose rights or interests are acquired, extinguished or otherwise affected by the selection of a site for a facility.

Part 7 of the Bill also preserves rules in the current Act conferring certain advantages on the Northern Territory if the site selected is one nominated by a Land Council before the opening of the nation-wide volunteer site nomination process.

Schedule 1

Schedule 1 of the Bill repeals the *Commonwealth Radioactive Waste Management Act 2005* (the current Act) and amends the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act).

The current Act provides that no person is entitled to procedural fairness in relation to the key decisions to be made under the Act. The Bill will require the Government to accord procedural fairness in relation to such decisions.

Key decisions under the current Act are not susceptible to review under the ADJR Act.

Decisions under the Bill will be reviewable.

The repeal and amendment satisfies a 2007 ALP Platform commitment.

The Government has removed from further consideration three sites on Defence land in the Northern Territory identified by the former Government. These sites were at Harts Range (Alcoota) and Mount Everard in the Alice Springs region and Fishers Ridge in the Katherine region.

Schedule 2

In 2007, a site on Ngapa clan land at Muckaty Station in the Northern Territory was nominated and approved as a site under the current Act. The Government will honour the commitment made to the Ngapa traditional owners.

Accordingly, Schedule 2 contains a saving provision to ensure that the site will remain an approved site. The Bill will not introduce procedural fairness requirements in relation to the existing nomination and approval of this site, but procedural fairness requirements will apply to any decision to select the site as the site for a facility.

Procedural Fairness and Absolute Discretion

Under the Bill certain decisions are made by the Minister relating to approving and selecting a site, subject to regulatory approval, for a radioactive waste management facility.

The Bill states that the Minister may make the decision or perform an action in his or her absolute discretion.

In an administrative law context, to state in legislation that a decision-maker may make a decision or perform an action in his or her absolute discretion, serves to emphasise that the decision-maker is free to make or not to make the decision or free to do or not do an action. It also serves to identify that the Minister is unambiguously responsible for the resulting decision or action.

At the same time the Minister cannot make a decision or perform an action capriciously.

Limitations on the Minister's freedom to make decisions under the Bill are implied from the subject matter, scope and purpose of the legislation. Key decisions are guided by natural justice requirements, including extension of a right to be heard to any person potentially affected by a proposed decision or action.

The basic requirement of procedural fairness is that a person whose rights, interests or legitimate expectations are adversely affected by a decision is given a reasonable opportunity of putting his or her case. The traditional elements of procedural fairness are:

- A decision-maker must give a person whose rights, interests or legitimate expectations may be affected by a decision notice that a decision will be made, the information on which the decision may be based and the opportunity to provide a submission; and
- A decision-maker must be free from any apprehension of bias.

The Minister is also subject to an obligation to provide reasons, on request, under the *Administrative Decisions (Judicial Review) Act 1977*. Judicial review, of key decisions, is available under the *Administrative Decisions (Judicial Review) Act 1977* and the *Judiciary Act 1901*, on the grounds that a decision-maker has failed to take a relevant consideration into account when exercising a power.

The weight given to a particular factor in making a decision is always a matter of discretion for the individual decision-maker but can be challenged if the weight attributed is unreasonable.

The Minister has also agreed to undertake consultations with all parties with an interest in, or who would be affected by a decision to select the Muckaty Station site as the location for a facility.

Scientific Rationale

Australia's current radioactive waste inventory stands at just over 4,020 m³ of low level and short-lived intermediate level radioactive waste and approximately 600 m³ of long-lived intermediate waste.

Most existing stores in Australia were not specifically designed for long term radioactive waste storage. Centralisation minimises the risk of inadvertent loss or control of radioactive material with consequential safety and security risks.

Radioactive waste management is governed by rigorous national and international standards. Extensive experience has been gained from over 100 low-level waste disposal facilities in more than 30 countries and a range of geological conditions.

Once the facility is constructed, low level waste will be disposed of by burial. This waste includes lightly contaminated laboratory waste such as paper, plastic, glassware and protective clothing, contaminated soil, smoke detectors and emergency exit signs.

Intermediate waste will be stored at the site. This includes waste from production of nuclear medicines, waste arising from overseas reprocessing of spent research reactor fuel and disused medical and industrial sources such as radiotherapy sources and soil moisture meters.

Environmental and Regulatory Approval Processes

Radioactive waste management is one of the most regulated industrial activities in the world. The Bill ensures Australia upholds the highest safety standards for radioactive waste management and also meets its international obligations.

Under the Bill, site selection processes (Part 4) will not guarantee the establishment of a facility. The Bill complements environmental and nuclear regulatory processes. Part 5 of the Bill ensures that environmental and nuclear regulatory approvals must be obtained.

The regulatory approval processes are those specified by the *Environment Protection and Biodiversity Conservation Act 1999*, the *Australian Radiation Protection and Nuclear Safety Act 1998* and the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

State and Territory Laws

Australian Government facilities are regulated through the Commonwealth. In the case of a radioactive waste management facility, laws of particular relevance include the *Environment Protection and Biodiversity Conservation Act 1999* for broad environmental impacts and the *Australian Radiation Protection and Nuclear Safety Act 1998* for radiological impacts.

One effect of permitting State and Territory laws to apply would be to permit legislation prohibiting siting of a facility and transporting waste.

For this reason, State and Territory laws will not apply to certain activities under the Bill, to the extent that these laws may regulate, hinder or prevent these activities from taking place.

Financial Impact

Overall, the financial impact of the legislation is considered to be negligible. Provision for any costs, including any liability of the Commonwealth to compensate persons for any

acquisition etc. of their interests in land affected by the Bill, would be sought to supplement the existing administrated appropriation for Outcome 1 of the Department of Resources, Energy and Tourism.

NATIONAL RADIOACTIVE WASTE MANAGEMENT BILL 2010

NOTES ON CLAUSES

Part 1 – Preliminary

Clause 1 – Short Title

Provides for the Act to be cited as the *National Radioactive Waste Management Act 2010*

Clause 2 - Commencement

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

Clause 3 – Object of Act

Outlines that the object of this Act is to provide for the selection of a site for a radioactive waste management facility on voluntarily nominated land in Australia and to establish and operate a facility on a selected site to ensure the safe and secure management of radioactive waste generated, possessed or controlled by the Commonwealth or a Commonwealth entity.

Clause 4 – Definitions

This clause sets out the definitions of terms that are relied upon in other provisions throughout the Bill.

Part 2 – Nomination of sites

Clause 5 – Nomination by a Land Council

Clause 5(1) provides that a Land Council may, before the time when a declaration under clause 6 takes effect, nominate Aboriginal land in the area of the Land Council as a potential site.

Subclause 5(2) also provides rules in relation to such nominations.

Subclause 5(3) allows the Minister to request further information from a nominator.

Subclause 5(4) provides that failure to comply with subsection (2) does not invalidate a nomination.

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

Clause 6 - Minister may declare that nominations can be made under section 7

Clause 6 will allow the Minister to allow persons with a threshold level of interest in land in a State, the Northern Territory or the Australian Capital Territory to nominate that land as a potential site for a facility.

Subclause 6(2) provides that it is a relevant consideration to the Minister's exercise of power under clause 6 whether it is unlikely that a facility will be able to be constructed and operated on Aboriginal land that has been nominated as a potential site under clause 5, whether or not that land has been approved as a site under clause 9.

To avoid doubt, it is the intention that such Aboriginal land includes land to which Schedule 2 item 1(1) relates.

Subclause 6(4) provides that a declaration must be published in the *Gazette* within seven days of the declaration being made. However, subclause 6(5) provides that a failure to comply with subclause 6(4) does not invalidate a declaration.

Subclause 6(6) provides that a declaration made under subclause 6 is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 7 – Nominations of potential sites

Subclause 7(1) provides that if a declaration under clause 6 is in effect, a person or persons may in accordance with this clause, nominate land in a State, the Australian Capital Territory or the Northern Territory as a potential site.

Subclause 7(2) provides that a person with an interest specified in this subclause may nominate land as a potential site. These interests include an estate in fee simple, a lease of land granted by or on behalf of the Crown, a Minister of the Crown, a statutory authority or

any other prescribed person, under a State or a Territory but not an interest as a joint tenant or a tenant in common.

Subclause 7(3) provides that persons who as joint tenants or tenants in common hold specified interests in land may nominate the land as a potential site. These interests include an estate in fee simple or a lease of the land granted by or on behalf of the Crown, a Minister of the Crown, a statutory authority or any other prescribed person, under a law of the Commonwealth, a State or a Territory.

Subclause 7(4) provides that certain native title holders may nominate land as a potential site if an approved determination of native title covers an area containing the land; and the approved determination of native title determines that native title exists in relation to the land and the native title rights and interests confer possession, occupation, use and enjoyment of the land on the native title holders to the exclusion of all others. Where subclause 7(4)(a) and (b) apply, subclause 7(4)(c) provides that one of the following must apply:

- in the case of an approved determination of native title by the Federal Court—the person is a prescribed body corporate that holds the native title rights and interests concerned on trust, or is an agent prescribed body corporate in relation to the native title rights and interests concerned.
- in the case of an approved determination of native title by a recognised State/Territory body—the person is a body corporate that holds the native title rights and interest concerned on trust, or that is determined in relation to the native title under a provision of a law of the State and Territory concerned that corresponds to section 57 of the *Native Title Act 1993*.

Subclause 7(5) provides definitions for the purposes of clause 7.

Clause 8 – Rules about nominations

Subclause 8(1) provides rules in relation to nominations made under clause 7. Subclause 8(2) provides what must be specified in the reference to land under subclause 8(1)(c).

Subclause 8(3) allows the Minister to request further information from a nominator of the land.

Subclause 8(4) provides that a failure to comply with subclause 8(1) does not invalidate a nomination made under clause 7.

Subclause 8(5) provides that a nomination under this clause is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 9 - Approval of nominated land

Clause 9, subject to clause 10(6), allows the Minister in his or her absolute discretion to approve, in writing, land, or a specified part of land, nominated as a site under clause 5 or clause 7. The approval must be published in the *Gazette* within seven days of the approval being made. The clause provides that a failure to gazette an approval, or a failure of a

nomination to which an approval relates to comply with the relevant rules of nomination, will not invalidate an approval.

Subclause 9(7) provides that an approval is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 10 - Procedural fairness in relation to Minister's declarations and approvals

Subclauses 10(1) and (2) provide that the Minister must give a notice to each Land Council and publish a notice in the *Gazette* and a national daily newspaper stating that the Minister proposes to make a declaration under clause 6 and inviting comments on the proposed declaration.

Subclause 10(3) provides that in deciding whether to make a declaration under clause 6, the Minister must take into account any relevant comments received in response to an invitation.

Subclauses 10(4) and (5) provide that the Minister must give a notice to each nominator and publish a notice in the *Gazette*, a national daily newspaper and any local newspaper circulating in the area in which the land is situated, stating that the Minister proposes to approve land under clause 9 and inviting comments on the proposed approval by nominators and persons with a right or interest in the land.

Subclause 10(6) provides that in deciding whether to make an approval under clause 9, the Minister must take into account any relevant comments received in response to an invitation.

Subclause 10(7) provides that clause 10 is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision whether to make a declaration opening the nation-wide volunteer site nomination process and the Minister's decision whether to approve land as a site.

Part 3 – Selecting the site for a facility

Clause 11 – Authority to conduct activities

Clause 11(1) and(2) allows the Commonwealth, a Commonwealth entity, a Commonwealth contractor and an employee or agent of any of these persons to do anything in a State or Territory necessary for, or incidental to, the purposes of selecting a site on which to construct and operate a facility.

Subclause 11(3) provides a non-exhaustive list of things the Commonwealth etc. may do.

Subclause 11(4) provides that a person doing a thing under this Part 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.

Clause 12 – Application of State and Territory laws

Clause 12(1) provides that a law, or a provision of a law, of a State and Territory, insofar as it relates to the matters described in this subclause has no effect to the extent that it would, apart from this clause, regulate, hinder or prevent the doing of a thing authorised by clause 11.

Clause 12(2) provides that the regulations may prescribe a law, or a provision of a law, with the effect that that law etc. has no effect to the extent that it would, apart from this subclause, regulate, hinder or prevent the doing of a thing authorised by clause 11.

Clause 12(4) provides that the regulations may prescribe a law, or a provision of a law, with the effect that the law etc. has effect despite anything else in this clause.

Clause 13 – Application of Commonwealth laws

Clause 13(1) provides that the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and the *Environment Protection and Biodiversity Conservation Act 1999* have no effect to the extent that they would, apart from this clause, regulate, hinder or prevent the doing of activities authorised in clause 11.

Clause 13(2) provides that the regulations may prescribe another law, or a provision of another law, with the effect that the law etc. has no effect to the extent that it would, apart from clause 13, regulate, hinder or prevent the doing of a thing authorised by clause 11.

Part 4 – Acquisition or extinguishment of rights and interests

Clause 14 – Minister’s declaration of land as selected site or required for road access

Subclause 14(1) provides that clause 14 applies if land has been both nominated and approved as a site.

Subclause 14(2) provides that, subject to clause 18, the Minister may, in his or her absolute discretion, declare in writing that the site approved by the Minister, or a specified part of the site, is selected as the site for a facility. The declaration may specify all or some of the rights and interests in the selected site. The effect of selecting a site is that Part 5 applies in relation to the selected site. The effect of specifying rights or interests in the selected site is that clause 19 applies in relation to those rights and interests.

Subclause 14(3) provides that the Minister may not, after the general nomination start time, make a declaration under subclause 14(2) in relation to land nominated by a Land Council as a site under clause 5.

Subclause 14(4) provides that, subject to clause 18, the Minister may, in his or her absolute discretion, declare in writing that all or specified rights or interests in land in a State or Territory specified in the declaration are required for providing all-weather road access to the selected site. The effect of specifying rights or interests is that clause 19 applies in relation to those rights and interests.

Subclause 14(5) provides that, to avoid doubt, rights and interests specified in a declaration under subclause 14(2) or (4) includes rights to minerals (if any), native title rights and interests (if any), an interest in land that did not previously exist and an easement in gross (if any).

Subclause 14(6) provides that to avoid doubt, clause 14 has effect subject to section 9 of the *Racial Discrimination Act 1975*.

Subclause 14(7) provides that a declaration under subclause 14(2) or (4) is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 15 – Formalities relating to Minister’s declarations

Subclause 15(1) provides that a declaration under clause 14(2) or (4) must be published in the *Gazette* within seven days of the declaration being made. However, subclause 15(2) provides that a failure to comply with subclause 15(1) does not invalidate a declaration. Subclause 15(2) also provides that failure to comply with this subclause or subclause 5(2), 6(4), 8(1) or 9(5) does not invalidate a declaration.

Clause 16 - When Minister’s declarations take effect etc.

Subclause 16(1) provides that a Minister’s declaration under clause 14(2) or (4) takes effect at the time specified in the declaration, which must not be earlier than the time the declaration is made.

Subclause 16(2) and (3) operate so that the Minister may make more than one declaration under each of subclauses 14(2) and (4), but that there may only be one declaration under subclause 14(2) in effect at a particular time. That there may only be one declaration under subclause 14(2) in effect at a particular time means that there is only one 'selected site' at a particular time and Part 5 may therefore only apply in relation to one site at a particular time.

Clause 17 - Revocation of Minister's declaration

Subclause 17(1) provides the Minister may in his or her absolute discretion revoke a declaration under subclause 14(2).

Subclause 17(2) provides that a revocation takes effect at the time specified in the revocation, which must not be earlier than the time the revocation is made.

Subclause 17(3) provides that, to avoid doubt, the revocation of a declaration made under subclause 14(2) does not affect the operation of clause 19 in relation to the land to which the declaration relates but, on and from the revocation, Part 5 does not apply to that land.

Subclause 17(4) provides that clause 18 does not apply to a revocation under this clause.

Subclause 17(5) provides that a copy of a revocation must be published in the *Gazette* within seven days of the declaration being made. However, subclause 17(6) provides that a failure to comply with subclause 17(5) does not invalidate a revocation.

Subclause 17(7) provides that section 33(3) of the *Acts Interpretation Act 1901* does not apply to a revocation. This subclause should not be taken to imply that section 33(3) does not apply in relation to other clauses.

Clause 18 - Procedural fairness in relation to Minister's declarations

Clause 18 provides an entitlement to procedural fairness in relation to a Minister's declaration under clause 14 and exhaustively describes that entitlement.

Subclauses 18(1) and (2) provide that the Minister must give a notice to each nominator and publish a notice in the *Gazette*, a national daily newspaper and any local newspaper circulating in the area in which the land is situated, stating that the Minister proposes to make a declaration under clause 14 and inviting comments on the proposed declaration by nominators of the land and persons with a right or interest in the land.

Subclause 18(3) provides that in deciding whether to make a declaration under clause 14, the Minister must take into account any relevant comments received in response to an invitation.

Subclause 18(4) provides that a reference in this clause to each nominator of the land, in relation to a declaration under subclause 14(4) that rights or interests in land are required for providing all-weather road access to the selected site, is a reference to each person who nominated the selected site under clause 5 or 7.

Subclause (5) provides that clause 18 is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Minister's decision to make a declaration under clause 14.

Clause 19 - Acquisition or extinguishment

Subclause 19(1) has the effect of providing that, at the time of a declaration under subclause 14(2) has effect, any rights or interests in the selected site that are specified in the declaration are 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 19(2) has the effect of providing that, at the time of a declaration under subclause 14(4) has effect, any rights or interests in the selected site that are specified in the declaration are 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.

Clause 20 - Application of Commonwealth and State or Territory laws

Subclause 20(1) provides that clause 19 has effect despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

It is the intention that subclause 20(1) will apply to any law of the Commonwealth, a State or a Territory, regardless whether that law is a law of the State or Territory in which the selected site is located.

Subclause 20(2) has the effect of providing that, without limiting subclause 20(1), clause 19 has effect despite the *Lands Acquisition Act 1989* and the *Native Title Act 1993*.

Clause 21 - Notice to Registrar-General or other appropriate officer

Subclause 21(1) provides that the Secretary of the Department may lodge with the Registrar-General, the Registrar of Titles or other appropriate officer of a State, the Australian Capital Territory or the Northern Territory, a copy of a Minister's declaration under clause 14, certified by writing signed by the Secretary.

Subclause 21(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 State or Territory.

Clause 22 - Regional consultative committee

Subclause 22(1) provides that immediately after a declaration under subclause 14(2) takes effect, the Minister must, by writing, establish a committee to be known as the regional consultative committee.

Subclause 22(2) provides that the functions of the committee are to facilitate communication between the Commonwealth, the operator of the facility (if any) at the

selected site and persons living in or near the region where the selected site is situated and such other functions as are prescribed under subclause 22(4)(a).

Subclause 22(3) provides that an instrument made under subclause (1) of this clause is not a legislative instrument. This provision is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Subclause 22(4) provides that the regulations may prescribe matters relating to the committee, including, but not limited to, the following:

- (a) the functions of the committee
- (b) the operation and procedures of the committee
- (c) membership of the committee
- (d) term of appointment of members
- (e) remuneration of members
- (f) resignation of members
- (g) disclosure of interests by members
- (h) termination of appointment of members
- (i) leave of absence of members.

Subclause 22(5) provides that if no regulations are in force under subclause 22(4), the committee may operate in the way determined in writing by the committee.

Part 5 – Conducting activities in relation to selected site

Clause 23 - Authority to conduct activities

This clause 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.

Subclause 23(1) has the effect of providing that clause 23 applies to the Commonwealth, a Commonwealth entity and a Commonwealth contractor as well as an employee or agent of these persons.

Subclause 23(2) has the effect of providing that a person to whom clause 23 applies may, (in relation to the selected 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 the construction or operation of a facility or 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 for a facility;
- (d) preparing to construct and operate a facility;
- (e) constructing a facility;
- (f) constructing roads on, or grading, land in a State or Territory;
- (g) erecting fences and other access controls on land specified in the declaration under subclause 14(4);
- (h) operating a facility;
- (i) maintaining a facility;
- (j) keeping a facility safe;
- (k) decommissioning a facility.

A Commonwealth regulatory scheme mentioned in subclause 23(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 23(3) provides that, without limiting subclause 23(2), the person may, under that subclause, do a thing mentioned in subclause 11(3) in relation to the selected site.

Subclause 23(4) provides that subclause 23(2) extends to doing things outside the selected site.

Subclause 23(5) provides that a person to whom clause 23 applies may, in relation to the selected 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 24 - Application of State and Territory laws

Clause 24 limits the application of State and Territory laws in specified ways.

Subclause 24(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:

- (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 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 clause 24) regulate, hinder or prevent the doing of a thing authorised by clause 23.

Subclause 24(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 clause 24) regulate, hinder or prevent transport authorised by clause 23.

Subclause 24(3) provides that the regulations may prescribe a law (or provision of a law) of a State or Territory for the purposes of subclause 24(3) as a law or provision that has no effect to the extent that it would (apart from subclause 24(3)) regulate, hinder or prevent the doing of a thing authorised by clause 23.

Subclause 24(4) provides that regulations made for the purposes of subclause 24(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 subclause 24(1) or (2).

Subclause 24(5) provides that the regulations may prescribe a law (or provision of a law) of a State or Territory for the purposes of subclause 24(5). The prescribed law or provision has effect despite anything else in subclause 24.

Clause 25 - Application of Commonwealth laws

Subclause 25(1) provides that the regulations may prescribe a law (or provision of a law) of the Commonwealth for the purposes of subclause 25(1) as a law or provision that has no effect to the extent that it would (apart from subclause 25(1)) regulate, hinder or prevent the doing of a thing authorised by clause 23.

Subclause 25(2) provides that 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 6 – Granting of rights and interests in land to original owners

Clause 26 - Application of Part

Subclause 26 sets out how Part 6 applies to a declaration under subclauses 14(2) and (4). However, subclause 26(3) provides that Part 6 does not apply to a declaration under subclause 14(2) or (4) if the declaration relates to land nominated under the nation-wide volunteer site nomination process.

Subclause 26(1) provides that Part 6 applies if:

- (a) immediately before a declaration under subclause 14(2) took effect, land that was the subject of the declaration was Aboriginal land (the relevant land); and
- (b) as a result of the declaration, the Commonwealth acquired (under clause 19) an estate in fee simple in the relevant land; and
- (c) a facility on the relevant land has been abandoned in accordance with the *Australian Radiation Protection and Nuclear Safety Act 1998*; and
- (d) the Commonwealth holds an estate in fee simple in the relevant land.

Subclause 26(2) provides that Part 6 applies if:

- (a) immediately before a declaration under subclause 14(4) took effect, all or part of the land that was the subject of the declaration was Aboriginal land (the whole, or that part, of the land being relevant land); and
- (b) as a result of the declaration, the Commonwealth acquired, under clause 19, rights or interests in the relevant land; and
- (c) the facility mentioned in subclause 26(1)(c) has been abandoned in accordance with the *Australian Radiation Protection and Nuclear Safety Act 1998*; and
- (d) the Commonwealth holds all or some of those rights or interests in the relevant land.

Subclause 26(3) provides that this Part does not apply to a declaration referred to in subsection (1) or (2) if the declaration relates to land nominated under clause 7.

Abandonment of a facility under the *Australian Radiation Protection and Nuclear Safety Act 1998* means that the facility has been released from regulatory control. This cannot occur until decommissioning and any subsequent monitoring has been completed.

Clause 27 - Declaration of intention to grant rights and interests in land to original owners

Subclause 27(1) provides that the Minister may (in his or her absolute discretion) declare in writing that the land that was the subject of the declaration under subclause 14(2) is no longer required for the facility mentioned in subclause 26(1)(c).

Subclause 27(2) provides that the declaration must:

- (a) specify all the relevant land; and
- (b) state that the Minister intends to make a declaration under clause 28 granting the rights and interests specified in clause 29 in specified land to a specified Land Trust.

Subclause 27(3) provides that land specified under subparagraph 27(2)(b) may be all or part of the relevant land, but all of the specified land must, in total, be all of the relevant land.

This allows for different specified parts of the relevant land to be returned to different Land Trusts.

Subclause 27(4) provides that a Land Trust may be specified under subparagraph 27(2)(b) in relation to specified land only if:

- (a) the Land Trust held title to the specified land immediately before the declaration under subclause 14(2) or (4) (as the case may be) took effect; or
- (b) the Land Trust has succeeded to the functions of a Land Trust mentioned in subparagraph (4)(a).

Subclause 27(5) provides that, within seven days of the declaration being made, the Minister must publish a copy of the declaration in the *Gazette* and notify a specified Land Trust in writing that the Minister intends to make a declaration under clause 28.

Subclause 27(6) provides that a declaration is not valid unless it specifies and states the matters mentioned in subclause 27(2) and the Minister complies with subclause 27(5).

Subclause 27(7) provides that a Land Trust specified in the declaration may consent in writing to the granting of the rights and interests specified in clause 29 in the specified land.

Subclause 27(8) provides that a declaration made under subclause 27(1) is not a legislative instrument. This provision is included to assist readers, as the declaration is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Clause 28 - Declaration granting rights and interests in land to original owners

Subclause 28(1) provides that the Minister must make a declaration in writing that an estate in fee simple is granted in specified land to a specified Land Trust if the Commonwealth holds an estate in fee simple in the specified land and the specified Land Trust has, under subclause 27(7), consented to the granting of an estate in fee simple in the specified land within:

- 12 months of the day on which the declaration under clause 27 was published in the *Gazette*; or
- such longer period as is prescribed in the regulations.

Subclause 28(2) provides that the Minister must make a declaration in writing that the rights and interests specified in subclause 29(3) are granted in specified land to a specified Land Trust if the Commonwealth holds rights or interests (other than an estate in fee simple) in the specified land and the specified Land Trust has, under subclause 27(7), consented to the granting of the rights and interests specified in subclause 29(3) in the specified land within:

- 12 months of the day on which the declaration under clause 27 was published in the *Gazette*; or
- such longer period as is prescribed in the regulations.

Clause 28(3) provides that a declaration has effect at the time specified in the declaration (which must not be earlier than the time the declaration is made).

Subclause 28(4) provides that a declaration made under subclause 28(1) or (2) is not a legislative instrument. This provision is included to assist readers, as the declarations are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Subclause 28(5) provides that the Minister may include one or more declarations under subclause 28(1) and (2) in the same document.

Clause 29 - Grant of rights and interests in land to original owners

Clause 29 provides for the grant of rights and interests in land to original owners as a grant of estate in fee simple (subclauses 29(1) and (2)), a grant of other rights and interests (subclause 29(3)) and the effect on the validity of earlier rights, interests and actions (subclause 29(4)).

Subclause 29(1) provides that, if the Minister makes a declaration under subclause 28(1), then at the time the declaration has effect, an estate in fee simple is granted (by force of subclause 29(1)) in the specified land to the specified Land Trust and the land is taken, for all purposes, to be Aboriginal land.

Subclause 29(2) provides that the estate in fee simple is subject to the reservations that:

- (a) the right to any minerals existing in their natural condition, or in a deposit of waste material obtained from any underground or surface working, on or below the surface of the land (being minerals all interests in which are vested in the Commonwealth) remains with the Commonwealth; and
- (b) rights to explore for minerals, and leases or licences to mine for minerals, on or below the surface of the land may be granted under section 124 of the *Lands Acquisition Act 1989*.

Subclause 29(3) provides that, if the Minister makes a declaration under subclause 28(2), then at the time the declaration has effect, any rights and interests that are held by the Commonwealth in the specified land and were acquired by the Commonwealth (under clause 19) in the specified land from the specified Land Trust or another Land Trust, are granted (by force of subclause 29(3)) in the specified land to the specified Land Trust.

Subclause 29(4) provides that the granting of rights and interests in land under subclause 29(1) or (3) does not affect the validity of any rights or interests acquired, created or granted (whether under this Act or otherwise) in relation to the land or the validity of the construction, operation, maintenance, decommissioning or abandoning of a facility on the land, or the doing of any other thing in relation to the land, before the declaration under clause 28 has effect.

Clause 30 - No earlier rights and interests granted

Clause 30 provides that, to avoid doubt, the making of a declaration under clause 28 does not create or grant any rights or interests in land before the declaration has effect.

Clause 31 - Application of Commonwealth, State and Territory laws

Clause 31 provides that clause 29 has effect despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

Clause 32 - Notice to Registrar-General

Subclause 32(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 clause 28, certified by writing signed by the Secretary.

Subclause 32(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.

Clause 33 - Indemnity by Commonwealth

Subclause 33(1) provides that the Commonwealth must indemnify each Land Trust specified in a declaration under clause 28 and keep the Land Trust indemnified against any action, claim or demand brought or made against the Land Trust 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 land specified in the declaration.

Clause 33(2) provides that the amount of the indemnity is reduced to the extent to which any fault on the part of the Land Trust, or its employees, agents or contractors, contributed to the liability or damage.

Clause 33(3) provides that subclause 33(1) does not apply in relation to an action, claim or demand unless the Land Trust notifies the Commonwealth, in writing, of the action, claim or demand as soon as practicable and the Land Trust follows any directions of the Commonwealth in relation to the action, claim or demand.

Clause 34 - Regulations

Clause 34 provides that the regulations may prescribe any modifications of this Act that are necessary or convenient to deal with transitional matters arising from the making of a declaration under clauses 27 or 28.

Part 7 – Miscellaneous

Clause 35 - Compensation

Subclause 35(1) provides that, if rights or interests are acquired, extinguished or otherwise affected under clause 19, the Commonwealth is liable to pay a reasonable amount of compensation to a person whose rights or interests have been acquired, extinguished or otherwise affected.

Subclause 35(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 36 - Compensation for acquisition of property

Subclause 36(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 36(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 36(3) defines *acquisition of property*, and *just terms* for the purposes of clause 36. These terms are defined as having the same meaning as in paragraph 51(xxxi) of the Constitution.

Clause 37 - Indemnity by Commonwealth and management of Northern Territory controlled material for section 5 nominations

Subclause 37(1) provides that this clause applies if the selected site was nominated under clause 5.

Subclause 37(2) provides that 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 damaged 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.

Subclause 37(3) provides that 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.

Subclause 37(4) provides that subclause 37(2) does not apply in relation to an action, claim or demand unless the Northern Territory notifies the Commonwealth, in writing, of the action, claim or demand as soon as practicable and follows any directions of the Commonwealth in relation to the action, claim or demand.

Subclause 37(5) provides that if controlled material that is generated by activities in the Northern Territory is managed at a facility on the selected site, the Commonwealth must not charge the Northern Territory for the management.

Clause 38 – Severability-additional effect of Act

Clause 38 provides that, without limiting the effect apart from this clause, the Bill also has effect it would have if:

- (a) each reference to a facility were, limited to a facility within a Territory; and
- (b) each reference to the doing of things, or things done, on or in relation to land was expressly limited to a reference to the doing of things, or things done, or in relation to land within a Territory.

This clause is designed to ensure that the Bill is capable of being read down so that it is supported by section 122 of the Constitution.

Clause 39 - Regulations

Clause 39 provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Clause 40 - Schedule(s)

Clause 40 provides that each Act that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned and any other item in a Schedule to this Bill has effect according to its terms.

Schedule 1 – Repeal and consequential amendments

Part 1 – Repeal of the Commonwealth Radioactive Waste Management Act 2005

Item 1 repeals the whole of the *Commonwealth Radioactive Waste Management Act 2005*.

Part 2 - Consequential amendment

Item 2 repeals paragraph (zc) of Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*.

Schedule 2 – Transitional provisions

Item 1 - Saving–nominations and approvals

Item 1(1) provides that despite the repeal of Part 1A of the *Commonwealth Radioactive Waste Management Act 2005* by item 1 of Schedule 1, a nomination under section 3A of the *Commonwealth Radioactive Waste Management Act 2005* continues in force, after the commencement time, as if it had been made under clause 5 of the Bill.

Item 1(2) provides that despite the repeal of Part 1A of the *Commonwealth Radioactive Waste Management Act 2005* by item 1 of Schedule 1, an approval under section 3C of the

Commonwealth Radioactive Waste Management Act 2005 continues in force, after the commencement time, as if it had been made under clause 9 of the Bill.

Item 1(3) provides that section 3D of the *Commonwealth Radioactive Waste Management Act 2005* and the old ADJR Act continue to apply, after the commencement time, in relation to a nomination or approval continued in force by this item.

Item 1(4) provides that clause 10 of the Bill and the new ADJR Act do not apply in relation to an approval continued in force by this item.

Item 1(5) provides that to avoid doubt, clause 18 of the Bill and the new ADJR Act apply in relation to a declaration under clause 14 of the Bill that relates to an approval continued in force by this item.

Item 1(6) provides definitions for Item 1, Schedule 2.