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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

National Radioactive Waste Management Bill 2010

No. , 2010

(Resources, Energy and Tourism)

**A Bill for 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**

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1 **A Bill for an Act to make provision in relation to**
2 **the selection of a site for, and the establishment and**
3 **operation of, a radioactive waste management**
4 **facility, and for related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

9 This Act may be cited as the *National Radioactive Waste*
10 *Management Act 2010*.

Section 2

1 **2 Commencement**

2 This Act commences on the day this Act receives the Royal
3 Assent.

4 **3 Object of Act**

5 The object of this Act is to provide for:
6 (a) the selection of a site for a radioactive waste management
7 facility on voluntarily nominated land in Australia; and
8 (b) the establishment and operation of such a facility on the
9 selected site;
10 to ensure that radioactive waste generated, possessed or controlled
11 by the Commonwealth or a Commonwealth entity is safely and
12 securely managed.

13 **4 Definitions**

14 In this Act:

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

17 **Commonwealth contractor** means:

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

22 **Commonwealth entity** means:

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

30 **controlled material** means controlled material within the meaning
31 of the *Australian Radiation Protection and Nuclear Safety Act*

Section 4

1 1998, but does not include high level radioactive material or spent
2 nuclear fuel.

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

6 **general nomination start time** means the time at which a
7 declaration under section 6 takes effect.

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

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

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

14 **nominator** of land means the following:

- 15 (a) a Land Council that nominated the land as a potential site
16 under subsection 5(1);
17 (b) a person who nominated the land as a potential site under
18 subsection 7(2) or (3).

19 **selected site** means the site, or the specified part of a site, in
20 relation to which a declaration by the Minister under subsection
21 14(2) is in effect.

22 **site** means a site approved by the Minister under section 9.

23 **spent nuclear fuel** means material that:

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

31 **statutory authority**, in relation to the Crown in right of the
32 Commonwealth, a State or a Territory, means any authority or

Section 4

1 body (including a corporation sole) established by a law of the
2 Commonwealth, the State or Territory other than a general law
3 allowing incorporation as a company or body corporate.

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

5 (a) a contract with a Commonwealth contractor (within the
6 meaning of paragraph (a) of the definition of **Commonwealth**
7 **contractor**); or

8 (b) a contract with another subcontractor (under a previous
9 application of this definition).

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

1

2 **Part 2—Nomination of sites**

2

3 **Division 1—Nomination by a Land Council**

3

4 **5 Nomination by a Land Council**

4

- 5 (1) A Land Council may, before the general nomination start time,
6 nominate Aboriginal land in the area of the Land Council as a
7 potential site.

5

6

7

8 Note: After the general nomination start time, certain persons may nominate
9 land in a State or Territory as a potential site—see Division 2 of this
10 Part.

8

9

10

- 11 (2) A nomination must:

11

12

(a) be in writing; and

13

(b) be made to the Minister; and

14

(c) specify the land nominated by reference to portion number (if
15 any), survey points (if available) and geographical
16 coordinates; and

15

16

(d) contain evidence of all interests in the land; and

17

(e) if there is a sacred site within the meaning of the *Aboriginal
18 Land Rights (Northern Territory) Act 1976* on or near the
19 land—contain evidence that the persons for whom the site is
20 sacred or is otherwise of significance are satisfied that there
21 is no substantial risk of damage to or interference with the
22 sacred site as a result of the nomination or subsequent action
23 under this Act; and

18

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23

24

(f) contain evidence that:

25

26

27

(i) the Land Council has consulted with the traditional
28 Aboriginal owners of the land; and

26

27

(ii) the traditional Aboriginal owners understand the nature
29 and effect of the proposed nomination and the things
30 that might be done on or in relation to the land under
31 this Act if the Minister approves the nomination; and

28

29

30

31

(iii) the traditional Aboriginal owners as a group have
32 consented to the proposed nomination being made (that
33

32

33

Part 2 Nomination of sites

Division 1 Nomination by a Land Council

Section 5

- 1 consent as a group being determined in accordance with
2 section 77A of the *Aboriginal Land Rights (Northern*
3 *Territory) Act 1976*; and
4 (iv) any Aboriginal community or group that may be
5 affected by the proposed nomination has been consulted
6 and has had adequate opportunity to express its view to
7 the Land Council.
- 8 (3) The Minister may request further information from the Land
9 Council.
- 10 (4) Failure to comply with subsection (2) does not invalidate a
11 nomination.
- 12 (5) A nomination is not a legislative instrument.

1

2 **Division 2—General nominations**

3 **6 Minister may declare that nominations can be made under**
4 **section 7**

5 (1) The Minister may make a declaration in writing that nominations
6 of potential sites may be made under section 7.

7 Note: After a declaration is made:

8 (a) a nomination cannot be made under section 5 (see subsection
9 5(1)); and

10 (b) the Minister must not approve land nominated under section 5, or
11 declare land so nominated to be the selected site for a facility
12 (see subsections 9(2) and 14(3)).

13 (2) In deciding whether to make a declaration, the Minister must have
14 regard to whether it is unlikely that a facility will be able to be
15 constructed and operated on Aboriginal land that has been
16 nominated as a potential site under section 5 (whether or not that
17 land has been approved as a site under section 9).

18 (3) A declaration takes effect at the time specified in the declaration,
19 which must not be earlier than the time the declaration is made.

20 (4) A copy of a declaration must be published in the *Gazette* within 7
21 days of the declaration being made.

22 (5) Failure to comply with subsection (4) does not invalidate a
23 declaration.

24 (6) A declaration is not a legislative instrument.

25 **7 Nominations of potential sites**

26 *Nominations may be made*

27 (1) If a declaration under section 6 is in effect, a person or persons
28 may, in accordance with this section, nominate land in a State, the
29 Australian Capital Territory or the Northern Territory as a potential
30 site.

Section 7

Nominations by holders of certain interests in land

- 1
2 (2) A person may nominate land under this subsection as a potential
3 site if:
4 (a) the person holds an interest in the land; and
5 (b) the interest is:
6 (i) an estate in fee simple; or
7 (ii) a lease of land granted by or on behalf of the Crown, a
8 Minister of the Crown, a statutory authority or any other
9 prescribed person, under a law of the Commonwealth, a
10 State or a Territory; and
11 (c) the person does not hold the interest as a joint tenant or a
12 tenant in common.
- 13 (3) The persons who, as joint tenants or tenants in common, hold one
14 of the following interests in land may jointly nominate the land
15 under this subsection as a potential site:
16 (a) an estate in fee simple;
17 (b) a lease of the land granted by or on behalf of the Crown, a
18 Minister of the Crown, a statutory authority or any other
19 prescribed person, under a law of the Commonwealth, a State
20 or a Territory.

Nominations where native title exists

- 21
22 (4) A person may nominate land under this subsection as a potential
23 site if:
24 (a) an approved determination of native title covers an area
25 containing the land; and
26 (b) the approved determination of native title determines that:
27 (i) native title exists in relation to the land; and
28 (ii) the native title rights and interests confer possession,
29 occupation, use and enjoyment of the land on the native
30 title holders to the exclusion of all others; and
31 (c) one of the following applies:
32 (i) in the case of an approved determination of native title
33 by the Federal Court—the person is a prescribed body
34 corporate that holds the native title rights and interests
35 concerned on trust, or is an agent prescribed body

- 1 corporate in relation to the native title rights and
2 interests concerned;
- 3 (ii) in the case of an approved determination of native title
4 by a recognised State/Territory body—the person is a
5 body corporate that holds the native title rights and
6 interests concerned on trust, or that is determined in
7 relation to the native title under a provision of a law of
8 the State or Territory concerned that corresponds to
9 section 57 of the *Native Title Act 1993*.

10 (5) In this section:

11 *agent prescribed body corporate* has the same meaning as in the
12 *Native Title Act 1993*.

13 *approved determination of native title* has the same meaning as in
14 the *Native Title Act 1993*.

15 *prescribed body corporate* has the same meaning as in the *Native*
16 *Title Act 1993*.

17 *recognised State/Territory body* has the same meaning as in the
18 *Native Title Act 1993*.

19 **8 Rules about nominations**

- 20 (1) A nomination made under section 7 must:
- 21 (a) be in writing; and
22 (b) be made to the Minister; and
23 (c) specify the land nominated in accordance with
24 subsection (2); and
25 (d) in the case of a nomination under subsection 7(2) or (3)—
26 contain evidence that the interest in the land held by the
27 nominator or nominators of the land is an interest referred to
28 in subparagraph 7(2)(b)(i) or (ii) or subsection 7(3); and
29 (e) in the case of a nomination under subsection 7(4)—contain
30 evidence of the matters specified in that subsection; and
31 (f) contain such other evidence (if any) as is prescribed by the
32 regulations, including, but not limited to, the following:

Part 2 Nomination of sites

Division 2 General nominations

Section 8

- 1 (i) evidence that one or more specified groups of persons
2 have been consulted in relation to the nomination;
- 3 (ii) evidence that one or more specified groups of persons
4 are satisfied of specified matters in relation to the
5 nomination;
- 6 (iii) evidence that one or more specified groups of persons
7 have consented to the making of the nomination.
- 8 (2) For the purposes of paragraph (1)(c), land must be specified by
9 reference to:
- 10 (a) survey points (if available); and
11 (b) geographical coordinates; and
12 (c) whichever of the following is appropriate:
- 13 (i) portion number;
14 (ii) district, division, section and block;
15 (iii) certificate of title;
16 (iv) plan and lot number;
17 (v) volume and folio number;
18 (vi) lot on plan;
19 (vii) title identifier;
20 (viii) parcel identifier;
21 (ix) deposited plan;
22 (x) title diagram;
23 (xi) registered plan;
24 (xii) a descriptor of a kind similar to a descriptor referred to
25 in this paragraph.
- 26 (3) The Minister may request further information from a nominator of
27 the land.
- 28 (4) Failure to comply with subsection (1) does not invalidate a
29 nomination made under section 7.
- 30 (5) A nomination made under section 7 is not a legislative instrument.

1

2 **Division 3—Approval of nominated land**

3 **9 Approval of nominated land**

- 4 (1) Subject to subsection 10(6), the Minister may, in his or her
5 absolute discretion, approve in writing land, or a specified part of
6 land, nominated as a site under section 5 or 7.
- 7 (2) Despite subsection (1), the Minister must not, after the general
8 nomination start time, approve land nominated as a site under
9 section 5.
- 10 (3) The Minister does not have a duty to consider a nomination.
- 11 (4) An approval takes effect at the time specified in the approval,
12 which must not be earlier than the time the approval is made.
- 13 (5) A copy of an approval must be published in the *Gazette* within 7
14 days of the approval being made.
- 15 (6) Failure to comply with subsection (5) of this section, or subsection
16 5(2), 6(4) or 8(1), does not invalidate an approval.
- 17 (7) An approval is not a legislative instrument.

Section 10

1

2 **Division 4—Procedural fairness in relation to Minister's**
3 **declarations and approvals**

4 **10 Procedural fairness in relation to Minister's declarations and**
5 **approvals**

6 *Declaration under section 6*

7 (1) Before the Minister decides to make a declaration under section 6,
8 the Minister must:

9 (a) give a notice in writing to each Land Council; and

10 (b) publish a notice:

11 (i) in the *Gazette*; and

12 (ii) in a daily newspaper that circulates generally in each
13 State, the Australian Capital Territory and the Northern
14 Territory.

15 (2) A notice under paragraph (1)(a) or (b) must:

16 (a) state that the Minister proposes to make a declaration under
17 section 6; and

18 (b) invite comments on the proposed declaration; and

19 (c) specify the address to which comments may be sent; and

20 (d) specify the date by which comments must be received, which
21 must be at least 60 days after the notice is given or published.

22 (3) In deciding whether to make a declaration under section 6, the
23 Minister must take into account any relevant comments in response
24 to an invitation referred to in paragraph (2)(b).

25 *Approval under section 9*

26 (4) Before the Minister decides to approve land, or a specified part of
27 land, under section 9, the Minister must:

28 (a) give a notice in writing to each nominator of the land; and

29 (b) publish a notice:

30 (i) in the *Gazette*; and

- 1 (ii) in a daily newspaper that circulates generally in each
2 State, the Australian Capital Territory and the Northern
3 Territory; and
4 (iii) in a local newspaper (if any) circulating in the area in
5 which the land is situated.
- 6 (5) A notice under paragraph (4)(a) or (b) must:
7 (a) state that the Minister proposes to approve land, or a
8 specified part of land, under section 9; and
9 (b) if the notice is given under paragraph (4)(a)—invite each
10 nominator of the land to comment on the proposed approval;
11 and
12 (c) if the notice is published under paragraph (4)(b)—invite
13 persons with a right or interest in the land to comment on the
14 proposed approval; and
15 (d) specify the address to which comments may be sent; and
16 (e) specify the date by which comments must be received, which
17 must be at least 60 days after the notice is given or published.
- 18 (6) In deciding whether to approve land, or a specified part of land,
19 under section 9, the Minister must take into account any relevant
20 comments given to the Minister, by a nominator of the land, or a
21 person with a right or interest in the land, in response to an
22 invitation referred to in paragraph (5)(b) or (c).

23 *Exhaustive statement*

- 24 (7) This section is taken to be an exhaustive statement of the
25 requirements of the natural justice hearing rule in relation to:
26 (a) the Minister's decision whether to make a declaration under
27 section 6; and
28 (b) the Minister's decision whether to approve land, or a
29 specified part of land, under section 9.

Section 11

1

2 **Part 3—Selecting the site for a facility**

3

4 **11 Authority to conduct activities**

5

(1) This section applies to:

6

(a) the Commonwealth; and

7

(b) a Commonwealth entity; and

8

(c) a Commonwealth contractor; and

9

(d) an employee or agent of a person mentioned in paragraph (a),

10

(b) or (c).

11

(2) A person to whom this section applies may, in a State or Territory, do anything necessary for or incidental to the purposes of selecting a site on which to construct and operate a facility.

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(3) Without limiting subsection (2), the person may do any or all of the following under that subsection (whether or not on a site):

15

16

(a) gain access to and enter land and drive vehicles or fly aircraft to and from it;

17

18

(b) in order to drive vehicles to and from land—use existing roads or construct roads on, or grade, land;

19

20

(c) construct or rehabilitate bores;

21

(d) operate drilling equipment;

22

(e) extract water;

23

(f) collect samples of flora and fauna;

24

(g) place monitoring equipment (including meteorological and hydrological measuring equipment);

25

26

(h) build structures to protect bores, monitoring equipment or other things;

27

28

(i) move or extract sand, gravel, soil, mineral and rock samples;

29

(j) conduct seismic or geological investigations;

30

(k) conduct archaeological or heritage investigations;

31

(l) clear vegetation.

32

(4) A person doing a thing under this Part must:

- 1 (a) take all reasonable steps to ensure that the doing of the thing
2 causes as little detriment and inconvenience, and does as
3 little damage, as is practicable to the land and to anything on,
4 or growing or living on, the land; and
5 (b) remain on the land only for such period as is reasonably
6 necessary; and
7 (c) leave the land, as nearly as practicable, in the condition in
8 which it was immediately before the thing was done.

9 **12 Application of State and Territory laws**

- 10 (1) A law, or a provision of a law, of a State or Territory (whether
11 written or unwritten), so far as it relates to:
12 (a) the use or proposed use of land or premises; or
13 (b) the environmental consequences of the use of land or
14 premises; or
15 (c) the archaeological or heritage values of land, premises or
16 objects (including the significance of land, premises or
17 objects in the traditions of Indigenous people); or
18 (d) controlled material, radioactive material or dangerous goods;
19 or
20 (e) licensing (however described) in relation to:
21 (i) employment; or
22 (ii) carrying on a particular kind of business or undertaking;
23 or
24 (iii) conducting a particular kind of operation or activity;
25 has no effect to the extent that it would, apart from this section,
26 regulate, hinder or prevent the doing of a thing authorised by
27 section 11.
- 28 (2) The regulations may prescribe a law, or a provision of a law, of a
29 State or Territory for the purposes of this subsection. The
30 prescribed law or provision has no effect to the extent that it
31 would, apart from this subsection, regulate, hinder or prevent the
32 doing of a thing authorised by section 11.
- 33 (3) Regulations made for the purposes of subsection (2) may prescribe
34 a law, or a provision of a law, whether or not it is a law or a
35 provision of a kind described in subsection (1).

Section 13

- 1 (4) The regulations may prescribe a law, or a provision of a law, of a
2 State or Territory for the purposes of this subsection. The
3 prescribed law or provision has effect despite anything else in this
4 section.

5 **13 Application of Commonwealth laws**

- 6 (1) The following laws have no effect to the extent that they would,
7 apart from this section, regulate, hinder or prevent the doing of a
8 thing authorised by section 11:
9 (a) the *Aboriginal and Torres Strait Islander Heritage*
10 *Protection Act 1984*;
11 (b) the *Environment Protection and Biodiversity Conservation*
12 *Act 1999*.
- 13 (2) The regulations may prescribe another law, or a provision of
14 another law, of the Commonwealth for the purposes of this
15 subsection. The prescribed law or provision has no effect to the
16 extent that it would, apart from this subsection, regulate, hinder or
17 prevent the doing of a thing authorised by section 11.

1

2 **Part 4—Acquisition or extinguishment of rights**
3 **and interests**

3

4 **Division 1—Minister may declare a site as the site for a**
5 **facility**

5

6 **14 Minister’s declaration of land as selected site or required for**
7 **road access**

6

7

8

(1) This section applies if:

9

(a) land has been nominated as a site under section 5 or 7; and

10

(b) the Minister has approved the nominated land, or a specified part of the nominated land, as a site under section 9.

11

12

(2) Subject to section 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 or interests in the selected site.

13

14

15

16

17

(3) Despite subsection (2), the Minister must not, after the general nomination start time, make such a declaration in relation to land nominated as a site under section 5.

18

19

20

(4) Subject to section 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.

21

22

23

24

(5) To avoid doubt, rights and interests specified in a declaration under subsection (2) or (4) may include the following:

25

26

(a) rights to minerals (if any);

27

(b) native title rights and interests (if any);

28

(c) an interest in the land, being an interest that did not previously exist;

29

30

(d) an easement in gross (if any).

Section 15

1 (6) To avoid doubt, this section has effect subject to section 9 of the
2 *Racial Discrimination Act 1975*.

3 (7) A declaration under subsection (2) or (4) is not a legislative
4 instrument.

5 **15 Formalities relating to Minister's declarations**

6 (1) A copy of a declaration under subsection 14(2) or (4) must be
7 published in the *Gazette* within 7 days of the declaration being
8 made.

9 (2) Failure to comply with subsection (1) of this section, or subsection
10 5(2), 6(4), 8(1) or 9(5), does not invalidate a declaration.

11 **16 When Minister's declarations take effect etc.**

12 (1) A declaration under subsection 14(2) or (4) takes effect at the time
13 specified in the declaration, which must not be earlier than the time
14 the declaration is made.

15 (2) The Minister may, subject to this section, make more than one
16 declaration under subsection 14(2) or (4), but only one declaration
17 under subsection 14(2) may be in effect at a particular time.

18 (3) If:

19 (a) a declaration under subsection 14(2) (the *original*
20 *declaration*) is in effect at a particular time; and

21 (b) at that time, the Minister makes another such declaration (the
22 *later declaration*);

23 the Minister is taken, immediately before the time of effect
24 specified in the later declaration, to have revoked the original
25 declaration under section 17.

26 **17 Revocation of Minister's declaration**

27 (1) The Minister may, in his or her absolute discretion, revoke in
28 writing a declaration made under subsection 14(2).

29 (2) A revocation takes effect at the time specified in the revocation,
30 which must not be earlier than the time the revocation is made.

Section 17

- 1 (3) To avoid doubt, if a declaration made under subsection 14(2) is
2 revoked:
- 3 (a) the revocation does not affect the operation of section 19 in
4 relation to the land that was, immediately before the
5 revocation, the selected site; and
6 (b) on and from the revocation, Part 5 does not apply to that
7 land.
- 8 (4) Section 18 does not apply to a revocation under this section.
- 9 (5) A copy of a revocation must be published in the *Gazette* within 7
10 days of the revocation.
- 11 (6) Failure to comply with subsection (5) does not invalidate a
12 revocation.
- 13 (7) Subsection 33(3) of the *Acts Interpretation Act 1901* does not
14 apply to a revocation.

Section 18

1

2 **Division 2—Procedural fairness**

3 **18 Procedural fairness in relation to Minister’s declarations**

4 (1) Before the Minister decides to make a declaration under section 14
5 in relation to land, the Minister must:

- 6 (a) give a notice in writing to each nominator of the land; and
7 (b) publish a notice:
8 (i) in the *Gazette*; and
9 (ii) in a daily newspaper that circulates generally in each
10 State, the Australian Capital Territory and the Northern
11 Territory; and
12 (iii) in a local newspaper (if any) circulating in the area in
13 which the land is situated.

14 (2) A notice under paragraph (1)(a) or (b) must:

- 15 (a) state that the Minister proposes to make a declaration under
16 subsection 14(2) or (4); and
17 (b) set out details of the proposed declaration; and
18 (c) if the notice is given under paragraph (1)(a)—invite each
19 nominator of the land to comment on the proposed
20 declaration; and
21 (d) if the notice is published under paragraph (1)(b)—invite
22 persons with a right or interest in the land to comment on the
23 proposed declaration; and
24 (e) specify the address to which comments may be sent; and
25 (f) specify the date by which comments must be received, which
26 must be at least 60 days after the notice is given or published.

27 (3) In deciding whether to make a declaration under section 14, the
28 Minister must take into account any relevant comments given to
29 the Minister, by a nominator of the land, or a person with a right or
30 interest in the land, in response to an invitation referred to in
31 paragraph (2)(c) or (d).

32 (4) A reference in this section to each nominator of the land, in
33 relation to a declaration under subsection 14(4) that rights or

Section 18

1 interests in land are required for providing all-weather road access
2 to the selected site, is a reference to each person who nominated
3 the selected site under section 5 or 7.

4 *Exhaustive statement*

5 (5) This section is taken to be an exhaustive statement of the
6 requirements of the natural justice hearing rule in relation to the
7 Minister's decision whether to make a declaration under
8 section 14.

Section 19

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2 **Division 3—Acquisition or extinguishment**

3 **19 Acquisition or extinguishment**

4 (1) At the time a declaration under subsection 14(2) takes effect, any
5 rights or interests in the selected site that are specified in the
6 declaration are, by force of this section:

- 7 (a) acquired by the Commonwealth or extinguished; and
8 (b) freed and discharged from all other rights and interests and
9 from all trusts, restrictions, dedications, reservations,
10 obligations, mortgages, encumbrances, contracts, licences,
11 charges and rates.

12 (2) At the time a declaration under subsection 14(4) takes effect, the
13 rights or interests in the specified land that are specified in the
14 declaration are, by force of this section:

- 15 (a) acquired by the Commonwealth or extinguished; and
16 (b) freed and discharged from all other rights and interests and
17 from all trusts, restrictions, dedications, reservations,
18 obligations, mortgages, encumbrances, contracts, licences,
19 charges and rates.

20 **20 Application of Commonwealth and State or Territory laws**

21 (1) Section 19 has effect despite any other law of the Commonwealth,
22 a State or a Territory (whether written or unwritten).

23 (2) Without limiting subsection (1), section 19 has effect despite the
24 following laws of the Commonwealth:

- 25 (a) the *Lands Acquisition Act 1989*;
26 (b) the *Native Title Act 1993*.

27 **21 Notice to Registrar-General or other appropriate officer**

28 (1) The Secretary of the Department may lodge with the
29 Registrar-General, the Registrar of Titles or other appropriate
30 officer of a State or Territory a copy of a Minister's declaration
31 under section 14, certified by writing signed by the Secretary.

Section 21

- 1 (2) The officer with whom the copy is lodged may deal with and give
2 effect to it as if it were a grant, conveyance, memorandum or
3 instrument of transfer of relevant rights and interests done under
4 the laws of the State or Territory.

Section 22

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2 **Division 4—Regional consultative committee**

3 **22 Regional consultative committee**

4 (1) Immediately after a declaration under subsection 14(2) takes effect,
5 the Minister must, by writing, establish a committee to be known
6 as the regional consultative committee.

7 Note: For variation and revocation, see subsection 33(3) of the *Acts*
8 *Interpretation Act 1901*.

9 (2) The functions of the committee are:

10 (a) to facilitate communication between the Commonwealth, the
11 operator of the facility (if any) at the selected site and persons
12 living in or near the region where the selected site is situated;
13 and

14 (b) such other functions as are prescribed under paragraph (4)(a).

15 (3) An instrument made under subsection (1) is not a legislative
16 instrument.

17 (4) The regulations may prescribe matters relating to the committee,
18 including, but not limited to, the following:

19 (a) the functions of the committee;

20 (b) the operation and procedures of the committee;

21 (c) membership of the committee;

22 (d) term of appointment of members;

23 (e) remuneration of members;

24 (f) resignation of members;

25 (g) disclosure of interests by members;

26 (h) termination of appointment of members;

27 (i) leave of absence of members.

28 (5) If no regulations are in force under subsection (4), the committee
29 may operate in the way determined in writing by the committee.

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Part 5—Conducting activities in relation to selected site

23 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, 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 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 subsection 14(4);
 - (h) operating a facility;
 - (i) maintaining a facility;
 - (j) keeping a facility safe;
 - (k) decommissioning a facility.

Section 24

- 1 (3) Without limiting subsection (2), the person may, under that
2 subsection, do a thing mentioned in subsection 11(3) in relation to
3 the selected site.
- 4 (4) Subsection (2) extends to doing things outside the selected site.
- 5 (5) A person to whom this section applies may, in relation to the
6 selected site:
- 7 (a) transport (including through a State or Territory) people and
8 materials (including controlled material) to or from a facility;
9 and
10 (b) use transport infrastructure for that transport.

24 Application of State and Territory laws

- 12 (1) A law, or a provision of a law, of a State or Territory (whether
13 written or unwritten), so far as it relates to:
- 14 (a) the use or proposed use of land or premises; or
15 (b) the environmental consequences of the use of land or
16 premises; or
17 (c) the archaeological or heritage values of land, premises or
18 objects (including the significance of land, premises or
19 objects in the traditions of Indigenous people); or
20 (d) controlled material, radioactive material or dangerous goods;
21 or
22 (e) licensing (however described) in relation to:
- 23 (i) employment; or
24 (ii) carrying on a particular kind of business or undertaking;
25 or
26 (iii) conducting a particular kind of operation or activity;
- 27 has no effect to the extent that it would, apart from this section,
28 regulate, hinder or prevent the doing of a thing authorised by
29 section 23.
- 30 (2) A law, or a provision of a law, of a State or Territory (whether
31 written or unwritten), so far as it relates to the transport of
32 controlled material, radioactive material or dangerous goods, has
33 no effect to the extent that it would, apart from this section,
34 regulate, hinder or prevent transport authorised by section 23.

- 1 (3) The regulations may prescribe a law, or a provision of a law, of a
 2 State or Territory for the purposes of this subsection. The
 3 prescribed law or provision has no effect to the extent that it
 4 would, apart from this subsection, regulate, hinder or prevent the
 5 doing of a thing authorised by section 23.
- 6 (4) Regulations made for the purposes of subsection (3) may prescribe
 7 a law, or a provision of a law, whether or not it is a law or a
 8 provision of a kind described in subsection (1) or (2).
- 9 (5) The regulations may prescribe a law, or a provision of a law, of a
 10 State or Territory for the purposes of this subsection. The
 11 prescribed law or provision has effect despite anything else in this
 12 section.

13 **25 Application of Commonwealth laws**

- 14 (1) The regulations may prescribe a law, or a provision of a law, of the
 15 Commonwealth for the purposes of this subsection. The prescribed
 16 law or provision has no effect to the extent that it would, apart
 17 from this subsection, regulate, hinder or prevent the doing of a
 18 thing authorised by section 23.
- 19 (2) The regulations must not prescribe any of the following laws, or
 20 any provision of the following laws:
- 21 (a) the *Australian Radiation Protection and Nuclear Safety Act*
 22 *1998*;
- 23 (b) the *Environment Protection and Biodiversity Conservation*
 24 *Act 1999*;
- 25 (c) the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

Section 26

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2 **Part 6—Granting of rights and interests in land to**
3 **original owners**

4

5 **26 Application of Part**

6 *Declaration under subsection 14(2)*

- 7 (1) This Part applies if:
- 8 (a) immediately before a declaration under subsection 14(2) took
9 effect, land that was the subject of the declaration was
10 Aboriginal land (the *relevant land*); and
 - 11 (b) as a result of the declaration, the Commonwealth acquired,
12 under section 19, an estate in fee simple in the relevant land;
13 and
 - 14 (c) a facility on the relevant land has been abandoned in
15 accordance with the *Australian Radiation Protection and*
16 *Nuclear Safety Act 1998*; and
 - 17 (d) the Commonwealth holds an estate in fee simple in the
18 relevant land.

19 *Declaration under subsection 14(4)*

- 20 (2) This Part also applies if:
- 21 (a) immediately before a declaration under subsection 14(4) took
22 effect, all or part of the land that was the subject of the
23 declaration was Aboriginal land (the whole, or that part, of
24 the land being *relevant land*); and
 - 25 (b) as a result of the declaration, the Commonwealth acquired,
26 under section 19, rights or interests in the relevant land; and
 - 27 (c) the facility mentioned in paragraph (1)(c) has been
28 abandoned in accordance with the *Australian Radiation*
29 *Protection and Nuclear Safety Act 1998*; and
 - 30 (d) the Commonwealth holds all or some of those rights or
31 interests in the relevant land.

1 *Part does not apply to nominations under section 7*

- 2 (3) However, this Part does not apply to a declaration referred to in
3 subsection (1) or (2) if the declaration relates to land nominated
4 under section 7.

5 **27 Declaration of intention to grant rights and interests in land to**
6 **original owners**

- 7 (1) The Minister may, in his or her absolute discretion, declare in
8 writing that the land that was the subject of the declaration under
9 subsection 14(2) is no longer required for the facility mentioned in
10 paragraph 26(1)(c).
- 11 (2) The declaration must:
12 (a) specify all the relevant land; and
13 (b) state that the Minister intends to make a declaration under
14 section 28 granting the rights and interests specified in
15 section 29 in specified land to a specified Land Trust.
- 16 (3) Land specified under paragraph (2)(b) may be all or part of the
17 relevant land, but all of the specified land must, in total, be all of
18 the relevant land.
- 19 (4) A Land Trust may be specified under paragraph (2)(b) in relation
20 to specified land only if:
21 (a) the Land Trust held title to the specified land immediately
22 before the declaration under subsection 14(2) or (4) (as the
23 case may be) took effect; or
24 (b) the Land Trust has succeeded to the functions of a Land Trust
25 mentioned in paragraph (a) of this subsection.
- 26 (5) Within 7 days of the declaration being made, the Minister must:
27 (a) publish a copy of the declaration in the *Gazette*; and
28 (b) notify a specified Land Trust in writing that the Minister
29 intends to make a declaration under section 28.
- 30 (6) A declaration is not valid unless:
31 (a) it specifies and states the matters mentioned in
32 subsection (2); and
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Section 28

- 1 (b) the Minister complies with subsection (5).
- 2 (7) A Land Trust specified in a declaration may consent in writing to
3 the granting of the rights and interests specified in section 29 in the
4 specified land.
- 5 (8) A declaration is not a legislative instrument.

6 **28 Declaration granting rights and interests in land to original**
7 **owners**

- 8 (1) The Minister must make a declaration in writing that an estate in
9 fee simple is granted in specified land to a specified Land Trust if:
10 (a) the Commonwealth holds an estate in fee simple in the
11 specified land; and
12 (b) the specified Land Trust has, under subsection 27(7),
13 consented to the granting of an estate in fee simple in the
14 specified land within:
15 (i) 12 months of the day on which the declaration under
16 section 27 was published in the *Gazette*; or
17 (ii) such longer period as is prescribed in the regulations.
- 18 (2) The Minister must make a declaration in writing that the rights and
19 interests specified in subsection 29(3) are granted in specified land
20 to a specified Land Trust if:
21 (a) the Commonwealth holds rights or interests (other than an
22 estate in fee simple) in the specified land; and
23 (b) the specified Land Trust has, under subsection 27(7),
24 consented to the granting of the rights and interests specified
25 in subsection 29(3) in the specified land within:
26 (i) 12 months of the day on which the declaration under
27 section 27 was published in the *Gazette*; or
28 (ii) such longer period as is prescribed in the regulations.
- 29 (3) A declaration takes effect at the time specified in the declaration,
30 which must not be earlier than the time the declaration is made.
- 31 (4) A declaration is not a legislative instrument.

- 1 (5) The Minister may include one or more declarations under
2 subsections (1) and (2) in the same document.

3 **29 Grant of rights and interests in land to original owners**

4 *Grant of estate in fee simple*

- 5 (1) If the Minister makes a declaration under subsection 28(1), then at
6 the time the declaration takes effect:
7 (a) an estate in fee simple is granted, by force of this subsection,
8 in the specified land to the specified Land Trust; and
9 (b) the land is taken, for all purposes, to be Aboriginal land.
- 10 (2) The estate in fee simple is subject to the reservations that:
11 (a) the right to any minerals existing in their natural condition, or
12 in a deposit of waste material obtained from any underground
13 or surface working, on or below the surface of the land, being
14 minerals all interests in which are vested in the
15 Commonwealth, remains with the Commonwealth; and
16 (b) rights to explore for minerals, and leases or licences to mine
17 for minerals, on or below the surface of the land may be
18 granted under section 124 of the *Lands Acquisition Act 1989*.

19 *Grant of other rights and interests*

- 20 (3) If the Minister makes a declaration under subsection 28(2), then at
21 the time the declaration takes effect, any rights and interests:
22 (a) that are held by the Commonwealth in the specified land; and
23 (b) that were acquired by the Commonwealth, under section 19,
24 in the specified land from the specified Land Trust or another
25 Land Trust;
26 are granted, by force of this subsection, in the specified land to the
27 specified Land Trust.

28 *Validity of earlier rights, interests and actions*

- 29 (4) The granting of rights and interests in land under subsection (1) or
30 (3) does not affect:

Section 30

- 1 (a) the validity of any rights or interests acquired, created or
2 granted (whether under this Act or otherwise) in relation to
3 the land; or
4 (b) the validity of the construction, operation, maintenance,
5 decommissioning or abandoning of a facility on the land, or
6 the doing of any other thing in relation to the land;
7 before the declaration under section 28 takes effect.

8 **30 No earlier rights and interests granted**

9 To avoid doubt, the making of a declaration under section 28 does
10 not create or grant any rights or interests in land before the
11 declaration takes effect.

12 **31 Application of Commonwealth, State and Territory laws**

13 Section 29 has effect despite any other law of the Commonwealth,
14 a State or a Territory (whether written or unwritten).

15 **32 Notice to Registrar-General**

- 16 (1) The Secretary of the Department may lodge with the
17 Registrar-General for the Northern Territory (or other appropriate
18 officer) a copy of a Minister's declaration under section 28,
19 certified by writing signed by the Secretary.
- 20 (2) The officer with whom the copy is lodged may deal with and give
21 effect to it as if it were a grant, conveyance, memorandum or
22 instrument of transfer of relevant rights and interests done under
23 the laws of the Northern Territory.

24 **33 Indemnity by Commonwealth**

- 25 (1) The Commonwealth must indemnify each Land Trust specified in
26 a declaration under section 28, and keep the Land Trust
27 indemnified, against any action, claim or demand brought or made
28 against the Land Trust in respect of any liability arising from, or
29 damage caused by, ionising radiation from any act done or omitted
30 to be done by or on behalf of the Commonwealth in relation to the
31 transport of controlled material to or from, or the management of

- 1 controlled material at, a facility on the land specified in the
2 declaration.
- 3 (2) The amount of the indemnity is reduced to the extent to which any
4 fault on the part of the Land Trust, or its employees, agents or
5 contractors, contributed to the liability or damage.
- 6 (3) Subsection (1) does not apply in relation to an action, claim or
7 demand unless:
- 8 (a) the Land Trust notifies the Commonwealth, in writing, of the
9 action, claim or demand as soon as practicable; and
- 10 (b) the Land Trust follows any directions of the Commonwealth
11 in relation to the action, claim or demand.

12 **34 Regulations**

13 The regulations may prescribe any modifications of this Act that
14 are necessary or convenient to deal with transitional matters arising
15 from the making of a declaration under section 27 or 28.

Section 35

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2 **Part 7—Miscellaneous**

3

4 **35 Compensation**

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(1) If rights or interests are acquired, extinguished or otherwise affected under section 19, 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.

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(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.

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14 **36 Compensation for acquisition of property**

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(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.

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(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.

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(3) In this section:

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

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

28

1 **37 Indemnity by Commonwealth and management of Northern**
2 **Territory controlled material for section 5 nominations**

- 3 (1) This section applies if the selected site was nominated under
4 section 5.

5 *Indemnity by Commonwealth*

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

24 *Management of Northern Territory controlled material*

- 25 (5) If controlled material that is generated by activities in the Northern
26 Territory is managed at a facility on the selected site, the
27 Commonwealth must not charge the Northern Territory for the
28 management.

29 **38 Severability—additional effect of Act**

30 Without limiting its effect apart from this section, this Act also has
31 the effect it would have if:

Section 39

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

7 **39 Regulations**

- 8 The Governor-General may make regulations prescribing matters:
9 (a) required or permitted by this Act to be prescribed; or
10 (b) necessary or convenient to be prescribed for carrying out or
11 giving effect to this Act.

12 **40 Schedule(s)**

- 13 Each Act that is specified in a Schedule to this Act is amended or
14 repealed as set out in the applicable items in the Schedule
15 concerned, and any other item in a Schedule to this Act has effect
16 according to its terms.

1 **Schedule 1—Repeal and consequential**
2 **amendments**

3 **Part 1—Repeal of the Commonwealth Radioactive**
4 **Waste Management Act 2005**

5 **1 The whole of the Act**

6 Repeal the Act.

Schedule 1 Repeal and consequential amendments

Part 2 Consequential amendment

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2 **Part 2—Consequential amendment**

3 *Administrative Decisions (Judicial Review) Act 1977*

4 **2 Paragraph (zc) of Schedule 1**

5 Repeal the paragraph.

Schedule 2—Transitional provisions

1 Saving—nominations and approvals

- (1) 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 old radioactive waste law continues in force, after the commencement time, as if it had been made under section 5 of the new radioactive waste law.
- (2) 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 old radioactive waste law continues in force, after the commencement time, as if it had been made under section 9 of the new radioactive waste law.
- (3) Section 3D of the old radioactive waste law, and the old ADJR Act, continue to apply, after the commencement time, in relation to a nomination or an approval continued in force by this item.
- (4) Section 10 of the new radioactive waste law, and the new ADJR Act, do not apply in relation to a nomination or an approval continued in force by this item.
- (5) To avoid doubt, section 18 of the new radioactive waste law, and the new ADJR Act, apply in relation to a declaration under section 14 of the new radioactive waste law that relates to an approval continued in force by this item.
- (6) In this item:
- commencement time** means the time at which item 1 of Schedule 1 commences.
- new ADJR Act** means the *Administrative Decisions (Judicial Review) Act 1977* as in force immediately after the commencement time.
- new radioactive waste law** means the *National Radioactive Waste Management Act 2010* as in force immediately after the commencement time.
- old ADJR Act** means the *Administrative Decisions (Judicial Review) Act 1977* as in force immediately before the commencement time.

Schedule 2 Transitional provisions

1 ***old radioactive waste law*** means the *Commonwealth Radioactive Waste*
2 *Management Act 2005* as in force immediately before the
3 commencement time.

