

National Radioactive Waste Management Bill 2010

Referral of inquiry

- 1.1 The *National Radioactive Waste Management Bill 2010* (the bill) was referred to the House Standing Committee on Climate Change, Environment and the Arts on 21 October 2010 by the Selection Committee for inquiry and report by the end of the Autumn sittings in 2011.¹

Background

- 1.2 The bill was introduced and the second reading moved in the House of Representatives by the Minister for Resources, Energy and Tourism, the Hon Martin Ferguson MP, on 21 October 2010. The Minister explained that the purpose of the bill is to establish a facility for managing, at a single site, radioactive waste currently stored at a number of locations across the country.²
- 1.3 The bill repeals and replaces the *Commonwealth Radioactive Waste Management Act 2005*. The bill also restores some review and procedural

1 House of Representatives, *Votes and Proceedings*, 21 October 2010, p. 111.

2 House of Representatives, *Official Hansard*, 21 October 2010, p. 1063.

fairness rights in the process of selecting a site for the proposed Commonwealth radioactive waste management facility.³

Outline of bill

1.4 The Explanatory Memorandum outlines the objectives of the bill as follows:

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.⁴

3 Parliamentary Library, *Bills Digest No. 52, 2010-11*, p. 3.

4 National Radioactive Waste Management Bill 2010, Explanatory Memorandum, p. 2.

Conduct of inquiry

- 1.5 The Committee considers that:
- the subject matter of the bill has been the subject of earlier thorough inquiries, including by the Senate Legal and Constitutional Affairs Legislation Committee;
 - opportunities for comment have been available during earlier processes;
 - the recommendations of the Senate Committee were substantially addressed in the revised bill that has been the subject of this inquiry by the Committee;
 - the merits of a bill in a parliamentary sense are matters for the parliament;
 - the regulatory approval process related to the establishment of a facility will enable other environmental and safety issues to be raised; and
 - the further delay caused by reconsideration of all elements raised in earlier discussions of this issue will continue to defer the resolution of the issue of the storage of radioactive waste in Australia.
- 1.6 These points are further outlined in the Committee's comments below.

Committee comment

Extensive past scrutiny of issue

- 1.7 The Committee notes that the history of an effort to build a radioactive waste management facility in Australia is a lengthy one. Further background on the history of Australian radioactive waste management issues can be found in the Parliamentary Library's chronology, 'Radioactive Waste and Spent Nuclear Fuel Management in Australia'.⁵
- 1.8 Several bills relating to this matter have been referred to Senate Committees in recent years – a detailed timeline is set out at Appendix A.

⁵ See <<http://www.aph.gov.au/library/pubs/online/RadioactiveWaste.htm>>, viewed 25 November 2010.

- 1.9 The Committee highlights the lengthy history of extensive scrutiny of this issue.

2010 Senate inquiry into previous version of bill

- 1.10 The Committee recognises that a previous and substantially similar version of the bill was considered by the Senate Legal and Constitutional Affairs Legislation Committee in early 2010.⁶

- 1.11 The Senate Committee received 238 submissions and undertook public hearings in Canberra and Darwin during March and April 2010. In its May 2010 report, the Committee recommended passage of the bill and made five additional recommendations (see discussion below). The report included a dissenting report from the Australian Greens with four recommendations:

- Procedural fairness and judicial review must be restored to the Muckaty Land Trust nomination.
- The Bill should be amended to ensure that State and Territory laws apply so as to assist to manage the environmental impacts and risks as thoroughly as possible.
- Establishment of Commission with its first task to conduct an inventory of international best practices to be used in the Australian context.
- That the legislation be amended to provide clear guidelines, timelines, consultation obligations and reporting obligations on the Minister before the process of site assessment proceeds any further.⁷

- 1.12 In reaching its conclusions, the Senate Committee received submissions and considered issues surrounding:

- preservation of the Muckaty Station site nomination;
- the bill's preferencing of a Northern Territory site;
- consultation on the bill and site selection;
- procedural fairness and judicial review; and
- other legal issues.⁸

6 The Committee's report is available at: http://www.aph.gov.au/Senate/committee/legcon_ctte/radioactivewaste/report/index.htm, viewed 25 November 2010.

7 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill [Provisions]*, May 2010, p. 55, 57 and 59.

8 Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill [Provisions]*, May 2010, p. 13.

Senate Committee recommendations incorporated in current bill

1.13 The recommendations from the Senate Legal and Constitutional Affairs Legislation Committee majority report on the previous version of the bill were as follows:

- Recommendation 1: The committee recommends that, as soon as possible, the Minister for Resources, Energy and Tourism 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 the national radioactive waste facility.
- Recommendation 2: The committee recommends that proposed section 21 of the Bill be amended to make the establishment of a regional consultative committee mandatory, immediately following the selection of a site for the radioactive waste facility.
- Recommendation 3: The committee recommends that proposed sections 9 and 17 of the Bill be amended to require the Minister to respond in writing to comments received in accordance with the Bill's procedural fairness requirements.
- Recommendation 4: The committee recommends that the Explanatory Memorandum be amended to include a detailed rationale for, and explanation of, the Minister's absolute discretion in relation to decision making under the Bill.
- Recommendation 5: The committee recommends that the Bill be amended to include an objects clause.
- Recommendation 6: The committee recommends that, subject to consideration of the preceding recommendations, the Senate pass the Bill.⁹

1.14 The Minister for Resources, Energy and Tourism, in his second reading speech on the current bill, noted that:

The bill includes changes recommended by the Senate Legal and Constitutional Affairs Legislation Committee in May 2010 ... The bill and explanatory memorandum have been amended to incorporate all of these recommendations, other than recommendation 3 ...

the intent of recommendation 3 will be met by posting, online, detailed reasons for key decisions as they are made, in line with

⁹ Senate Legal and Constitutional Affairs Legislation Committee, *National Radioactive Waste Management Bill [Provisions]*, May 2010, p. ix.

requirements of the *Administrative Decisions (Judicial Review) Act 1977*.¹⁰

- 1.15 The Committee is satisfied that all of the Senate Committee recommendations, other than recommendation 3, have therefore been incorporated in the current bill and Explanatory Memorandum, with other arrangements having been made to meet the requirements of recommendation 3.

Due process followed

- 1.16 The Committee is aware of the extensive Senate Committee inquiry process conducted for the previous version of the bill, as described above. It has considered the key issues raised in evidence to the Senate Committee through submissions and public hearings. It has also considered the Senate Committee report conclusions and recommendations.
- 1.17 As previously discussed, the Committee further notes that the Senate Committee report's recommendations are reflected in the current bill and Explanatory Memorandum, and through other arrangements.
- 1.18 The Committee is satisfied that due process was followed in the Senate Committee inquiry.

Committee briefing

- 1.19 The Committee was briefed on the current bill and the Government's response to the recommendations of the Senate Legal and Constitutional Affairs Legislation Committee report by senior officials of the Department of Resources, Energy and Tourism.
- 1.20 Officials reaffirmed that the bill incorporated the Senate Committee recommendations and that there had been extensive past scrutiny of these issues.

Federal Court case

- 1.21 A court challenge to the Muckaty station nomination has been lodged in the Federal Court, for report back to the court by the end of January 2011.¹¹

¹⁰ House of Representatives, *Official Hansard*, 21 October 2010, p. 1064.

¹¹ Parliamentary Library, *Bills Digest No. 52*, 2010-11, p. 8.

- 1.22 The Committee does not provide any comment on this matter as it is before the courts.

Extent of regulatory process


- 1.23 The Committee notes that, following passage of the bill, and once a site has been selected, regulatory processes under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Australian Radiation Protection and Nuclear Safety Act 1998* (ARPANS Act) must be implemented. This includes environmental assessment under the EPBC Act and the provision of licences under the ARPANS Act to construct and operate a facility, and to transport radioactive material to the facility.
- 1.24 The Committee is aware that the timeframes for selecting a site and concluding regulatory processes are significant and Australia is expecting reprocessed long-lived intermediate level material to be returned from France in 2015 and the United Kingdom in 2016.¹²

Conclusion

- 1.25 The Committee concludes that the bill should be passed.

Recommendation 1

That the House of Representatives pass the *National Radioactive Waste Management Bill 2010*.



Tony Zappia MP
Chair

¹² House of Representatives, *Official Hansard*, 21 October 2010, p. 1064.

