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According to the explanatory memorandum to the environment and heritage legislation amendment bill 2006,

Item 532 Section 304
283. This item amends section 304 of the Act, by replacing paragraph 304(a) to include additional subparagraphs 304(v) to (viii) and subsection 304(2). It extends the coverage of conservation agreements to the protection and conservation of additional Part 3 protected matters Ramsar wetlands, nuclear actions, Commonwealth marine areas and Commonwealth land.

However, in doing so, the only qualifications added in relation to nuclear actions are to exclude the coverage of such agreements to those specific installations listed in section 37J of the amendment Act (2006). Indeed, some of these may not be approved under the EPBC Act at all. This has the effect of leaving the more likely nuclear actions – uranium mining, and establishing a facility for the long term storage of radioactive waste – now subject to being covered by a conservation agreement.

These amendments to the EPBC act suggest that nuclear actions, other than those specifically excluded, may now be approved by processes with less stringency, transparency and public participation than previously applied by the general application of the Act.

No specific rationale for this change with respect to some nuclear actions is offered, neither in the EM, nor the second reading speech and subsequent debate, though it should be noted that this affect of the Amendment Act was at the time noted by the late Peter Andren. While presented as a restriction to the amendments' relation to nuclear actions, the effect is clearly to ensure that some nuclear actions are now offered this 'escape clause' from due process and appropriate public scrutiny.

The most light shed on this aspect of the Amendment Act comes from the Australian Greens additional comments (to the senate committee's report on the Bill) which gives us :

'Nuclear actions' in particular may be entirely exempt from assessment under the terms of these items, for which no explanation is given in the explanatory memorandum.

In his statement to the Committee, the Australia Institute's Deputy Director Andrew Macintosh was very clear about the potential for nuclear installations to escape public scrutiny:

Mr Macintosh —Yes. As you said, you could prepare a bioregional plan that exempts a nuclear waste dump, for example, from the operation of part 3. That is the relevant provisions that concern nuclear actions; I think it is section 22. As a result, once the bioregional plan has been prepared then that action is

exempt and you do not have to go through a public process. The interesting thing is that in preparing the bioregional plan there is only guaranteed public consultation in relation to plans prepared in Commonwealth areas, not in relation to bioregional plans prepared in states.

Senator SIEWERT —So let me get this right. If it is not in a Commonwealth area, a state could prepare a bioregional plan saying, 'It is okay to have a nuclear waste dump or uranium mining,' and therefore, because it is not part of the exemption, it would not need to be assessed.

Mr Macintosh —Yes, that is right. If they prepare a bioregional plan that said that in a state, yes, that would not have to be assessed under parts 7, 8 and 9, and also the public would not be guaranteed of having any consultation on the preparation of the bioregional plan.

I recommend that this committee consider explicitly excluding all nuclear actions from the application of section 304.