

CHAPTER 2

OVERVIEW OF THE BILL

Key provisions of the Bill

Repeal of the Commonwealth Radioactive Waste Management Act 2005

2.2 Schedule 1 (Part 1) of the Bill repeals the current Act.

2.3 Schedule 1 (Part 2) of the Bill amends the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to remove paragraph (zc) of Schedule 1 to that Act. Under that paragraph, key decisions under the current Act are not reviewable under the ADJR Act.

Retention of Muckaty Station site as an approved site

2.4 Schedule 2 of the Bill contains a saving provision which provides that, despite the repeal of the current Act, the site at Muckaty Station will remain an approved site for a radioactive waste management facility (this site was nominated and approved under the current Act in 2007).

2.5 The EM notes that the Bill does not introduce procedural fairness requirements in relation to the existing nomination and approval of the Muckaty Station site. However, procedural fairness requirements will apply to any decision to select the site as the site for a facility.¹

Nomination of sites

2.6 Part 2 (proposed subsection 4(1)) of the Bill provides that a land council in the Northern Territory may nominate land as a potential site for a radioactive waste management facility. The EM notes that this provision enables the NLC to nominate other sites on Ngapa land (as it is entitled to do under the current Site Nomination Deed).

2.7 Part 2 (proposed section 6) also allows the Minister to open a nation-wide volunteer site-nomination process. However, in making this decision, 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 [section 4]' (whether or not that land has in fact been approved as a site).²

2.8 Procedural fairness requirements will apply to any decision to approve a potential site (under proposed section 8) and to any decision to open the nation-wide

1 EM, p. 2.

2 National Radioactive Waste Management Bill 2010, proposed section 5(2).

site-nomination process (proposed section 6). The procedural requirements that apply to these decisions are set out in proposed section 9, and the Bill provides that these are an 'exhaustive statement of the requirements of the natural justice hearing rule in relation to [these sections]'.

2.9 In effect, before making a decision under either of these sections, the Minister must satisfy certain notice requirements, and invite comments from relevant stakeholders. In making a decision under either of these sections, the Minister must 'take into account any relevant comments' received in response to an invitation to comment.

Selection of a site for the facility

2.10 Part 3 (proposed section 10) of the Bill allows relevant persons (such as Commonwealth employees or contractors) to conduct activities for the purpose of selecting a site for the radioactive waste management site. The section authorises such persons to 'do anything necessary for, or incidental to, the purposes of selecting a site on which to construct and operate a facility'.³

2.11 The EM states that 'certain state, territory and Commonwealth laws will not apply to activities under Part 3'.⁴ Proposed section 11 provides that state or territory laws that relate to certain subjects or areas will have no effect to the extent that they would otherwise 'regulate, hinder, or prevent the doing of something authorised by proposed section 10'. Such laws include those relating to:

- the use or proposed use of land or premises, or the environmental consequences of any such use;
- the archaeological or heritage values of land or premises;
- controlled material, radioactive material or dangerous goods; and
- licensing in relation to employment or carrying on a particular business or undertaking.

2.12 Similarly, proposed section 12 provides that the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the HPA Act), and the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), will have no effect to the extent that they would otherwise 'regulate, hinder, or prevent the doing of something authorised by proposed section 10'.

2.13 Another law of a state, territory or the Commonwealth, or its provisions, may be prescribed by regulation (proposed subsections 11(2) and 12(2)).

3 A non-exhaustive list of such activities is provided in proposed subsection 10(3). This includes, for example, operation of drilling equipment, water extraction, flora and fauna collection and clearing of vegetation.

4 EM, p. 3.

Conducting activities in relation to the selected site

2.14 Part 5 of the Bill preserves rules in the current Act allowing relevant persons to conduct activities in relation to the selected site. These activities include, for example:

- gathering or preparing information for a Commonwealth regulatory scheme relating to the construction or operation of a facility;
- preparing the selected site for a facility; and
- constructing, operating and maintaining a facility.

2.15 The EM notes that, as with the selection of the 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 EPBC Act and the *Nuclear Non-Proliferation (Safeguards) Act 1987* must be complied with at all times after a site has been selected.⁵

Acquisition or extinguishment of rights and interests

2.16 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 (proposed section 13). The EM notes that procedural fairness requirements will apply to these decisions (proposed section 17).⁶

2.17 The EM also notes that, after selecting a site for a facility, the Minister may establish a regional consultative committee.⁷

2.18 Proposed section 18 allows for the acquisition or extinguishment of rights and interests in relation to the selected site and land required for an access road. This proposed section is to have effect despite any other law of a state, territory or the Commonwealth, including the *Lands Acquisition Act 1989* and the *Native Title Act 1993* (proposed section 19).

2.19 Part 6 of the Bill preserves rules in the current Act which allow the Minister to grant rights and interests in land acquired under the Bill back to the original owners (this refers to land that was nominated by a land council before the opening of the nation-wide volunteer site-nomination process).⁸

2.20 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

5 EM, p. 3.

6 EM, p. 3. These requirements are essentially the same as those outlined above at paragraph 2.9.

7 EM, p. 3.

8 EM, p. 4.

site for a facility. It also preserves rules in the current Act, which confer 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. These rules state that the Commonwealth will indemnify the Northern Territory against any claims arising from the operation of the site, and that the Northern Territory will not be charged for the management of material that it generates which goes to the facility.⁹

9 EM, p. 4.