



# **Commonwealth Radioactive Waste Management Legislation Amendment Act 2006**

**No. 161, 2006**

**An Act to amend the law relating to the  
management of Commonwealth radioactive waste,  
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to amend the law relating to the  
management of Commonwealth radioactive waste,  
and for related purposes**

*[Assented to 11 December 2006]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Commonwealth Radioactive Waste  
Management Legislation Amendment Act 2006*.

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## **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### *Administrative Decisions (Judicial Review) Act 1977*

#### **1 Paragraph (zc) of Schedule 1**

Before “a decision”, insert “a nomination under section 3A or”.

### *Commonwealth Radioactive Waste Management Act 2005*

#### **2 Section 3**

Insert:

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

#### **3 After subsection 3B(2)**

Insert:

(2A) Failure to comply with subsection (1) does not affect the validity of a nomination.

#### **4 Section 3D**

Omit “a Minister’s approval”, substitute “a nomination under section 3A or an approval under section 3C”.

Note: The heading to section 3D is altered by inserting “**nominations and**” before “**approvals**”.

#### **5 After subsection 7(5)**

Insert:

(5A) Failure to comply with subsection 3B(1) does not affect the validity of a declaration.

#### **6 After Part 4**

Insert:

## **Part 4A—Granting of rights and interests in land to original owners**

### **14A Application of Part**

#### *Declaration under subsection 7(1)*

- (1) This Part applies if:
  - (a) immediately before a declaration under subsection 7(1) 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 section 9, 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.

#### *Declaration under subsection 7(2)*

- (2) This Part also applies if:
  - (a) immediately before a declaration under subsection 7(2) 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 section 9, rights or interests in the relevant land; and
  - (c) the facility mentioned in paragraph (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.

### **14B Declaration of intention to grant rights and interests in land to original owners**

- (1) The Minister may, in his or her absolute discretion, declare in writing that the land that was the subject of the declaration under
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subsection 7(1) is no longer required for the facility mentioned in paragraph 14A(1)(c).

- (2) The declaration must:
  - (a) specify all the relevant land; and
  - (b) state that the Minister intends to make a declaration under section 14C granting the rights and interests specified in section 14D in specified land to a specified Land Trust.
- (3) Land specified under paragraph (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.
- (4) A Land Trust may be specified under paragraph (2)(b) in relation to specified land only if:
  - (a) the Land Trust held title to the specified land immediately before the declaration under subsection 7(1) or (2) (as the case may be) took effect; or
  - (b) the Land Trust has succeeded to the functions of a Land Trust mentioned in paragraph (a) of this subsection.
- (5) Within 7 days of the declaration being made, the Minister must:
  - (a) publish a copy of the declaration in the *Gazette*; and
  - (b) notify a specified Land Trust in writing that the Minister intends to make a declaration under section 14C.
- (6) A declaration is not valid unless:
  - (a) it specifies and states the matters mentioned in subsection (2); and
  - (b) the Minister complies with subsection (5).
- (7) A Land Trust specified in the declaration may consent in writing to the granting of the rights and interests specified in section 14D in the specified land.
- (8) A declaration made under subsection (1) is not a legislative instrument.

#### **14C Declaration granting rights and interests in land to original owners**

- (1) 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:
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- (a) the Commonwealth holds an estate in fee simple in the specified land; and
  - (b) the specified Land Trust has, under subsection 14B(7), consented to the granting of an estate in fee simple in the specified land within:
    - (i) 12 months of the day on which the declaration under section 14B was published in the *Gazette*; or
    - (ii) such longer period as is prescribed in the regulations.
- (2) The Minister must make a declaration in writing that the rights and interests specified in subsection 14D(3) are granted in specified land to a specified Land Trust if:
- (a) the Commonwealth holds rights or interests (other than an estate in fee simple) in the specified land; and
  - (b) the specified Land Trust has, under subsection 14B(7), consented to the granting of the rights and interests specified in subsection 14D(3) in the specified land within:
    - (i) 12 months of the day on which the declaration under section 14B was published in the *Gazette*; or
    - (ii) such longer period as is prescribed in the regulations.
- (3) A declaration has effect at the time specified in the declaration (which must not be earlier than the time the declaration is made).
- (4) A declaration made under subsection (1) or (2) is not a legislative instrument.
- (5) The Minister may include one or more declarations under subsections (1) and (2) in the same document.

#### **14D Grant of rights and interests in land to original owners**

##### *Grant of estate in fee simple*

- (1) If the Minister makes a declaration under subsection 14C(1), then at the time the declaration has effect:
- (a) an estate in fee simple is granted, by force of this subsection, in the specified land to the specified Land Trust; and
  - (b) the land is taken, for all purposes, to be Aboriginal land.
- (2) 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*.

*Grant of other rights and interests*

- (3) If the Minister makes a declaration under subsection 14C(2), then at the time the declaration has effect, any rights and interests:
  - (a) that are held by the Commonwealth in the specified land; and
  - (b) that were acquired by the Commonwealth, under section 9, in the specified land from the specified Land Trust or another Land Trust;are granted, by force of this subsection, in the specified land to the specified Land Trust.

*Validity of earlier rights, interests and actions*

- (4) The granting of rights and interests in land under subsection (1) or (3) does not affect:
  - (a) the validity of any rights or interests acquired, created or granted (whether under this Act or otherwise) in relation to the land; or
  - (b) 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 section 14C has effect.

**14E No earlier rights and interests granted**

To avoid doubt, the making of a declaration under section 14C does not create or grant any rights or interests in land before the declaration has effect.

**14F Application of Commonwealth and Northern Territory laws**

Section 14D has effect despite any other law of the Commonwealth or the Northern Territory (whether written or unwritten).

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### **14G Notice to Registrar-General**

- (1) 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 section 14C, certified by writing signed by the Secretary.
- (2) 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.

### **14H Indemnity by Commonwealth**

- (1) The Commonwealth must indemnify each Land Trust specified in a declaration under section 14C, 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.
- (2) 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.
- (3) Subsection (1) does not apply in relation to an action, claim or demand unless:
  - (a) the Land Trust notifies the Commonwealth, in writing, of the action, claim or demand as soon as practicable; and
  - (b) the Land Trust follows any directions of the Commonwealth in relation to the action, claim or demand.

### **14J Regulations**

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 section 14B or 14C.

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*[Minister's second reading speech made in—  
House of Representatives on 2 November 2006  
Senate on 30 November 2006]*

(165/06)