



National Radioactive Waste Management Act 2012

No. 29, 2012

**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**

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

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**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**

[Assented to 4 April 2012]

The Parliament of Australia enacts:

National Radioactive Waste Management Act 2012 No. 29, 2012 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Radioactive Waste Management Act 2012*.

2 Commencement

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

3 Object of Act

The object of this Act is to provide for:

- (a) the selection of a site for a radioactive waste management facility on voluntarily nominated land in Australia; and
- (b) the establishment and operation of such a facility on the selected site;

to ensure that radioactive waste generated, possessed or controlled by the Commonwealth or a Commonwealth entity is safely and securely managed.

4 Definitions

In this Act:

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

Commonwealth contractor means:

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

Commonwealth entity means:

- (a) a body corporate established for a public purpose by or under an Act; or

- (b) a company in which a controlling interest is held by any one of the following persons, or any 2 or more of the following persons together:
- (i) the Commonwealth;
 - (ii) a body covered by paragraph (a).

controlled material means controlled material within the meaning of the *Australian Radiation Protection and Nuclear Safety Act 1998* that is of domestic origin, but does not include high level radioactive material or spent nuclear fuel. For this purpose, controlled material is **of domestic origin** if it has been used in Australia, generated by activities in Australia, or sent to Australia under contractual arrangements relating to the conditioning or reprocessing of ANSTO spent nuclear fuel (within the meaning of the *Australian Nuclear Science and Technology Organisation Act 1987*).

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

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

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

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

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

nominator of land means the following:

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

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

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

spent nuclear fuel means material that:

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

statutory authority, in relation to the Crown in right of the Commonwealth, a State or a Territory, means any authority or body (including a corporation sole) established by a law of the Commonwealth, the State or Territory other than a general law allowing incorporation as a company or body corporate.

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

- (a) a contract with a Commonwealth contractor (within the meaning of paragraph (a) of the definition of **Commonwealth contractor**); or
- (b) a contract with another subcontractor (under a previous application of this definition).

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

Part 2—Nomination of sites

Division 1—Nomination by a Land Council

5 Nomination by a Land Council

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

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

- (2) A nomination must:
- (a) be in writing; and
 - (b) be made to the Minister; and
 - (c) specify the land nominated by reference to portion number (if any), survey points (if available) and geographical coordinates; and
 - (d) contain evidence of all interests in the land; and
 - (e) if there is a sacred site within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* on or near the land—contain evidence that the persons for whom the site is sacred or is otherwise of significance are satisfied that there is no substantial risk of damage to or interference with the sacred site as a result of the nomination or subsequent action under this Act; and
 - (f) contain evidence that:
 - (i) the Land Council has consulted with the traditional Aboriginal owners of the land; and
 - (ii) the traditional Aboriginal owners understand the nature and effect of the proposed nomination and the things that might be done on or in relation to the land under this Act if the Minister approves the nomination; and
 - (iii) the traditional Aboriginal owners as a group have consented to the proposed nomination being made (that

Part 2 Nomination of sites

Division 1 Nomination by a Land Council

Section 5

consent as a group being determined in accordance with section 77A of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and

- (iv) any Aboriginal community or group that may be affected by the proposed nomination has been consulted and has had adequate opportunity to express its view to the Land Council.
- (3) The Minister may request further information from the Land Council.
- (4) Failure to comply with subsection (2) does not invalidate a nomination.
- (5) A nomination is not a legislative instrument.

Division 2—General nominations

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

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

Note: After a declaration is made:

- (a) a nomination cannot be made under section 5 (see subsection 5(1)); and
 - (b) the Minister must not approve land nominated under section 5, or declare land so nominated to be the selected site for a facility (see subsections 9(2) and 14(3)).
- (2) In deciding whether to make a declaration, 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 5 (whether or not that land has been approved as a site under section 9).
 - (3) A declaration takes effect at the time specified in the declaration, which must not be earlier than the time the declaration is made.
 - (4) A copy of a declaration must be published in the *Gazette* within 7 days of the declaration being made.
 - (5) Failure to comply with subsection (4) does not invalidate a declaration.
 - (6) A declaration is not a legislative instrument.

7 Nominations of potential sites

Nominations may be made

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

Section 7

Nominations by holders of certain interests in land

- (2) A person may nominate land under this subsection as a potential site if:
- (a) the person holds an interest in the land; and
 - (b) the interest is:
 - (i) an estate in fee simple; or
 - (ii) a lease of land granted by or on behalf of the Crown, a Minister of the Crown, a statutory authority or any other prescribed person, under a law of the Commonwealth, a State or a Territory; and
 - (c) the person does not hold the interest as a joint tenant or a tenant in common.
- (3) The persons who, as joint tenants or tenants in common, hold one of the following interests in land may jointly nominate the land under this subsection as a potential site:
- (a) an estate in fee simple;
 - (b) a lease of the land granted by or on behalf of the Crown, a Minister of the Crown, a statutory authority or any other prescribed person, under a law of the Commonwealth, a State or a Territory.

Nominations where native title exists

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

corporate in relation to the native title rights and interests concerned;

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

(5) In this section:

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

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

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

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

8 Rules about nominations

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

Part 2 Nomination of sites

Division 2 General nominations

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

Division 3—Approval of nominated land

9 Approval of nominated land

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

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

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

Declaration under section 6

- (1) Before the Minister decides to make a declaration under section 6, the Minister must:
 - (a) give a notice in writing to each Land Council; and
 - (b) publish a notice:
 - (i) in the *Gazette*; and
 - (ii) in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory.
- (2) A notice under paragraph (1)(a) or (b) must:
 - (a) state that the Minister proposes to make a declaration under section 6; and
 - (b) invite comments on the proposed declaration; and
 - (c) specify the address to which comments may be sent; and
 - (d) specify the date by which comments must be received, which must be at least 60 days after the notice is given or published.
- (3) In deciding whether to make a declaration under section 6, the Minister must take into account any relevant comments in response to an invitation referred to in paragraph (2)(b).

Approval under section 9

- (4) Before the Minister decides to approve land, or a specified part of land, under section 9, the Minister must:
 - (a) give a notice in writing to each nominator of the land; and
 - (b) publish a notice:
 - (i) in the *Gazette*; and

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

Exhaustive statement

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

Part 3—Selecting the site for a facility

11 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 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.
- (3) Without limiting subsection (2), the person may do any or all of the following under that subsection (whether or not on a site):
 - (a) gain access to and enter land and drive vehicles or fly aircraft to and from it;
 - (b) in order to drive vehicles to and from land—use existing roads or construct roads on, or grade, land;
 - (c) construct or rehabilitate bores;
 - (d) operate drilling equipment;
 - (e) extract water;
 - (f) collect samples of flora and fauna;
 - (g) place monitoring equipment (including meteorological and hydrological measuring equipment);
 - (h) build structures to protect bores, monitoring equipment or other things;
 - (i) move or extract sand, gravel, soil, mineral and rock samples;
 - (j) conduct seismic or geological investigations;
 - (k) conduct archaeological or heritage investigations;
 - (l) clear vegetation.
- (4) A person doing a thing under this Part must:

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

12 Application of State and Territory laws

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

Section 13

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

13 Application of Commonwealth laws

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

Part 4—Acquisition or extinguishment of rights and interests

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

14 Minister's declaration of land as selected site or required for road access

- (1) This section applies if:
 - (a) land has been nominated as a site under section 5 or 7; and
 - (b) the Minister has approved the nominated land, or a specified part of the nominated land, as a site under section 9.
- (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.
- (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.
- (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.
- (5) To avoid doubt, rights and interests specified in a declaration under subsection (2) or (4) may include the following:
 - (a) rights to minerals (if any);
 - (b) native title rights and interests (if any);
 - (c) an interest in the land, being an interest that did not previously exist;
 - (d) an easement in gross (if any).

Section 15

- (6) To avoid doubt, this section has effect subject to section 9 of the *Racial Discrimination Act 1975*.
- (7) A declaration under subsection (2) or (4) is not a legislative instrument.

15 Formalities relating to Minister's declarations

- (1) A copy of a declaration under subsection 14(2) or (4) must be published in the *Gazette* within 7 days of the declaration being made.
- (2) Failure to comply with subsection (1) of this section, or subsection 5(2), 6(4), 8(1) or 9(5), does not invalidate a declaration.

16 When Minister's declarations take effect etc.

- (1) A declaration under subsection 14(2) or (4) takes effect at the time specified in the declaration, which must not be earlier than the time the declaration is made.
- (2) The Minister may, subject to this section, make more than one declaration under subsection 14(2) or (4), but only one declaration under subsection 14(2) may be in effect at a particular time.
- (3) If:
 - (a) a declaration under subsection 14(2) (the *original declaration*) is in effect at a particular time; and
 - (b) at that time, the Minister makes another such declaration (the *later declaration*);the Minister is taken, immediately before the time of effect specified in the later declaration, to have revoked the original declaration under section 17.

17 Revocation of Minister's declaration

- (1) The Minister may, in his or her absolute discretion, revoke in writing a declaration made under subsection 14(2) or (4).
- (2) A revocation takes effect at the time specified in the revocation, which must not be earlier than the time the revocation is made.

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

Division 2—Procedural fairness

18 Procedural fairness in relation to Minister's declarations

- (1) Before the Minister decides to make a declaration under section 14 in relation to land, the Minister must:
 - (a) give a notice in writing to each nominator of the land; and
 - (b) publish a notice:
 - (i) in the *Gazette*; and
 - (ii) in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory; and
 - (iii) in a local newspaper (if any) circulating in the area in which the land is situated.
- (2) A notice under paragraph (1)(a) or (b) must:
 - (a) state that the Minister proposes to make a declaration under subsection 14(2) or (4); and
 - (b) set out details of the proposed declaration; and
 - (c) if the notice is given under paragraph (1)(a)—invite each nominator of the land to comment on the proposed declaration; and
 - (d) if the notice is published under paragraph (1)(b)—invite persons with a right or interest in the land to comment on the proposed declaration; and
 - (e) specify the address to which comments may be sent; and
 - (f) specify the date by which comments must be received, which must be at least 60 days after the notice is given or published.
- (3) In deciding whether to make a declaration under section 14, the Minister must take into account any relevant comments given to the Minister, by a nominator of the land, or a person with a right or interest in the land, in response to an invitation referred to in paragraph (2)(c) or (d).
- (4) A reference in this section to each nominator of the land, in relation to a declaration under subsection 14(4) that rights or

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

Exhaustive statement

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

Division 3—Acquisition or extinguishment

19 Acquisition or extinguishment

- (1) At the time a declaration under subsection 14(2) takes effect, any rights or interests in the selected site that are specified in the declaration are, by force of this section:
 - (a) acquired by the Commonwealth or extinguished; and
 - (b) freed and discharged from all other rights and interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.
- (2) At the time a declaration under subsection 14(4) takes effect, the rights or interests in the specified land that are specified in the declaration are, by force of this section:
 - (a) acquired by the Commonwealth or extinguished; and
 - (b) freed and discharged from all other rights and interests and from all trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates.

20 Application of Commonwealth and State or Territory laws

- (1) Section 19 has effect despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).
- (2) Without limiting subsection (1), section 19 has effect despite the following laws of the Commonwealth:
 - (a) the *Lands Acquisition Act 1989*;
 - (b) the *Native Title Act 1993*.

21 Notice to Registrar-General or other appropriate officer

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

Division 4—Regional consultative committee

22 Regional consultative committee

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

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

- (2) The functions of the committee are:
- (a) to facilitate communication between the Commonwealth, the operator of the facility (if any) at the selected site and persons living in or near the region where the selected site is situated; and
 - (b) such other functions as are prescribed under paragraph (4)(a).
- (3) An instrument made under subsection (1) is not a legislative instrument.
- (4) The regulations may prescribe matters relating to the committee, including, but not limited to, the following:
- (a) the functions of the committee;
 - (b) the operation and procedures of the committee;
 - (c) membership of the committee;
 - (d) term of appointment of members;
 - (e) remuneration of members;
 - (f) resignation of members;
 - (g) disclosure of interests by members;
 - (h) termination of appointment of members;
 - (i) leave of absence of members.
- (5) If no regulations are in force under subsection (4), the committee may operate in the way determined in writing by the committee.

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.

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

24 Application of State and Territory laws

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

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

25 Application of Commonwealth laws

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

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

26 Application of Part

Declaration under subsection 14(2)

- (1) This Part applies if:
- (a) immediately before a declaration under subsection 14(2) 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 19, 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 14(4)

- (2) This Part also applies if:
- (a) immediately before a declaration under subsection 14(4) 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 19, 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.

Part does not apply to nominations under section 7

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

27 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 subsection 14(2) is no longer required for the facility mentioned in paragraph 26(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 28 granting the rights and interests specified in section 29 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 14(2) or (4) (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 28.
- (6) A declaration is not valid unless:
- (a) it specifies and states the matters mentioned in subsection (2); and

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

28 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:
 - (a) the Commonwealth holds an estate in fee simple in the specified land; and
 - (b) the specified Land Trust has, under subsection 27(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 27 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 29(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 27(7), consented to the granting of the rights and interests specified in subsection 29(3) in the specified land within:
 - (i) 12 months of the day on which the declaration under section 27 was published in the *Gazette*; or
 - (ii) such longer period as is prescribed in the regulations.
- (3) A declaration takes effect at the time specified in the declaration, which must not be earlier than the time the declaration is made.
- (4) A declaration is not a legislative instrument.

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

29 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 28(1), then at the time the declaration takes 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 28(2), then at the time the declaration takes 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 19, 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:

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- (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 28 takes effect.

30 No earlier rights and interests granted

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

31 Application of Commonwealth, State and Territory laws

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

32 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 28, 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.

33 Indemnity by Commonwealth

- (1) The Commonwealth must indemnify each Land Trust specified in a declaration under section 28, 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.

34 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 27 or 28.

Part 6A—National Repository Capital Contribution Fund

34A Application of Part

This Part applies if:

- (a) the Minister has made a declaration under subsection 14(2) that a site in a State or Territory (the *relevant State or Territory*) is selected as the site for a facility; and
- (b) a facility has been constructed at the site.

34B National Repository Capital Contribution Fee

- (1) An entity wishing to use the facility, other than the following entities:

- (a) the Commonwealth;
- (b) the relevant State or Territory;
- (c) an authority of the Commonwealth or the relevant State or Territory;

must pay such fee (the *Capital Contribution Fee*) as is prescribed by the regulations as a capital contribution towards the cost of the facility before being eligible **to have radioactive waste accepted by the facility for storage, management or any other purpose.**

- (2) The Capital Contribution Fee is to be determined in the manner prescribed by the regulations.

- (3) In this section:

authority of the Commonwealth means:

- (a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or
- (b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest.

authority of the relevant State or Territory means:

- (a) a body corporate established for a purpose of the relevant State or Territory by or under a law of the relevant State or Territory; or
- (b) an incorporated company in which the relevant State or Territory, or a body corporate referred to in paragraph (a), has a controlling interest.

34C National Repository Capital Contribution Fund

- (1) The National Repository Capital Contribution Fund (the **Fund**) is established by this subsection.
- (2) The Fund is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.
- (3) The Fund is taken to be established immediately after a facility licence that authorises a person to operate the facility is issued under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

34D Credits of amounts to the Fund

- (1) There must be credited to the Fund:
 - (a) all money appropriated by the Parliament for the purposes of the Fund; and
 - (b) amounts in excess of the first \$10,000,000 received by the Commonwealth as Capital Contribution Fees.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

- (2) Amounts standing to the credit of the Fund may be debited for the purposes of providing enhanced public services and/or infrastructure in the relevant State or Territory.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

Section 34E

34E Conditions attaching to the initial use of facility

- (1) A radioactive waste management facility established on a site selected under this Act must not commence accepting any radioactive waste for storage, management or any other purpose, unless:
 - (a) the requirements specified in subsection (2) of this section have been met; and
 - (b) the Minister has given to the person managing the facility a notice certifying that each of those requirements has been met.
- (2) The requirements to be met for the purposes of subsection (1) are:
 - (a) that the Fund stands in credit to the value of at least \$10,000,000; and
 - (b) either:
 - (i) the Commonwealth has entered into an agreement with the relevant State or Territory for the administration of the Fund, which provides that the Fund be administered by the Minister, on the advice of a committee chaired by the Premier or Chief Minister of the relevant State or Territory and comprising 3 other persons resident in that State or Territory with expertise in education, infrastructure and health respectively; or
 - (ii) failing such agreement—the Commonwealth has established a committee comprising 3 persons with expertise in education, infrastructure and health resident in the relevant State or Territory, whose function is to advise the Minister on the administration of the Fund by the Minister.

34F Commonwealth acceptance of waste destined for facility

The Commonwealth must not accept radioactive waste from any entity in a manner that avoids the payment of the Capital Contribution Fee mentioned in section 34B.

Part 7—Miscellaneous

35 Compensation

- (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.
- (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.

36 Compensation for acquisition of property

- (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.
- (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.

- (3) In this section:

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

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

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

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

Indemnity by Commonwealth

- (2) The Commonwealth must indemnify the Northern Territory, and keep the Northern Territory indemnified, against any action, claim or demand brought or made against the Northern Territory 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 selected site.
- (3) The amount of the indemnity is reduced to the extent to which any fault on the part of the Northern Territory, or its employees, agents or contractors, contributed to the liability or damage.
- (4) Subsection (2) does not apply in relation to an action, claim or demand unless:
- (a) the Northern Territory notifies the Commonwealth, in writing, of the action, claim or demand as soon as practicable; and
 - (b) the Northern Territory follows any directions of the Commonwealth in relation to the action, claim or demand.

Management of Northern Territory controlled material

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

38 Severability—additional effect of Act

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

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

39 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

40 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 Repeal and consequential amendments

Part 1 Repeal of the Commonwealth Radioactive Waste Management Act 2005

Schedule 1—Repeal and consequential amendments

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

1 The whole of the Act

Repeal the Act.

Part 2—Consequential amendment

Administrative Decisions (Judicial Review) Act 1977

2 Paragraph (zc) of Schedule 1

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 2012* 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.

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

*[Minister's second reading speech made in—
House of Representatives on 21 October 2010
Senate on 28 February 2011]*

(252/10)

44 *National Radioactive Waste Management Act 2012* No. 29, 2012