Policy Scrutiny Committee

Public Hearing 15 October 2018

Opening Statement

NUCLEAR WASTE TRANSPORT STORAGE AND DISPOSAL (PROHIBITION) AMENDMENT BILL 2018

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Introductions

Madam Chair and members of the committee. Thank you for inviting the Departments of Environment and Natural Resources and Trade, Business and Innovation to talk to you today about the Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018.

This Bill introduces amendments to the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004.*

I would like to thank the members of the public and community organisations that took the time to prepare a submission on this Bill.

I have had the opportunity to review the public submissions, and Mr Tennant and I are pleased to have this opportunity to provide further clarity about the role and function of the Act and this Amendment Bill.

As I advised the Committee at the previous public hearing on 10 September 2018, the purpose of the Act is to protect the Northern Territory environment and the health of Territorians, by preventing the Territory from becoming a dumping ground for Australia's nuclear wastes. It was introduced at a time when there was significant local and national debate

about national nuclear waste facilities and their location, including debate and discussion about establishing a facility on Commonwealth land in the Northern Territory.

The Act is a prohibition Act, with two core functions.

The first is to **prevent certain wastes being imported** into the Territory, and the second is to prevent someone from constructing and operating a nuclear waste facility.

The Act **does not, and is not** intended to, regulate the transport, storage or disposal of nuclear wastes that may be generated or present within the Northern Territory. This is the function of other legislation, primarily the *Radiation Protection Act* and its regulations.

This Bill and Hydraulic Fracturing

A number of the public submissions raise concerns about the relationship of this Bill to the management of hydraulic fracturing activities in the Northern Territory. I would like to reiterate that this Act is not about the management or regulation of hydraulic fracturing or the oil and gas industry. As I have already stated, it is about prohibiting the importation of nuclear waste into the Territory and construction and operation of facilities to dispose of that waste in the Territory.

There are a number of reforms currently being undertaken to the Water Act and petroleum legislation to ensure that hydraulic fracturing activities are appropriately managed and regulated. I would be happy to expand on these if the Committee has questions while noting that those matters are outside the scope of these amendments.

The definition of nuclear waste includes radioactive wastes and NORMS

I would also like to clarify that under the Act, the definition of nuclear waste includes radioactive wastes, and naturally occurring radioactive material or NORM.

The Act does not differentiate between how nuclear wastes are generated and – unless an exemption applies – the prohibitions on the importation of these wastes applies regardless of how they were generated.

The offshore industry was clearly intended to be exempted from the operation of the Act. However the exemptions as they are currently drafted have the potential for ambiguity. This has been confirmed by advice from the Solicitor General – and it is to resolve this ambiguity that these amendments have been prepared.

There have been some concerns raised that the amendments appear to reduce protections for environment. The amendments reinforce the original objective of the Act by continuing to prohibit the construction or operation of a nuclear waste storage facility and the transportation into the Territory of nuclear wastes originating from outside the Territory for the purpose of storage at a nuclear waste storage facility in the Territory. They also provide clarity in relation to the existing exemptions for the offshore oil and gas industry.

None of these amendments change the intent of the Act or its primary functions. However, they do make it clearer that certain matters are not captured by the Act. These include wastes in the Territory and managed under the *Radiation Protection Act*, and wastes associated with the oil and gas industry – whether onshore or offshore.

In relation to the offshore industry, the amendments ensure that the industry, which as some submitters acknowledged is already operating, are not inadvertently placed in a position where it may be claimed that they are in breach of this legislation.

In preparing these amendments, the departments have been very careful to ensure that the amendments do not introduce new exemptions or expand the scope of the existing exemptions. In fact, by introducing these amendments and providing greater clarity about the exemptions, we have been able to specify certain criteria that the offshore industry must meet in order to take advantage of the exemption.

This is particularly relevant for the proposed section 5(4)(b) which identifies that the industry must deliver significant economic and social benefits to the Territory and be located in an area where it would be realistic for the industry to use the Northern Territory as its base of operations.

Determining economic and social benefits

In regards to economic and social benefits, while these terms have not been defined in the amendment bill, it is proposed that the draft regulations will include information to assist the Administrator to determine if a specific project will provide those benefits. Further, it will be necessary for the operator of the proposed project to demonstrate a benefit beyond that which is generated simply through the treatment, transport and storage of nuclear waste.

A number of submissions recommended that these amendments should not be passed until there is certainty about the regulation of these wastes in the Territory. Again, this Act does not manage or regulate wastes in the Territory. There is a separate regulatory scheme that manages these

wastes, and due to the prohibition on constructing and operating nuclear waste storage facilities, there are no facilities in the Territory authorised to accept these wastes for disposal. Nuclear wastes generated in the Territory, or which are brought in by the offshore oil and gas industry under the existing exemptions, are aggregated and disposed of overseas. While reiterating that these matters are beyond the scope of these amendments, Mr Feldtman will be able to answer any questions the committee may have about these arrangements.

Penalty provisions

Finally, I would just like to address some concerns about the penalties in the Act. Again, while penalties were outside the scope of the amendments, there appear to be concerns that the penalties in the Act are inadequate.

There are two offences contained in the Act.

The first is associated with importing nuclear waste into the Territory, and the second is associated with constructing and operating a nuclear waste disposal facility. Both of these offences are identified as attracting a level 1 environmental offence penalty. These penalties are presented as a range, which means that if someone is convicted of the offence, the court must impose a penalty that is not lower than the bottom of the range and may impose a penalty up to the top of the range.

The current penalty for an individual ranges between $59 675 and $596 750 or 5 years imprisonment, and for a body corporate between $298 220 and $2 982 200.

I will now hand over to Mr Tennant who will take the opportunity to address some of the other matters raised in the submissions.