



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

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SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018

9.00 am, Monday, 15 October 2018

Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Ms Sandra Nelson MLA, Member for Katherine
Mr Chansey Paech MLA, Member for Namatjira

Witnesses:

Department of Environment and Natural Resources

Joanne Townsend: Chief Executive Officer

Karen Avery: Executive Director Environment Policy and Support

Kathleen Davis: Director Environment Policy

Department of Trade, Business and Innovation

Michael Tennant: Chief Executive Officer

Nicky D'Antoine: director, Project Facilitation, Strategic Infrastructure
and Projects

Department of Health

Bradley Feldtman: Manager, Radiation Protection

Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018

**Department of Environment and Natural Resources
Department of Trade, Business and Innovation
Department of Health**

Madam CHAIR: Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit. I am the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing into the Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018.

I acknowledge that this public briefing is being held on the land of the Larrakia people, and I pay my respects to Larrakia elders, past, present and emerging.

I also acknowledge my fellow committee members in attendance today and Sandra Nelson, the Member for Katherine and Chansey Paech, the Member for Namatjira, via telephone. I ask that you all ensure that your mobile phones are now switched to silent.

I note that this is the first time that our committee has had an additional public briefing, so I thank you all for coming back to answer a few further questions from the committee.

I welcome to the table to give evidence to the committee the following witnesses: from the Department and Environment and Natural Resources, Joanne Townsend, Chief Executive Officer, Karen Avery, Executive Director Environment Policy and Support; Kathleen Davis, Director Environment Policy; from the Department of Trade, Business and Innovation, Michael Tennant, Chief Executive Officer; Nicky D'Antoine, Director, Project Facilitation, Strategic Infrastructure and Projects; and from the Department of Health, Bradley Feldtman, Manager, Radiation Protection.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply.

This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

I also, at this time, acknowledge committee member, Lia Finocchiaro, Member for Spillett, in attendance as well.

If, at any time during the public briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask you to state your name for the record, and the capacity in which you appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions. Could you please state your name and the capacity in which you are appearing?

Mr FELDTMAN: Bradley Feldtman, Manager, Radiation Protection, Department of Health.

Ms DAVIS: Kathleen Davis, Director Environment Policy, Department of Environment and Natural Resources.

Ms TOWNSEND: Joanne Townsend, Chief Executive Officer, Environment and Natural Resources.

Mr TENNANT: Michael Tennant, Chief Executive Officer, Department of Trade, Business and Innovation.

Ms D'ANTOINE: Nicky D'Antoine, Director, Project Facilitation, Department of Trade, Business and Innovation.

Ms AVERY: Karen Avery, Executive Director, Environment Policy and Support, Department of Environment and Natural Resources.

Madam CHAIR: Thank you very much. Ms Townsend and Mr Tennant, would either of you like to make an opening statement?

Ms TOWNSEND: I would, Madam Chair.

Madam Chair and members of the committee. Thank you for inviting both the Department of Environment and Natural Resources and the Department of Trade, Business and Innovation to talk to you today about the nuclear Waste, Transport, Storage and Disposal (Prohibition) Amendment Bill. We also have the Department of Health represented because of its role in various legislation which support this bill.

This bill introduces amendments to the *Nuclear Waste, Transport, Storage and Disposal (Prohibition) Act 2004*. I thank the members of the public and community organisations that took time to prepare submissions to this bill. We have had

the opportunity to review the public submissions and Mr Tennant and I are pleased to have this opportunity to provide further clarification about the role and function of both the act and this amendment bill.

As I advised the committee at the previous hearing in September, the purpose of this act is to protect the Northern Territory environment and the health of Territorians by preventing the Northern Territory from becoming a dumping ground for Australia's nuclear waste.

It was introduced at a time when there was significant local and national debate about nuclear waste facilities and their location, including 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 waste from 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 waste 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.

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

There are reforms being undertaken to the *Water Act* and to petroleum legislation to ensure that hydraulic fracturing activities are appropriately managed and regulated. I am happy to expand on these but those amendments are outside the scope of these amendments—some of them are before the Economic Policy Scrutiny Committee.

Under the act, the definition of nuclear waste includes radioactive waste and naturally occurring radioactive material or NORM. The act does not differentiate how nuclear waste is generated unless an exemption applies. The prohibitions on importation of these wastes apply regardless of how they were generated.

The offshore industry has intended to be exempt from the operation of the act and that has not changed. However, the exemptions as they are currently drafted have the potential for ambiguity. This ambiguity is being confirmed by advice from the Solicitor-General—it is to resolve this ambiguity that these amendments have been proposed.

There has been concerns raised that the amendments appear to reduce protections for the environment. In fact, 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 waste that originates outside of the Northern Territory.

They also provide clarity in relation to the existing exemptions for the offshore oil and gas industry. None of the amendments change the intent of the act or its primary functions however they do make it clear that certain matters are not captured by the act. These include waste in the Territory and managed under the Radiation Protection Act and waste associated with the oil and gas industry whether onshore or offshore.

In relation to the offshore industry, the amendments ensure that the already operating industry—which as some submitters acknowledged—is not inadvertently placed in a position where it may be claimed that they are in breach of this legislation. There is no suggestion that they are.

In preparing these amendments the department has been careful to ensure that they do not introduce new exemptions or expand the scope of the existing exemptions. 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 relevant for the proposed section 5(4)(b), which identifies that the industry must deliver significant economic and social benefits to the Territory and must be located in an area where it would be realistic for the industry to use the Northern Territory as its base of operations. There have been questions about how that might be determined.

In regards to economic and social benefits—while these terms have not been defined in the amendment bill—it has proposed that the draft regulations will include information to assist the administrator to determine if a specific project will provide those benefit. Further, it will be necessary for the operator of the proposed project to demonstrate a benefit beyond that which is generated 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 this waste in the Territory. Again, this act does not manage or regulate waste in the Territory. There is a completely separate regulatory scheme that manages these wastes. Due to the prohibition on constructing and operating nuclear waste storage facilities, there are no facilities in the Territory authorised to accept this waste for disposal.

Nuclear waste generated in the Territory, or which are brought in by the offshore oil and gas industries under the existing exemption are aggregated and disposed of overseas. While reiterating that these matters are beyond the

scope of these amendments, Mr Feldtman from the Department of Health will be able to answer any questions you might have about those arrangements.

Finally, there were some concerns about penalties in the act, which I will quickly address ...

Ms NELSON: Hey, Jo, excuse me for interrupting. It is Sandra Nelson, Member for Katherine for the sake of Hansard. I was wondering, Julia, if you could hit the mute button on the phone that is on the desk for me please, because I can hear the background noise and it disrupts, so I am not able to hear what Jo is saying.

Madam CHAIR: Sandra, I thought if we pressed mute, you actually would not be able to hear us from Darwin.

Ms KNIGHT: No, you will not.

Ms NELSON: I am sorry. Is there any way? Sorry. It keeps breaking up and I cannot ... Sorry.

Ms TOWNSEND: I am happy to table my statement.

Madam CHAIR: That would be helpful, but I will get you to continue. Sandra, did you hear that? Jo will table her opening statement. But at this stage, we will not be able to mute it from our end because then you and Chansey both will not be able to hear what is happening ...

Ms NELSON: Okay. Sorry, yes, you are right. Okay, thanks.

Madam CHAIR: Thank you.

Ms TOWNSEND: As I was saying, there have been some concerns about penalties in the act, which are outside the scope of the amendments. There was a concern that penalties were inadequate. I will clarify for the committee that there are two offences contained in this 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 one 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 \$50 675 and \$596 750, or five years imprisonment and for a body corporate between \$298 220 and \$2 982 200. I can reassure people that is a very significant penalty.

I now ask Mr Tennant to take the opportunity to address some of the other issues raised in the submissions.

Madam CHAIR: Thank you. Michael.

Mr TENNANT: Thank you, Madam Chair and members of the committee. Thank for inviting me to speak here again today on behalf of the Department of Trade, Business and Innovation.

I acknowledge the time and effort those members of the public and industry have made in putting submissions in on this bill. I note that some of the submissions included references to comments I made at the previous public hearing on 10 September of this year.

My comments then highlighted that the original act provided an exemption for the offshore oil and gas sector, and that the exemption is clarified and maintained in this bill. This provided ongoing certainty to existing and future oil and gas proponents and supports jobs and economic activity in the Territory.

In responding to the request by the Minerals Council of Australia, Northern Territory Division, for an additional exemption for mineral sands and rare earths operations, it is worth reiterating that onshore rare earths and mineral sands operations—as with all onshore operations—are regulated under the *Radiation Protection Act* and are exempt from, and therefore unaffected by this act and this bill.

Consideration of an exemption for offshore mineral sands and rare earths operation is beyond the scope of this amendment bill and would require considerable community consultation, although it is not considered appropriate while there remains a moratorium on seabed mining in the Territory. However, reviewing the list of exemptions could be considered during the next major legislative review of this act.

I note the submission from INPEX provided a considerable outline of how naturally occurring radioactive materials and norms are generated and dealt with in relation to offshore petroleum production operations, including the onshore processing and cleaning prior to disposal at an approved facility outside of the Territory.

As outlined in INPEX's submission, the Northern Territory Government has invested in the Darwin Marine Supply Base to generate economic activity and support Territory jobs through servicing offshore oil and gas industries.

The proposed bill supports this activity by providing clarity and certainty to the industry and to supporting industries and operations. While the majority of this activity is expected to come from fields within 800 kilometres of the Territorial Sea Baseline, it is accepted that it may be commercially viable if operations beyond 800 kilometres or outside the Australian jurisdiction, to use the Territory as service and supply hub.

To that end, it is proposed that in addition to the 800 kilometre requirement to include an alternative requirement for an operation to be based within a prescribed basin. Prescribed basins would be identified in the draft regulations and would initially include at least the Browse, Bonaparte, Money Shoal, Arafura and Carpentaria basins.

The geographical criteria, in addition to the economic and social benefit requirements as outlined by Ms Townsend, will ensure clear economic and related social benefits to the Territory are identified for each prescribed project. They will also prevent other companies that have for example, established supply bases in Queensland or Western Australia, from using the Territory solely as a dumping ground for nuclear waste and ensure that the original intent of the act is supported and preserved.

I am happy to answer any questions the committee may have.

Madam CHAIR: Thank you.

Mr Tennant would you be happy to table your opening statement as well?

Mr TENNANT: Yes.

Madam CHAIR: Member for Katherine, I open it up to the committee starting with yourself for any questions on this bill.

Ms NELSON: Thank you Ms Townsend and Mr Tennant for your statements.

The one I need some clarification on was the 800 kilometre radius—if you could explain that a little. I am thinking about offshore oil and gas production in the Timor Sea and if this going to have any affect at all. Is there anything in place already in regards to waste produced out there?

Mr TENNANT: The proposed amendments ensure that there is several tests to provide a nexus to the Territory so that we are not a dumping ground for other jurisdictions of nuclear waste—they work together. One is the 800 kilometre, the second as I explained is the prescribed basins and the third is where there needs to be an economic and social benefit to the Territory.

Those three tests not only provide clarity to industry and address the ambiguity that has been confirmed by the Solicitor-General, but to ensure the original intent of the act—to exempt the offshore industry—is preserved and that the Territory did not become a dumping ground for nuclear waste from other jurisdictions.

There are already existing offshore gas operations, offshore from the Northern Territory, and these would be captured within the proposed amendments to provide clarity for those industries. If there was a new offshore gas development it would need to meet those criteria to be exempt from the act. Those criteria being a clear economic and social benefit to the Territory, within 800 kilometres or being in a prescribed basin.

If there was a new development offshore and there was not a clear economic and social benefit to the Territory and was outside 800 kilometres or prescribed basin, it would not be exempt. It would prevent the development of a new offshore gas basin with no economic and social benefit to the Territory, and the Territory becoming a dumping ground for nuclear waste from the project.

Ms NELSON: Does it have to meet all of those criteria?

Mr TENNANT: They would need to meet the criteria of providing an economic and social benefit plus being within 800 kilometres or in a prescribed basin.

Mrs FINOCCHIARO: There is no detail on what that criteria is as yet? That has not been developed.

Ms NELSON: Yes, I am agreeing with that question.

Mr TENNANT: As Jo Townsend mentioned in her opening statement, that criteria would then be defined in the regulations to the bill.

Mrs FINOCCHIARO: We would not get an opportunity to see that until the bill is passed.

Madam CHAIR: Member for Katherine, do you have any further questions.

Ms NELSON: I do. How does this bill fit in with the Commonwealth legislation—with national legislation and regulation?

Mr FELDTMAN: Can you be more specific to the legislation you are referring to, please?

Ms NELSON: We have national—Australian or federal—legislation regarding nuclear waste transport, storage and disposal? Correct?

Mr FELDTMAN: Not to my knowledge. There is the *Australian Radiation Protection and Nuclear Safety Act*, which is administered by Australian Radiation Protection and Nuclear Safety Agency. That would deal with the use of and the management of radioactive material at the Commonwealth level.

Ms NELSON: So, our legislation is not in conflict with anything that we have in place nationally? There is no ...

Mr FELDTMAN: No, it is a distinct difference in areas. The Commonwealth does not regulate—it only regulates Commonwealth departments or agencies. So, any commercial operation operating within even Commonwealth waters, is not covered under their legislation.

Ms NELSON: Okay. I need some guidance and clarification as well. I understand that this does not actually fall—it is about onshore oil and gas production and any waste derived from that. How do I frame this question? How do I provide assurance, even though that is not addressed in this bill—we are waiting on the regulations to be implemented or be developed for the onshore oil and gas production—for something like to be developed so it addresses the onshore oil and gas waste? Is that right? Does that make sense?

Madam CHAIR: Sandra, our guests are deliberating amongst themselves to clarify the question you are asking.

Ms NELSON: Thank you.

Ms DAVIS: Member for Nelson, Kathleen Davis, Environment and Natural Resources. I am not sure if this will answer your question, but it is important. We have different pieces of legislation with different purposes. This bill before you is about the *Nuclear Waste, Transport, Storage and Disposal (Prohibition) Act*. This act's sole purpose is to prevent nuclear waste being imported into the Territory and the construction and operation of facilities in the Territory.

It works in conjunction with a number of other pieces of legislation. As Mr Feldtman spoke about, there is the *Radiation Protection Act*, which deals with radioactive waste. He can talk about that much more eloquently than I can. Then we also have the mining and petroleum legislations. We have the *Petroleum Act*, Petroleum Environment Regulations and a *Mining Management Act*. Those acts manage the industry themselves. If there are wastes produced within the oil and gas industries that falls under the responsibility of the *Petroleum Act*, the *Petroleum Act* is what regulates that, not this act.

Madam CHAIR: Sandra, I will chime in there. Jo, can I ask whether or not the regulations that will accompany this bill will be open for public input or feedback? Mr Tennant?

Mr TENNANT: Thank you Madam Chair, there is no reason to not put them out as draft regulations for feedback.

Madam CHAIR: Thank you. Member for Katherine, any further questions?

Mrs FINOCCHIARO: Do you mind if I ask one?

It is hard to understand because it is not something that an everyday person is involved with or would have to turn their mind to. I am trying to think of it in layman's terms. The crux of this legislation is that if they are digging away out there in the middle of the ocean NORMs are found, they can be brought to Darwin and dealt with, that is stored for some period of time, and then moved on. Is that the general gist of it?

Mr TENNANT: Thank you Member for Spillett. In essence, yes. The existing act does provide an exemption for the offshore oil and gas industry to bring NORMs onshore until they are permanently disposed of.

Mrs FINOCCHIARO: Which is not in the Territory?

Mr TENNANT: That is correct.

Mrs FINOCCHIARO: So whether it has to go on a truck or by plane or however you move this stuff, it allows for the movement of it somewhere else.

Mr TENNANT: The original act—this does not change that intent—was in relation to controlling who and what circumstances could bring nuclear waste into the Territory and preventing the establishment of a nuclear waste storage dump facility here in the Territory. That is preserved by these amendments.

What it does is provide that clarity around the existing exemption and strengthens that by being clear it needs to have a social and economic benefit to the Territory and be 800 kilometres or a prescribed basin. It strengthens that in relation to the clarity and around that nexus to the Territory—it strengthens the original exemptions that were provided by the act.

Mrs FINOCCHIARO: Will it be a ministerial decision whether those criteria are met? Or is that from within the department?

Ms DAVIS: The projects that are allowed to operate under those exemptions will be prescribed in the regulations, so the administrator will make those regulations on the advice of government.

Madam CHAIR: Any further questions from the committee?

Ms NELSON: No.

Mr PAECH: No, thank you Madam Chair.

Mrs FINOCCHIARO: I just have one more.

Whilst it is brought here, it cannot be stored here but foreseeably it has to be here for a period of time. Is that not governed by this act, it is a different act that deals with being allowed to have it here for 28 days or whatever it might be?

Mr FELDTMAN: If it is allowed to be brought in under an exemption under the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act*, it will be managed under the *Radiation Protection Act*. We will license the operation to do certain activities and that will be based on an evaluation of their radiation protection plan which is a document which details what they will do in terms of radiation safety and how they manage their waste.

We can impose a licence with conditions. All of our licences do come with conditions and if necessary we can set limits on how much they can bring in—which will force some sort of action to either move the waste on or make some decision regarding it.

Mrs FINOCCHIARO: Thank you.

Madam CHAIR: As there are no further questions from the committee, that concludes our additional public briefing.

Thank you all for appearing before the committee today.