



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

**Inquiry into the Nuclear Waste
Transport, Storage and Disposal
(Prohibition) Amendment Bill
2018**

October 2018

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Chair's Preface

This report details the Committee's findings regarding its examination of the Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018. The primary purpose of this Bill is to clarify the application of the Act as it relates to nuclear waste that may be incidentally generated from offshore oil and gas activities and subsequently brought into the Territory.

As highlighted in Chapter 3, a number of the submissions received raised issues that went beyond the scope of the Bill. To address these concerns the report includes further clarification on the operation of the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004*.

The Committee has recommended that the Assembly pass the Bill with the proposed amendment set out in recommendation two. This amendment seeks to clarify the requirements for a 'prescribed project' as set out in proposed section 5(4)(b)(ii).






On behalf of the Committee, I would like to thank all those who made submissions to the inquiry and to the Department of Environment and Natural Resources, the Department of Trade, Business and Innovation and the Department of Health for briefing the Committee and responding to the Committee's questions. I would also like to thank Committee Members for their support in the examination of this Bill.



Ms Ngaree Ah Kit MLA

Chair

Committee Members

	Ms Ngaree Ah Kit MLA Member for Karama	
	Party:	Territory Labor
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
	Mrs Robyn Lambley MLA Member for Araluen	
	Party:	Independent
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
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	Party:	Country Liberals
	Parliamentary Position:	Deputy Leader of the Opposition, Opposition Whip
	Committee Membership	
	Standing:	Public Accounts, Privileges
	Sessional:	Social Policy Scrutiny
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	Sessional:	Social Policy Scrutiny
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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at the public briefings.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 with the proposed amendment set out in recommendation 2.

Recommendation 2

The Committee recommends that proposed section 5(4)(b)(ii) be amended to read as follows:

- (ii) is located within 800 km of the closest point on the Territorial Sea Baseline or within a prescribed geoscience basin.

1 Introduction

Introduction of the Bill

- 1.1 The Nuclear Waste Transport, Storage and Disposal (Prohibition) Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Minister for Environment and Natural Resources, the Hon Eva Lawler MLA, on 23 August 2018. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 27 November 2018.¹

Conduct of the Inquiry

- 1.2 On 24 August 2018 the Committee called for submissions by 19 September 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As noted in Appendix 2, the Committee received twelve submissions to its inquiry, four of which were proforma submissions. The Committee held two public briefings with representatives from the Department of Environment and Natural Resources, the Department of Trade, Business and Innovation and the Department of Health on 10 September 2018 and the 15 October 2018.

Outcome of Committee's Consideration

- 1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendment as set out in recommendation 2.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 with the proposed amendment set out in recommendation 2.

¹ Hon Eva Lawler, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – Thursday 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, pp.27-9

Report Structure

- 1.6 Chapter 2 provides an overview; of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

2 Provisions of the Bill

Background to the Bill

- 2.1 In presenting the Bill the Minister for Environment and Natural Resources advised the Assembly that the proposed amendments to the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004* seek to provide:

clarity and certainty to the offshore oil and gas industry about the application of the Act to nuclear waste, including Naturally Occurring Radioactive Materials (NORMs) that may be incidentally generated from offshore oil and gas activities and subsequently brought into the NT.²

- 2.2 As noted in the Statement of Compatibility with Human Rights accompanying the Bill, NORMs are:

widespread in sands, clays, soils and rocks, and many ores and minerals, commodities, products, by-products, recycled residues and devices used by humans. NORM scale deposit can occur offshore, via a pipeline and/or onshore at the LNG processing plant.³

- 2.3 The Minister further noted that the need for the Bill was identified during discussions between government and stakeholders from the offshore oil and gas industry⁴ who had raised concerns that, due to the way in which the Act was currently drafted, there was a:

risk they might unlawfully transport NORM via pipelines and on equipment from offshore production facilities via service vessels for cleaning, maintenance, and refurbishment.⁵

Purpose and Overview of the Bill

- 2.4 The primary purpose of the Bill is to address an ambiguity in the *Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004* (the Act) to ensure that it includes activities that fall under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth) and the *Petroleum (Submerged Lands) Act* (NT).⁶

- 2.5 As provided for under subsections 5(2)(c)(i) and (ii), while the Act currently applies to nuclear waste generated under the *Energy Pipeline Act* and the *Petroleum (Submerged Lands) Act*:

the drafting of these exemptions does not clearly capture the full scope of the pipeline and petroleum exploration, and recovery activities carried out by the offshore oil and gas industry which services their projects in the Territory.

² Hon Eva Lawler, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, p.28

³ Statement of Compatibility with Human Rights, *Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62)*, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.1

⁴ Hon Eva Lawler, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, p.28

⁵ Statement of Compatibility with Human Rights, *Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62)*, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.1

⁶ Statement of Compatibility with Human Rights, *Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62)*, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.1

It is not clearly specified that nuclear waste deriving from pipelines and petroleum exploration and recovery activities under the *Offshore and Petroleum and Greenhouse Gas Storage Act 2006* (Cth), and from pipelines under the *Petroleum (Submerged Lands) Act*, is exempt from the Act.⁷

2.6 To clarify the application of the Act, the Bill repeals and replaces section 5(2) of the Act. However, it is important to note that the Bill:

does not introduce new exemptions or broaden the existing exemptions. Rather the reframing of the exemptions provides greater certainty to industry while maintaining the legislature's original intention when passing the Act.⁸

The amendments clarify that nuclear waste deriving from pipelines and exploration and recovery activities in the offshore oil and gas industry is exempt from the Act, provided that the relevant project has a relationship with the Territory and is providing an economic benefit to the Territory.⁹

⁷ Statement of Compatibility with Human Rights, *Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62)*, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.1

⁸ Hon Eva Lawler, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, p.28

⁹ Explanatory Statement, *Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62)*, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.1

3 Examination of the Bill

Introduction

- 3.1 While the Committee's inquiry into the Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 received significant community attention, the majority of submissions raised concerns that fell outside of the scope of the Bill. It was also evident to the Committee that the purpose of the Act and the proposed amendments were not clearly understood by the wider community.
- 3.2 The following discussion seeks to clarify the operation of the Act and consider the issues raised by submitters regarding specific provisions within the Bill along with the advice provided by the Departments of Environment and Natural Resources, Trade, Business and Innovation, and Health (the Departments).

Clarification on the Operation of the Act

- 3.3 As noted above, in addition to issues raised regarding specific provisions of the Bill, a number of submissions sought clarification on the operation of the Act. As summarised below, submitters raised concerns as to the purpose of the Act, the transport and storage of NORMs, the definition of Nuclear Waste and the offence provisions within the Act.

Purpose of the Act

- 3.4 Ms Joanne Townsend (Chief Executive Officer: Department of Environment and Natural Resources) advised the Committee that the Act was introduced in 2004:
- at a time when there was significant local and national debate about nuclear waste facilities and their location, including debate and discussion about establishing a facility on Commonwealth land in the Northern Territory. The purpose of the Act was 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.¹⁰
- 3.5 The Act has two primary functions. Namely, to prohibit:
- (a) the construction or operation of a nuclear waste storage facility in the Territory; and
 - (b) the transportation of nuclear waste into the Territory for storage at a nuclear waste storage facility in the Territory.
- 3.6 To ensure that Northern Territory industries could continue to operate in compliance with the law, the Act included a range of exemptions which demonstrate that:

¹⁰ Ms Joanne Townsend, Committee Transcript, 10 September 2018, p.2

the original policy intent of the Act was to exempt nuclear wastes that may be generated by mining or petroleum activities in the NT, while ensuring that these wastes are managed appropriately.¹¹

- 3.7 The Committee heard that the proposed amendments do not change the intent of the Act or its primary functions. Importantly, as noted by the Minister, the Bill does not “introduce new exemptions or broaden the existing exemptions.”¹² Rather, the Bill is designed to clarify that:

Northern Territory industries that may generate nuclear waste, including naturally occurring radioactive materials, or NORMs, incidentally as part of its ordinary business are not captured by the Act. ... however whilst undertaking legal due diligence the offshore oil and gas industry raised with the Northern Territory Government that these exemptions were potentially ambiguous and they have sought greater clarity on the regulatory arrangements. Our own legal advice confirmed these ambiguities, and this Bill has been prepared in order to redraft the exemptions in the Act in order to provide greater certainty for both industry and the Northern Territory community.¹³

- 3.8 Ms Townsend further noted that:

the Act does not and is not intended to regulate the transport, storage or disposal of nuclear waste that may be generated or present already within the Northern Territory. This is the function of other legislation, primarily the *Radiation Protection Act* and its regulations.¹⁴

Transport and Storage of NORMs

- 3.9 The joint submission from the Arid Lands Environment Centre and the Environment Centre NT raised concerns that the reframing of the exemptions:

could have significant environmental implications by transporting and storing NORM waste on land that would otherwise have been protected from such storage ... While Indigenous land is currently protected from the storage of nuclear waste, this amendment drastically alters that situation ... Specifically, there are concerns that this Act would lead to waste being stored at the Chandler Hazardous Waste Storage Facility.¹⁵

However, as outlined below, the reframing of the exemptions in the Bill does not affect or alter existing statutory provisions that regulate the transport and storage of NORM waste.

- 3.10 With the exception of uranium mining which is regulated by the *Mining Management Act* and the *Radioactive Ores and Concentrates (Packaging and Transport) Act*, regulation of the transport, storage and disposal of radioactive waste is a function of the *Radiation Protection Act*. Pursuant to section 12(1), the *Radiation Protection Act* provides that:

¹¹ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Response to Committee’s Queries*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.1

¹² Hon Eva Lawler, Minister for Environment and Natural Resources, Parliamentary Record, *Debates Day 6 – 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>, p.28

¹³ Ms Joanne Townsend, Committee Transcript, 10 September 2018, p.3

¹⁴ Ms Joanne Townsend, Committee Transcript, 10 September 2018, p.3

¹⁵ Arid Lands Environment Centre and Environment Centre NT, Submission No. 6, pp.1-2

- (1) a person must not manufacture, sell, acquire, possess, use, store, transport, dispose of or otherwise deal with a radiation source other than in accordance with a licence authorising the person to do so.
- 3.11 The submission from the Lock the Gate Alliance queried whether the *Radiation Protection Act* includes “any provisions to consider radioactive waste from petroleum activities.”¹⁶ For the purposes of the Act, it is noted that a radiation source refers to radioactive material, including waste generated by petroleum activities, that ‘has or exceeds the activity or activity concentration prescribed by the Regulations.’¹⁷
- 3.12 As is the case for nuclear waste that is produced by the oil and gas industry in the Territory, an offshore oil and gas company seeking to import NORM into the Territory must apply for an authority to do so under the *Radiation Protection Act*. The Committee was further advised that:

The Radiation Protection Section of the Department of Health is responsible for assessing the application for an authority (on behalf of the Chief Health Officer) to ensure that the proposed activity meets the requirements of the *Radiation Protection Act*, subordinate legislation, applicable Codes of Practice, standards and guidelines. Overall, the application for an authority will only be granted if the proposed activity is compatible with the object of the *Radiation Protection Act* which is to ensure the health and safety of people by protecting them from the harmful effects of radiation and to protect the environment from harmful effects of radiation. ...

Materials brought into the Territory under an authority granted under the *Radiation Protection Act* will most likely be stored in the physical foot print operated by the holder of the authority. The duration of storage will depend on the available options for disposing of the NORM and the factors affecting a decision to dispose of the NORM. The factors affecting the disposal options available to a company include regulatory compliance requirements and the cost, technical viability and availability of transport and disposal options both locally, nationally and internationally. The storage of NORM may be short term to package, analyse and ship for disposal or long term to consolidate total NORM inventories from a project and dispose of in one project.

Some proven disposal methods in Australia and overseas include down hole disposal (back into the well during abandonment), land farming (dispersion at a land based facility), near surface burial at an engineered facility and at sea dispersal. Any option selected to dispose of NORM will require compliance with not only the *Radiation Protection Act* (if it were to occur in the Northern Territory) but also other relevant legislation depending on the disposal option and the technical details.¹⁸

Definition of ‘Nuclear Waste’

- 3.13 Concern was raised by some submitters that since the Act does not specifically reference NORMs, the definition of ‘Nuclear Waste’ should be amended to clarify that it includes “radioactive material derived from exploring, producing or transporting

¹⁶ Lock the Gate Alliance, Submission No. 7, p.2

¹⁷ *Radiation Protection Act* (NT), s6(3)(b)

¹⁸ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Questions and Answers – Amendments to the Nuclear Waste, Transport, Storage and Disposal (Prohibition) Act*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.6

petroleum or other energy-producing hydrocarbons.”¹⁹ However, as pointed out by the Departments, “NORM are captured by the definition of nuclear waste in the Act.”²⁰

- 3.14 Pursuant to subsection 2(a), the definition of ‘Nuclear Waste’ means Category A, B, C or S radioactive waste within the meaning of the *code of practice for the near-surface disposal of radioactive waste in Australia (1992)*. As summarised below, the Code applies to radioactive waste materials, including NORMs arising from the mining of mineral sands and rare earths and the oil and gas industry, in a range of circumstances including:
- a. waste arising from the medical, industrial, research and domestic use of radioisotopes;
 - b. contaminated plant and equipment resulting from handling or processing of naturally occurring materials which contain radioactive material (contaminants) in low but non-trivial amounts e.g. gypsum, phosphate, mineral sands, mineral waters, brown coal, natural gas and crude oil;
 - c. waste arising from processing of minerals remote from any mine site and where disposal at the mine site is inappropriate; and
 - d. waste arising from the rehabilitation, decontamination or decommissioning of sites or facilities where radioactive materials have been produced, stored, used or dispersed.²¹

Offence Provisions

- 3.15 A number of submissions expressed the view that “to act as a genuine deterrent to corporations offending” the penalties provided for under Part 4, section 15(2) of the Act should be increased. However, it is noted that this section relates to offences against the Regulations rather than offences against the Act. Whereas offence provisions against the Regulations provide for a maximum penalty not exceeding 100 penalty points (\$15,500) for an individual and not more than 500 penalty units (\$77,500) for a body corporate, penalties for offences against the Act are significantly higher.
- 3.16 Offences against the Act are provided for under Part 2, sections 6 and 7. Section 6 provides that it is an offence to construct or operate a nuclear waste storage facility. Under section 7 it is an offence to transport nuclear waste into the Territory for storage at a nuclear waste storage facility in the Territory. Both of these offences are classified as level 1 environmental offences.
- 3.17 Pursuant to section 4 of the *Environmental Offences and Penalties Act (NT)*, an individual who is found guilty of a designated level 1 environmental offence may be subject to a fine of not less than 385 penalty units (\$59,675) and not more than 3,850 penalty units (\$596, 750), or imprisonment of not more than 5 years. For a body

¹⁹ Proforma Submission, Submission No.2, p.2

²⁰ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Questions and Answers – Amendments to the Nuclear Waste, Transport, Storage and Disposal (Prohibition) Act*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.2

²¹ National Health and Medical Research Council, *Code of practice for the near-surface disposal of radioactive waste in Australia (1992)*, Australian Government Publishing Service, Canberra, 1993, p.1

corporate, a level 1 environmental offence attracts a penalty of not less than 1,924 penalty units (\$298,220) and not more than 19,240 penalty units (\$2,982,200).

Definition of ‘Legislative Authority’

- 3.18 The Bill amends the Definitions contained in the Act by deleting the reference to ‘legislative authority’, which was defined as meaning ‘a licence, certificate of registration or other authority issued under the *Radiation (Safety Control) Act* or *Radiation Protection Act*. The term was used in section 5(2)(b)(i) and (ii) of the Act to clarify that the Act did not apply to nuclear waste derived from radioactive material that was used, stored or disposed of in accordance with the provisions of the legislation encompassed by the definition of ‘legislative authority’.
- 3.19 The Explanatory Statement accompanying the Bill noted that the definition of ‘legislative authority’ has been deleted as it “will no longer be used in the Act and is therefore not required.”²² Clarification was sought from one submitter as to why this was the case.²³

Committee’s Comments

- 3.20 In 2009 the *Radiation (Safety Control) Act* was repealed by amendments to the *Radiation Protection Act*.²⁴ As legislative authority now rests solely with the *Radiation Protection Act*, which is specifically cited in the proposed amendments to section 5, the Committee notes that the term ‘legislative authority’ is, therefore, now redundant.

Exemptions for the Mining of Mineral Sands and Rare Earths

- 3.21 The Minerals Council of Australia NT Division (MCA NT) raised concern that since the Bill does not specifically reference NORMs, “mineral sands and rare earths could theoretically still be captured under the Act.”²⁵ Noting that an exemption already exists for uranium mining activities, MCA NT suggested that:

There is an opportunity to improve the amendment bill through the inclusion of NORM derived from other types of mining activities, to ensure that mining of mineral sands or rare earth minerals are on the exclusion list.²⁶

- 3.22 As noted above, NORMs are encompassed within the definition of nuclear waste in the Act. The Departments further advised that they were of the view that:

The existing exemptions in the Act are suitable to address these concerns. Specifically, the proposed amended 5(3)(b) would address the storage of NORMs

²² Explanatory Statement, *Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62)*, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.1

²³ Confidential, Submission No. 9, pp. 3-4

²⁴ Northern Territory Legislation, Historical Acts and Subordinate Legislation, *Radiation (Safety Control) Act*, https://legislation.nt.gov.au/en/LegislationPortal/Historical-Acts-and-Subordinate-Legislation#header_act_acc_R

²⁵ Minerals Council of Australia NT Division, Submission No. 1, p.1

²⁶ Minerals Council of Australia NT Division, Submission No. 1, p.1

on a mining site. The *Radiation Protection Act* would address the transport of the NORMs for sale of the resource.²⁷

- 3.23 With regards to MCA NT's suggestion that the Bill should also include an exemption for offshore mining of mineral sands and rare earths, Mr Michael Tennant (Chief Executive Officer: Department of Trade, Business and Innovation) advised that:

consideration of an exemption for offshore mineral sands and rare earths operations was 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 the Act.²⁸

Committee's Comments

- 3.24 The Committee is satisfied with the response from the Departments that the existing exemptions contained within the Act, and reframed by the proposed amendments in the Bill, address the issue raised by MCA NT.

Requirements for a 'Prescribed Project'

- 3.25 While supporting the amendments to the Act, INPEX raised concerns regarding the operation of proposed section 5(4)(b). As drafted, section 5(4) provides that the Act does not apply in relation to nuclear waste that is transported into the Territory if the waste is produced incidentally from:
- (a) the operation or maintenance of a pipeline conveying petroleum or other energy-producing hydrocarbons into the Territory; or
 - (b) the exploration for, or the recovery or exploitation of, petroleum or other energy producing hydrocarbons at a prescribed project that:
 - (i) delivers significant economic and social benefits to the Territory; and
 - (ii) is located within 800 km of the closest point on the Territorial Sea Baseline.

Proposed Section 5(4)(b)(i)

- 3.26 With regards to proposed section 5(4)(b)(i), INPEX expressed the view that:

This test is very subjective, as a significant social benefit would be very difficult to measure and likely to take a significant period of time and resources to assess. This requirement would also be very difficult to meet for brownfield or smaller greenfield offshore projects. For example, the development of the Petrel and Tern gas fields through the Blacktip Project may not pass this requirement, despite that investment generating economic benefit and the fields being close to Darwin. A simpler requirement of 'economic benefit' is suggested.²⁹

²⁷ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Response to Committee's Queries*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.1

²⁸ Department of Trade, Business and Innovation, *Opening Statement – Public Briefing – 15 October 2018*, pp.1-2

²⁹ INPEX, Submission No. 4, p.2

3.27 To obtain prescribed project status, the Department advised that an oil and gas project would need to demonstrate that it would contribute to the social and economic development of the Territory through, for example, the:

- Creation of skills development and jobs for Territorians;
- Creation of local business opportunities; and
- Local business engagement.³⁰

The Departments further advised that the Bill will be supported by Regulations, which will provide additional certainty for the offshore oil and gas industry regarding requirements to meet the criteria for exemption as specified in the Bill.³¹ As noted by Ms Townsend, this information will also:

assist the Administrator to determine if a specific project will provide those benefits.³²

Committee's Comments

3.28 The Committee considers that the requirement for the offshore oil and gas industry to demonstrate that a project delivers both significant social and economic benefits to the Territory in order to be recognised as a prescribed project is an important aspect of being granted a social licence to operate. As advised by the Departments, development of the associated Regulations will provide further clarification and certainty to the industry regarding requirements to meet the criteria for exemption as specified in the Bill.

Proposed Section 5(4)(b)(ii)

3.29 INPEX also raised concerns regarding the 800 km distance metric used in proposed section 5(4)(b)(ii), pointing out that:

if INPEX and the joint venturers develop new fields to the south of the Ichthys field, where they have offshore interests, NORM waste generated from these fields would be unintentionally excluded even if the petroleum is processed via the Ichthys offshore facilities, since these fields lie outside the 800 km requirement. The 800 km metric could also permit nuclear waste from outside Australia to be imported. Commercial considerations would resolve the distance aspect of any offshore NORM waste being imported.³³

INPEX subsequently proposed that subsection 5(4)(b)(ii) be reworded to read "*is located within Australia's jurisdiction.*"³⁴

3.30 The Committee understands that the 800 km limit was identified by the Departments to include "all areas where offshore developments are likely to occur in the medium

³⁰ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Questions and Answers – Amendments to the Nuclear Waste, Transport, Storage and Disposal (Prohibition) Act*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.5

³¹ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Questions and Answers – Amendments to the Nuclear Waste, Transport, Storage and Disposal (Prohibition) Act*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.5

³² Department of Environment and Natural Resources, *Opening Statement – Public Briefing 15 October 2018*, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.4

³³ INPEX, Submission No. 4, p.2

³⁴ INPEX, Submission No. 4, p.2

to long term where the operators of those developments may choose to use the Territory as the base for their operations.”³⁵ Given that limiting this subsection to projects located within Australia’s jurisdiction may unintentionally exclude existing or potential projects, the Committee sought further clarification from the Departments as to how the amendment suggested by INPEX would impact on the operation of the Act.

3.31 In response the Departments advised the Committee as follows:

The Departments acknowledge the matters raised by INPEX, being where the operation of a platform is close to the 800 km limit and the company having further tenements that are outside the 800 km limit that would be logically developed by expanding current infrastructure (pipeline) to the new field. In this regard the Departments note that the 800 km limit only applies to nuclear waste that may be transported into the Northern Territory by a means other than a pipeline (e.g. via a vessel). Any extension of a pipeline to a tenement located further afield would not be limited by the proposed section 5(4)(b).

However, the Departments do not consider that an amendment in the form proposed, i.e. “within Australia’s jurisdiction”, provides the necessary certainty for industry as to the area covered, or meets the policy intent contained in the original exemption. Such an amendment may result in the importation of nuclear waste that more appropriately should be managed by another Australian jurisdiction and would exclude projects from other countries, such as the Indonesian Abadi LNG project, that logically would be best serviced from Darwin.

To address the concerns raised by INPEX the Departments propose to include a further clarification so that a prescribed project must be within the 800 km limit or “be in a prescribed geoscience basin” such as the Browse Basin, Bonaparte Basin, etc. to maintain the intent of the Act. These would be listed in the accompanying Regulations, along with the list of prescribed projects. The existing proposed requirement that the project provides an economic and social benefit to the Territory would apply to both the 800 km limit and to the “prescribed geoscience basin” approach.³⁶

Committee’s Comments

3.32 While acknowledging INPEX’s concern regarding the operation of subsection 5(4)(b)(ii), the Committee is satisfied with the Departments’ advice and agrees that the clarification proposed by the Departments:

is the most appropriate approach as it will ensure that all proposals to import nuclear waste can be examined individually, maintaining the original intent of the Act not to limit petroleum or mining activities whilst ensuring nuclear waste is not dumped in the Northern Territory.³⁷

³⁵ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Questions and Answers – Amendments to the Nuclear Waste, Transport, Storage and Disposal (Prohibition) Act*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.5

³⁶ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Response to Committee’s Queries*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.2

³⁷ Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Response to Committee’s Queries*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>, p.2

Recommendation 2

The Committee recommends that proposed section 5(4)(b)(ii) be amended to read as follows:

- (ii) is located within 800 km of the closest point on the Territorial Sea Baseline or within a prescribed geoscience basin.**

Appendix 1: Submissions Received

Submissions Received

1. Minerals Council of Australia NT Division
2. Proforma Submissions:
 - Ms Pauline Cass – Private Citizen
 - Ms Bodil Conroy – Private Citizen
 - Ms Judyanne Kent – Private Citizen
 - Ms Katherine Marchment – Private Citizen
3. Heidi Jennings – Private Citizen
4. INPEX (Redacted by Submitter)
5. Justin Tutty – Private Citizen
6. Arid Lands Environment Centre and Environment Centre NT
7. Lock the Gate Alliance
8. 1 Territory
9. Confidential

Note:

Copies of submissions are available at: <https://parliament.nt.gov.au/committees/spsc/62-2018>

Appendix 2: Public Briefings

Public Briefing – 10 September 2018

Department of Environment and Natural Resources

- Joanne Townsend: Chief Executive Officer
- 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
- Joseph Kuhn: Director, Strategic Policy and Research

Department of Health

- Bradley Feldtman: Manager, Radiation Protection

Public Briefing – 15 October 2018

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

Note

Copies of briefing transcripts and tabled papers are available at:

<https://parliament.nt.gov.au/committees/spsc/62-2018>

Bibliography

Department of Environment and Natural Resources, *Opening Statement – Public Briefing 15 October 2018*, <https://parliament.nt.gov.au/committees/spsc/62-2018>

Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Questions and Answers – Amendments to the Nuclear Waste, Transport, Storage and Disposal (Prohibition) Act*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>

Department of Environment and Natural Resource, and Department of Trade, Business and Innovation, *Response to Committee’s Queries*, 27 September 2018, <https://parliament.nt.gov.au/committees/spsc/62-2018>

Department of Trade, Business and Innovation, *Opening Statement – Public Briefing 15 October 2018*, <https://parliament.nt.gov.au/committees/spsc/62-2018>

Environmental Offences and Penalties Act (NT)

Explanatory Statement, *Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62)*, <https://parliament.nt.gov.au/committees/spsc/62-2018>

Mining Management Act (NT)

National Health and Medical Research Council, *Code of practice for the near-surface disposal of radioactive waste in Australia (1992)*, Australian Government Publishing Service, Canberra, 1993

Nuclear Activities (Prohibitions) Act 1983 (Vic)

Nuclear Waste Storage and Transportation (Prohibition) Act 1999 (WA)

Nuclear Waste Storage Facility (Prohibition) Act 2000 (SA)

Nuclear Waste Transport, Storage and Disposal (Prohibition) Act 2004 (NT)

Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62), <https://parliament.nt.gov.au/committees/spsc/62-2018>

Parliamentary Record, *Debates Day 6 – 23 August 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/300583>

Radiation Protection Act (NT)

Radioactive Ores and Concentrates (Packaging and Transport) Act

Statement of Compatibility with Human Rights, *Nuclear Waste Transport, Storage and Disposal (Prohibition) Amendment Bill 2018 (Serial 62)*, <https://parliament.nt.gov.au/committees/spsc/62-2018>