



Minister for Resources and Northern Australia

Min ID: MB19-000583

**For Action**

**Subject:** ACTION - SITE SPECIFIC LEGISLATION RELATING TO THE NATIONAL RADIOACTIVE WASTE MANAGEMENT FACILITY

**Timing:** URGENT – to allow the development of legislative amendments for introduction in the Autumn 2020 sittings

**Recommendations:** That you

- |   |   |
|---|---|
| 1. <b>Agree</b> to not pursue introduction of the National Radioactive Waste Management Amendment (Community Fund and Other Measures) Bill in Spring 2019.                                | <b>Agreed/Not agreed/Please discuss</b> |
| 2. <b>Agree</b> to progress site specific legislative amendments to the <i>National Radioactive Waste Management Act 2012</i> to be introduced in the Autumn 2020 parliamentary sittings. | <b>Agreed/Not agreed/Please discuss</b> |
| 3. <b>s 42</b> [REDACTED]   | <b>Noted/Please discuss</b>             |
| 4. <b>Sign</b> the letter to the Prime Minister seeking policy authority to pursue site specific legislation.   | <b>Signed/Not signed/Please discuss</b> |
| 5. <b>Agree</b> you will refer the Bill to the Senate Economics Legislation Committee once it is introduced.  | <b>Agreed/Not agreed/Please discuss</b> |

**Matthew Canavan** ..... **Date:** / /2019

**Comments:**

**Key Points:**

1. The Barnjarla Determination Aboriginal Corporation (BDAC) appeal to the Federal Court is expected to be heard in the week of 17 February 2020, however it may take some time for the appeal to be decided, and there remains an opportunity to BDAC to appeal further to the High Court. **s 42** [REDACTED]
2. To address these risks, and provide Parliament with a say in this important national decision, the department recommends pursuing site specific legislative amendments, which will name the site you select following your assessment of the Site Assessment Report (MS19-001277 refers) and the Community Sentiment Report. The site specific legislative amendments will include the current amendments relating to the Community Fund as well as all other amendments required to prescribe the site that you select.
3. To do this, your agreement is required to:

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- a) not pursue introduction in the Spring 2019 parliamentary sittings of the National Radioactive Waste Management Amendment (Community Fund and Other Measures) Bill, which includes validating the nomination and site selection process in the *National Radioactive Waste Management Act 2012* (NRWM Act) (MS19-000642 and MS19-001248 refer), and
  - b) seek policy authority from the Prime Minister to amend the NRWM Act to remove the current voluntary nomination site selection process and allow for a specific site to be identified as the site for the National Radioactive Waste Management Facility (the facility).
4. We have consulted with the Department of the Prime Minister and Cabinet on the revised approach. While they agree that a new policy authority is required, they have noted that it may be necessary to take the matter to Cabinet.
5. In the first instance, a letter seeking the Prime Minister's authority has been prepared for your signature (see Attachment A).

Implementation considerations

6. s 42 [Redacted]

7. [Redacted]

8. [Redacted]

The department will advise in due course.

9. s 42 [Redacted]

10. s 42 [Redacted]

Timing considerations

11. A category-T (critical) legislation bid is being pursued as a contingency in the event the currently proposed NRW Act legislative amendment package is not introduced in the current sittings. If status is granted, this could be used to introduce and pass the proposed site specific legislative amendments in the Autumn 2020 parliamentary sittings. Your decision on a site for inclusion in the legislative amendments will be required by mid-January 2020 to enable introduction of the Bill before 13 February, or it will automatically revert to a category-A Bill, which would not pass until the Winter 2020 sitting period.
12. Once the Bill is introduced, the department could publish the site assessment and community sentiment reports to ensure that there is public information available to support the introduction of the Bill. We will work with your office to prepare a detailed communication plan to support the change of approach and help mitigate any legal risks.
13. The Standing Committee for the Scrutiny of Bills will review the Bill as a matter of course. We recommend that you refer the Bill to the Senate Economics Legislation Committee for inquiry and report. Your referral means that you can request that the Committee consider the Bill and provide its report within a certain timeframe. Further details on these Committees are at Attachment C.
14. Subject to passage through the Parliament, it could be possible to acquire a site via site specific legislative amendments by July 2020.

Next Steps

15. If the Prime Minister grants policy approval and the Bill is granted status for Autumn 2020, the Office of Parliamentary Counsel in consultation with AGS (on instruction from the department) will determine the precise wording of the amendments. You will be provided with regular updates on progress of the site specific legislative amendment package or an alternative approach if policy authority is not granted.
16. The amendments to implement the Australian Government's commitment to establish a \$20 million Community Fund to support the host community's long-term social and economic sustainability are well progressed and would be included in the site specific legislative amendment package.

**Sensitivities**

17. s 42 [REDACTED]
18. Announcement of the amendments is likely to encourage interested parties to seek access to documents through the Freedom of Information process. s 42 [REDACTED]
19. s 42 [REDACTED]
20. There is a community expectation that legislative amendments to the NRW Act, including the establishment of the \$20 million Community Fund, will be progressed as soon as possible, and potentially in November this year. However, the department has been clear in its engagements that legislative amendments are subject to legislative timeframes outside of its control, and the amendments may not progressed until early 2020.

**Consultation:** Legal Audit and Assurance Branch, Department of the Prime Minister and Cabinet, and AGS.

Clearance Officer:

Sam Chard  
General Manager  
National Radioactive Waste Management Taskforce  
Northern Australia and Major Projects Division

s47F

Contact Officer:

s47F  
Strategic Policy

s47F

**MLO Version: 4/11/2019**

**ATTACHMENTS**

- A: Letter to the Prime Minister seeking policy authority
- B: AGS advice on pursuing site specific legislative amendments
- C: Background information on Committees



**Senator the Hon Matthew Canavan**

**Minister for Resources and Northern Australia**

MB19-000583

The Hon Scott Morrison MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

I am writing to seek policy approval pursue a new policy outcome for the *National Radioactive Waste Management Act 2012* (the Act). These amendments seek to provide the greatest clarity and certainty for all stakeholders (including relevant communities) about the selection of a site for the National Radioactive Waste Management Facility (the facility).

s 42  
[Redacted]

To address these risks, and provide Parliament with a say in this important national decision, I seek your agreement to an alternate legislative amendment approach which would involve the removal of processes currently in the Act relating to the voluntary nomination of potential sites and site selection activities under Part 2 and 4 of the Act. I propose to replace these by introducing amendments to enable a specific site to be identified as the facility. s 42  
[Redacted]

I also propose that amendments currently being progressed to implement community funding commitments (MT18/0409/CAB/2 refers), expected by the host community and other stakeholders to support the host community's long-term social and economic sustainability, would be included in this legislative package of amendments.

I seek your immediate consideration to enable the development of legislative amendments for introduction in the Autumn 2020 sittings.

Yours sincerely

Matthew Canavan

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Parliament House, Canberra ACT 2600 Telephone (02) 6277 7180

Committee Information

Committee	Description	Membership
<p>Standing Committee for the Scrutiny of Bills</p>	<p>This Committee is non-partisan and assess bills against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, the rule of law and on parliamentary scrutiny.</p> <p>It is not the committee’s role to recommend particular action on a bill but to raise issues for the Senate’s consideration. If the committee identifies a potential problem with a bill, it alerts the Senate and follows the matter up with the responsible minister for response and then reports back to the Senate.</p> <p>Individual senators often take up concerns raised by the committee and draft amendments to the bill accordingly. These amendments are subsequently dealt with in the committee of the whole stage.</p> <p>Source: <a href="#">link</a></p>	<ul style="list-style-type: none"> <li>• Senator Helen Polley (Chair) -Australian Labor Party, TAS</li> <li>• Senator Dean Smith (Deputy Chair)- Liberal Party of Australia, WA</li> </ul> <p>Members:</p> <ul style="list-style-type: none"> <li>- Senator the Hon Kim Carr - Australian Labor Party, VIC</li> <li>- Senator Perin Davey - The Nationals, NSW</li> <li>- Senator Janet Rice -Australian Greens, VIC</li> <li>- Senator Paul Scarr - Liberal Party of Australia, QLD</li> </ul>
<p>Senate Economics Legislation Committee</p>	<p>This Committee is non-partisan and consider 5 scrutiny principles for inquiry and report:</p> <ul style="list-style-type: none"> <li>• whether the bill unduly trespasses on personal rights and liberties;</li> <li>• whether administrative powers are defined with sufficient precision;</li> <li>• whether appropriate review of decisions is available;</li> <li>• whether any delegation of legislative powers is appropriate; and</li> <li>• whether the exercise of legislative powers is subject to sufficient parliamentary scrutiny.</li> </ul>	<ul style="list-style-type: none"> <li>• Senator Slade Brockman (Chair) - Liberal Party of Australia, WA</li> <li>• Senator Alex Gallacher (Deputy Chair)- Australian Labor Party, SA</li> </ul> <p>Members:</p> <ul style="list-style-type: none"> <li>- Senator Andrew Bragg -Liberal Party of Australia, NSW</li> <li>- Senator Jenny McAllister - Australian Labor Party, NSW</li> <li>- Senator Susan McDonald - The Nationals, QLD</li> <li>- Senator Rex Patrick - Centre Alliance, SA</li> </ul>





**Minister for Resources and Northern Australia**

Min ID: MS19-000642

**For Action**

**Subject:** APPROVAL TO PURSUE AMENDMENTS TO THE *NATIONAL RADIOACTIVE WASTE MANAGEMENT ACT 2012*

**Timing:** Urgent – by 2 August 2019 – Your approval for this package, including seeking policy approval from the Prime Minister, is required following your agreement to the full package of bids proposed by the department to secure drafting resources for the legislative amendments (MS19-000779 refers).

**Recommendations:** That you

- |   |                                  |
|---|----------------------------------|
| 1. Note the s 42  | Noted/Please discuss             |
| 2. Agree to the preferred approach to manage these issues, which is to continue with the current site selection process and amend the <i>National Radioactive Waste Management Act 2012</i> ;   | Agreed/Not agreed/Please discuss |
| 3. Agree to the scope of legislative amendments, including: <ul style="list-style-type: none"> <li>a) validating the nominations process;</li> <li>b) changing the amount, purpose, name and fees associated with the \$10 million National Repository Capital Contribution Fund (NRCCF), to support the \$31 million Community and Development Package, which you announced in July 2018;</li> <li>c) introducing a time limit on compensation claims; and</li> <li>d) introducing a mechanism to close the site selection process.</li> </ul> | Agreed/Not agreed/Please discuss |
| 4. Note that a June 2018 Cabinet decision provides policy authority for increasing the amount of the NRCCF and revising its scope and delivery (MT18/0409 refers), but policy authority must be sought to change the name of the fund, remove the National Repository Capital Contribution Fee, and progress the other amendments noted at Recommendation 3;  | Noted/Please discuss             |
| 5. Agree that you will seek to introduce the legislative amendments after the community ballot result is known, but prior to making your final site declaration, noting that this timing will need to be revisited if progress on the ballot is delayed due to further legal action; and  | Agreed/Not agreed/Please discuss |
| 6. Sign the letter to the Prime Minister seeking required policy authority for the legislative amendments.  | Signed/Not signed/Please discuss |

Matthew Canavan .....

Date:        /        /2019

Comments:

**Key Points:**

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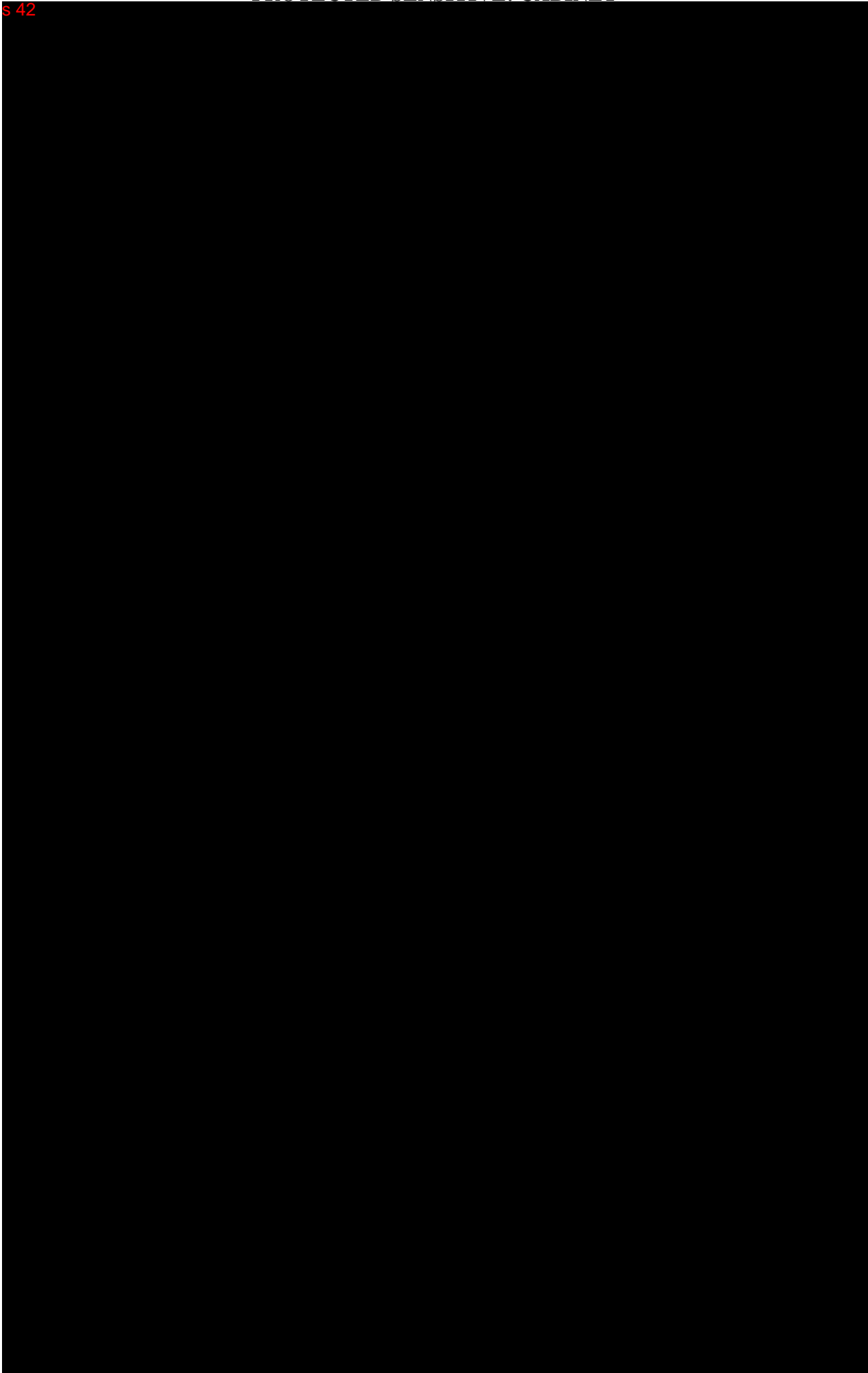
1. The *National Radioactive Waste Management Act* (NRWM Act) provides you with the legislative authority to declare in writing that a site (nominated and approved under the NRWM Act) is selected as the site for the National Radioactive Waste Management Facility (the facility).
2. Three sites (nominated and approved under the NRWMF Act) in South Australia remain under active consideration for selection as a site to host the facility. s 42

[Redacted]

s 42

[Redacted]





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19. In the absence of any further injunction, the local community ballot is expected to open on 23 September, and close on 18 October, with a published result by 28 October. (MS19-000773 refers). Based on this timeframe, and your recent agreement to seek 'A' status for potential legislative amendments (MS19-000779 refers), legislation could be introduced to Parliament late in the Spring Sittings (last week of November) and passed in 2020 Autumn or Winter sittings to align with site declaration (see 3b in Attachment G).

20. s 42 [REDACTED]

The need to seek policy authority for elements of proposed amendments

- 21. Policy authority is necessary to ensure legislative drafting resources are allocated to this task.
- 22. A draft letter from you to the Prime Minister seeking policy authority to the legislative amendment package for the NRW Act is at Attachment H.

Next steps

- 23. If policy approval is obtained from the Prime Minister and the bill is granted status, the Office of Parliamentary Counsel in consultation with AGS (on instruction from the department) will determine the precise wording of the amendments. You will be provided with regular updates on progress of the Legislation Approval Package.
- 24. Once the amendments are finalised and agreed by you, you will be required to seek the Prime Minister's agreement.
- 25. In the event that the amendments were not passed, you may still revoke nominations and undertake a new nomination process (as per Option 2 in Attachment C).

**Sensitivities:**

26. Introducing amendments is subject to Parliamentary priority and there is a risk that legislative amendments may not pass, or may not pass in timeframes that align with your site selection decision. This may increase the level of public criticism depending on timing.

27. s 42 [REDACTED]

**Consultation:** Legal Audit and Assurance Branch, Legislation Unit, Department of the Prime Minister and Cabinet.

Clearance Officer:

Paul James  
A/g General Manager  
National Radioactive Waste Management Facility  
Taskforce  
s47F [REDACTED]

Contact Officer:

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Parliamentary and Legal Coordination  
s47F [REDACTED]

MLO Version: 31/7/2019

**ATTACHMENTS**

- A: Key legal risks identified at each nomination stage
- B: AGS advice on historical nomination flaws
- C: Advantages and disadvantages of options to address historical nomination flaws
- D: AGS advice on options to address nomination flaws
- E: Background on National Repository Capital Contribution Fund and Community Development Package
- F: Summary of proposed legislative amendments
- G: Implications for the timing of amendments
- H: Draft letter to the Prime Minister seeking policy authority for proposed legislative amendments

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**Background on the NRCCF and Community Development Package**

National Repository Capital Contribution Fund (NRCCF)

The NRCCF was established when the government was working with the Northern Territory Government on a potential site pre-2012. The NRCCF was designed to support the relevant state or territory government deliver public services and infrastructure.

Under the current NRWM Act (Section 6A), the government must credit \$10 million to the NRCCF prior to the facility becoming operational. Funds would only be made available once the facility receives its operating licence, which is anticipated for 2028. This amount has never been appropriated by the government.

The Act also provides for a National Repository Capital Contribution Fee, which requires States and Territories to pay fees to the Host State or Territory before being eligible to use the NRWMF for storing their radioactive waste.

Cabinet agreed in June 2018 (MT18/0409 refers) to increase the NRCCF from \$10 million to \$20 million and to revise the scope and delivery of the NRCCF to support the long-term social and economic sustainability of the NRWMF host community through a community-controlled fund. The fund is part of a \$31 million Community Development Package you announced in June 2018 (more detail below).

The Fund will focus on promoting sustainable health services, agriculture research and development, enhancements to local critical infrastructure, and further develop the indigenous economy. The Fund will be delivered as an upfront one-off payment to a community-controlled entity such as a trust, or a company limited by guarantee.

Policy authority is needed to change the name of the NRCCF to ensure its revised purpose is accurately reflected. The department suggests the fund be named the “NRWMF Community Fund”, or another name of your choosing to acknowledge the linkages to the long term presence of the NRWMF in the community.

Policy authority is also required to remove the National Repository Capital Contribution Fee, which requires States and Territories to pay fees to the Host State or Territory before being eligible to use the NRWMF for storing their radioactive waste. The National Repository Capital Contribution Fee is inconsistent with the current policy for the establishment of the community controlled fund.

Community Development Package

The Community Development Package, announced on 23 July 2018, recognises the need to build economic capacity, skills and resilience within the NRWMF host community, and to help them to realise the significant economic benefits of hosting the facility.

As well as the \$20 million National Radioactive Waste Management Facility (NRWMF) Community Fund will deliver long term infrastructure and development benefits to the host community, the package includes:

- \$8 million in grants to be delivered through the Community Skills and Development Program (CSDP) to maximise opportunities from the construction and operation of the facility. This will include:
  - job training



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- funding programs that upskill local people and businesses and attract labour supply and other commercial operations to the region
- the protection and promotion of local Indigenous cultural, heritage and business development
- Up to \$3 million from the Indigenous Advancement Strategy to promote economic opportunities for the local Aboriginal community, delivered through the Department of the Prime Minister and Cabinet until Machinery of Government changes take effect in July 2019, including a focus on strengthening Indigenous skills training and employment opportunities in the construction and operation phases of the NRWMF, including in cultural heritage protection.

The program was offset from savings from the Flagship Programs in the contingency reserve (SM18/0234 of December 2019 refers).

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Implications for the timing of amendments

Timing and implementation opportunities for proposed amendments		
Scenario	Benefits	Risks
3a Pre-ballot	<ul style="list-style-type: none"> <li>• s42 [REDACTED]</li> <li>• s42 [REDACTED]</li> </ul>	<ul style="list-style-type: none"> <li>• Public criticism of site selection process is likely.</li> <li>• s42 [REDACTED]</li> <li>• s42 [REDACTED]</li> </ul>
3b Post ballot, but pre-declaration/ acquisition of a site	<ul style="list-style-type: none"> <li>• s42 [REDACTED]</li> <li>• s42 [REDACTED]</li> </ul>	<ul style="list-style-type: none"> <li>• A level of public criticism of site selection process remains.</li> <li>• s42 [REDACTED]</li> <li>• s42 [REDACTED]</li> <li>• s42 [REDACTED]</li> </ul>
3c Post ballot and declaration/ acquisition of a site	<ul style="list-style-type: none"> <li>• No delay to the site selection process.</li> <li>• s42 [REDACTED]</li> <li>• s42 [REDACTED]</li> <li>• s42 [REDACTED]</li> </ul>	<ul style="list-style-type: none"> <li>• s42 [REDACTED]</li> <li>• s42 [REDACTED]</li> </ul>



**Senator the Hon Matthew Canavan**

**Minister for Resources and Northern Australia**

MS19-000642

The Hon Scott Morrison MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

Dear Prime Minister

I am writing to seek policy approval for a package of amendments to the *National Radioactive Waste Management Act 2012* (the Act). These amendments will facilitate the implementation of the Australian Government's ongoing commitment to financially support the community that will host the National Radioactive Waste Management Facility (NRWMF). It will also clarify a number of administrative processes under the Act to ensure that the legislation operates as intended.

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[REDACTED] The proposed amendments will enable the implementation of a \$20 million community controlled fund to support the long-term social and economic sustainability of the host community. These amendments are expected by the community and other stakeholders.

I am also seeking your approval to re-name the NRCC Fund to the NRWMF Community Fund, to better reflect the fund's revised scope and purpose. I further seek your approval to remove the NRCC Fee, which requires States and Territories to pay fees to the host State or Territory in order to use the NRWMF for storing their radioactive waste, as this is inconsistent with the existing policy for the implementation of the community controlled fund.

Secondly, I propose to amend the Act to clarify the site selection process for the NRWMF. In particular, the nomination process for land owners in siting the NRWMF (including an expiration process), and to prescribe time limits for compensation claims under the Act. More detail on the proposed amendments is enclosed.

I seek your immediate consideration of this legislative amendment package. The timing acknowledges that it is my intent to make a Ministerial declaration of a site to locate the NRWMF in late 2019 or early 2020 and that this declaration is likely to attract legal challenges s 42 [REDACTED]

Yours sincerely

Matthew Canavan  
Encl. (1)

**Enclosure for PM letter**

The *National Radioactive Waste Management Act 2012* (the Act), provides for the legal framework that governs the establishment and operation of a National Radioactive Waste Management Facility (NRWMF) in Australia. The Act imbeds a number of processes relating to the nomination and subsequent ministerial declaration of a site for the NRWMF, as well as providing for community funding and compensation for affected communities.

The department is in the process of selecting a site for the construction and operation of NRWMF. Given the nature of this project, there is a high risk of legal challenge to the decisions made during the process of site assessment, selection, and declaration for each site <sup>s 42</sup>

The proposed measures will align the Act with Government decisions made in July 2018 concerning implementation of the [Community Development Package](#), as well as retroactively clarifying the site selection process to ensure that the current nominations are valid, providing authority to close the nominations process and ensuring that compensation processes are finite.

**Summary of Amendments**

- *\$20 million community controlled fund* - In line with the government’s decision of 10 July 2018, this amendment would revise the scope and delivery of the existing \$10m NRCCF to a \$20m community controlled fund to focus on the long-term social and economic sustainability of the NRWMF host community. Amendments are required to change the name of the fund to NRWMF Community Fund to reflect its revised purpose and to remove the National Repository Capital Contribution Fee that is no longer required. An amendment to the *Financial Framework (Supplementary Powers) Regulations 1997* (FFSP Regs) may also be required.
- <sup>s 42</sup>
- <sup>s 42</sup>
- *Nomination process closure* – The Act currently provides for the Minister to open a process to enable persons with a right or interest in land to nominate that land as a prospective site for a NRWMF. There is presently no mechanism to close the nomination process, meaning land owners can continue to put forward prospective sites indefinitely. While there is no requirement for the Minister to consider each nominated site, the ability to formally close the process mitigates the ongoing need to continue to consider new nominations once a site has been declared.



Minister for Resources and Northern Australia

Min ID: MS19-001248

**For Action**

**Subject:** UPDATE ON LEGISLATIVE AMENDMENTS TO THE *NATIONAL RADIOACTIVE WASTE MANAGEMENT ACT 2012*

**Timing:** Urgent – by 23 October 2019 to enable supplementary drafting instructions to be provided to the Office of Parliamentary Counsel to progress the National Radioactive Waste Management Amendment (Community Fund and Other Measures) Bill

**Recommendations:** That you

- |   |   |
|---|---|
| 1. <b>Note</b> the progress of legislative amendments to the <i>National Radioactive Waste Management Act 2012</i> (NRWM Act).  | <b>Noted/Please discuss</b>             |
| 2. <b>Agree</b> to further legislative amendments to: <ul style="list-style-type: none"> <li>a. remove the requirement for the National Repository Capital Contribution Fee (NRCC Fee) to be paid into the National Repository Capital Contribution Fund (to be amended to a community controlled fund);</li> <li>b. remove the requirement for the money appropriated for the community controlled fund to be paid out of a special account; and</li> <li>c. provide for the establishment of an appropriate non-Commonwealth community controlled entity, with the entity type and associated governance arrangements to be established under regulations in the future.</li> </ul> | <b>Agreed/Not Agreed/Please discuss</b> |
| 3. <b>Agree to not progress</b> amendments to introduce a mechanism to close the site selection process and impose time limits on compensation claims under the NRWM Act.   | <b>Agreed/Not Agreed/Please discuss</b> |
| 4. <b>Note</b> the Australian Government Solicitor’s (AGS) advice <sup>s42</sup> [REDACTED]   | <b>Noted/Please discuss</b>             |
| 5. <b>Agree</b> to consider site specific legislation in more detail, should the BDAC vs Kimba Council appeal be delayed beyond the 2020 February/March Federal Court appeal hearing schedule.  | <b>Agreed/Not agreed/Please discuss</b> |

Matthew Canavan .....

Date:        /        /2019

**Comments:**



**Key Points:**

1. On 19 August 2019, you agreed to a scope of legislative amendments to the NRW Act to implement the Australian Government's commitment to establish a \$20 million community controlled fund (Community Fund), <sup>s 42</sup> [REDACTED]
2. You received policy authority from the Prime Minister on 30 September 2019 for all measures other than the removal of the National Repository Capital Contribution Fee (NRCC fee) (MC19-003438 refers). This measure is being pursued to remove the requirement for any NRCC fees received by the Commonwealth in excess of \$20 million being paid into the Community Fund that is being established in the current legislative package. As this measure could have a future impact on the Budget, you have been requested to provide a fully costed New Policy Proposal (NPP) for consideration of this amendment. Further detail on this issues is at Attachment A.
3. The department has been working closely with the Office of Parliamentary Counsel (OPC), AGS and central agencies, to determine a way forward, and to develop a National Radioactive Waste Management Amendment (Community Fund and Other Measures) Bill (the Bill), which would give effect to the proposed amendments. In the course of this work, further policy considerations have emerged, which are detailed at Attachment A. In summary:
  - a. It would be preferable to engage the community, local councils and state government in determining the specific nature of the community-controlled entity to be established to manage the \$20 million Community Fund. However, the corporate structures are relatively complex and adequate consultation could not be undertaken prior to introducing the Bill, based on the current schedule. For this reason, the department recommends specifying the entity type and governance arrangements in regulations, rather than directly in legislation, to enable consultation without delaying the progress of the Bill;
  - b. The NRW Act establishes the National Repository Capital Contribution Fund, which is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Advice from the Department of Finance is that a special account is not an appropriate mechanism for providing funding to the Community Fund. Your agreement to the repeal of this provision is being sought. Agreement from the Minister for Finance and policy approval from the Prime Minister will be required for this measure; and
  - c. Minor administrative amendments were proposed to close the nomination process and place a time limit on compensation claims. Further analysis has revealed a level of complexity and potential controversy that was not previously considered. For this reason, the department recommends that these amendments are not progressed.
4. <sup>s 42</sup> [REDACTED]
5. This schedule will enable you to make a site selection declaration and acquire property by mid-2020 (pending resolution of current litigation), to enable the National Radioactive Waste Management Facility (NRWMF) program of work to progress.

*Site specific legislation*

6. The department has also considered the potential for site-specific legislation, which would place the site selection decision in the hands of parliament, rather than an individual Minister.

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7. Two options have been considered:

- a. repealing the voluntary nomination and site selection framework under the NRW Act and inserting a new provision that specifies a particular site for a facility; or
- b. replacing the NRW Act with new legislation involving the acquisition of a particular site, rather than the current voluntary nomination framework.

s 42



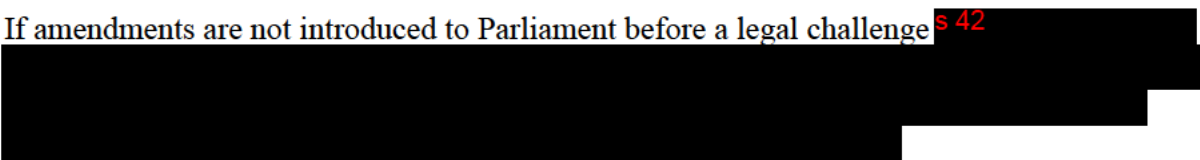
10. If progressed, site specific amendments would be recommended over replacing the NRW Act due to timing considerations. New legislation would take between 12 and 18 months to complete even if significant aspects of the current NRW Act were retained or adapted for a new site specific framework. Either option would require new policy authority from Cabinet.

11. Given the implementation risks outlined above, the department does not recommend progressing site specific legislation instead of the previously agreed amendments to validate the site selection process. However, if the current BDAC vs Kimba Council appeal in the Federal Court is protracted, or if BDAC makes a further appeal to the High Court, then it may be opportune to revisit the position. Further advice on the timing of appeals and implications of appeals to your site selection decision is provided in **MS19-001112**. An outline of the potential timing of decisions and legislative introduction is at Attachment C.

**Sensitivities/Risks:**

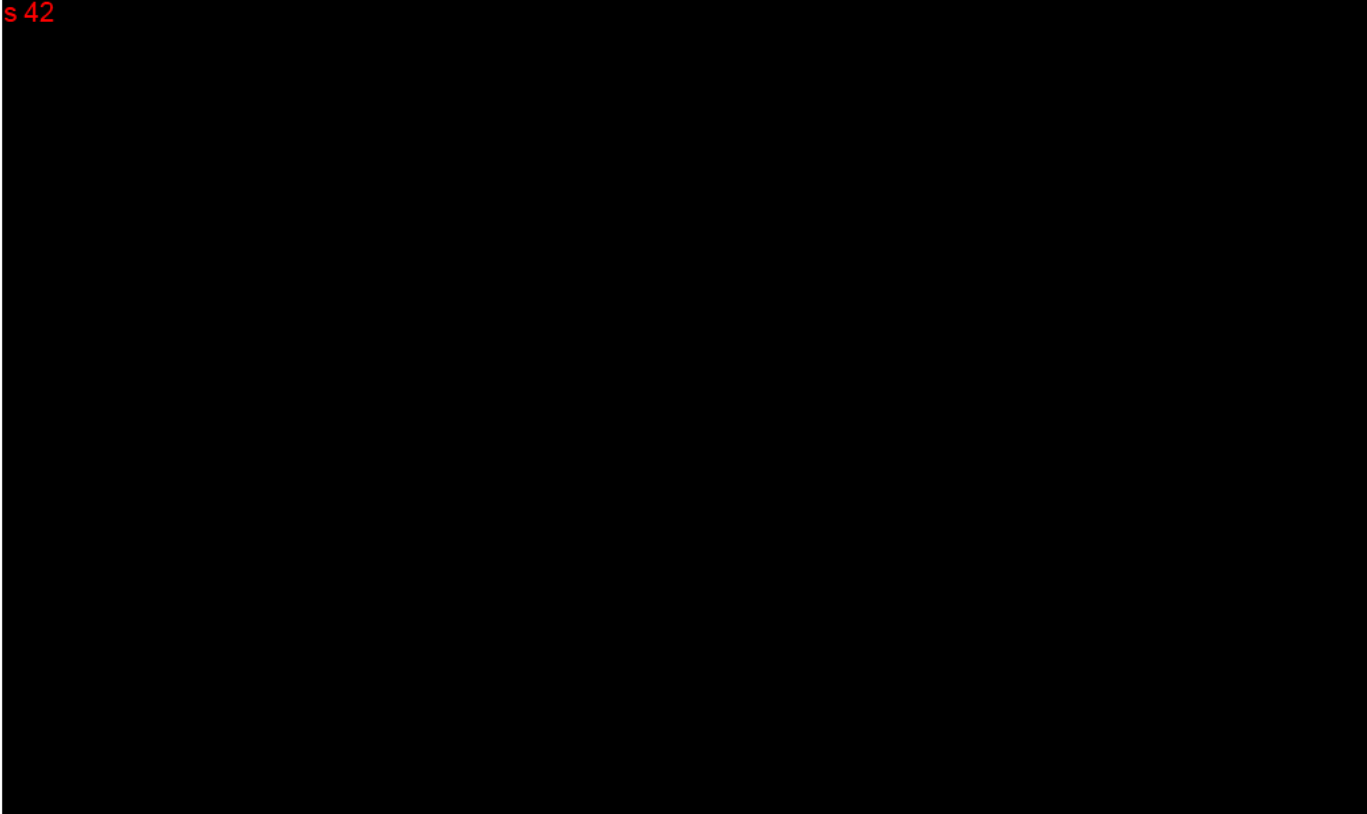
12. The proposed NRW legislation package may be referred to a Senate Committee for inquiry. If the Bill is referred it may unnecessarily delay the passage of the legislation, and delay the site declaration process. OPC have indicated it may be advantageous for you to consider referral of the Bill to manage expectations regarding timeframes.

13. If amendments are not introduced to Parliament before a legal challenge s 42



**PROTECTED CABINET**

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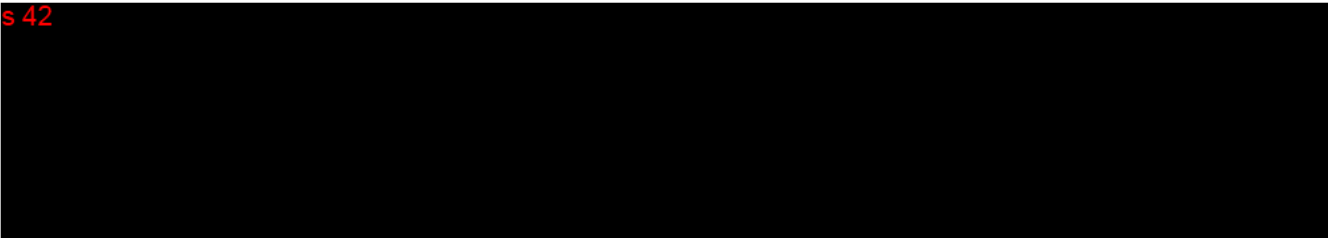
**Next steps:**

- 17. The department will provide you with a fully costed NPP to remove the requirement for the NRCC fee to be paid into the Community Fund (as amended) and a letter to seek policy authority from the Prime Minister for the NPP and the removal of the special account.
- 18. A letter will also be provided for you to write to the Minister for Finance to seek agreement for the removal of the special account.
- 19. Further issues may be identified throughout the drafting process, which may require additional policy authority. The department will brief you accordingly as these issues arise and will prepare requests for policy authority in accordance with advice from the Department of Prime Minister and Cabinet and the Department of Finance.

**Consultation:** Legal Audit and Assurance Branch, Department of the Prime Minister and Cabinet, Department of Finance, the Treasury, AGS and the Office of Parliamentary Council.

**ATTACHMENTS**

s 42



Clearance Officer:

Sam Chard  
General Manager  
National Radioactive Waste Management Taskforce  
Northern Australia and Major Projects Division

s47F [Redacted]

Contact Officer:

s47F [Redacted]  
Strategic Policy Section

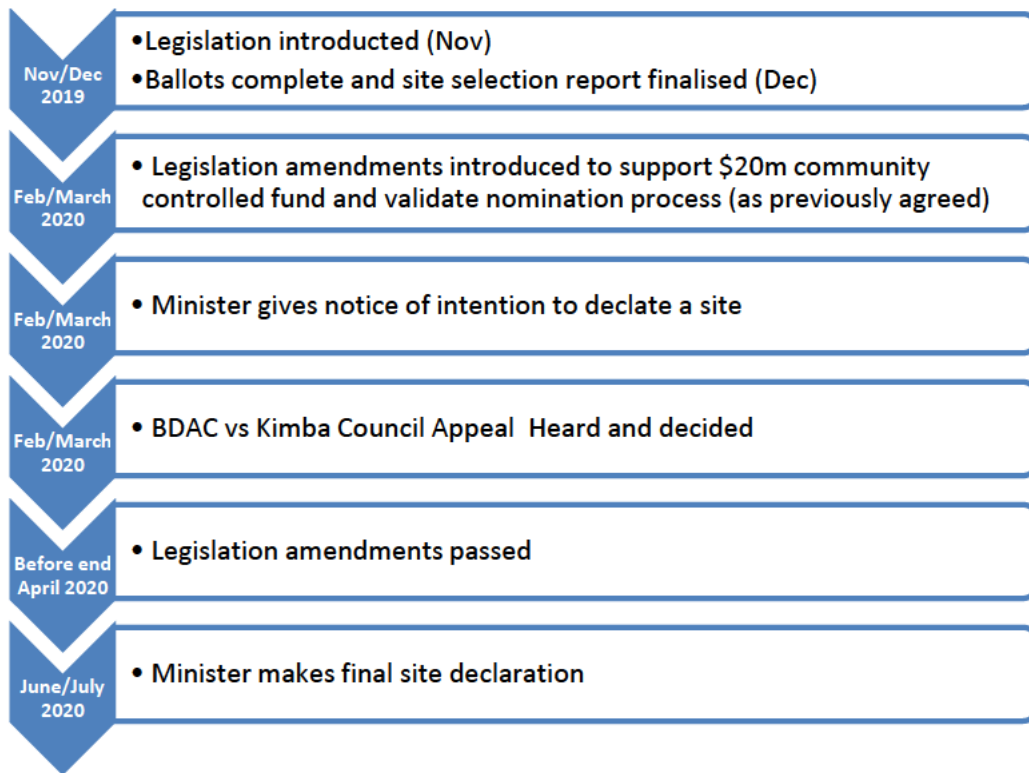
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MLO Version: 17/10/2019

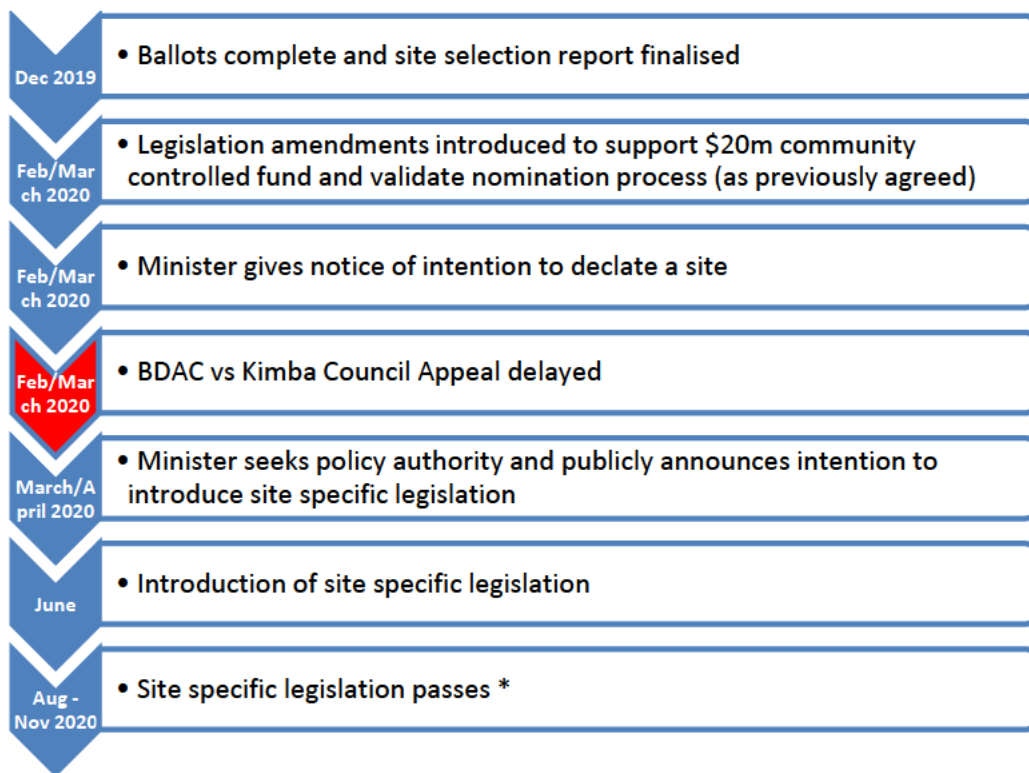
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**Potential process and timeframe if BDAC vs Kimba Council appeal is expedited**



**Potential process and timeframe if BDAC vs Kimba Council appeal is protracted**





**Status of legislative amendments in the *National Radioactive Waste Management Amendment (Community Fund and Other Measures) Bill***

s 42

Implementation of \$20 million Community Fund

2. Cabinet's decision of 10 July 2019 (MT18-0409) provides policy authority to revise the scope and delivery of the existing \$10 million National Repository Capital Contribution Fund (NRCCF) to a \$20 million National Radioactive Waste Management Facility (NRWMF) Community Fund to focus on the long-term social and economic sustainability of the NRWMF host community. This authority also requires you to seek agreement on the type of entity to be established and the associated governance and implementation arrangements from the Prime Minister, the Treasurer and the Minister for Finance.

*Community controlled entity*

3. The department has considered a number of potential types of entities that would meet the requirements of being community controlled while balancing the need for appropriate oversight of the use of public monies under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). This includes a Trust, a Company Limited by Guarantee, a community established entity such as an incorporated or not-for-profit entity or an entity established with the assistance of Regional Development Australia.
4. There is a preference to consult with the community about the nature of the entity. Preliminary, high level consultation is planned at the upcoming Kimba and Barndioota Consultative Committees, however, further consultation is recommended. Given the timing constraints for the introduction of the legislation, the department recommends progressing amendments that allow for the establishment of a non-Commonwealth entity, with specifics to be settled in regulations.
5. This approach provides the benefit of appropriate messaging to the communities involved, insofar as it will give effect to the government's commitment to the community controlled fund, while also providing for necessary consultation with the relevant community, local and state or territory government and other relevant Commonwealth agencies. This will also provide sufficient consideration of the best structure to support the community fund, noting that the funding will not be available until the facility receives its operating licence, expected in 2027.

6. s42

*Fee related to the National Repository Capital Contribution Fund (NRCCF)*

7. The NRWM Act currently requires non-Commonwealth and non-host state and territory users of the NRWMF to pay a fee to contribute towards the capital costs of the facility before being eligible to use the facility (the Capital Contribution Fee). The manner in which the fee must be paid is to be prescribed by regulations, which have not been made to date. The NRWM Act further requires that amounts in excess of \$10 million received by the Commonwealth be paid into the NRCCF special account. These provisions were made to facilitate the planned Northern Territory site acquisition, which was being pursued at that time.



8. Although these amendments would abolish the NRCCF special account and replace it with the NRWMF Community Fund, it is not proposed that amounts received by way of the Capital Contribution Fee be directed to the new fund. This is because it would be inconsistent with the policy intent of the implementation of a community controlled entity and any potential future charging regime for the use of the facility.
9. You previously agreed to an amendment to remove the provisions requiring a fee from the legislation (MS19-000642 refers) and sought approval from the Prime Minister. However, in light of subsequent advice from the Department of Prime Minister and Cabinet that the removal of the fee from the legislation could have a future impact on the Budget, the Prime Minister has requested you write again with a fully costed proposal in relation to the removal of the fee (MC19-003438 refers).
10. Given the uncertainty of whether a charging regime to offset costs associated with the establishment and /or operation of the NRWMF will be implemented, it is recommended that the provisions enabling a Capital Contribution Fee to be prescribed in the future remain and that there be no requirement for that fee to be redirected to the NRWMF Community Fund. This fee would instead be paid into the Consolidated Revenue Fund.
11. This approach will still have the desired effect of eliminating any community expectations that any future payments by non-Commonwealth and non-host state and territory users of the facility will be credited to the NRWMF Community Fund, while retaining the fee mechanism for future use in the legislation.
12. It is anticipated that any fees associated with the use of the facility by waste holders will be considered by Cabinet in the 2020-2021 Budget context as part of a potential charging regime.
13. The Australian Government Solicitor (AGS) has advised <sup>s42</sup> [REDACTED]
14. The department is developing a New Policy Proposal to enable Capital Contribution Fees to be paid into consolidated revenue and, if agreed, to seek policy authority from the Prime Minister via letters.

*Removal of special account*

15. The NRW Act establishes the NRCCF, which is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). A special account is a legislative mechanism which notionally sets certain amounts aside for certain prescribed purposes.
16. <sup>s 42</sup> [REDACTED] advice from the Department of Finance is that a special account is not the appropriate mechanism for the provision of this funding as the Commonwealth will be the sole provider of the money appropriated for the Community Fund. The department will work with the Department of Finance to determine the appropriate payment mechanism for providing funding to the Community Fund.
17. Agreement to repeal the provisions establishing the special account is required from the Minister for Finance in addition to policy authority from the Prime Minister.
18. Accordingly, and subject to your approval, the department will include repeal of the provisions establishing the special account from the legislation in the letter seeking policy authority from the Prime Minister referred to above and a separate letter to the Minister for Finance.

Closing of nominations processes

19. You agreed to amendments to enable the closure of the land nomination process under section 7 of the NRW Act to mitigate any ongoing need to consider new nominations once a site has been declared (MS19-000642 refers). <sup>s42</sup> [REDACTED]
20. Formally closing the nomination process raises issues with the desirability of re-opening the nomination process to allow for circumstances where the land acquired under section 14 of the NRW Act no longer meets the requirements for the establishment of a facility.
21. This may occur where unforeseen technical issues with the acquired land lead to regulatory or environmental approvals not being able to be obtained and it was desirable to only consider previously approved land nominations, rather than starting a new land nomination process. This could include where:
- there is a technical impediment preventing the declared site from progressing to construction
  - the declared site fails to receive a licence (in the event that the failure can't be rectified), or
  - a significant heritage find is identified on the declared site.
22. Such an amendment would operate separate to a new voluntary nomination process under section 6 of the NRW Act, however, it raises issues with the interaction of section 5 of the NRW Act that enables a Land Council to nominate Aboriginal land prior to the opening of a general nomination process. Currently, the Minister is unable to approve Aboriginal land nominated by a Land Council after the opening of a general nomination process, meaning that consideration of Aboriginal land is given preference to any other land nominations.
23. Were amendments made to enable the nomination process to be formally closed, re-opened for previously approved nominations, or for a new general nomination process to be started, there is a risk that there would be criticism of not enabling Land Councils to nominate Aboriginal land either before or during the general nomination period.
24. Given the complexity and potential for controversy of this amendment, it is recommended that it not progress at this time. If the current nomination and declaration process was unable to be finalised, amendments could be made to improve the existing provisions as part of a broader legislative package at that time.

Amendments to impose time limits on compensation provisions

25. The department seeks your agreement to no longer pursue this amendment at this time.
26. You previously agreed to amendments to reduce the Commonwealth's compensation liability under the NRW Act, by imposing a time limit for interested parties to seek compensation claims against the Commonwealth. It was also aimed at reducing the risk of additional compensation claims by nominators not selected to host the facility. (MS19-000642 refers).

s42 [REDACTED]

28. The department has explored options for achieving the policy intent of time-limiting compensation claims, including exploring the utility of imposing time limits similar to existing provisions in Australian legislation. For example, the *Lands Acquisition Act 1989* (Cth), which does not prescribe time bars on compensation claims for compulsory acquisition of land, but does apply a three year time limit on claims for the temporary entry and occupation of land. The *Lands*

*Acquisition (Just Terms Compensation) Act 1991* (NSW) provides for compensation to be held in trust for up to six years to allow for persons with a right or interest to make a compensation claim within that time.

29. AGS advice indicates <sup>s42</sup> 

30. For these reasons, the department does not recommend proceeding with these amendments. A copy of the AGS advice is at **Appendix 3**.

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PRIME MINISTER

Reference: MC19-052956

30 SEP 2019

Senator the Hon Matthew Canavan  
 Minister for Resources and Northern Australia  
 Parliament House  
 CANBERRA ACT 2600

Dear Minister

Thank you for your letter dated 20 August 2019 seeking policy approval for a package of amendments to the *National Radioactive Waste Management Act 2012* (the Act).

I agree to your proposal to repurpose and rename the National Repository Capital Contribution (NRCC) Fund to become the National Radioactive Waste Management Facility (NRWMF) Community Fund. <sup>s 42</sup>

<sup>s 42</sup>

Given community sentiment towards the NRWMF, please work closely with my Office on handling these amendments and ensure the time limits for compensation claims are reasonable and in line with community expectations.

I do not agree to your proposal to remove the NRCC fee at this time. Instead, I ask that you write again with a detailed and fully costed proposal in relation to the NRCC fee.

Thank you for working closely with both the Hawker and Kimba communities through the community ballot process and towards site declaration. Please continue this good work.

I have provided a copy of this letter to the Treasurer, the Hon Josh Frydenberg MP, the Minister for Finance, Senator the Hon Matthias Cormann, and the Attorney-General, the Hon Christian Porter MP.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Morrison'.

SCOTT MORRISON

Parliament House CANBERRA ACT 2600  
 Telephone (02) 6277 7700  
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