

Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: economics.sen@aph.gov.au

9 April 2020

Submission on the *National Radioactive Waste Management Amendment (Site Specification, Community Fund and Other Measures) Bill 2020 [Provisions]*

Dear Members,

1. The Australian Conservation Foundation Inc would like to thank you for the opportunity to make a submission on the *National Radioactive Waste Management Amendment (Site Specification, Community Fund and Other Measures) Bill 2020 (Bill)*.
2. The Australian Conservation Foundation Inc (ACF) is Australia's oldest national environmental organisation, founded in the mid-1960s with the support of eminent Australians, the Australian community and the Australian Government. ACF is strictly non-partisan and we are proud of our political independence. Over the past 50 years our independent advocacy has helped drive extraordinary commitments from governments of all political persuasions as well as from business and communities. Since its creation some 50 years ago, ACF has been the leading national advocate for the environment. ACF protects, restores and sustains Australia's environment through research, consultation, education, partnerships and advocacy.
3. ACF welcomes the opportunity to comment on this important national issue and the Bill's proposed amendments to the *National Radioactive Waste Management Act 2012 (Act)*. ACF would welcome the opportunity to orally address the Committee on this issue.
4. Nuclear waste from the Commonwealth's nuclear facilities should be managed safely for the long-term in accordance with international best practice, legal requirements and a clearly articulated economic need. This Bill's proposed selection of the Kimba Site for a new national radioactive waste management facility, together with the plethora of other amendments to the Act, fails to demonstrate safe long-term management, international best practice or demonstrated need. The Bill should be abandoned.

5. There has been no compelling public health, radiological or national interest case made for the planned facility. Extended interim storage at existing federal facilities is possible, prudent and – coupled with a public options analysis - far more likely to realise a lasting solution to our radioactive waste management challenge.
6. Whilst the Bill principally seeks to impose the site selection decision of the Kimba site by enshrining it in law, ACF's concerns about the Bill go beyond mere site selection. In particular, we note a significant change to the definitions of the legislation which will have the effect of enabling private operators to dispose of nuclear waste to this site (as opposed to restricting this to Commonwealth entities as is currently the case). This is both alarming and premature, given that there has been no public debate within Australia as to nuclear power generation in recent times and would therefore seem to be putting "cart before horse" in terms of opening the site to other operators to dispose of radioactive waste.

Executive summary

7. ACF's key concerns with this Bill are as follows:
 - a. **Process and inadequate consultation:** The Bill overrides existing legislation that currently provides for an administrative process for site selection (the Act) and supplants it with a political decision on site selection. By so doing, the Kimba site is selected as "law" and judicial scrutiny of the site selection process that would ordinarily apply for those people affected by the proposal is removed. Not only is this unfair, and contrary to previous government statements about the process that would be adopted, it is deeply concerning that the Government has sought to extinguish well established legal protections of judicial scrutiny of government actions through this Bill. This is particularly the case in light of defects in the consultation process to date and the impacts on the Aboriginal community, upon whom this political decision will be imposed. The Committee should take no comfort that the Aboriginal community or other stakeholders has been properly consulted and should resist legislation that harms the rights of Australia's first peoples and provides no opportunity for natural justice.
 - b. **No proven economic or public health rationale** for the selection of this site.
 - i. There is no justification for the cost or risk of double-handling radioactive material, in particular, for moving it long distances interstate from a site



- of high security best practice storage, to a private site with unknown safety and security protocols;
- ii. There is no information about transport corridors by which the radioactive waste will be transported, and thus the impacts on communities affected along those transport corridors. This should have been an essential part of the site selection process;
 - iii. There is no criteria for waste acceptance at the site;
 - iv. There is a significant lack of clarity for any reasonable reader of the Bill as to the particular land proposed for the site and additional land – no map is provided. This lack of clarity is deeply concerning as it prevents proper scrutiny of the Bill;
 - v. The Kimba site is not proximate to the site of generation of the majority of nuclear waste (NSW) proposed to be disposed of at Kimba;
 - vi. With respect to the purported need for medical waste disposal, medical waste already appropriately managed - The Bill, and approach of the Government is misguided with respect to medical waste handling.
- c. **Exclusion of key laws that protect Australians** - The Bill purports to exclude the operation of State and Federal legislation by regulation. This provides no clarity on which laws are to be disapplied and what the impacts on public health and safety would be. The removal of State and Federal laws potentially stops operation of safety laws and transport safety laws in all jurisdictions through which radioactive waste must travel and also key state-based planning, environmental impact assessment and environment protection laws in South Australia, which operate to protect the environment and people and ensure sustainable development. Once again, there is no clarity in the Bill as to which laws may be excluded from operation – no list is provided;
8. **Inconsistent with international best practice** - The selection of the site does not accord with nuclear standards or international best practice;
9. **Acceptance of waste from private sector** - The Bill expands the scope of radioactive waste to non-Commonwealth entities. This is a significant departure from previous Government policy and opens the flood gates to nuclear waste storage from private entities. There has been no public debate on this issue.
10. Section I provides detailed submissions on the above.

Detailed submissions on the Bill

Process and inadequate consultation

Process

11. This Bill seeks to circumvent the existing national law on site selection. It removes an existing right of judicial review for persons affected by the proposal (by dint of the fact that the site is selected as a matter of law, not an administrative decision).
12. This is deeply concerning as a matter of public policy and in ACF's opinion, inconsistent with international best-practice.
13. The 2001 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) provides that members of the public should have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene law relating to the environment. Whilst Australia is not a signatory to this Convention, this standard that is widely adopted in international law and the process by which this Bill seeks to circumvent a judicial review process is therefore inconsistent with international best practice.

Inadequate consultation

14. In addition, ACF is concerned by the inadequate consultation in this matter.

Broader consultation on the need for a facility

15. Firstly, the broader "consultation" process in relation to a national radioactive waste facility has been flawed for numerous years. The Federal Government's apparent fixation on the pursuit of one management model (namely a national radioactive waste facility) at the exclusion of other management options, has resulted in a history of flawed decision-making and legal challenges, as summarised in Appendix A. This history is important and needs to be recognised, not replicated. The search for a site has developed such institutional momentum that advancing this has become an end in itself. This has seen the search for a postcode to host a national facility prioritised over any evidence-based assessment of whether a national facility is needed or if the proposed federal model is the best management option.

16. Radioactive waste management is a complex policy arena. It involves long-lived wastes that pose a significant intergenerational legacy and burden. The material is hazardous with important safety, security and risk considerations and related technical, financial, regulatory and political complexities and costs. The difficulty of the issue is heightened by the long-term nature of the material and the fact that any decision may compromise other future management or development options.

Consultation on the Kimba Site

17. Secondly, the consultation process in relation to the specific site at Kimba has been astonishingly flawed over recent years and the Committee should take no comfort that the site selection has been appropriately consulted upon.

- a. This Bill is a u-turn on earlier Government Gazettal statements, which stated that the site selection would proceed by way of the process under the Act;
- b. Whilst purportedly consulting on the site selection process, the Federal Government was in fact preparing this legislation, which brings in to question any reliance that should be placed on purported earlier consultation;
- c. There has been no meaningful engagement of affected:
 - i. Aboriginal peoples;
 - ii. Kimba grain growers;
 - iii. emergency services/first responders;
 - iv. wider regional communities;
 - v. communities along the transport routes between the facilities producing or currently storing nuclear waste and any new facility.
- d. This issue affects a far broader cohort than simply the local community at the possible site. All national stakeholders should have been consulted but have not been.

18. In relation to the proposed Kimba site, ACF notes that Kimba was initially excluded from the shortlist with the proponent observing strong levels of community opposition and concerns about community cohesion and noting that 'given the level of strongly held opposition, it remains an open question as to how much additional support could be garnered through further engagement'. Kimba was later re-added in a move that has exacerbated community pressures and discord and signalled to many in the community that for the Federal government "No" is perceived as 'not yet'.

Relevant considerations in relation to consultation

19. ACF notes that The UK Committee on Radioactive Waste Management (CORWM) found that community involvement in any proposals for the siting of long-term radioactive waste facilities should be based on the principle of volunteerism i.e. an expressed willingness to participate. CORWM identified the failure of earlier 'top down' mechanisms (often referred to as Decide-Announce-Defend).
20. It is generally considered that a voluntary process is essential to ensure equity, efficiency and the likelihood of successfully completing the process and that:

There is a growing recognition that it is not ethically acceptable for a society to impose a radioactive waste facility on an unwilling community

UK Committee on Radioactive Waste Management, 2006

21. Further:

Experience has shown that without this consent, the project will sooner or later be cancelled, stopped or indefinitely delayed – one way or the other

EU Nuclear Decommissioning Best Practice guidelines

22. There are clear communities of interest that are not geographically defined but who also need to be actively recognised and meaningfully engaged. This was recognised in the SA Nuclear Fuel Cycle Royal Commission finding that both 'broad social consent and specific community consent must be obtained for any new nuclear activity to commence in South Australia'.
23. The South Australian Royal Commission into the nuclear industry noted that radioactive waste management requires both social consent for the activity and advanced technical engineering to contain and isolate the waste. Of the two, social consent warrants in planning and development much greater attention than the technical issues.

Aboriginal community concerns

24. ACF's view is that a local vote on site selection does not constitute appropriate consultation on site selection.
25. This is particularly the case when Aboriginal stakeholders were substantially not included in that vote.
26. Further, when conducted, the AEC vote that had a return (56%) that was well lower than other figures previously floated by portfolio Ministers and Department representatives as indicative of broad community support (65%). This hardly meets the standard of "broad public support".
27. Native Title holders in the affected region have long opposed the current ballot process. The Barngarla Determination Aboriginal Corporation (BDAC) have taken legal action against the vote associated with the Kimba site selection process in the Federal Court. **The Federal Court determined that Barngarla people were neighbours at the Kimba site and were excluded from the ballot.** Whilst the approach to the vote under the SA Local Government Act was ultimately held to be non-discriminatory under national discrimination law, the Federal Court's judgment should not be taken as providing any comfort that the ballot, which excluded the Barngarla people, was a legitimate or appropriate way to "consult" with stakeholders or an endorsement that the vote means that consultation has occurred. The fact remains that the Barngarla people were substantially excluded from the vote.
28. Indeed, when asked, the community response was unanimous rejection – see their statement:

After being excluded from the Kimba Council ballot, the Barngarla Determination Aboriginal Corporation RNTBC ("BDAC") recently engaged Australian Election Company, an independent ballot agent, to conduct a confidential postal ballot of BDAC members regarding the National Radioactive Waste Management Facility ("NRWMF"). The ballot paper asked members:

Do you support the proposed National Radioactive Waste Management Facility being located at one of the nominated sites in the community of Kimba?

Of 209 eligible voters (all of whom are Barngarla native title holders), 83 cast valid "No" votes.

Zero "Yes" votes were returned.



This unanimous “No” vote demonstrates that there is absolutely no support at all within the Barngarla community for the NRWMF.

....

In light of this total rejection of the NRWMF by the Barngarla people, it is BDAC’s responsibility to continue to give voice to the profound concerns Barngarla traditional owners have regarding the NRWMF, and to take whatever steps are necessary to oppose the NRWMF being located on Barngarla Country.

29. ACF draws the Department’s attention to the profound inconsistency with the proposal to select the Kimba site in these circumstances and Australia’s international obligations:

“States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent”.

UN Declaration on the Rights of Indigenous Peoples (Article 29)

30. This concern alone should be reason enough not to further any consideration of this site.

No proven economic or public health rationale

31. This Committee must be satisfied that there is a need for a radioactive waste site at Kimba. ACF can find no reasonable basis on which the Committee could be so satisfied. The Federal Government has never proven the need for a site to be selected for disposal or management of radioactive waste at a location different to the generation sites of the Australian nuclear research facilities, nor has it adequately explored alternative management options.
32. The principle of ‘justification’ is a key part of any radiation safety approach. This requires that any decision that alters a radiation exposure situation should do more good than harm. ACF maintains that this foundation principle has not been realised in relation to the current federal plan.
33. Despite claims of a purported need for a site to dispose of radioactive medical waste, this facility at Kimba will not in fact remove waste from hospitals or medical

clinics, as these wastes are already managed by existing State and Territory waste management regimes.

34. Medical waste streams from ordinary medical activities and constitute Exempt Waste (EW), Very Short Lived Waste (VSLW) or Very Low Level Waste (VLLW) are not intended for disposal at the new facility in any event.
35. In fact, the vast majority of waste intended to be stored at the new facility is controlled and managed by just 4 Commonwealth agencies: CSIRO, ARPANSA, ANSTO and the Department of Defence, with only one percent or so held at State and Territory Government facilities. The Committee should be clear that this is not a facility that is required for management of “radioactive medical waste”.

No evidence of economic or public benefit

36. With regard to the specific site at Kimba, there is no credible rationale for the costs or risks for the double-handling of Intermediate Level Waste or for moving this from secured storage at a site with high institutional assets to one with lesser assets. ACF considers that there is no benefit to the long-term disposal of waste at any national site and the claimed project benefits have not been adequately tested or proven.
37. Please find the attached briefing paper on the case for extended interim storage of ILW at ANSTO to provide the time and certainty to ensure a proper deliberative and evidence-based decision on future management options. This approach is prudent, possible and far more logical in relation to radiological protection, informed and integrated decision making, and minimizing cost, unnecessary duplication and double handling.
38. As noted above, there has been inadequate project information – including in relation to waste acceptance criteria, transport methods and routes, who would manage any facility to provide any comfort that the economic benefit of the project stands up, or will in fact deliver any benefit at all, which is absurd given the risks.

Risks to grain producing region

39. ACF also notes that Kimba is an important grain producing region. The National Health and Medical Research Council 1992 Code of practice for the near-surface disposal of radioactive waste in Australia lists the following criterion (inter alia) for near-surface disposal of radioactive waste as follows:

“the site for the facility should be located in a region which has no known significant

natural resources, including potentially valuable mineral deposits, and which has little or no potential for agriculture or outdoor recreational use"

40. There has been sustained opposition of many Kimba grain growers to the selection of this site. The selection of the Kimba site is inconsistent with the Code of practice.

Exclusion of key laws that protect Australians

Exclusion of laws

41. The Bill purports to exclude the operation of State and Federal legislation by regulation. This provides no clarity on which laws are to be disapplied and what the impacts on public health and safety would be. The removal of State and Federal laws potentially stops operation of safety laws and transport safety laws in all jurisdictions through which radioactive waste must travel.
42. The Bill also gives power to exclude the operation of the key state-based planning, environmental impact assessment, heritage and environment protection laws in South Australia, which operate to protect the environment and people and ensure sustainable development.

Additional land

43. The declaration of a nominated site for a facility gives the Minister the right to acquire adjacent or related land required to access the declared site and may therefore affect the rights of other community members. Under the proposed amendments in the Bill, there is provision for additional land to be acquired for a range of ancillary purposes, such as grading roads or other works.
44. ACF is concerned that the impacts on those additional lands have not been properly considered and that the Bill will prevent this, if for example, heritage laws or flora and fauna protection laws are excluded. There is no rationale for suspension of heritage and environmental protection laws.

Conflict with South Australian laws

45. South Australia is the only jurisdiction currently being considered as a potential host for a national radioactive waste facility notwithstanding it has long-standing legislation banning the import, transport, storage and disposal of nuclear wastes, the *Nuclear Waste Storage (Prohibition) Act 2000*. This seeks "to protect the health, safety and

welfare of the people of South Australia and to protect the environment in which they live by prohibiting the establishment of certain nuclear waste storage facilities in this State". The proposed facility is unlawful in South Australia and the conflict between the federal plan and existing state law undermines commitments to the principle of a volunteered site and non-imposition.

46. ACF has joined with thousands across South Australia in a call for the SA Government to defend this prudent law. Such initiatives will increase should the federal government seek to ignore the current state waste prohibition and advance the NRWM Project in its current configuration.
47. ACF notes the position adopted in October 2019 by SA Labor, particularly the commitment to 'defend the SA Nuclear Waste Facility (Prohibition) Act 2000'.

No Nuclear Waste Dump in South Australia

State Convention acknowledges that radioactive waste management continues to be a complex policy challenge that requires the highest level of transparency and evidence and that the current federal approach to site a national waste facility in regional South Australia is strongly contested.

Supports Traditional Owners and community members in the Flinders Ranges and Kimba regions of South Australia in their current struggle to prevent a nuclear waste facility being constructed in their region.

Acknowledge that Native Title holders in both affected regions in SA have taken legal and procedural action against their non-inclusion in the federal governments' community ballot

Calls for full transparency, broad public input and best practice technical and consultative standards during the current site nomination and selection process.

Expresses concern at the federal government's continuing focus on finding a single remote site for radioactive waste to be disposed (low level) and stored (intermediate level) to the exclusion of all other waste management options.

Reaffirms its support for the civil society call for the extended interim storage of federal wastes at federal sites pending a broad independent inquiry that examines all options for future responsible radioactive waste, transport and storage and management



Commits to support communities opposing the nomination of their lands or region for a dump site, and any workers who refuse to facilitate the construction and operation or transport and handling of radioactive waste material destined for any contested facility or sites including South Australian Port communities.

Commits to defend the SA Nuclear Waste Facility (Prohibition) Act 2000

Oppose the double handling of the intermediate level waste, currently produced and stored at Lucas Heights.

Inconsistent with international best practice or standards

48. Despite the remote or regional facility model, or the Kimba site, never having been subjected to independent analysis or any options review, the project is repeatedly promoted as being both consistent with international best practice and required to meet international obligations. Neither of these assertions is correct.
49. The Kimba site proposal relates to two types of radioactive waste: low-level waste (LLW) and long-lived intermediate level waste (ILW). Each has separate requirements for safe long-term management, yet, this Kimba site is proposed to be used for both waste types. There has been a conflation of two distinct waste management options, one (LLW) which is consistent with best practice, and one (ILW) which is not.
50. Relevantly, it is the management of higher risk waste which is inconsistent with best practice. It is proposed that ILW is transported a long distance from above ground interim storage where the vast bulk is produced and currently stored at ANSTO to above ground interim storage at a less secure, monitored and resourced facility in regional South Australia. There is no pathway, process or timeframe to identify a final disposal method or site for the ILW.

No net benefit

51. The National Health and Medical Research Council 1992 Code of Practice for the Near-Surface Disposal of Radioactive Waste in Australia requires that:

"No practice involving exposures to radiation should be adopted unless it produces sufficient benefit to the exposed individuals or to society to offset the radiological detriment it causes".

52. Similarly, section 41 of the ARPANSA Regulations (1999) lists matters the CEO of the

Australian Radiation Protection and Nuclear Safety Agency must consider in relation to a licence application, including: "Whether the applicant has shown that there is a net benefit from carrying out the conduct relating to the controlled facility." That requirement is also specified in subsection 32(3) of the ARPANS Act.

53. Net benefit has not been demonstrated in relation to a facility at Kimba.
54. There has been scant attention or assessment given to alternative radioactive waste management options and the absence of this fundamental pathway analysis is inconsistent with the evidence base required to demonstrate justification. The site selection at Kimba fails to satisfy this pivotal test.

Acceptance of waste from private sector

55. ACF's final concern with regard to the Bill is the proposed change to definitions which seek to remove the current restrictions relating to waste disposal being only from Commonwealth entities.
56. This proposed change is an unwarranted and goes well beyond legislation relating to mere site selection.
57. This change has not been made clear.
58. If passed would open the Kimba site to waste disposal from private entities, including potential future waste from future nuclear power facilities.
59. This particular amendment should be abandoned, particularly in light of the issues we have raised with regard to ILW proposed to be disposed of to this site and the inconsistency of management of ILW at the Kimba site with international and national best practice and standards.

Conclusion

60. The fundamental question that needs to be answered: what is the most responsible way to manage Australia's ILW in the absence of a proven disposal pathway?
61. The clear majority of Australia's radioactive waste is currently stored at two secured federal facilities at ANSTO and Woomera (SA). ANSTO has the capacity to continue storage of this material for many years and this allows an opportunity to re-calibrate the national approach to this issue with the extended interim storage of Australia's

highest-level wastes at ANSTO and a genuine assessment of longer-term management options.

A measured, transparent and evidence-based approach to radioactive waste management provides our best chance to achieve a credible and lasting result for us and all future Australians.

ACF urges the Committee to recommend the abandonment of the Bill and instead recommend the approach adopted in the attached report.

If you have any questions in relation to this submission or would like to invite oral submissions before the Committee, please contact Dave Sweeney on 0408 317 812.

Yours sincerely,

Dave Sweeney
Nuclear Free Campaigner
dave.sweeney@acf.org.au
P: 0408 317 812

Appendix A

Historical context to radioactive waste management:

1990/91 – around 2000 cubic metres of low-level contaminated soil moved from CSIRO in Fisherman’s Bend (Vic) to the Australian Nuclear Science and Technology Organisation’s (ANSTO) Lucas Heights nuclear facility in southern Sydney

1992 – NSW Land and Environment Court upholds Sutherland Shire Council application and orders removal of non ANSTO origin waste from Lucas Heights

1992 – Primary Industry and Energy Minister Simon Crean announces national radioactive waste repository site selection study

1998 – National repository study identifies the Billa Kalina region of north-central South Australia as the area for detailed site-specific investigation

1998 – ANSTO seek approval for construction of the current OPAL reactor and commits to progressively move Lucas Heights waste off site

2003 – Federal government acquires land for a site in northern SA. This is later quashed following a Federal Court objection and the government abandons SA site plans in 2004

2005 – Despite an earlier commitment to the contrary the Federal government identifies three Defence land parcels in the Northern Territory as possible waste sites

2007 – Muckaty Station north of Tennant Creek is added to the NT site list and becomes the primary federal focus

2012 – Resource Minister Martin Ferguson announces reprocessed waste returned from Europe will be stored at Lucas Heights due to delays with Muckaty plan

2014 – Muckaty site nomination withdrawn during Federal Court action and Minister Ian Macfarlane announces “I’ll throw it open to anyone in Australia who can provide me with a block of land free of dispute and challenge that is environmentally suitable”

2015 – National Radioactive Waste Management (NRWM) Project opens for nominations – six sites are short listed in November, including two in the Kimba region – Cortlinye and Pinkawillnie.

2015 - Waste returned from Europe moved into dedicated on site storage at ANSTO

2016 – April - NMRW Phase 1 Summary report identifies that majority of community submissions oppose the planned facility with “only around 20% supportive”

2016 – April - Barndioota site chosen for detailed federal site assessment – Kimba sites not advanced for further consideration

2016 – November - Minister Canavan approves revised guidelines and the Working for Kimba’s Future group seek to advance three new site nominations

2017 – Two new Kimba sites - Napandee and Lyndhurst added for consideration

2020 – Feb – Minister Canavan announces Napandee as the preferred facility site