

Schedule 2—Transitional provisions

1 Saving—nominations and approvals

- (1) Despite the repeal of Part 1A of the *Commonwealth Radioactive Waste Management Act 2005* by item 1 of Schedule 1, a nomination under section 3A of the old radioactive waste law continues in force, after the commencement time, as if it had been made under section 5 of the new radioactive waste law.
 - (2) Despite the repeal of Part 1A of the *Commonwealth Radioactive Waste Management Act 2005* by item 1 of Schedule 1, an approval under section 3C of the old radioactive waste law continues in force, after the commencement time, as if it had been made under section 9 of the new radioactive waste law.
 - (3) Section 3D of the old radioactive waste law, and the old ADJR Act, continue to apply, after the commencement time, in relation to a nomination or an approval continued in force by this item.
 - (4) Section 10 of the new radioactive waste law, and the new ADJR Act, do not apply in relation to a nomination or an approval continued in force by this item.
 - (5) To avoid doubt, section 18 of the new radioactive waste law, and the new ADJR Act, apply in relation to a declaration under section 14 of the new radioactive waste law that relates to an approval continued in force by this item.
 - (6) In this item:
commencement time means the time at which item 1 of Schedule 1 commences.
new ADJR Act means the *Administrative Decisions (Judicial Review) Act 1977* as in force immediately after the commencement time.
new radioactive waste law means the *National Radioactive Waste Management Act 2012* as in force immediately after the commencement time.
old ADJR Act means the *Administrative Decisions (Judicial Review) Act 1977* as in force immediately before the commencement time.
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Australian Government
Australian Safeguards and Non-Proliferation Office

File Number: 19/2045

26 September 2019

Ms Sam Chard
General Manager
NRWMF Taskforce
Department of Industry, Innovation and Science

Re: Permit to Establish for National Radioactive Waste Management Facility

Dear Ms Chard,

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What avenues, if any, would be available to members of the public to challenge a decision by ASNO to grant a permit to establish a facility or a permit to possess nuclear material? How could the risks of a legal challenge be mitigated?

ASNO has been advised that the following broad avenues for legal challenge to a decision to issue a permit under section 16A of the Act:

AAT Review: In addition to avenues available to the permit holder, section 22 of the Safeguards Act provides an avenue for parties who's interest are affected by the conditions and restrictions placed on the grant of the permit, rather than the grant itself.

Judicial Review – ADJR Act: Section 5 of the *Administrative Decisions (Judicial Review) Act 1977* provides that a person who is aggrieved by an administrative decision may apply to the Federal Court or the Federal Circuit Court on any one or more of a number of grounds.

Judicial Review – Original jurisdiction: An applicant may also seek judicial review of a decision in the High Court or the Federal Court, including seeking an injunction against the construction of the facility.

Please contact ASNO should you have any further questions regarding this advice.

Yours sincerely



Dr Stephan Bayer
Acting Assistant Secretary

Pesic, Sasha

From: Chard, Sam
Sent: Thursday, 28 November 2019 3:19 PM
To: s47F
Cc: s47F
Subject: RE: BDAC/IE handout [SEC=PROTECTED, DLM=Sensitive:Legal]

Security Classification:
PROTECTED Sensitive: Legal

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Thanks

Sam Chard

PROTECTED Sensitive: Legal

From: s47F s
Sent: Thursday, 28 November 2019 12:49 PM
To: Chard, Sam
Cc: s47F
Subject: FW: BDAC/IE handout [SEC=PROTECTED, DLM=Sensitive:Legal]

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Reasons - What I found

The former Act was the *Commonwealth Radioactive Waste Management Act 2005*. This was repealed by the current Act as at 4 April 2012. You asked about the reasons why our Act was amended. It wasn't, but I did check the reasons for the repeal, which are outlined in the [explanatory memorandum](#) for the National Radioactive Waste Management Bill (introduced 2010). The EM notes that the new Act focuses on volunteerism but also has a significant focus on improving procedural fairness, for example:

The current Act provides that no person is entitled to procedural fairness in relation to the key decisions to be made under the Act. The Bill will require the Government to accord procedural fairness in relation to such decisions. Key decisions under the current Act are not susceptible to review under the ADJR Act.

s47F

Parliamentary and Legal Coordination
National Radioactive Waste Management Project

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