

Questions for the Department of Environment and Energy – Kimba 6 August 2018

- a) **What role does the Dept of Environment play in the regulation of the facility and how will the EPBC Act come into play? How do people get involved?**
- b) **Can you please explain what role the Department of Environment plays in the Facility getting environmental approvals to be built?**
- c) **What role does the Department of Environment and Energy play in the siting of a National Radioactive Waste Management Facility? What role does the EPBC Act play in the siting of the Facility and how will the community be involved?**

Response to questions a. and b.

In addition to licenses the Facility will need from the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA; these licenses are discussed in responses to other questions), the Facility is likely to need assessment and approval under Australia's national environmental law, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

Under the EPBC Act, a person must not take an action that has, will have or is likely to have a significant impact on any of the matters of national environmental significance or other protected matters without approval from the Australian Government Minister for the Environment (the Minister).

The matters of national environmental significance include nationally-listed threatened species of flora and fauna, migratory species, internationally important wetlands and places of world and national heritage significance. For actions taken by Commonwealth agencies, and nuclear actions, the matter protected by the EPBC Act becomes the whole of the environment. The Facility meets the definition of a nuclear action under s.22(1) of the EPBC Act.

Before taking an action that could have a significant impact on a matter protected by the EPBC Act, the person proposing to take the action must refer the proposed action to the Minister. The Department of Industry, Innovation and Science has indicated the Facility will be referred to the Minister.

The referral process enables the Minister to determine whether or not a proposed action will need formal assessment and approval under the EPBC Act. During the referral period, the EPBC Act provides for a public comment period of 10 business days, and any person can comment on the proposal.

At the end of the referral period, the comments and the referral document inform the Minister's decision as to whether an approval is necessary and, if so, the type of assessment that must be undertaken.

If the Facility is likely to have significant impacts, it will be determined to be a 'controlled action' and it will require assessment and approval. For controlled actions, all types of assessments include a public consultation phase and, again, any person can comment on the detail about the proposed action.

The process for each type of assessment under the EPBC Act is summarised on the Department of the Environment and Energy's website: www.environment.gov.au/epbc/publications/environment-assessment-process-flowchart.

Following the assessment of a proposed action, the Minister must decide whether to: approve the action, approve the action subject to conditions, or not approve the action.

When deciding if a proposed action should be approved, and what conditions to impose (if any), the Minister will consider the impacts of the proposed action on matters protected by the EPBC Act and other economic and social matters. The Minister must take into account:

- a) the principles of ecologically sustainable development
- b) the outcomes of the assessment of the impacts of the proposed action
- c) the referral documentation
- d) community and stakeholder comment
- e) any other relevant information available on the impacts of the proposed action and
- f) relevant comments from other Australian Government and state and territory government ministers.

Response to question c.

The Department does not have a direct regulatory role, under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), in relation to the decision on whether and, if so, where to establish the Facility.

The Department of Industry, Innovation and Science has publicly indicated its intention to refer a proposal for the Facility to the Minister for consideration in 2019, if/once a specific location for the Facility has been selected.

As noted in answers to questions a. and b., once the referral is received by the Department, the Department will then consider the potential for a significant impact on 'the environment'.

Questions for the Department of Environment and Energy – QUORN 7 August 2018

d) Nuclear actions are a trigger issues under the EPBC Act. What does this mean for the facility?

Response to question d.

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is Australia's national environmental law. Under the EPBC Act, a person must not take an action that has, will have or is likely to have a significant impact on any of the matters of environmental significance or other protected matters without approval from the Australian Government Minister for the Environment (the Minister).

In the case of nuclear actions, the matter protected by the EPBC Act is the whole of the environment.

Subsection 22(1) of the EPBC Act defines what 'nuclear actions' are for the purposes of the Act; the definition includes:

- a) ...
- b) transporting spent nuclear fuel or radioactive waste products arising from reprocessing;
- c) establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;
- d) ...
- e) establishing or significantly modifying a large-scale disposal facility for radioactive waste;
- f) de-commissioning or rehabilitating any facility or area in which an activity described [above, in b., c. or e.] has been undertaken
- g)

If the construction and operation of the Facility is found to be a nuclear action that could have a significant impact on the environment, it will be determined to be a 'controlled action' that will then require assessment and approval under the EPBC Act before it could proceed.