

DEPARTMENT OF INDUSTRY, SCIENCE AND RESOURCES

MS23-001217

To: Minister for Resources (For Decision)

NATIONAL RADIOACTIVE WASTE MANAGEMENT FACILITY (NRWMF) – JUDGEMENT
APPEAL CONSIDERATIONSTiming: By 10 August 2023^{s42}

s42

Recommendations:			
1. That you decide whether to appeal the Federal Court judgement by 10 August 2023.			
			Appeal / <u>Not appeal</u>
2. ^{s47C}			
Minister:  ^{s47C}			Agree / <u>Not agreed</u> Date: 7.8.23
Comments			
Clearing Officer:	Anthea Long	Division Head, Mineral & Resources Division	Anthea: ^{s22} ^{s22}
	Sam Usher	CEO, ARWA	Sam: ^{s22} ^{s22}
Contact Officer:	^{s22}	Manager, Radioactive Waste Policy	Ph: ^{s22} Mob
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Date Submitted to the Minister's office in PDMS:			01/08/2023

Key Points:

1. On 18 July 2023, the Federal Court of Australia (Justice Charlesworth) set aside the declaration of the former Minister for Resources, the Hon Keith Pitt MP, to select the site for the NRWMF under s14(2) of the *National Radioactive Waste Management Act 2012* (NRWM Act 2012).
 - a. The Court found in favour of the Applicants (the Barngarla Determination Aboriginal Corporation (BDAC)) on the apprehended bias ground because it was satisfied a fair-minded observer might reasonably apprehend the former Minister for Resources might not have had an open mind at the time that the Decision was made.
 - b. All other grounds (both under constitutional law and by way of judicial review) were rejected.