

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Department of Industry, Science, Energy and Resources

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

30 June 2020

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

TOPIC: Decision making process; Advice on legislation; Advice to Minister on Judicial Review; Letters between the PM and Minister on the old and new act

REFERENCE: Question on Notice (Hansard, 30 June 2020, Page number 35)

QUESTION No.: 3

Senator McALLISTER: I'm trying to understand the process of decision-making to move from one process to another. Is it your indication that the first time this was raised or contemplated was in conversations between the minister and the community?

Ms Chard: It was raised in conversations that the minister had with the department, and subsequently—

Senator McALLISTER: Right. So the first time was, in fact, in a conversation with the department, not in a conversation with the community.

Ms Reinhardt: I think we'd have to take that on notice. Certainly, the previous minister, Minister Canavan, had made it very clear that he felt this was a significant decision and his preference was for parliament to consider it.

Senator McALLISTER: I'm trying to understand whether he sought advice before making that public commitment.

Ms Chard: We'd need to take that on notice.

QUESTION No.: 4

Senator McALLISTER: When did you first provide advice about legislation as an alternative pathway to decision-making under the act?

Ms Chard: We'd need to take the specific timing on notice—some time in 2019.

Senator McALLISTER: Some time in 2019. Was that in the form of a brief?

Ms Chard: We'd need to take that on notice.

QUESTION No.: 5

Senator McALLISTER: That doesn't answer my question. Have you provided the minister with advice about the risks or prospects of a party seeking judicial review of a decision under section 14 for this site?

Ms Chard: The department provides the minister and respective ministers with a range of advice around a range of legal risks that the program might be exposed to, and that would have included risks around the potential for a judicial review.

Senator McALLISTER: Thanks, Ms Chard. When was that advice provided?

Ms Chard: Advice would have been provided at some time through the course of the program. I'd have to take on notice specific dates.

Senator McALLISTER: Please provide, on notice, the dates on which the minister was briefed on the risks that a party would seek judicial review of a decision. Who made the decision to proceed via legislation?

Ms Chard: The decision to proceed via legislation was made by the government and Minister Pitt when the legislation was introduced into parliament.

Senator McALLISTER: When was the decision made?

Ms Chard: The decision was made in 2019.

Senator McALLISTER: There is a formal decision, at which point the government policy changes. Who made the decision? Was it the minister, or did it go to cabinet?

Ms Chard: We could take that on notice, but that would be discussing cabinet deliberations.

Senator McALLISTER: Ms Chard, it would not be discussing cabinet deliberations. It is absolutely appropriate, particularly once a decision has been announced—as this one has been—for you to describe the timing of cabinet consideration of matters. I am asking, in the first instance, a process question. Was it a decision of cabinet, or was it a decision by the minister?

Ms Chard: I'd need to take that on notice. I can't quite recollect if it was a decision of cabinet or an exchange of letters between ministers.

Senator McALLISTER: Chair, we are going to need answers to these questions, and so far the department has been unable to provide very much information at all about the core elements at the heart of this process. I'm just indicating that, from my perspective, either there are satisfactory answers provided on notice or we're just going to have to come around again. These are things that need to be dealt with properly.

CHAIR: The officials do have the right to take questions on notice. Where they have done so, the committee obviously expects them to come back with the information.

QUESTION No.: 6

Senator PATRICK: Just some follow-up from Senator McAllister. The letters that may exist between the minister and the Prime Minister and/or other ministers relating to the decision to switch from the old act to the new act—can you please provide those to the committee on notice?

Ms Chard: Yes.

Senator PATRICK: And also the briefs that might have been associated with the need to go to, or the desire to go to, this new legislative pathway, in particular any brief related to the risk of judicial review.

Ms Chard: Yes.

ANSWER

Over the life of the program the department has briefed respective Ministers on risks to the National Radioactive Waste Management Facility development associated with judicial review.

On 31 July 2019, the department provided a brief to the former Minister for Resources and Northern Australia, the Hon Matthew Canavan, which also noted the potential to specify a site in the *National Radioactive Waste Management Act 2012* (the Act).

On 20 August 2019 the Minister wrote to the Prime Minister seeking amendments to the *National Radioactive Waste Management Act 2012* (the Act).

On 21 and 22 August 2019, at community forums in Kimba and Hawker, Minister Canavan indicated that Parliament would have a role in the site selection decision making process.

On 30 September 2019, the Prime Minister responded to the Minister's letter of 20 August 2019. On 17 October 2019 and on 4 November 2019, the department provided further briefs to the Minister on potential amendments to the Act.

On 8 November 2019, the Minister wrote to the Prime Minister seeking policy authority to develop legislative amendments.

It is a longstanding practice not to disclose information about the operation and business of the Cabinet, including if or when a matter went to Cabinet, as to do so could potentially reveal the deliberations of the Cabinet, which are confidential.

The department has identified three briefs, including attached letters, and a stand-alone letter from the Prime Minister that the department can provide to the Committee on a confidential basis, as they contain deliberative advice to Government including legal advice.

The documents also contain sensitive information, which would not be in the public interest to reveal, and which has been redacted. This includes information that is legally privileged and/or part of the policy deliberations of Cabinet.