



Nuclear-based science benefiting all Australians

23 July 2015

Committee Secretary
Community Affairs Legislation Committee
community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Re: Inquiry into Australian Radiation Protection and Nuclear Safety Amendment Bill 2015

Please find attached the Australian Nuclear Science & Technology Organisation's (ANSTO) submission to the Community Affairs Legislation Committee's inquiry into the *Australian Radiation Protection and Nuclear Safety Amendment Bill 2015*.

We would like to thank the Committee for the opportunity to contribute to this important inquiry. Additionally, ANSTO is happy to provide a representative if invited to give evidence at a public hearing.

Please do not hesitate to contact me if the Committee has any questions regarding this submission.

Yours sincerely,

Dr Adi Paterson
Chief Executive Officer

ANSTO SUBMISSION

AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY AMENDMENT BILL 2015

The Australian Nuclear Science & Technology Organisation (ANSTO) is custodian of Australia's operational nuclear science and technology expertise. As the operator of the OPAL nuclear research reactor, the Australian Synchrotron and the Centre for Accelerator Science (all of which are subject to regulation under the *Australian Radiation Protection and Nuclear Safety Act*), ANSTO is at the forefront of innovation for the benefit of public health, industry and the environment in Australia. In addition to its world-class research capabilities, including partnerships and collaborations across Australia, ANSTO produces vital nuclear medicines which one in two Australians will rely on, in their lifetime, for the diagnosis and treatment of a range of diseases and cancers.

ANSTO welcomes the Committee's invitation to comment on the *Australian Radiation Protection and Nuclear Safety Amendment Bill 2015*. Whilst ANSTO is subject to regulation by more than 20 individual bodies, ARPANSA is our primary nuclear safety and radiation protection regulator and it shares nuclear security regulation with the Australian Safeguards and Non-proliferation Office. Any changes to ARPANSA's functions and powers are obviously of great interest to ANSTO. This submission details ANSTO's key points of interest regarding this legislation.

1. Proposed changes to the powers of the ARPANSA CEO during an emergency

ANSTO notes the proposed amendment to section 41 of the Act dealing with the power of the CEO to give written directions to controlled persons. This amendment:

- Expands the operation of the provision so that the CEO of ARPANSA can issue written directions to licence holders even in the absence of non-compliance with the legislation or licence conditions during emergency situations; and
- Allows the CEO to provide written directions to a controlled person requiring them to take actions in relation to a hazardous thing or to the controlled facility, material or apparatus.

ANSTO notes that the Explanatory Memorandum reaffirms the internationally accepted principle of operator responsibility for safety and clearly sets out that the powers of the ARPANSA CEO would only be used in the most exceptional of circumstances:

"It is important to note that these amendments in no way shift responsibility or liability for safety – this continues to remain with the licence holders. The expanded directions power is not intended to undermine operator responsibility. The amendments simply expand the circumstances in which the CEO can issue directions to a licence holder where the CEO believes on reasonable grounds that there is a risk of death, serious illness, serious injury or serious damage to the environment arising from radiation in connection with a controlled facility, material or apparatus. It is not envisaged that the power would be exercised in other than exceptional circumstances, and its exercise will not be inconsistent with the implementation of the licensee's approved emergency plans and arrangements." (Page 11)

ANSTO understands that any future decision by the regulator as to whether there is a need to invoke the powers set out in this section will be taken in the context of that explanation, which reaffirms the principle of operator responsibility for safety. Operators have an intimate knowledge of their facilities and how to manage them during an emergency, as well as the practiced emergency operations experience. In the very unlikely event of a major emergency at one of ANSTO's sites, it would be important that the public and emergency management stakeholders know unequivocally that ANSTO and designated emergency response organisations have responsibility for the implementation of the relevant emergency plans.

The text of the memorandum indicates that the CEO of ARPANSA cannot direct *specific* safety actions by the licence holder as this would indeed "shift responsibility" to ARPANSA. Since the direction given by the CEO could not reference a licence condition or indeed a regulatory requirement, for clarity, such directions should reference internationally accepted principles of nuclear safety or security.

The principle of operator responsibility for safety reflects international best practice, as developed under the auspices of the International Atomic Energy Agency (IAEA). In its Safety Standards Publication, *Fundamental Safety Principles*, the IAEA states that "*the prime responsibility for safety must rest with the person or organisation responsible for the facilities that give rise to radiation risk.*" This principle is also reflected in international safety treaties to which Australia is party, including the Convention on Nuclear Safety and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.

2. Proposed Reduction in time for a licence holder to request a review

ANSTO notes that the legislation proposes to reduce the time in which a licence holder can request a review of a decision made by ARPANSA's CEO or inspectors from 90 days to 28 days. This change occurs in sections:

- 40(2)(b) (Review of licence decisions);
- 42(2)(b) (Review of decisions by ARPANSA's CEO to give directions to controlled persons); and
- 80C (Review of improvement notice decisions)

ANSTO welcomes the inclusion of the following language on page 10 of the explanatory memorandum relating to this change:

"While a request for reconsideration must be made within 28 days, additional information may be provided to the decision maker on review, at any time during the period of reconsideration."

Considering the high level of detail and expert information that may be needed to inform a request to review a decision, this language provides the licence holder with the flexibility needed to avoid filing an incomplete submission.

3. Licensing of 'legacy sites'

ANSTO welcomes provisions contained in the Bill relating to the licensing of 'legacy sites' that require remediation. ANSTO notes the Bill achieves this in the following ways:

- By amending the definition of a controlled facility as set forth in section 13 of the *Act* to include a prescribed legacy site as a type of controlled facility; and
- Amending section 30 (1) of the *Act* to allow a controlled person to remediate a prescribed legacy site.

These amendments are welcome, as they provide a clear legal basis for the safe management of legacy sites. For example, ANSTO has responsibility for a legacy site adjacent to its Lucas Heights Campus, known as the Little Forest Legacy Site, which was previously used by the Australian Atomic Energy Commission. ARPANSA has licenced ANSTO to "*possess and control*" the site, but the legal basis for licensing any other action in respect of the site (such as any remediation which might be necessary in future) was unclear. This amendment will now allow ANSTO, as a controlled person authorised by an ARPANSA licence, to undertake necessary safe management activities at the site.