



## **Australian Government**

**Australian Government response to the  
Senate Foreign Affairs, Defence and Trade Legislation Committee  
report:**

**Inquiry into Australian Naval Nuclear Power Safety Bill 2023  
[Provisions] and Australian Naval Nuclear Power Safety (Transitional  
Provisions) Bill 2023 [Provisions]**

SEPTEMBER 2024

## Introduction

On 16 November 2023 the Deputy Prime Minister and Minister for Defence, the Hon Richard Marles MP, introduced the Australian Naval Nuclear Power Safety Bill 2023 [Provisions] and Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 [Provisions] (together, the ANNPS bills).

These bills are a significant legislative step in delivering a conventionally armed, nuclear-powered submarine capability for Australia under AUKUS, building on the Defence Legislation Amendment (Naval Nuclear Propulsion) Act 2023.

The legislation is specifically focused on ensuring Australia maintains the highest level of nuclear safety in respect of conventionally-armed, nuclear-powered submarines by establishing a new regulatory framework, including an independent regulator, to ensure nuclear safety within Australia's conventionally-armed, nuclear-powered submarine enterprise.

The Senate referred the ANNPS bills to the Senate Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 26 April 2024.

On 16 April 2024, the Senate Foreign Affairs, Defence and Trade Legislation Committee tabled a progress report requesting to extend the reporting date. The Committee subsequently tabled its final report on 13 May 2024.

The Government's response to the recommendations of the Report follows below. The Government thanks the Committee for its work on the bills.

## Government Response to the Senate Committee on Foreign Affairs, Defence and Trade Legislation

### Report:

### Inquiry into Australian Naval Nuclear Power Safety Bill 2023 [Provisions] and Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 [Provisions]

#	Recommendation	Government Response
1	The Committee recommends that the Government amend the [Australian Naval Nuclear Power Safety] Bill to provide that the eligibility criteria for appointment to the positions of Director-General or Deputy Director-General require a suitable minimum period of separation between appointment and any previous service in the Australian Defence Force or employment in the Department of Defence.	<b>Agreed</b>  The Government will amend the ANNPS Bill to provide that a person must not be appointed as the Director-General or the Deputy Director-General, if at any time during the period of 12 months ending at the start of the proposed period of appointment, the person was a defence staff member, which will include the Secretary of the Department of Defence, the Head of the Australian Submarine Agency and APS employees of the Australian Submarine Agency.
2	The Committee recommends that the Government amend the Bill to provide that, where a direction is given by the Minister to the Regulator under clause 105(1), the Minister is required to inform the Parliamentary Joint Statutory Committee on Defence, once established, of the nature and	<b>Agreed in-principle</b>  The Government agrees with the intent of this recommendation. The Government had intended for the Regulator to report to the Parliamentary Joint Committee on Defence, and introduced contingent amendments to the Defence Amendment (Parliamentary Joint Committee on Defence) Bill 2024 (PJCD Bill) to allow for this. The Government considers the PJCD would have been an important forum for ensuring Parliament is

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	<p>purpose of the direction. This is in addition to the tabling of a statement in each chamber informing the Parliament that a direction has been given which is already contained within the Bill.</p> <p>The Committee also recommends that the Bill be amended to provide that a private briefing be offered to the Parliamentary Joint Statutory Committee on Defence by the Regulator regarding the context of the direction. Where such a briefing occurs, the Joint Statutory Committee on Defence may consider the need for additional private briefings from stakeholders and receive them as determined necessary.</p>	<p>appropriately briefed on the activities of the Regulator with necessary security arrangements in place. It is therefore regrettable that, despite the bi-partisan recommendation of this Committee, Coalition Senators voted with Greens Senators to negative the PJCD Bill in the Senate on 4 July 2024. Should the Government decide to reintroduce the PJCD Bill, the Government will take this recommendation into account.</p>
3	<p>The Committee recommends that the Government consider amending the Bill so that a distinction is made between Australia's acceptance of low-level nuclear waste from AUKUS partners, but non-acceptance of high-level nuclear waste.</p>	<p><b>Agreed</b></p> <p>The Government supports this recommendation and notes the Government has stated that Australia will not be responsible for the storage or disposal of spent nuclear fuel from the United States, United Kingdom or other countries. To put the matter beyond doubt, the Government will amend the ANNPS Bill to clarify that nothing in the Bill is to be taken to authorise the storage or disposal in Australia of spent nuclear fuel that is not from an Australian submarine, which is not expected to occur until the 2050s.</p>
4	<p>The Committee recommends that the Bill be amended to establish an additional reporting relationship between the Regulator and the soon-to-be-legislated Parliamentary Joint Statutory Committee on Defence so as to</p>	<p><b>Agreed in-principle</b></p> <p>The Government agrees with the intent of this recommendation. The Government had intended for the Regulator to report to the Parliamentary Joint Committee on Defence, and introduced contingent amendments to the Defence Amendment (Parliamentary</p>

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	<p>ensure transparency with the Parliament concerning the Regulator’s activities and any accidents or incidents that might occur concerning naval nuclear power within its jurisdiction.</p>	<p>Joint Committee on Defence) Bill 2024 (PJCD Bill) to allow for this. The Government considers the PJCD would have been an important forum for ensuring Parliament is appropriately briefed on the activities of the Regulator with necessary security safeguards in place. It is therefore regrettable that, despite the bi-partisan recommendation of this Committee, Coalition Senators voted with Greens Senators to negative the PJCD Bill in the Senate on 4 July 2024. Should the Government decide to reintroduce the PJCD Bill, the Government will take this recommendation into account.</p>
5	<p>The Committee recommends that the Government consider directing the Regulator, through regulatory instrument, to establish consultation committees comprised of relevant local stakeholders, such as state and local governments, to inform its work.</p>	<p><b>Agreed</b></p> <p>The Government has directed Defence to consult with stakeholders to the greatest extent possible. Consultation and cooperation of the nature envisaged in this recommendation is already enabled by section 103 of the ANNPS Bill, as well as section 24 of the <i>Public Governance, Performance and Accountability Act 2013</i>.</p> <p>Noting the concerns raised by the Committee, the Government will amend the ANNPS Bill to require the Minister for Defence to conduct public consultation in relation to the proposed boundaries of future designated zones (other than those already contemplated by the Bill) before they may be prescribed by the regulations.</p> <p>Additionally, the Government intends to amend the ANNPS Bill to establish a ministerial advisory committee to ensure the Defence Minister is provided with independent advice relating to the Regulator. This will include advice on the nature and efficacy of the Regulator’s consultation and cooperation with other persons or bodies.</p> <p>The Government will also amend the ANNPS Bill to require the Director-General to report particular nuclear safety incidents to the Minister and to table a report about such incidents in each House of the Parliament within three (3) sitting days of each House. Each report would be required to include details of any actions that have been</p>

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		taken by the Australian Naval Nuclear Power Safety Regulator or a licence holder in response to such an incident.
6	The Committee recommends that the Government consider what outcomes could be enhanced through a greater degree of collaboration between the Regulator and the Australian Radiation Protection and Nuclear Safety Agency.	<p><b>Agreed</b></p> <p>The Government has directed Defence to engage with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) and other relevant nuclear safety agencies to the greatest extent possible in developing the Australian Naval Nuclear Power Safety Regulator. Once established, the Regulator will be able to rely on section 103 of the ANNPS Bill to cooperate and consult with any person or body if it is necessary for, or conducive to, the performance of its functions. That will include engaging with ARPANSA in addition to a range of other relevant agencies, including but not limited to Comcare and the Australian Safeguards and Non-Proliferation Office (ASNO).</p>
7	The Committee recommends that the Government consider ways in which it can direct the Department of Defence to engage in greater consultation concerning the design of the regulations that will be created under the Bill.	<p>The Government also intends to amend the ANNPS Bill to allow the Minister for Defence to share reports provided by the Director-General with the Ministers for Health, as the Minister responsible for ARPANSA, and the Minister for Industry &amp; Science, as the Minister responsible for the Australian Nuclear Science and Technology Organisation, to provide for greater sharing of information and application of nuclear safety best practices.</p> <p>Work remains ongoing to develop the associated regulations. The Government intends to release an exposure draft of the regulations at the appropriate time and as soon as practicable.</p>
8	The Committee recommends, after due consideration by Government of the Committee's recommendations above, that the Bill be passed.	The Government welcomes the Committee's recommendation that the Bill be passed.



## Dissenting Recommendations (Australian Greens)

The Government notes the comments and recommendations in the Australian Greens' Dissenting Report, and further notes that the stated policy position of The Greens is that Australia should withdraw from the AUKUS Agreement. While the Government does not agree with this position, a substantive response to the recommendations is provided below.

#	Recommendation	Government Response
1	<p>It is recommended that the Bill be amended to ensure a genuinely independent regulator and that the regulator reports to the Minister of Health rather than the Minister of Defence.</p> <p>Alternatively, that the regulator more closely reflects the arrangements in the United States and jointly reports to both the Minister of Health and the Minister for Defence, with these Ministers jointly holding Ministerial responsibility under the Bill.</p>	<p><b>Not agreed</b></p> <p>The Government does not consider an amendment of this nature to be necessary. The ANNPS Bill contains a number of important provisions that will ensure the Regulator is functionally and effectively independent from the regulated community, and the Government intends to further strengthen this independence with the amendments outlined in its response to the recommendations in the Committee's report. The approach adopted by the Government is broadly consistent with UK and US regulatory models which also have separate defence nuclear safety regulators.</p>
2	<p>It is recommended that for transparency any direction issued under section 105 be tabled in Parliament within three days where the direction may, or will, negatively impact public health or safety.</p>	<p><b>Noted</b></p> <p>See response to Recommendation 5 of the Committee's Report.</p>
3	<p>It is recommended that section 109 be amended to:</p> <ul style="list-style-type: none"> <li>• prohibit the Director General from being a current or former member of the ADF or Department of Defence, and;</li> </ul>	<p><b>Noted</b></p> <p>See response to Recommendation 1 of the Committee's Report.</p>



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	<ul style="list-style-type: none"> <li>that the Deputy Director General not be a current member of the ADF or Department of Defence or have been a member of the ADF or Department of Defence for at least two years prior to any appointment.</li> </ul>	
4	It is recommended that the Bill must ensure that there is free, prior and informed consent from First Nations people and the communities impacted before any designated zone is established for low, medium or high-level naval nuclear waste.	<p><b>Noted</b></p> <p>See response to Recommendation 5 of the Committee's Report.</p>
5	It is recommended that the Bill should expressly include reference to, and compliance with, Australia's international obligations including the United Nations Declaration on the Rights of Indigenous Peoples.	<p><b>Not agreed</b></p> <p>The ANNPS Bill does not alter Australia's existing international obligations, nor does it impact Australia's compliance with those obligations.</p>
6	It is recommended that the Bill should adopt the requirements for public consultation and site identification for designated nuclear zones found in the <i>National Radioactive Waste Management Act 2012</i> .	<p><b>Not agreed</b></p> <p>See response to Recommendation 5 of the Committee's Report.</p>
7	It is recommended that the Bill should require close co-operation and consultation between the proposed naval nuclear regulator and the civilian regulator ARPANSA.	<p><b>Noted</b></p> <p>See response to Recommendations 6 and 7 of the Committee's Report.</p>

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8	It is recommended that the Bill should be amended to ensure that the Director General receives advice from the relevant nuclear safety advisory groups including the Radiation Health and Safety Advisory Council, Radiation Health Committee and the Nuclear Safety Committee.	<p><b>Not agreed</b></p> <p>The Government does not consider an amendment of this type necessary to ensure the Director-General of the Australian Naval Nuclear Power Safety receives relevant advice. Consultation and cooperation for the purposes of obtaining technical advice would be enabled by section 103 of the ANNPS Bill, as well as section 24 of the <i>Public Governance, Performance and Accountability Act 2013</i>.</p> <p>Additionally, the Government intends to amend the ANNPS Bill to establish a ministerial advisory committee to ensure the Defence Minister is provided with independent advice relating to the Regulator. This will include advice on the nature and efficacy of the Regulator’s consultation and cooperation with other persons or bodies.</p>
9	The Bill must be amended to ensure that no UK or US nuclear waste can be stored or disposed of in Australia.	<p><b>Noted</b></p> <p>See response to Recommendation 3 of the Committee’s Report.</p>
10	It is recommended that section 135 of the Bill should be removed to retain existing State and Territory protections for the safe treatment of nuclear materials.	<p><b>Not agreed</b></p> <p>State and Territory regulatory frameworks have not been designed in contemplation of the unique circumstances, risks and hazards of naval nuclear propulsion material.</p>
11	It is recommended, to ensure the Bill meets the existing requirements for Australia's nuclear safety regime to be consistent with international standards, that section 136 be amended to require functions performed to be in accordance with, rather than simply to have regard to, prescribed international agreements.	<p><b>Not agreed</b></p> <p>The ANNPS Bill does not alter Australia’s existing international obligations, nor does it impact Australia’s compliance with those obligations.</p>

## Additional comments by Senator Lidia Thorpe

The Government notes the additional comments by Senator Thorpe, in particular the Senator's stated opposition to AUKUS. While the Government does not agree with this position, a substantive response to the Senator's recommendations is provided below.

#	Recommendation	Government Response
1	<p>It is recommended that any siting process for nuclear waste management, and other nuclear related activities, need to adhere to the principles of the United Nations Declaration on the Rights of Indigenous Peoples, including the right to Free, Prior and Informed Consent.</p>	<p><b>Noted</b></p> <p>See response to Recommendation 5 of the Majority Report.</p>
2	<p>It is recommended that the objects of the Act be amended to focus on nuclear safety, removing the existing clauses on promotion of defence and the interests of Australia and support for the AUKUS partnership and instead include additional provisions to 'expressly address:</p> <ul style="list-style-type: none"> <li>• protecting workers, other persons and communities against harm to their health, safety and welfare through the elimination or minimisation of risks arising from regulated activities;</li> <li>• promoting the provision of advice, information, education and training in relation to nuclear safety;</li> <li>• ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act'.</li> </ul>	<p><b>Not agreed</b></p> <p>The Government does not consider an amendment of this nature is necessary. The objects of the ANNPS Bill have been carefully calibrated to the unique circumstances, hazards and risks associated with the naval nuclear propulsion context. The first and second stated objectives of the Bill as outlined at clause 6 is to to promote the nuclear safety of activities relating to AUKUS submarines, and; to promote public confidence and trust in relation to the nuclear safety of Australia's conventionally-armed, nuclear-powered submarine enterprise.</p>

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3	It is recommended that the Bill be amended to include express and clear emergency preparedness and response provisions.	<p><b>Not agreed</b></p> <p>Section 32 of the ANNPS Bill makes clear emergency preparedness and response arrangements could be contained within licence conditions that apply to regulated activities and may be prescribed in regulations to be made under the ANNPS Bill, once enacted. This approach is consistent with that taken in the <i>Australian Radiation Protection and Nuclear Safety Act 1998</i>.</p>
4	It is recommended that the Bill be amended to establish a clear-cut obligation to ensure nuclear safety and then provide a defence if the defendant can demonstrate that they exercised due diligence and took all reasonably practicable precautions.	<p><b>Not agreed</b></p> <p>The framework of nuclear safety duties in the ANNPS Bill have been carefully calibrated to the unique circumstances, hazards and risks associated with the naval nuclear propulsion context.</p>
5	It is recommended that the Bill be amended to ensure the Commonwealth cannot contract out the liability in relation to compliance with the duties on licence holders created by the Bill, and will at all times bear responsibility for the nuclear safety of the actions of a contractor holding a licence.	<p><b>Not agreed</b></p> <p>The ANNPS Bill imposes obligations on licence holders in respect of nuclear safety. It is most appropriate that licence holders bear statutory duties relating to nuclear safety, and corresponding civil and criminal liability for any breach of those duties, under this legislation. Transferring this liability to the Commonwealth (where it is not a licence holder) would be antithetical to the objectives of the Bill.</p>
6	It is recommended that the Bill be amended to ensure the definition of Commonwealth contractor does not include sub-contractors to a Commonwealth sub-contractor.	<p><b>Not agreed</b></p> <p>Definitions within the ANNPS Bill have been carefully calibrated to the unique circumstances, hazards and risks associated with the naval nuclear propulsion context.</p>

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7	It is recommended that the Bill be amended to include defining the responsibility of each person in the supply chain or logistics chain.	<p><b>Not agreed</b></p> <p>The Government does not consider an amendment of this nature necessary. Persons in the ‘supply or logistics chain’ who are conducting ‘regulated activities’ as defined by the ANNPS Bill will be subject to the nuclear safety duties specified in Division 2 of Part 2 of the ANNPS Bill. Those duties are comprehensive and would broadly include the following:</p> <ul style="list-style-type: none"> <li>- Duty to ensure nuclear safety (section 18)</li> <li>- Duty to be authorised by a licence (section 19)</li> <li>- Duties in relation to nuclear safety management systems (subsections 20 and 24)</li> <li>- Duty to report nuclear safety incidents (section 21)</li> <li>- Duty to ensure expertise, training, information and supervision (section 22)</li> <li>- Duty to comply with licence conditions (subsections 23 and 25)</li> </ul>
8	It is recommended that the Bill be amended to include a requirement that licences only be issued to entities that are a fit and proper person.	<p><b>Noted</b></p> <p>The Government considers there are already sufficient requirements in relation to a licence holder’s suitability (necessary for ensuring nuclear safety) to be issued a licence in the ANNPS Bill. Subsection 31(2) of the ANNPS Bill provides that, in deciding whether to issue a licence to conduct a regulated activity, the Australian Naval Nuclear Power Safety Regulator must be satisfied that the applicant will be able to comply with the conditions of the licence and any other matters prescribed by regulations, which are under development.</p> <p>Licence conditions can only be prescribed or specified if the condition is necessary to ensure nuclear safety (section 32(3)). This means, to issue a licence to conduct a regulated activity, the Regulator must be satisfied the applicant would be able to meet</p>

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		<p>the conditions which are in place to ensure nuclear safety. Relevantly, there is a threshold of satisfaction about competency to conduct the activity safely that must be met before a licence can be issued. In effect, this is the assurance of a licence applicant's suitability to conduct the activity.</p> <p>Further, in deciding whether to issue a licence, the Australian Naval Nuclear Power Safety Regulator must take into account international best practice in relation to nuclear safety that is relevant to naval nuclear propulsion and the matters prescribed by regulations.</p>
9	It is recommended that the Bill be amended to remove Section 132 which states that the ARPANS Act does not apply in relation to regulated activities.	<p><b>Not agreed</b></p> <p>Displacing the application of <i>Australian Radiation Protection and Nuclear Safety Act 1998</i> in relation to regulated activities is critical to the operation of the proposed regulatory framework as it ensures there is no duplication of regulatory effort or requirements. This ensures clear lines of regulatory responsibility, accountability, and obligations for regulators, operators and the public.</p>
10	It is recommended that the ARPANS Act be amended through consequential amendments to provide for an appropriate representative of the Director-General of ANNPSR as a standing member of the Radiation Health Committee and as a member or observer of the Nuclear Safety Committee, to be invited when there are relevant topics of interest to be discussed.	<p><b>Not agreed</b></p> <p>Amendments to the <i>Australian Radiation Protection and Nuclear Safety Act 1998</i> are outside the scope of this inquiry. The Australian Naval Nuclear Power Safety Regulator has an express function of consulting and cooperating with other entities (section 103) which would, in any event support this approach.</p>
11	The ARPANS Act to be amended through consequential amendments to provide for the Nuclear Safety Committee to allow for a representative from each local government	<p><b>Not agreed</b></p> <p>Amendments to the <i>Australian Radiation Protection and Nuclear Safety Act 1998</i> are outside the scope of this inquiry and the ANNPS Bill.</p>

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	area affected by a matter related to the safety of a controlled facility.	
12	It is recommended that the Bill be amended to require the publication of notifiable events including, but not limited to, applications lodged for and decisions made on licences, licence conditions, suspensions or cancellations, prohibition notices, nuclear safety and other breaches under the Act, and any proposed regulations through a register for this purpose on the ANNPSR website, as well as a notification in the Government Gazette.	<p><b>Noted</b></p> <p>Section 122 of the ANNPS Bill will require the Director-General of the Australian Naval Nuclear Power Safety Regulator to give the Minister for Defence an annual report under section 46 of the <i>Public Governance, Performance and Accountability Act 2012</i>, which will be publicly available.</p>
13	It is recommended that the Bill be amended to include the requirement for public consultation on any proposed designated zones.	<p><b>Noted</b></p> <p>See response to Recommendation 5 of the Majority Report.</p>
14	It is recommended that the Bill be amended to include the requirement for accepting public comment on any licence application.	<p><b>Not agreed</b></p> <p>The Government notes the objects of the ANNPS Bill are to:</p> <ul style="list-style-type: none"> <li>• Promote the nuclear safety of activities relating to AUKUS submarines; and</li> <li>• Promote public confidence and trust in relation to the nuclear safety of Australia’s nuclear-powered submarine enterprise; and</li> <li>• Promote the defence and interests of Australia; and</li> <li>• Support the AUKUS partnership.</li> </ul> <p>The inclusion of a statutory requirement for the Australian Naval Nuclear Power Safety Regulator to engage with public submissions prior to the issuing of a licence could result in an unreasonable diversion of the Regulator’s finite technical expertise and resources. These resources must be directed towards the objects of the ANNPS Bill; monitoring and, where necessary, enforcing compliance with nuclear safety duties specified in the ANNPS Bill. The absence of a statutory public submission process will</p>

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		not prevent or limit broader public engagement and consultation initiatives which have been adopted and will continue to be adopted across the implementation of the optimal pathway.