

Report

Referral

1.1 The Research Agencies Legislation Amendment Bill 2002 ('the bill') was introduced into the House of Representatives on 21 March 2002. On 25 June 2002 the Senate adopted the Selection of Bills Committee recommendation to refer the provisions of the bill to this Committee for report by 29 August 2002.

1.2 Eight submissions were received, and they are listed at Appendix 1.

Reasons for referral

1.3 The Selection of Bills Committee Report contained the following reasons for referring the bill to the Committee:

- Financial reporting requirements possibly too weak and inappropriate;
- Issues connected with financial management associated with commercialisation;
- Adequacy or otherwise of financial safeguards;
- Appropriateness of certain commercial ventures undertaken by these agencies.¹

Background to the bill

1.4 The Australian Institute of Marine Science (AIMS) was established by the *Australian Institute of Marine Science Act 1972* (the AIMS Act). Its functions are set out in detail in section 9 of the AIMS Act, but in general are to 'generate the knowledge needed for the sustainable use and protection of the marine environment through innovative, world-class scientific and technological research.'²

1.5 The Australian Nuclear Science and Technology Organisation (ANSTO) was established by the *Australian Nuclear Science and Technology Organisation Act 1987* (The ANSTO Act). Its mission is 'to provide expert advice, nuclear services and nuclear-based products on demand, and to identify, develop and promote innovative solutions through the application of nuclear-based research and development'³

1.6 AIMS and ANSTO are currently permitted to undertake commercial activities associated with the intellectual property generated by their research, but their respective Acts limit the extent of this commercial activity in two important ways. First, the agencies have specified limits on the size of contracts they can enter into. For AIMS, ministerial approval is required for contracts in excess of \$100,000⁴. For ANSTO, ministerial approval is required

1 Selection of Bills Committee, Report No. 5 of 2002

2 <http://www.aims.gov.au/pages/about.html>

3 <http://www.ansto.gov.au/ansto/miss.html>

4 AIMS Act, s.42.

for contracts in excess of \$1 million⁵. Second, the Acts have the effect of limiting the commercial activities of AIMS and ANSTO to matters directly related to their Functions. This means that if either organisation generates, as a by-product of their research activities, intellectual property that does not relate directly to marine science or nuclear technology (respectively), they cannot act to commercialise that intellectual property. This latter limitation appears to be the primary reason for the introduction of the Research Agencies Legislation Amendment Bill 2002 (the bill).

1.7 Schedule 1 of the bill addresses the issues raised above with respect to AIMS, and Schedule 2 does so for ANSTO. In each case, Part 1 of the Schedule increases the functions and powers of the organisation to provide for the non-marine or non-nuclear application of technologies, and Part 2 of the Schedule increases the size of the contracts AIMS and ANSTO can enter into without Ministerial approval.

1.8 In his second reading speech, the Minister explained the need for the bill as follows:

“it is imperative that the AIMS and ANSTO acts be amended so that the growing range of commercial activities of these research agencies may be fully exploited and in doing so, are fully supported by providing funds and infrastructure.”⁶

Issues

1.9 None of the submissions provided to the committee expressed concern about any direct aspects of the bill. While two submissions raised concerns about Government policy in this area, neither expressed direct criticism of the bill. In fact, one of these submissions stated that “in removing impediments now faced by ANSTO and AIMS preventing and limiting their commercial operations we believe the bill has merit.”⁷ None of the submissions expressed criticism in relation to any of the reasons expressed by the Senate Selection of Bills Committee for referring this bill to the committee.

1.10 The two submissions which expressed general policy concerns were apprehensive about the extension of commercial powers available to AIMS and ANSTO. This was considered likely to result in the organisations directing their activities towards more commercially lucrative activities, or were likely to result in the Government reducing the appropriations to these agencies. While the committee majority notes these arguments, it regards them as speculative at best. These are not issues which can properly be dealt with by this inquiry.

1.11 The committee majority noted that, while the submissions of AIMS and ANSTO addressed the terms of reference for this inquiry, they fell short of addressing the interest expressed by members of the committee during a number of inquiries about the longer term implications of the commercialisation of research. While the committee majority strongly supports this bill, and sees merit in opening up further opportunities for collaborative research, it notes that the agencies have not expounded on the scope and challenges presented by these collaborative opportunities. The committee considers that AIMS and ANSTO must

5 ANSTO Act, s.31.

6 The Hon. Peter McGauren MP, Minister for Science, House of Representatives *Hansard*, 21 March 2002, p.1842

7 *Submission 2*, Association of Professional Engineers, Scientists and Managers, Australia, p.2

be aware of the concerns and debates surrounding the commercial activities of research institutions such as universities and the CSIRO, and further concerns touching on the impact of commercial funding in public research institutions. The committee majority looks to these concerns being allayed. Following the changes to administrative arrangements since the election of the 40th Parliament, this committee has some direct oversight over the performance of research agencies and will be watching to ensure that these agencies take full and prudent advantage of their new powers. It looks forward to seeing an unfolding pattern of innovative long-term commercial ventures successfully managed in the national interest.

Issues raised by the Selection of Bills Committee

1.12 As noted in paragraph 1.3 above, the Selection of Bills Committee raised a number of issues as it referred this bill to the Committee. In the absence of evidence critical of the bill, each of the issues raised will be briefly addressed below:

Financial reporting requirements

1.13 Both AIMS and ANSTO report to the Government and Parliament in accordance with the *Commonwealth Authorities and Companies Act 1997* (the CAC Act). The CAC Act sets our reporting and accountability requirements which are relevant to a broad range of agencies. The Committee is unaware of any specific reasons why financial reporting requirements under the CAC Act might be regarded as too weak or inappropriate.

Issues connected with financial management associated with commercialisation

1.14 Evidence before the committee did not raise any issues regarding the financial management of commercial operations undertaken by AIMS and ANSTO.

Adequacy or otherwise of financial safeguards

1.15 The financial safeguards relating to these agencies are principally the CAC Act. In addition, both must seek Ministerial approval before taking other commercial decisions, such as entering contracts beyond \$1 million (AIMS) or \$5 million (ANSTO), or borrowing money (whether from the Commonwealth or any other body). Finally, both organisations are subject to audit by the Australian National Audit Office. The Committee concludes that these financial safeguards are entirely adequate.

Appropriateness of certain commercial ventures undertaken by these agencies

1.16 The committee is not aware of which commercial ventures undertaken, or likely to be undertaken, by these agencies might be controversial. The Committee observes that the most likely controversial activities probably relate to nuclear activities, but notes that ANSTO is already able to commercialise its intellectual property for nuclear uses. This legislation relates to *non-nuclear* activities. As such, the Committee has no reason for concern regarding the appropriateness of commercial ventures undertaken by these agencies.

Recommendation

The Committee recommends that the Senate pass this bill.

**Senator John Tierney
Chair**