

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Australian Nuclear Science and Technology Organisation Amendment Bill 2006

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Australian Government

Department of Education, Science and Training

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Australian Nuclear Science and Technology Organisation Amendment
Bill 2006

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Introduction

The purpose of this submission is to provide information about provisions of the *Australian Nuclear Science and Technology Organisation Amendment Bill 2006*.

Background

2. The powers granted to the Australian Nuclear Science and Technology Organisation (ANSTO) in relation to radioactive waste are set out under Section 5 of the *Australian Nuclear Science and Technology Organisation Act 1987* (the *ANSTO Act*). These powers do not permit ANSTO to fully participate in actions that might be required to assist the Commonwealth or its agencies in the management of radioactive materials or wastes.
3. In 1992, action by the Sutherland Shire Council against ANSTO in the NSW Land and Environment Court established that the *ANSTO Act* did not allow ANSTO to bring non-ANSTO origin waste onto the Lucas Heights site. The Court ruled that CSIRO waste already held at ANSTO had to be removed within three years.
4. The Act was subsequently amended to provide ANSTO with the power to bring non-ANSTO waste onto the site by making a regulation under section 5 (1)(ba) of the Act.
5. ANSTO's capacity to assist in managing other non-ANSTO waste was restricted in this manner because of concern that ANSTO could become a de-facto national radioactive waste repository. Such concerns have been addressed by recent government statements announcing that the Government had abandoned plans to establish a national repository (Prime Minister Howard, 14 July 2005) and would, instead, establish a Commonwealth Radioactive Waste Management Facility in the Northern Territory (Minister for Education, Science and Training, 15 July 2005).
6. In 1994, as a one-off arrangement to allow for the conditioning of Australian Defence Industries waste located at St Marys in Sydney, the Government passed a regulation under the amended *ANSTO Act* to permit ANSTO to deal with this material (*ANSTO Regulations 1994 No. 219 and No.415*).
7. It is incongruous that Australia's pre-eminent source of nuclear expertise, ANSTO, is prevented from effectively utilising its substantial infrastructure at Lucas Heights to assist the Commonwealth and Commonwealth agencies in responsibly managing radioactive materials.
8. When the *ANSTO Act* was passed in 1987 and amended in 1992, it was not envisaged that ANSTO may be required to assist emergency or law enforcement agencies in the event of a terrorist or other emergency situation involving radiological material.

Overview of the Bill

9. The broad purpose of the Bill is to amend the *ANSTO Act* to allow Australia's pre-eminent nuclear science and research agency, ANSTO, to more effectively assist the Commonwealth with the management of radioactive material and radioactive waste other than that which may arise directly from ANSTO's activities.

10. Ministerial statements make it clear that the amendments do not alter the Government's intention to establish a purpose-built facility for management of Commonwealth radioactive waste in the Northern Territory.

11. In 2005 the *Commonwealth Radioactive Waste Management Act 2005* was enacted, providing for the proposed Commonwealth Radioactive Waste Management Facility (CRWMF) to be established in the Northern Territory. Parsons Brinckerhoff have since been contracted to undertake site investigations of nominated sites.

12. Authority to manage radioactive material arising from a terrorist incident is an important component of Australia's counter-terrorism response. The Bill ensures that ANSTO is able to provide effective assistance to State and Territory jurisdictions in ensuring public health and safety in the event of an incident, including terrorist or criminal incidents, involving radiological material.

Interpretation and definitions

13. Items 1 to 6 of the Bill clarify new terms introduced into the *ANSTO Act* through this Bill and ensure consistency with terminology used in the *Commonwealth Radioactive Waste Management Act 2005*.

Ability for ANSTO to condition, manage and store Commonwealth waste

14. The Bill inserts a new paragraph, 5(1)(bb), which enables ANSTO to condition, manage and store radioactive materials and radioactive waste in the possession or under the control of any Commonwealth entity before it is removed to the CRWMF.

15. This will avoid the need for expensive and unnecessary duplication of expertise and specialist infrastructure at the site of the CRWMF, or elsewhere in Australia, that already exists at the ANSTO Lucas Heights facility.

Ability for ANSTO to assist in the event of an emergency or terrorist incident

16. The Bill inserts a new paragraph, 5(1)(bc), to allow ANSTO to condition, manage and store radioactive materials and radioactive waste at the request of a law enforcement agency, the Australian Customs Service, or a Commonwealth, State or Territory agency responsible for the management of emergencies or disasters. These include radioactive materials or radioactive waste involved in a radiological incident or emergency.

17. The Bill also inserts a new paragraph, 5(5)(g) which serves to further clarify that ANSTO may act to assist the Commonwealth in relation to the Commonwealth's defence powers, in particular in the case of a terrorist incident.

18. This Bill will also bring Australia in line with standards set out in the *United Nations Convention for the Suppression of Acts of Nuclear Terrorism* and removes a potential obstacle to ratification of the Convention that Australia signed in September 2005.

Allow ANSTO to manage waste returning from overseas from reprocessing of ANSTO spent nuclear fuel

19. The Bill inserts a new paragraph, 5(1)(bd), to allow ANSTO to condition, manage and store radioactive waste that has been, or is to be sent to Australia under contractual arrangements relating to conditioning or reprocessing of ANSTO spent nuclear fuel.

20. This will put beyond doubt ANSTO's authority to accept and manage radioactive waste arising from overseas reprocessing of Australian research reactor spent fuel to convert it into a stable intermediate level waste form suitable for long-term storage at the CRWMF.

21. This amendment is considered necessary because of likely actions by anti-nuclear groups to challenge ANSTO's ability to deal with this material either overseas or on its arrival back in Australia. This would potentially prevent the Commonwealth meeting obligations under agreements with the British and French governments. It could also raise issues in relation to the practical management and security arrangements necessary for holding the material while any Court actions were proceeding.

22. This amendment will remove any doubt about ANSTO's capacity to manage reprocessing waste from research reactor spent fuel upon its return to Australia.

Avoidance of costly and unnecessary delays

23. The Bill inserts a new subsection 5(1C) which will clarify that radioactive materials and radioactive waste generated, possessed or controlled by a Commonwealth contractor or a Commonwealth entity's contractor are taken to be generated, possessed or controlled by the Commonwealth or the Commonwealth entity respectively.

24. This amendment limits the potential legal action against Commonwealth contractors by jurisdictions opposed to the Commonwealth's radioactive waste management strategy.