

Chapter 4

Main findings

Criticism of the bill

4.1 The committee received two submissions criticising the bill, one from the Medical Association for the Prevention of War (MAPW) and the other from Friends of the Earth (FoE). Both submissions highlighted concerns that the legislation would impact unfairly on legitimate protest activity. Both cited the Greenpeace action in December 2001 which involved unauthorised entry into Lucas Heights. The MAPW argued that 'the 46 persons involved in the Greenpeace action had a clear intent to do no harm and posed no risk to anyone, but could be subject to extended prison sentences if such legislation were to be applied inappropriately'.¹ The FoE reiterated the concerns it made to the 2003 Senate inquiry (see paragraph 2.9) that Greenpeace's actions 'potentially involve the offence of obstructing or hindering an Agency inspector in the performance of a duty or function or exercise of a power'.²

4.2 Chapter 2 noted Labor Senators' initial concern with the impact of the Non-Proliferation Legislation Amendment Bill 2003 on the right to protest and the role of whistleblowers. However, the government subsequently took account of these concerns and made a change which made clear that section 26A of the Act was 'not intended to displace the requirements of recklessness or intention which are defined in Division 5 of the *Criminal Code Act 1995*'. This satisfied Labor Senators that 'legitimate protest activity and the communication of legitimate protest information would not be at risk of being inadvertently scooped up by new section 26A'.³

4.3 MAPW's submission supported the Bill's measures to minimise risks of nuclear and chemical weapons proliferation, and to extend jurisdiction of the legislation as widely as practical. It noted that the alignment of Australian law with the 2005 Convention is 'commendable'. However, the Association had the following criticisms and recommendations to make on the substance of the Bill:

- the specification of maximum penalties is 'inappropriate and inconsistent with the potential extreme seriousness of such crimes';
- permits to decommission facilities should require not only ministerial approval but also parliamentary scrutiny;
- the Bill's definitions should make unqualified the amount of radiation or radioactive material, or that the qualifying term 'significant' is defined 'such as to cover potential exposures of multiple individuals';

1 *Submission 3*, p. 3.

2 *Submission 2*, p. 1.

3 Senator Chris Evans, *Senate Hansard*, 28 November 2003, p. 18367.

- the period for which decommissioning work already commenced be exempt from full requirements be shortened from 6 months to 1 month; and
- non-proliferation measures in the absence of disarmament measures are unlikely to succeed. Existing safeguards measures and institutional arrangements are inadequate for preventing proliferation. The MAPW argued that '...Australia should join the large majority of governments in the General Assembly that call for multilateral negotiations leading to an early conclusion of a nuclear weapons convention'.⁴

Conclusion

4.4 The Non-Proliferation Legislation Amendment Bill 2006 is a strong response to Australia's new obligations under the amended Physical Protection Convention. It reflects the active role that Australia took in negotiating the July 2005 Amendments to the Convention. The system of permits and the list of offences under the *Nuclear Non-Proliferation (Safeguards) Act 1987* already include elements of some of the new offences required by the amendments. The bill responds further to the amendments by increasing prison penalties and extending the geographical scope of jurisdiction for offences under the Safeguards Act. It also contains three new offences relating to the decommissioning of a nuclear facility without a permit, trafficking nuclear material and interfering with the operation of a nuclear facility.

4.5 The committee acknowledges the concerns of the FoE and the MAPW. However, it believes the bill in its current form adequately meets Australia's new international obligations under the 2005 Convention to protect nuclear facilities and material for peaceful domestic use, storage and transport. The committee strongly supports continued Australian engagement in multilateral efforts on disarmament and non-proliferation.

Recommendation 1

4.6 The committee recommends that the Senate pass the bill.

**SENATOR DAVID JOHNSTON
CHAIR**

4 *Submission 3*, pp. 4–5.