



## Medical Association for Prevention of War (Australia)

National Office: PO Box 1379, Carlton, VIC 3065  
phone: 03 8344 1637 fax: 03 8344 1638  
e-mail: [mapw@mapw.org.au](mailto:mapw@mapw.org.au) w: [www.mapw.org.au](http://www.mapw.org.au)

Incorporation number: A0018205V  
ABN: 15 779 883 661  
National Council and Branch details: [www.mapw.org.au](http://www.mapw.org.au)

## Non Proliferation Legislation Amendment Bill (2006)

Submission from the Medical Association for Prevention of War (Australia)  
29 January 2007

### Senate Foreign Affairs, Defence and Trade Committee

Submitted on behalf of the Medical Association for Prevention of War (Australia) by:

Assoc. Prof Tilman Ruff – President  
Felicity Hill – International Campaign to Abolish Nuclear weapons (ICAN), Coordinator

**Date:** 29 January 2007

**Contact:**

Felicity Hill  
ICAN Coordinator  
Ph: (03) 8344 1637  
Email: [felicity.hill@mapw.org.au](mailto:felicity.hill@mapw.org.au)

**Submission sent to:**

Senate Foreign Affairs, Defence and Trade Committee

**Email**

[richard.grant@aph.gov.au](mailto:richard.grant@aph.gov.au)

**Postal address**

Suite S157, Parliament House  
Canberra 2000

---

The Medical Association for Prevention of War (Australia) welcomes this opportunity to respond to proposed amendments to the Non Proliferation Legislation Amendment Bill (2006). Before addressing the changes proposed to Australian law, several overarching comments will provide the organisation's starting position and context for reviewing the Bill.

### **Non-proliferation requires disarmament to succeed**

The Medical Association for Prevention of War (Australia) is the Australian affiliate of International Physicians for the Prevention of Nuclear War, a federation of health professional organisations in 60 countries. The organisation received the Nobel Peace Prize in 1985 for linking doctors across the Cold War divide in the authority of its diagnosis regarding the acute dangers posed nuclear weapons, its prescription for survival: the complete elimination of nuclear weapons, and its work in alerting and educating decision makers and the public on the critical and unprecedented nature of the threat nuclear weapons pose to global health.

Our organisation maintains that non-proliferation measures in the absence of disarmament measures are unlikely to succeed. Former UN Secretary-General Kofi Annan has recently powerfully articulated the inseparable linkage between nuclear disarmament and nuclear non-proliferation, as have senior former US officials led by George Schultz, William Perry, Henry Kissinger and Sam Nunn. This is not to undermine the importance of non-proliferation efforts, but to emphasise that the best enabling environment for them to be effective is a context in which disarmament diplomacy and action are palpably and substantially progressing. That is sadly not the case at this time; the paralysis in nuclear disarmament negotiations is widely recognised. Simultaneously, a resurgence in governmental and inter-governmental concern and activity in non-proliferation is evident, aroused by changes in the security environment and the focused activities on the part of leading and influential states.

However, non-proliferation is only half the story. Absenting disarmament processes that show fulfillment of NPT obligations, an ongoing decrease of weapons of mass destruction and decreasing reliance on associated doctrines, non-proliferation efforts and their proponents are set up for continuing and indeed escalating failure. Australian non-proliferation efforts and laws will fail unless disarmament negotiation and action resume in earnest.

### **Existing safeguards measures and institutional arrangements are inadequate for preventing proliferation**

The Medical Association for Prevention of War maintains that there is a serious risk that Australian uranium exports directly and indirectly support nuclear weapons manufacture, and that these risks will grow with expansion of the quantity of uranium exported and the number of buyers. In fact, Australian bilateral safeguards arrangements are not designed to – and cannot - prevent actual atoms of Australian uranium ending up in weapons. The 1997 Senate Select Committee on Uranium Mining and Milling (SCUMM) report distinguished Australian-sourced nuclear materials (actual atoms) from Australian Obligated Nuclear Materials (AONM) recommended more attention to safeguarding actual Australian atoms instead of just AONM. Australia's bilateral safeguards also do not add verification capacity on the ground and are essentially toothless book-keeping exercises.

Our organisation was joined by the Australian Conservation Foundation in issuing a report in November 2006 which details these arguments, and drew its name from the 1977 Fox Commission report that described the international nuclear safeguards system as providing only “an illusion of protection,” a description that remains even more appropriate today. The attached report details why the international safeguards system is inadequate, and relevant to the legislation under discussion, describes the impact this has on Australian non-proliferation measures and institutional arrangements resting upon this flawed system.

In nuclear weapon states (NWS) safeguards are virtually non-existent, and the International Atomic Energy Agency (IAEA) does not have the mandate it needs to effectively prevent proliferation; in fact it does not even have the human and economic resources it needs to fulfil its current limited safeguards mandate, as was recognised in the recent Parliamentary Inquiry into nuclear agreements paving the way for sale of Australian uranium to China.

Most relevant to a uranium mining and exporting country is the fact that IAEA safeguards do not extend to apply fully to mined uranium ores, or to refined uranium oxides, uranium hexafluoride and uranium conversion facilities, prior to the stages of enrichment or fuel fabrication. Two key factors that determine proliferation risk threshold are a) the amount considered a “significant quantity” – ie weapons-usable quantity - of plutonium and uranium 233 or U-235 (highly-enriched uranium) and b) the time it takes to turn that quantity into a weapon. “Significant quantity” is currently set for plutonium and uranium 233 at 8 kilograms, and for uranium 235 at 25 kilograms. These are in need of urgent review because 3-4 kilograms of weapons grade plutonium is commonly used for a nuclear warhead and, depending on yield and the sophistication of weapons design, even significantly smaller quantities may suffice. Current timely detection goals are also inadequate, and do not take into consideration the enhanced nature and more widespread availability of the knowledge and the technical means to turn fissile materials more speedily into weapons.

This nuclear danger will be amplified as laser enrichment technology is further developed with plans for commercialisation. Lamentably significant developments in laser enrichment have been undertaken in Australia by Silex Systems at the publicly funded Lucas Heights facility, which could greatly compact and make easier, cheaper, more modular and more concealable the whole process of enriching uranium, with profound proliferation dangers.

### **Security includes protection of the human right to dissent**

It is undeniable that the security context has altered since the events of 11 September 2001, which has raised greater awareness of the dangers and growing probability of attacks on nuclear facilities including reactors, among other dangers. The recent linkage of theft of rocket launchers from the Australian Defence Forces with terrorist plans to target the Lucas Heights nuclear reactor are only the latest in a series of publicly known threats to what is clearly Australia’s most attractive terrorist target.

It is also foreseeable that terrorists could steal, buy or otherwise acquire fissile material to fabricate crude nuclear bombs, and a number of terrorist groups have made significant and persistent efforts in this direction. Terrorists could disperse radiation as a weapon by attacking a nuclear reactor or waste fuel-cooling pond, or by causing the melt down of a reactor by disrupting water supply, cooling or electrical power systems.

A terrorist attack breaching a reactor containment structure could cause significant radioactive fallout. The effect would include acute radiation sickness and long-term increased incidence of cancer and genetic damage— for generations to come, as well massive fear and social disruption. As an organisation of health professionals, we understand the inherent dangers of radiation to human health, which is why our organisation has been alarmed about the very real and multiple risks posed by the the nuclear chain, alerting to these dangers well before 11 September 2001. To fully appreciate MAPW’s concerns about nuclear terrorism, please see a paper recently contributed by MAPW’s President, Assoc. Prof. Tilman Ruff as one in an expert series.<sup>1</sup>

---

<sup>1</sup> <http://www.energyscience.org.au>

Another related issue of concern to MAPW relates to the erosion of civil liberties, respect for human rights and the rule of law consequent upon the so-called 'war on terror'. Further, as recognised by senior police and security officials, much of the prosecution of this 'war' has in fact aggravated rather than reduced the risks of terrorism, in Australia as elsewhere. This aggravation is further escalated by Australia's continuing involvement in the invasion, occupation and ongoing war in Iraq, a war undertaken on false premises and contrary to the UN Charter. MAPW's parent body internationally, International Physicians for the Prevention of Nuclear War, which operates in 60 countries and has Consultative Status at the United Nations as a non-governmental organisation, MAPW is well aware of a global trend since 2001 of restriction and limitation of fundamental rights of political expression and, peaceful protest which is both legitimate and healthy, including symbolic actions.

Medical professionals in our organisation in several countries have been subjected to surveillance and intimidation for their work promoting peace and health. Due to the nature of interventions traditionally made by our members, who are professionals in positions of responsibility for health in their communities, arrestable direct actions of civil disobedience are uncommon. Our organisation does, however, work alongside reputable organisations that undertake peaceful non-violent protest.

While increasing the safety of nuclear facilities is a global concern enshrined in the 2005 Treaty, the inadequate security of nuclear facilities has been drawn to the attention of the government and public by peaceful protest. Attention to the real dangers posed by nuclear, biological and chemical (NBC) weapons has very often been enhanced by the courageous actions of those who are prepared to put themselves on the line by engaging in peaceful symbolic protest. These efforts are intended to prevent harm by alerting to dangers using communications and media strategies. In the current climate, it is not inconceivable that such peaceful efforts, that fall within the parameters of democratic rights to freedom of expression and legitimate protest, could be subject to the increased penalties to be imposed by the legislation in question. While the intention of the increased penalties and extradition standards is primarily to deal with armed attacks by those intending to cause irreparable harm by using nuclear facilities as pre-deployed radiological weapons, it is possible given the erosion of civil liberties witnessed since 2001, that these laws could be used in an effort to silence and inhibit peaceful protest.

Just one example is illuminating. Greenpeace activists penetrated the Lucas Heights nuclear facility in December 2001 to highlight the vulnerability of the facility; 21 persons climbed into the area and displayed "nuclear – never safe" banners at 3 sensitive locations: the reactor building, the high level waste storage building and a radio tower; while 25 people walked into the reactor complex at 0715 on a weekday morning.

It is possible that the increased penalties and extradition proposals put forward by the government to increase the safety of nuclear facilities was in part motivated by such action; or that efforts might be made to apply the legislation for undemocratic purposes in the future. Endangering the legitimate expression of well-founded public concern reduces security because it restricts the willing participation of citizens in assessing security risks, articulating their security needs, alerting to genuine security breaches, and actively contributing to the political life of the country. 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.

To summarize our general comments, MAPW would like to emphasise:

- The potential for effective nuclear non-proliferation measures are greatly reduced in the absence of genuine commitment to and progress in disarmament;

- The safeguards system is defective and thereby directly and substantially thwarts non-proliferation efforts;
- Non-proliferation is not enhanced when legislation intended to increase the security of nuclear facilities inhibits freedom of peaceful and legitimate expression, a recognised universal human right and precondition for genuine human security and authentic citizenship.

### **MAPW's specific comments on the Non Proliferation Legislation Amendment Bill (2006)**

- MAPW supports efforts to strengthen the security of nuclear materials and facilities, including during decommissioning. We also welcome measures to minimise risks of nuclear and chemical weapons proliferation, including extending jurisdiction of the relevant legislation as widely as practical. We would support similar measures being applied comprehensively to biological and toxin weapons and other indiscriminate and inhumane weapons
- The intention of the Australian government to apply the legislative changes that align Australian law with the already negotiated 2005 Convention on the Physical Protection of Nuclear Material is commendable.
- While we support strengthening of penalties for crimes related to proliferation of nuclear, chemical and other indiscriminate and inhumane weapons, we find the specification of maximum penalties to be inappropriate and inconsistent with the potential extreme seriousness of such crimes, which could have extremely serious – indeed catastrophic – consequences
- MAPW is concerned about the potential for inappropriate application of increased prosecutorial powers provided by the amended legislation. The broadened scope of an offence to include “an act that is directed against a nuclear facility” should be qualified to exclude acts that clearly demonstrate peaceful and symbolic intent; such as legitimate protest, civil disobedience and symbolic actions. The legislation also provides for an additional criterion for arrest without a warrant through amendment of the Australian Federal Police Act. Arrest without a warrant is not best practice in a functioning democracy and any expansion of scope for this practice must be subject to careful scrutiny and safeguards.
- We recommend that permits to decommission facilities require not only ministerial approval but also parliamentary scrutiny.
- In regard to amendment 32, we recommend that the definitions either make unqualified the amount of radiation or radioactive material, or that the qualifying term 'significant' be defined, such as to cover potential exposures of multiple individuals, and/or involve levels above recommended radiation dose limits for civilians, (currently 1 millisievert per year).
- In regard to amendment 54 we recommend that the period for which decommissioning work already commenced be exempt from full requirements be shortened from 6 months to 1 month.
- One of the many reasons MAPW members are opposed to nuclear power reactors in this country is because they are very difficult to secure. Throughout the 1990s, despite months of advance warning and increased security efforts, 47% of US nuclear power plants failed to deter small mock terrorist attacks conducted by the Nuclear Regulatory Commission.<sup>2</sup> Nuclear facilities at Lucas Heights and sites where nuclear waste is stored are vulnerable. The only reliable way “adequate protection” can be

---

<sup>2</sup> Farneth M. Nuclear power and the terrorist threat, Washington DC, Physicians for Social Responsibility. Available at [www.psr.org](http://www.psr.org)

provided over the long-term to citizens and the environment is through the removal of nuclear dangers from our suburbs and country, the phasing out of nuclear facilities and the cessation of uranium mining activity.

Finally, MAPW urges a balanced approach and effort by the government on disarmament and non-proliferation and greater contribution of Australia in multilateral disarmament efforts. To further the goal of nuclear non-proliferation 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.<sup>3</sup> Given the concern of the government about proliferation and the application of nuclear safeguards, it is particularly lamentable that Australia abstained on a resolution in 2006 calling on Israel, a state that has proliferated nuclear weapons, to join the nuclear Non-Proliferation Treaty “without further delay and not to develop, produce, test or otherwise acquire nuclear weapons, and to renounce possession of nuclear weapons, and to place all its unsafeguarded nuclear facilities under full-scope Agency safeguards.”<sup>4</sup>

Our organisation would particularly encourage the government to press for an increased pace and intensity of activity by our nuclear-armed allies in the field of disarmament, and that plans and budgetary allocations for the upgrading or replacement of weapons systems, such as currently in the UK, be strenuously opposed. Such moves are a direct obstacle to non-proliferation efforts.

---

<sup>3</sup> Australia abstained in the General Assembly vote on 6 December 2006, 125 in favour to 27 against, with 29 abstentions on A/RES/61/83 ‘Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons’, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/61/83&Lang=E>

<sup>4</sup> 166 of 177 states called on Israel to accede to the nuclear Non-Proliferation Treaty without further delay and not to develop, produce, test or otherwise acquire nuclear weapons, and to renounce possession of nuclear weapons, and to place all its unsafeguarded nuclear facilities under full-scope Agency safeguards. 5 against (Federated States of Micronesia, Israel, Marshall Islands, Palau, United States), with 6 abstentions (Australia, Cameroon, Canada, Ethiopia, India, Tonga) General Assembly Vote on 6 December 2006, 166 in favour to 5 against, with 6 abstentions on ‘The risk of nuclear proliferation in the Middle East’ <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/61/103&Lang=E>