



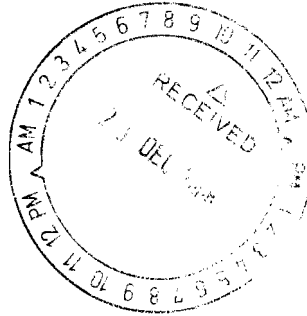
Australian Government

Ansto

Nuclear-based science benefiting all Australians

EXECUTIVE

15 December 2008



Secretariat
Independent review of the EPBC Act 1999
GPO Box 787
Canberra ACT 2601

Dear Sirs

Submission to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999*

I refer to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), and enclose a submission on behalf of the Australian Nuclear Science and Technology Organisation (ANSTO).

If you require any additional information, please contact Steven McIntosh, Senior Adviser, Government Liaison, by telephone on 9717 3699 or by email on smi@ansto.gov.au.

Yours sincerely

DR RON CAMERON
Acting Chief Executive Officer

Department of the Environment, Water, Heritage and the Arts

**ANSTO Submission to the Independent review of the *Environment
Protection and Biodiversity Conservation Act 1999***

Introduction

The Australian Nuclear Science and Technology Organisation (ANSTO) is the centre of Australia's nuclear science capabilities, and operates the nation's only nuclear reactor, as well as a number of other nuclear facilities. ANSTO is a crucial part of Australia's science and innovation infrastructure, and our facilities provide essential capabilities to medical research, industry and research groups. Drawing on those capabilities, ANSTO offers a wide range of scientific and technical services and expertise to governments and organisations throughout Australia and around the world.

As an operator of a number of nuclear facilities, many of ANSTO's activities are considered "actions" under the *Environment Protection and Biodiversity Conservation Act 1999* (the 'EPBC Act'). In particular, many of its activities fall within the definition of "nuclear action" in section 22 of the EPBC Act.

Observations and comments

Terms of Reference

The Terms of Reference of this review state that it is to be guided by key Australian Government policy objectives, including:

- the Australian Government's deregulation agenda to reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards; and
- to ensure activities under the Act represent the most appropriate, efficient and effective ways of achieving the Government's outcomes and objectives in accordance with the Expenditure Review Principles.

Duplicated regulation under the existing framework

Regulatory efficiency has been the subject of numerous government reports in recent years. Those reports have repeatedly highlighted the significant costs which regulatory overlap can impose on business and government, including costs caused by operator uncertainty, time delays for processing applications and excessive compliance obligations. In addition to the costs to business and government, overregulation has the effect of diverting resources away from the delivery of important services to the Australian public.

At present, the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) is the Federal Government agency charged under the *Australian Radiation Protection and Nuclear Safety Act 1998* (the 'ARPANS Act') with "responsibility for protecting the health and safety of people, and the environment, from the harmful effects of radiation". ARPANSA maintains expertise in radiation protection and nuclear safety, and monitors and contributes to international best practice in radiation protection and nuclear safety. As part of its functions, ARPANSA develops and promulgates standards, codes of practice, guidelines and other relevant material to support radiation protection and nuclear safety throughout Australia, many of which are implemented by State and Territory regulators.

ARPANSA draws upon its expertise in radiation protection and nuclear safety in regulating Commonwealth entities. The ARPANS Act and Regulations include a

requirement for licences and other approvals to be obtained, and these are granted to Commonwealth entities only if they can demonstrate safe operation of any radiation facilities and sources under their control. ARPANSA's regulatory role in licensing Commonwealth nuclear installations requires Commonwealth entities to undertake extensive reviews of the environmental issues associated with nuclear actions.

Given the scope and mandate of ARPANSA, there is significant overlap between the role of that agency under the ARPANS Act and the assessment of "nuclear actions" under the EPBC Act. ANSTO submits that ARPANSA's expertise in radiation protection and nuclear safety establishes it as a competent regulatory body in respect of the hazards that radiation may pose to the environment, and that the dual approval system may benefit from review to the extent that the same issues are considered under both assessment processes.

ANSTO notes that the EPBC Act provides for the possibility of joint Commonwealth/State assessments, and sees the potential for a similar arrangement to be introduced between Commonwealth regulatory bodies. Such cross-agency approval processes would streamline the regulatory process, whilst still achieving the same level of environmental protection, and upholding the requirement for consideration to be given to issues of national environmental significance.

ANSTO also notes other Commonwealth legislative arrangements which attempt to minimise dual regulation, in particular, the Commonwealth Major Hazard Facility regulations (enacted as amendments to the *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006* and the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 2007*), together referred to as the 'MHF regulations'. The MHF regulations provide that Commonwealth entities which are regulated by an existing equivalent Commonwealth regulatory scheme may apply for a Certificate of Compliance, thereby minimising the regulatory compliance burden.

International Best Practice

International best practice regarding the regulation of nuclear activities is currently set out in the International Atomic Energy Agency's (IAEA) Safety Requirements document "Legal and Governmental Infrastructure for Nuclear, Radiation, Radioactive Waste and Transport Safety". Paragraph 4.2 of those requirements states, *inter alia*:

"4.2. If the regulatory body consists of more than one authority, effective arrangements shall be made to ensure that regulatory responsibilities and functions are clearly defined and co-ordinated, in order to avoid any omissions or unnecessary duplication and to prevent conflicting requirements being placed on the operator."

Summary

The review of the EPBC Act provides a suitable opportunity for consideration to be given to amending the existing legislative arrangements regarding the environmental assessment of nuclear actions under the EPBC Act, with a view to minimising the regulatory overlap experienced by Commonwealth entities already regulated under the ARPANS Act and Regulations. Such amendment would be consistent with the objects of the EPBC Act, international best practice, and Australian Government policy regarding regulation.