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Secretariat
Independent review of the EPBC Act 1999
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To the Secretariat,

As one of South Australia's foremost community campaign organisations, Friends of the Earth Adelaide (FoE Adelaide) works to address social and environmental justice issues through community action. In addition to campaigners working with on climate justice and urban issues, FoE Adelaide has two primary campaign collectives; the Clean Futures Collective and Reclaim the Food Chain. The Clean Futures Collective focuses on mining, energy and nuclear issues.

The collective is committed to creatively

- promoting sustainable, socially and ecologically conscious technologies
- supporting Indigenous communities adversely affected by the nuclear industry, particularly through uranium mining or nuclear waste dumping
- raising public awareness about mining and energy issues
- monitoring the activities of the nuclear industry

Passionate about justice and the health of South Australia's fragile arid ecosystems, the collective coordinates Friends of the Earth's legendary nuclear education tour: the Radioactive Exposure Tour as well as conducting twice-yearly volunteer community work trips to Aboriginal communities in northern South Australia and are a participant in the Australian Nuclear Free Alliance.

The terms of reference of the review of the *Environment Protect and Biodiversity Conservation Act 1999* (the Act) are broad, and seek to assess the operation and relevance of the Act. The Discussion Paper released by the Federal Department of the Environment, Water, Heritage and the Arts (DEWHA) contained 44 guiding questions, though submissions need not be limited to these points. The Discussion Paper did not raise any direct issues associated with nuclear actions under the Act. Nuclear actions have severe and long lasting consequences and require the highest degree of scrutiny. Given the opportunity for the proliferation of nuclear activities in Australia, in particular uranium mining and milling, it is essential that the Act provides the appropriate framework for the assessment and regulation of such activities, in conjunction with other relevant legislation. Without the appropriate regulation of nuclear activities the Act will fail to achieve the fundamental objective of environment protection. It is within this context that FoE Adelaide provides comment.

Definition of nuclear actions and installations

The current definition of nuclear actions and installations which trigger the Act are not adequate and therefore do not achieve sufficient standards for environmental and public health and safety.

FoE Adelaide concurs with the recommendations made by the Australian Network of Environmental Defender's Offices (ANEDO) in their submission to the recent EPBC Senate Inquiry (ANEDO 2008) in that section 22(1) which describes nuclear actions and installations be extended to also include:

- nuclear actions relating to military facilities, operations and exercises,
- mining or processing of Australian fertile and fissile materials including uranium and minerals sands,
- transportation of radioactive materials and products, including spent nuclear fuel, or radioactive products arising from reprocessing,
- a requirement to take into account the downstream uses of the nuclear material domestically and internationally; and
- irradiation of foods and other products for human use or consumption.

(ANEDO 2008)

Guidelines for significant impact

The guidelines for significant impact associated with nuclear actions needs expansion. Currently the guidelines simply state '*A nuclear action will require approval if it has, will have, or is likely to have a significant impact on the environment.*' (DEH 2006).

Some projects are unequivocally unacceptable, and these situations need to be articulated to halt any unnecessary project development and financial investment. For example, the mining and milling of uranium has some clearly unacceptable methods. The insitu leach mining method has significant unresolved environmental consequences (see Mudd 1998 for a comprehensive review) and on this basis could be banned from further expansion within Australia.

It is important that the consideration of significant impact is contemporised for nuclear actions to include cumulative impacts. With the relaxation of the Australian Labour Party's Three Mines Policy, areas of multiple significant uranium deposits, such as central-northern South Australia, are in danger of being heavily targeted. The cumulative impacts of multiple developments within a given bioregion such as this are significant and must be considered.

Nuclear activities have unambiguous direct and indirect impacts. Any concept of significant impact must consider both of these. In the case of uranium mining, the contribution to the perpetuation of the nuclear fuel cycle and off shore impacts is clear. If Australia is to be environmentally and ethically responsible, not only within our own borders, but also beyond we cannot ignore these consequential pathways.

Uncompromisingly, there can be no exceptions to the assessment of a nuclear action once it triggers the Act. The decision made on EPBC Referral 2007/3331 not to require assessment under the Act for an acid-insitu leach uranium mining project in South Australia because the project was non-commercial, deemed as a small scale project and therefore called a *trial* is a situation which must not be allowed to occur again. Nuclear actions are of the most serious nature. It is completely unacceptable that any nuclear projects be exempted from such essential regulatory legislation.

Nuclear actions and agreements under the Act

Potentially bilateral and conservation agreements and bioregional plans under the Act could allow for some nuclear actions to be exempt from Federal and public scrutiny. It is essential any

loopholes be closed, and that Federal jurisdiction over an issue of such poignant national concern is uncompromised, as is the requirement for public consultation. Nuclear actions are of such a serious nature, that each proposal must be assessed on a case by case basis. All nuclear actions must pass through the Act along with other relevant State processes and subject to public accountability to ensure the highest degree of appropriate scrutiny. Nuclear actions require multiple umpires.

In summary of our brief discussion surrounding nuclear regulation under the Act, FoE Adelaide recommends

1. **The list of nuclear actions and installations that trigger the Act must be expanded**
2. **Significant impact guidelines need development in conjunction with public participation, particularly to out line instances where projects are completed unacceptable and rejected outright, to account for cumulative impacts and to appropriately consider both direct and indirect impacts**
3. **Ensure that all nuclear actions pass through the Act and are not subordinated to assessment under other agreements and that Federal scrutiny and public accountability is not able to be bypassed by any assessment agreements made under the Act.**

In addition to but not subordinate to our concerns over the regulation of nuclear actions, we also recommend

4. **A greenhouse gas emission trigger under the Act**
5. **Improved public participation rights, including significant changes to the financial burden and ramifications of the trying of public interest cases**
6. **Introduction of accountability via the provision of a merits review of decisions made under the Act**
7. **Improved application of the precautionary principle**
8. **Longer time frames for consultation processes to allow for a higher calibre, and thus utility, of public participation**

We are grateful for the opportunity to contribute to this review, and trust that our concerns are given due consideration.

Yours sincerely,

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References:

ANEDO (2008) *Submission to the Inquiry into the operation of the* Environment Protection and Biodiversity Conservation Act 1999 by the Australian Network of Environmental Defender's Offices www.edo.org.au/

DEH (2006) *EPBC Act Policy Statement 1.1 Significant Impact Guidelines, Matters of National Environmental Significance*. Commonwealth Department of Environment and Heritage http://www.environment.gov.au/epbc/publications/nes-guidelines.html

Mudd, G. (1998) *A case against uranium solution mining*. A Research Report for Friends of the Earth (Fitzroy) with The Australian Conservation Foundation http://www.sea-us.org.au/isl/islsuks.html