

Environment and Communications Legislation
Answers to questions on notice
Climate Change, Energy, the Environment and Water Portfolio

Inquiry: Environment and Other Legislation Amendment (Removing Nuclear Energy Prohibitions) Bill 2022

Question No: IQ23-000140

Hearing Date: 15 May 2023

Division/Agency: Nature Positive Taskforce

Topic: EPBC Act national interest exemption

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Question Type: Spoken

Senator Canavan asked:

Senator CANAVAN: Right, so without this legislation could we not have nuclear submarines?

Mr Tregurtha: Without this legislation, as I think you're probably aware, there are a number of sections of the act that certainly prohibit the minister from making an approval in relation to a nuclear power plant, which is defined in I think section 22 of the EPBC Act. So in the circumstance where there was an approval that was associated with the operation of a nuclear power plant the minister would be currently prohibited from undertaking that approval action.

Senator CANAVAN: So even though there's a provision in the EPBC Act that allows for some national priority or—

Mr Tregurtha: You're referring to the national interest exemption?

Senator CANAVAN: Yes. Is that not sufficient? That can't be used in this case?

Mr Tregurtha: Section 158 provides for the minister to exempt certain actions from the application of the EPBC Act in relation to a range of matters, including national security. However, I believe—and I would have to doublecheck this—

Senator CANAVAN: Yes, you can take that on notice.

Mr Tregurtha: I'd have to take it on notice, but I believe that the nuclear prohibition would still stand.

Senator CANAVAN: So it sits outside of that potential exemption?

Mr Tregurtha: That's correct.

Answer:

Section 22 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) defines both nuclear actions and nuclear installations for the purposes of the Act. Section 140A of the EPBC Act prohibits the Minister approving any action involving a nuclear power plant.

The Department notes there is some uncertainty as to the operation of section 158 of the EPBC Act in relation to this matter due to the inclusion of section 140A. It is our view that any action that is likely to have a significant impact on a matter of national environmental significance, such as those proposed within the conventionally armed nuclear submarine program, should be subject to an independent, rigorous environmental assessment under the Act.