



Australian Government
Australian Radiation Protection
and Nuclear Safety Agency



Inquiry into the Australian Naval Nuclear Power Safety Bill 2023 [Provisions] and Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 [Provisions]

ARPANSA's submission to the Senate Foreign Affairs, Defence and Trade Committee

Ref No: D243458

Dear Committee Secretary,

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) welcomes the opportunity to provide a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee's inquiry into the Australian Naval Nuclear Power Safety Bill 2023 [Provisions] and Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 [Provisions].

ARPANSA is the Australian Government's primary authority on radiation protection and nuclear safety. The CEO of ARPANSA is charged with responsibilities under the *Australian Radiation Protection and Nuclear Safety Act 1998* (ARPANS Act) for protecting the Australian people and the environment from the harmful effects of radiation.

The proposed Bill will create a new nuclear safety regulator, the Australian Naval Nuclear Power Safety Regulator (ANNPSR). The introduction of nuclear-powered submarines fundamentally changes Australia's nuclear landscape, and therefore presents new and expanded nuclear safety issues. A dedicated naval nuclear power safety regulator that provides direct oversight of the submarine enterprise is a necessary step to address those issues. ARPANSA supports the introduction of the Bill and the anticipated creation of the new regulator.

Independence of the regulator

ARPANSA has continually stressed the need for any nuclear safety regulator to be independent of the operator of nuclear-powered submarines and their associated infrastructure and activities. The principle of an independent regulator is affirmed in international best practice, exemplified by the International Atomic Energy Agency's Fundamental Safety Principles and General Safety Requirements. This principle was a major element of a 13 October 2022 letter to me, as CEO of ARPANSA, from the Chair of the Radiation

Health and Safety Advisory Council (RHSAC). ARPANSA notes that the Bill strikes a balance between the operational needs of a strategic military capability and the requirement for full independence of the regulator. ARPANSA appreciates the desirability of striking this balance, noting that the regulator will be a statutory authority with a Director-General and Deputy-Director General functionally separate from the Australian Defence Force (ADF) chain of command and neither of these statutory office holders can be a member of the ADF. ARPANSA also acknowledges that the Bill makes it clear that authorised parties retain the prime responsibility for safety throughout the lifetime of facilities and the duration of activities. However, ARPANSA does believe demonstration of the operational independence of the regulator could be further strengthened through the provision of a legislated advisory body.

No provision for an advisory body

ARPANSA notes that the Bill does not provide for the establishment of a formal advisory body to the Director-General of ANNPSR. Although ARPANSA notes that the absence of such a clause in the Bill does not necessarily preclude the discretionary establishment of such an advisory body, ARPANSA believes that enshrining such a body in legislation would strengthen the independence of the regulatory social license, as well as assist with transparency and ensuring diversity of views presented to the Director-General.

System of regulation and sharing of regulatory experience

The Bill provides for the new regulator to be part of a system of regulation for the nuclear-powered submarine program. ARPANSA is also part of that system of regulation. This provides regulatory coverage to ensure nuclear safety and radiation protection for the Australian public and the environment. Regulators working in harmony with clear responsibilities can produce positive safety outcomes while also reducing regulatory burden, overlap or duplication. This theme was also raised in the 13 October 2022 letter from the Chair of RHSAC.

The Bill does not provide a clear framework for how ANNPSR and ARPANSA will work together within the system of regulation nor what the boundaries and interfaces would be between the two agencies. Examples of interfaces between ANNPSR and ARPANSA would include environmental monitoring and protection, and the regulation of radioactive waste management. Although it may not be expected that a Bill would address such issues in detail, it is noted that the regulation making power contained in the Bill will allow, at least in part, for some elements of the interaction between ARPANSA and ANNPSR to be explained in the Regulations. ARPANSA is working with the Department of Defence on providing advice and guidance on the development of the Regulations. ARPANSA is also working with Defence to determine how the two regulators would operate in practice including maintaining a means of sharing regulatory experience, which is consistent with international best practice.

Uniformity of regulation

ARPANSA stresses the importance of consistent development, and uniform application, of regulations, codes and standards in nuclear safety and radiation protection. Australia has nine radiation safety regulators – one for each of the states and territories and the Commonwealth (represented by ARPANSA). Each regulator operates under its own legislation. The establishment of ANNPSR introduces a tenth regulator. This additional regulator further reinforces the critical role of ARPANSA in promoting uniformity as the national authority and conduit for implementation of international best practice in radiation protection and nuclear safety in Australia. The theme of national harmonisation was also a key component of the 13 October 2022 letter from the Chair of the RHSAC. ARPANSA will work with Defence and the ANNPSR, when established, to ensure that nuclear safety and radiation protection is applied uniformly to the extent possible. ARPANSA will also develop codes, standards and guides that can be used in both the

military context and the civilian context. ARPANSA acknowledges that ANNPSR may have some specific regulatory guidance or practices that are only applicable to the unique circumstances of naval nuclear propulsion, but ARPANSA believes that general safety principles behind such guidance should be uniform with those applying in the civilian sector. ARPANSA also notes that ANNPSR will be regulating some civilian entities involved in regulated activities connected with the submarine enterprise, and this should be done consistently with any other civilian entity regulated under another regulatory regime.

Transitional provisions

Development of infrastructure at HMAS *Stirling* in Western Australia has been identified as necessary to the preparation for Submarine Rotational Force – West. Should any of the proposed infrastructure or activities at *Stirling* have radiation protection or nuclear safety implications, ARPANSA is the only regulator that can undertake regulatory assessments until the establishment of ANNPSR. The transitional provisions mean that any licensing decisions made by the CEO of ARPANSA under the ARPANS Act prior to the Bill coming into force can be recognised by the Director-General of ANNPSR after commencement. This will maintain consistency of regulation and ensure that early activities can move forward in good time with appropriate regulatory oversight.

Emergency preparedness and response

ARPANSA notes that the Bill does not make and express provision for emergency preparedness and response (EPR) activities necessary to address the radiological and nuclear hazards associated with the submarine enterprise or other forms of naval nuclear propulsion. ARPANSA considers it vital that effective and fit-for-purpose EPR arrangements are in place within Australia’s radiation protection and nuclear safety system to deal with the unique challenges presented by radiological and nuclear hazards. This view was reinforced in the 13 October 2022 letter from the Chair of RHSAC.

Subsequent amendments to the ARPANS Act

ARPANSA notes there are currently no consequential amendments required of the ARPANS Act as a result of the passage of the ANNPS Bill. However, ARPANSA believes that consideration could be given for subsequent amendments to the ARPANS Act to facilitate cooperation between ARPANSA and ANNPSR.

Under the ARPANS Act, there are three advisory bodies to the CEO of ARPANSA. Of the three bodies, ARPANSA believes that an appropriate representative of the Director-General of ANNPSR should be a standing member of the Radiation Health Committee (RHC) and be considered for member or observer of the Nuclear Safety Committee (NSC), to be invited when there are relevant topics of interest to be discussed. This would enable the sharing of information related to nuclear safety and radiation protection, input into the development of codes and standards, and transparency of actions from all regulators. Membership of the RHC is prescribed in s 24 of the ARPANS Act, and the NSC’s under s 27. ARPANSA believes these sections should be amended to include an appropriate representative of the Director-General of ANNPSR as a member.

The membership of the NSC includes ‘a person to represent the local government or the local administration of an area affected by a matter related to the safety of a controlled facility’. Since ARPANSA was created, the main local government area (LGA) that has been affected by a controlled facility has been the Sutherland Shire which encompasses the Lucas Heights campus for the Australian Nuclear Science and Technology Organisation. The introduction of nuclear-powered submarines means that there will be more LGAs affected by activities from nuclear installations, though they may not be regulated by ARPANSA in the long term and defined as ‘controlled facilities’ under the ARPANS Act. ARPANSA considers it prudent to

have up to three representatives from affected LGAs in Australia necessitating amendment to the ARPANS Act accordingly.

Should the Bill be enacted, other amendments to the ARPANS Act may be desirable to enhance the system of radiation protection and nuclear safety in Australia.

Yours sincerely

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Chief Executive Officer
ARPANSA

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