

Nuclear Facilities Prohibition Bill 2007

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Nuclear Facilities Prohibition Bill 2007

A Bill for

An Act to prohibit the construction or operation of certain nuclear facilities in Western Australia, and for related purposes.

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Nuclear Facilities Prohibition Act 2007*.

2. Commencement

This Act comes into operation as follows:

- 5 (a) sections 1 and 2 — on the day on which this Act
 receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Terms used in this Act

- 10 (1) In this Act —
- “distribution system”** has the meaning given in the *Electricity
 Industry Act 2004* section 3;
- “enrichment”**, of a radioactive substance, means a process by
 which the concentration of an isotope in the substance is
 increased;
- 15 **“generating works”** has the meaning given in the *Electricity
 Industry Act 2004* section 3;
- “nuclear facility”** means a facility that is one or more of the
 following —
- 20 (a) a facility for the enrichment of a radioactive
 substance, for example, an isotope separation plant;
- (b) a facility for the transformation of a radioactive
 substance into a form suitable for use as fuel in a
 nuclear reactor, for example, a fabrication plant;
- (c) a nuclear reactor;
- 25 **“nuclear reactor”** means a device designed to produce
 controlled nuclear fission, whether or not designed to
 generate electricity;
- “person”** includes, without limiting the *Interpretation Act 1984*,
 the Crown in all its capacities;

“radioactive substance” has the meaning given in the
Radiation Safety Act 1975 section 4(1);

“transmission system” has the meaning given in the *Electricity
Industry Act 2004* section 3.

- 5 (2) For the purposes of this Act, a person transports equipment,
material or a substance in the State whether or not the origin or
destination of the equipment, material or substance is a place to
which this Act applies.

4. Act to bind Crown

- 10 This Act binds the Crown in right of the State and, so far as the
legislative power of the State permits, the Crown in all its other
capacities.

5. Act overrides other written laws

- (1) This Act has effect despite any other written law.
- 15 (2) Without limiting subsection (1), an authorisation (whether
granted before, on or after the day on which this Act comes into
operation) does not authorise the doing of an act that would
contravene section 6(1), 7(1) or (2), or 8(2).
- (3) In subsection (2) —
- 20 **“authorisation”** means an authorisation (however described)
under a written law.

**6. Prohibition against constructing or operating a nuclear
facility**

- 25 (1) A person must not construct or operate a nuclear facility in the
State.
Penalty: a fine of \$500 000.

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(2) Subsection (1) does not apply to —

- (a) the operation of a nuclear powered vessel; or
- (b) the construction or operation of a facility for the enrichment of radioactive substances the operation of which is —

- (i) authorised under the *Radiation Safety Act 1975*; or

- (ii) in accordance with a registration under the *Radiation Safety Act 1975* in respect of the facility; or

- (iii) covered by an exemption under the *Radiation Safety Act 1975*.

(3) Proceedings for an offence under subsection (1) are to be dealt with by a court constituted by a magistrate.

7. Prohibition against transporting certain material to a nuclear facility site

(1) A person must not transport equipment or material in the State that is intended to be used for or in the construction of a nuclear facility in the State.

Penalty: a fine of \$500 000.

(2) A person must not transport a radioactive substance in the State that is intended to be used in the operation of a nuclear facility in the State.

Penalty: a fine of \$500 000.

(3) Subsections (1) and (2) do not apply in respect of a nuclear facility described in section 6(2)(b).

(4) It is a defence to a charge of an offence under subsection (2) to prove that the transport was carried out in an emergency situation to prevent danger to human life or health or irreversible damage to the environment.

- (5) Proceedings for an offence under subsection (1) or (2) are to be dealt with by a court constituted by a magistrate.

8. Prohibition against connecting generating works to electricity transmission or distribution system

- 5 (1) In this section —

“operator of a transmission system or a distribution system”
means a person who is one of the following —

- (a) a licensee within the meaning given in the *Electricity Industry Act 2004* section 3;
- 10 (b) a person who is exempt under the *Electricity Industry Act 2004* from the requirement to hold a licence within the meaning of section 3 of that Act;
- (c) a person who operates a transmission system or distribution system in contravention of the
15 requirement to have a licence under the *Electricity Industry Act 2004*.

- (2) An operator of a transmission system or a distribution system must not permit the system to be connected to generating works in the State if the generating works are, or are powered by, a
20 nuclear facility.

Penalty: a fine of \$500 000.

- (3) Proceedings for an offence under subsection (2) are to be dealt with by a court constituted by a magistrate.

9. Injunctions

- 25 (1) The Minister may apply to a court for an injunction to prevent a person from doing anything that would involve —

- (a) the construction of a nuclear facility in the State, other than a facility described in section 6(2)(b); or
- 30 (b) the operation of a nuclear facility in the State, other than a facility described in section 6(2); or

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- (c) the transport of equipment or material in the State that is intended to be used for or in the construction of a nuclear facility in the State, other than a facility described in section 6(2)(b); or
- 5 (d) the transport of a radioactive substance in the State that is intended to be used in the operation of a nuclear facility in the State, other than a facility described in section 6(2)(b); or
- 10 (e) the connection of generating works to a transmission system or a distribution system if the generating works are, or are powered by, a nuclear facility,
- or that would facilitate or provide assistance in relation to any of those matters.
- 15 (2) It is not necessary for the Minister to prove that the act sought to be prevented by the injunction has previously occurred or would, if the injunction were not granted, be likely to occur or continue.
- (3) An interim injunction may be granted before final determination of an application under subsection (1).
- 20 (4) The court is not to require, as a condition of granting an interim injunction, that an undertaking be given as to damages or costs.
- (5) The taking of proceedings against any person for an offence under section 6(1), 7(1) or (2), or 8(2) is not affected by —
- 25 (a) the making of an application under subsection (1) for an injunction; or
- (b) the grant or refusal of an injunction upon an application under subsection (1); or
- (c) the rescission, variation or expiry of an injunction granted upon an application under subsection (1).

10. Offences by bodies corporate

- 5 (1) If a body corporate contravenes section 6(1), 7(1) or (2), or 8(2),
each person who is a director or who is concerned in the
management of the body corporate is taken to have committed
an offence under that provision unless the person proves that —
- (a) the person did not know, and could not reasonably be
expected to have known, of the contravention; or
- (b) the person —
- 10 (i) was not in a position to influence the conduct of
the body corporate in relation to the
contravention; or
- (ii) being in such a position, used all due diligence
and reasonable precautions to prevent the
contravention;
- 15 or
- (c) the body corporate would not have been convicted by
reason of being able to establish a defence available to it
under this Act.
- 20 (2) Under this section a person may be proceeded against and
convicted of an offence under section 6(1), 7(1) or (2), or 8(2)
whether or not the body corporate has been proceeded against or
convicted of an offence under that provision.
- (3) Nothing in this section prejudices or affects any liability
imposed on a body corporate for an offence committed by the
25 body corporate under section 6(1), 7(1) or (2), or 8(2).
- (4) Without limiting any other law or practice regarding the
admissibility of evidence, evidence that an officer, employee or
agent of a body corporate (while acting in his or her capacity as
such) had, at any particular time, a particular state of mind, is
30 evidence that the body corporate had that state of mind.

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11. Referendum

(1) In subsection (2) —

“prohibited nuclear facility” means a nuclear facility other than one described in section 6(2)(b).

- 5 (2) If the Minister is satisfied that the Commonwealth Government has taken steps to provide for the construction of a prohibited nuclear facility in Western Australia, the Minister must use his or her best endeavours to ensure that a Bill is introduced into the Parliament authorising or requiring a question or questions
10 relating to the construction of such a facility to be submitted under the *Referendums Act 1983* to the electors (as defined under section 2(1) of that Act).

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Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
authorisation	5(3)
distribution system	3(1)
enrichment	3(1)
generating works	3(1)
nuclear facility	3(1)
nuclear reactor.....	3(1)
operator of a transmission system or a distribution system.....	8(1)
person	3(1)
prohibited nuclear facility.....	11(1)
radioactive substance.....	3(1)
transmission system.....	3(1)