

NUCLEAR FACILITIES PROHIBITION BILL 2007

EXPLANATORY MEMORANDUM

The purpose of this Bill is to prohibit the construction or operation of a nuclear powered electricity generator in Western Australia.

The Bill seeks to directly prohibit construction or operation of a nuclear reactor and indirectly by prohibiting the transport of materials to a nuclear facility and connection of electricity generated by a nuclear reaction to transmission and distribution systems within the State.

The Bill creates offences for undertaking prohibited activities. Should the Commonwealth Government take steps to allow construction of a nuclear reactor in Western Australia, the Bill provides that the responsible Minister use best endeavours to hold a referendum on the issue.

1. Short title

This is the citation of the Act.

2. Commencement

This clause provides that sections 1 and 2 come into operation on the day it receives Royal Assent while the remainder of the Act comes into operation the day after.

This is intended to avoid possible retrospectivity by removing the potential for the Act to receive Royal Assent on a given day and prohibit activities that happened earlier that day.

3. Terms used in the Act

This clause defines terms used in the Act.

Sub section (2) of this section is intended to ensure that the prohibitions on transporting material intended to be used in the construction or operation of a nuclear facility apply regardless of whether the nuclear facility itself is covered by the Act, such as a facility to which State law would not apply.

4. Act binds the Crown

This clause provides that the Act binds the Crown.

5. Act overrides other written laws

This clause provides that written laws and any authorisations which might be interpreted as allowing construction or operation of nuclear facilities or other prohibited activities are overridden by this Act.

6. Prohibition against constructing or operating a nuclear facility

This clause makes it an offence to construct or operate a nuclear facility and imposes a penalty of \$500,000.

This clause also provides that operation of a nuclear powered vessel or activities authorised or exempted under the *Radiation Safety Act 1975* are not prohibited by the Act. These exemptions are provided to ensure that the Act does not inadvertently prevent the operation of nuclear powered vessels or legitimate medical and research activities, neither of which are intended to be prohibited by this legislation.

7. Prohibition against transporting materials to a nuclear facility site

This clause prohibits the transport of equipment, materials or radioactive substances intended to be used in the construction or operation of a nuclear facility in Western Australia and imposes a penalty of \$500,000.

This clause is intended to prevent the construction or operation of a nuclear facility if the facility itself is not captured by State law and thus the prohibition in clause 6 would not be effective.

This clause does not apply to legitimate medical and research activities authorised or exempted under the *Radiation Safety Act 1975* and it is a defence to this offence that the transport was necessitated by an emergency impacting human life or the environment.

8. Prohibition against connecting nuclear generation to the transmission or distribution system

This clause prohibits the connection of any electricity generated in Western Australia from nuclear power to electricity transmission or distribution systems within the State with a penalty of \$500,000. It is intended to cover both State and privately owned systems, including those who are unlicensed, either because they are exempt from licence requirements or who do not have a licence although they are required to do so.

This clause is intended to prevent the operation of a nuclear facility by preventing its output from being used if the facility itself is not captured by State law and thus the prohibition in clause 6 would not be effective.

9. Injunctions

This clause provides that the Minister may apply to a Court for an injunction to prevent a person from undertaking, facilitating or assisting the activities prohibited by the Act.

Obtaining an injunction does not require that the Minister prove that the prohibited activities have previously occurred or would be likely to occur if the injunction were not granted.

The clause also provides that an interim injunction may be granted before a final determination and that the Court may not require undertakings as to damages or costs before granting an interim injunction.

Proceedings for offences created under the Act will not be impacted by injunctions against those activities.

10. Offences by bodies corporate

Clause 10 provides that if an offence under the Act is committed by a body corporate then directors and managers are taken to have committed the offence. This applies regardless of whether or not the body corporate itself has had action taken against it for an offence and does not impact on any liability faced by the body corporate.

There are several exceptions to this provision, including that the:

- person did not know or could not reasonably have been expected to know of the events;
- person was not able to influence the conduct of the body corporate or took all reasonable steps to prevent it; and
- body corporate would have been able to use one of the defences available under the Act.

11. Referendum

Clause 11 provides that, if the Minister is satisfied that the Commonwealth has taken steps to construct a nuclear facility in Western Australia prohibited by the Act, then the Minister must use his or her best endeavours to ensure that a State referendum is held on the issue.