

NUCLEAR WASTE STORAGE (PROHIBITION) AMENDMENT BILL 2003

EXPLANATORY MEMORANDUM

The purpose of this Bill is to amend the *Nuclear Waste Storage (Prohibition) Act 1999* (“the Act”). The Act was introduced in the context of a proposal to establish a storage facility for overseas nuclear waste in Australia, and does not presently apply to the storage of nuclear waste generated in Australia. The Bill seeks to extend the application of the Act to all nuclear waste, whether generated in Australia or overseas. It would also introduce a new offence of transporting nuclear waste, and a power for the responsible Minister to seek an injunction to restrain activities associated with the storage or transportation of nuclear waste.

1. Short title

Citation of the Act.

2. Commencement

This clause provides that the Act commences on the day on which it receives Royal Assent.

3. The Act amended

This clause provides that the amendments in the Act are to the *Nuclear Waste Storage (Prohibition) Act 1999*.

4. Long title amended

This clause includes reference to transportation in the Act’s long title.

5. Section 1 amended

This clause includes reference to transportation in the name of the Act.

6. Section 3 amended

Subclause (1) makes a formatting change consequent upon the insertion of subsections (2) and (3).

Subclause (2) includes a definition of “nuclear plant” to make the provisions of the Act easier to read and a definition of “person” to avoid an argument that the key provisions of the Act (that refer to “a person”) do not apply to the Crown.

Subclause (3) inserts a new definition of nuclear waste. The principal differences between the new definition and the present definition are outlined in the attached table.

Subclause (4) deletes the definition of “Radiological Council”, which is no longer necessary given the changes to the definition of “nuclear waste”.

Subclause (5) makes clear that “nuclear waste” does not include waste that results from the use of products of a nuclear plant. Subclause (5) also inserts section 3(3), which makes it clear that the Act is intended to apply to the transportation of nuclear waste to a Commonwealth place, even if the Act did not apply to that Commonwealth place.

7. Section 4 amended

This clause inserts reference to the prohibition on the transportation of nuclear waste into the objects clause.

8. Section 5 amended

Under the *Radiation Safety Act 1975*, the Radiological Council may grant a number of different licences and approvals for, amongst other matters, the storage and transportation of radioactive substances.

When the *Nuclear Waste Storage (Prohibition) Act 1999* was introduced, section 41A of the *Radiation Safety Act 1975* was inserted to ensure that the Radiological Council could not authorise the storage or transportation of nuclear waste unless consent to do so is granted by both Houses of Parliament.

This clause amends section 5 to clarify the relationship between the two Acts, and ensure that only authorisations under section 41A of the *Radiation Safety Act 1975*, which have been granted or effected with the consent of both Houses of Parliament, can permit the storage or transportation of nuclear waste.

9. Section 7 amended

This clause inserts two additional subsections into section 7.

Subsection (3) provides that the offence in subsection (1) does not apply in emergency situations in which the storage of nuclear waste is required for the purpose of preventing danger to human life or health, or irreversible damage to the environment.

Subsection (4) ensures that a Magistrate, rather than Justices of the Peace, hears prosecutions. This is desirable given the seriousness of the offence and the size of the penalty.

10. Section 7A inserted

This clause inserts a new section into the Act.

Subsections (1) and (2) makes it an offence to transport nuclear waste in the State.

Subsection (3) provides that this offence does not apply in emergency situations in which the transportation of nuclear waste is required for the purpose of preventing danger to human life or health, or irreversible damage to the environment.

Subsection (4) ensures that a Magistrate, rather than Justices of the Peace, hears prosecutions. This is desirable given the seriousness of the offence and the size of the penalty.

11. Section 8 amended

This clause extends the existing “director’s liability” provisions of the Act to the new offences introduced by the Bill.

12. Section 8A inserted

Proposed section 8A(1) provides that the Minister may apply for an injunction to prevent a range of activities, including the construction or operation of a nuclear waste facility. The Minister can seek an injunction against a person who is facilitating, or providing assistance in relation to these matters.

The balance of section 8A addresses technical, procedural requirements associated with injunction applications. For example, the Courts have, in some cases, required that the person seeking an injunction prove that there have been a number of repeated unlawful acts before an injunction has been granted. Proposed section 8A(2) provides that the Minister need not prove this in order to obtain an injunction under section 8A(1).

13. Consequential amendments to the *Nuclear Activities Regulation Act 1978*

The *Nuclear Activities Regulation Act 1978* contains a reference to the *Nuclear Waste Storage (Prohibition) Act 1999*. This clause updates that reference so that it refers to the *Nuclear Waste Storage (Prohibition and Transportation) Act 1999*.

14. Consequential amendment to the *Radiation Safety Act 1975*

The *Radiation Safety Act 1975* contains a reference to the *Nuclear Waste Storage (Prohibition) Act 1999*. This clause updates that reference so that it refers to the *Nuclear Waste Storage (Prohibition and Transportation) Act 1999*.

CHANGES TO DEFINITION OF “NUCLEAR WASTE”

Present Definition	Proposed Definition	Comment
Includes radioactive substances derived from “ <i>any source, including</i> a nuclear reactor, a nuclear weapon, a nuclear weapon facility, a nuclear reprocessing plant or an isotope enrichment plant” (emphasis added).	Confines the definition to waste from the following sources: <ul style="list-style-type: none"> ▪ nuclear reactors ▪ radioisotope enrichment plants involved in the enrichment of uranium or plutonium ▪ nuclear reprocessing plants ▪ nuclear weapons facilities ▪ the testing, use or decommissioning of nuclear weapons. 	The reference to radioactive substances derived from any source is too broad.
Excludes radioactive substances “generated in Australia otherwise than from waste radioactive substances imported into Australia.”	Extends the definition to include nuclear waste that is generated in Australia.	This amendment expands the coverage of the Act to include nuclear waste generated in Australia.
Does not apply to waste “used under a licence, registration, exemption, disposal permit or temporary permit under the <i>Radiation Safety Act 1975</i> .”		This exclusion is no longer necessary, given that the definition of “nuclear waste” is to be confined in the manner discussed above.
Does not apply to radioactive substances “for which the Radiological Council is satisfied that no beneficial use is envisaged.”		The ordinary meaning of “waste” is clear enough, and with this amendment the application of the Act (including the application of offences) will no longer depend upon the view of a particular body.
	Provides that waste of a nuclear plant does not include waste that results from the use of the products of a nuclear plant: see clause 6(5).	Makes clear that waste from products that result from the use of a nuclear plant (e.g. broken industrial gauges containing radioactive sources produced in a nuclear reactor) are not covered by the Act.