

## Article Information

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# The Australian Naval Nuclear Power Safety Bill 2023 (Cth) - pathway to naval nuclear safety in Australia

**As the AUKUS alliance gains momentum, Australia continues to take steps to facilitate acquiring nuclear-powered, conventionally armed submarines.**

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## Introduction

On 14 March 2023, Australia, the United States and the United Kingdom announced their agreement to begin a phased approach for Australia's acquisition of conventionally armed, nuclear-powered submarines as part of the AUKUS alliance.

On 6 May 2023, the Australian Government also announced that they would establish an Australian Naval Nuclear Power Safety Regulator (**Regulator**), whom will have the functions and powers necessary to regulate naval nuclear safety, including related infrastructure and facilities.

To implement the Government's decision, on 16 November 2023 the Australian Naval Nuclear Power Safety Bill 2023 (Cth) (**Bill**) was introduced to the Federal Parliament's House of Representatives.

## Naval Nuclear Power Safety Bill 2023 (Cth)

The primary purpose of the Bill is to promote nuclear safety of regulated activities. Nuclear safety includes:

1. In all cases - protecting the health and safety of people, and the environment, from the harmful effects of ionising radiation and non-ionising radiation;
2. The implementation of proper operating conditions for regulated activities;
3. The prevention of accidents relating to regulated activities; and
4. The mitigation of the consequences of any accidents (if they occur).[\[1\]](#)

There are three types of regulated activity provided for by the Bill:

1. Facility activities - activities that relate to particular facilities (called naval nuclear propulsion facilities (or NNP facilities)) that are relevant to AUKUS submarines (such as facilities to construct an AUKUS submarine or maintain naval nuclear propulsion plant for an AUKUS submarine).
2. Submarine activities - activities that relate to AUKUS submarines themselves (such as constructing or operating an Australian nuclear-powered submarine).
3. Material activities - activities that relate to certain material, equipment and plant (called NNP material and NNP equipment or plant) which emit or produce radiation and are from, or for use on, AUKUS submarines.[\[2\]](#)

Regulated activities can only occur in a designated zone or in relation to an Australian submarine.[\[3\]](#) Presently, these designated zones prescribed by the Bill are HMAS *Stirling* at Garden Island in Western Australia, the Osborne Naval Shipyard in South Australia although scope is allowed for other areas in Australia to be prescribed by regulations.[\[4\]](#)

The Bill establishes a number of nuclear safety duties, requires Australian naval nuclear power licences in order to conduct a regulated activity, and sets out compliance and enforcement powers of inspectors. The Bill also establishes the Regulator.

The Bill is focused on the regulation of supporting facilities and infrastructure but is drafted in a manner that anticipates future regulation of activities involving Australian submarines.

### **Ensuring nuclear safety when conducting regulated activities**

Part 2 of the Bill establishes the following nuclear safety duties:

1. A general nuclear safety duty that requires any person conducting a regulated activity to, so far as reasonably practicable, ensure nuclear safety when conducting the activity.[\[5\]](#)
2. A duty for a person to not conduct a regulated activity unless they hold a licence authorising them to conduct the regulated activity.[\[6\]](#)
3. A duty for licence holders to establish, implement and maintain a nuclear safety management system that ensures, so far as reasonably practicable, the nuclear safety of regulated activities conducted by the licence holder and other persons authorised by the licence.[\[7\]](#)
4. A duty for licence holders to report any nuclear safety incident (an incident relating to nuclear safety that results in, or could have resulted in death or serious injury or illness, or a serious environmental incident, or as otherwise prescribed by the regulations) that occurs in relation to a regulated activity authorised by the licence.[\[8\]](#)
5. A duty for licence holders to, so far as reasonably practicable, ensure that the persons authorised to conduct regulated activities under the licence have the appropriate expertise, training and information to ensure nuclear safety of those activities and to ensure that those activities are appropriately supervised.[\[9\]](#)
6. A duty for licence holders to comply with any licence conditions.[\[10\]](#)
7. A duty for persons authorised by a licence to, so far as reasonably practicable, implement and comply with the nuclear safety management system that applies to the regulated activity.[\[11\]](#)
8. A duty for persons authorised by a licence to comply with any licence conditions.[\[12\]](#)

Each of these duties attract both civil and criminal penalties for contravention. For example, the general nuclear safety duty attracts a civil penalty of 10,000 penalty units (20,000 penalty units if a nuclear safety incident occurs) and a criminal penalty of 12 years imprisonment or 700 penalty units, or both, for an individual, or 28,000 penalty units for a body corporate (25 years imprisonment or 1,400 penalty units, or both, for an individual, or 57,500 penalty units for a body corporate if a nuclear safety incident occurs).[\[13\]](#)

### **Australian naval nuclear power safety licences**

Part 3 of the Bill provides an outline of the requirements in relation to Australian naval nuclear power safety licences. These licences can only be held by Commonwealth-related persons (the Commonwealth, a corporate Commonwealth entity, a Commonwealth company or a Commonwealth contractor) or a person otherwise authorised under a licence.[\[14\]](#)

The Regulator is responsible for deciding whether to issue a licence and must be satisfied that the required statutory criteria are fulfilled.[\[15\]](#) This includes being satisfied that an applicant will be able to comply with the conditions applicable to a relevant licence.[\[16\]](#) The Regulator can also impose conditions on a licence, as well as vary, suspend or cancel the licence if certain statutory criteria are met.[\[17\]](#)

### **Compliance and enforcement**

Part 4 of the Bill sets out the general powers of an Australian Naval Nuclear Power Safety Inspector (**Inspector**) in monitoring and ensuring compliance as well as investigating non-compliance with the *Australian Naval Nuclear Power Safety Act 2023* (**proposed Act**). An inspector can be the Director-General or Deputy Director-General of the Regulator, or an individual appointed by the Director-General.[\[18\]](#) In considering whether to exercise powers, an inspector must have regard to nuclear safety and security.[\[19\]](#)

The Inspector's powers include entering monitoring areas and investigation areas, conducting searches, operating equipment, and securing or seizing evidence.[\[20\]](#) Some of the powers may only be exercised with a warrant or with consent.

Inspectors also have the power to give directions, improvement notices and prohibition notices, and to make requirements of persons.[\[21\]](#)

The Bill contains offences for impersonating an inspector or making a false representation that a person is an Inspector.[\[22\]](#) as well as for obstructing, hindering, intimidating or resisting an Inspector.[\[23\]](#)

### **The Australian Naval Nuclear Power Safety Regulator**

Part 5 of the Bill establishes the Regulator, which consists of the Director-General, the Deputy Director-General, the staff,

persons assisting the regulator and the inspectors.[\[24\]](#)

The functions of the Regulator are:

1. To promote nuclear safety in relation to regulated activities.
2. To promote, monitor and enforce compliance with the proposed Act.
3. Any other functions conferred on the Regulator under the proposed Act or any other Commonwealth law.
4. To do anything incidental or conducive to the performance of any of the above functions.[\[25\]](#)

The Regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of the Regulator's functions.[\[26\]](#) The Regulator may also consult or cooperate with other entities, including AUKUS partner peer regulators.[\[27\]](#)

### **Other matters**

Part 6 of the Bill provides that the proposed Act applies both within and outside Australia and also provides for the Commonwealth to be prosecuted for an offence against the proposed Act or to be subject to proceedings for contravening a civil penalty provision.[\[28\]](#)

Part 6 also outlines the interaction between the proposed Act and relevant existing nuclear safety legislation:

1. *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth)  
There is no interaction as the *Australian Radiation Protection and Nuclear Safety Act 1988* (Cth) does not apply in relation to regulated activities.[\[29\]](#)
2. *Nuclear Non-Proliferation (Safeguards) Act 1987* (Cth)  
The proposed Act does not exclude the operation of the *Nuclear Non-Proliferation (Safeguards) Act 1987* (Cth).[\[30\]](#)
3. *Work Health and Safety Act 2011* (Cth)  
The proposed Act does not exclude the operation of the *Work Health and Safety Act 2011* (Cth) or any corresponding WHS law.[\[31\]](#)

Part 6 provides that, if a law of a State or Territory, or one or more provisions of such a law, is prescribed by the regulations, that law or provision does not apply in relation to a regulated activity.[\[32\]](#) Additionally, if the proposed Act confers a function on a person, the person must have regard to Australia's obligations under any international agreement prescribed by the regulations in performing that function.[\[33\]](#)

The Minister for Defence is able to delegate the Minister's functions under the proposed Act to another Minister.[\[34\]](#) The Director-General is also able to delegate any of its functions under the proposed Act to the Deputy Director-General or a person who is an SES employee, an acting SES employee, or who holds or is acting in a position that is equivalent to a position occupied by an SES employee, in the Regulator, and who is not a member of the Australian Defence Force.[\[35\]](#) However, the Director-General is not able to delegate certain specified functions under the proposed Act.[\[36\]](#)

The Bill authorises the Governor-General to make regulations regarding regulated activities and designated zones, incident reporting, licences, remuneration and allowances, annual reporting, operation of other laws and international agreements.[\[37\]](#)

### **Transitional Provisions**

The Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 (Cth) (**Transitional Bill**) enables the transition of any licences issued by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) where they correspond to regulated activities under the Bill.[\[38\]](#)

The Transitional Bill enables certain licences issued by the Chief Executive Office of ARPANSA to be treated as Australian naval nuclear power safety licences for the purposes of the proposed Act, on commencement of that Act.[\[39\]](#)

### **Status of Bill**

The Bill has been referred to the Senate Standing Committee on Foreign Affairs, Defence and Trade for inquiry and report. Submissions on the Bill close on 1 February 2024, with a report due by 26 April 2024.

[\[1\]](#) Australian Naval Nuclear Power Safety Bill 2023 (Cth) s 5.

[\[2\]](#) Ibid s 9.

[\[3\]](#) Ibid s 10.

[\[4\]](#) Ibid.

[\[5\]](#) Ibid s 18.

[\[6\]](#) Ibid s 19.

[\[7\]](#) Ibid s 20.

[\[8\]](#) Ibid s 21.

[\[9\]](#) Ibid s 22.

[\[10\]](#) Ibid s 23.

[\[11\]](#) Ibid s 24.

[\[12\]](#) Ibid s 25.

[\[13\]](#) Ibid s 18.

[\[14\]](#) Ibid s 29.

[\[15\]](#) Ibid ss 30-1.

[\[16\]](#) Ibid s 31.

[\[17\]](#) Ibid ss 34-6.

[\[18\]](#) Ibid s 5.

[\[19\]](#) Ibid s 92.

[\[20\]](#) Ibid ss 40-71.

[\[21\]](#) Ibid ss 75-85.

[\[22\]](#) Ibid s 89-90.

[\[23\]](#) Ibid s 91.

[\[24\]](#) Ibid s 101.

[\[25\]](#) Ibid s 102.

[\[26\]](#) Ibid.

[\[27\]](#) Ibid s 103.

[\[28\]](#) Ibid ss 125, 128-31.

[\[29\]](#) Ibid s 132.

[\[30\]](#) Ibid s 133.

[\[31\]](#) Ibid s 134.

[\[32\]](#) Ibid s 135.

[\[33\]](#) Ibid s 136.

[\[34\]](#) Ibid s 141.

[\[35\]](#) Ibid s 142.

[\[36\]](#) Ibid.

[\[37\]](#) Ibid s 143.

[\[38\]](#) Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 (Cth) ss 3-4.

[\[39\]](#) Ibid.