



Australian Nuclear Science and Technology Organisation Amendment Act 1992

No. 83 of 1992

**An Act to amend the *Australian Nuclear Science and
Technology Organisation Act 1987*, and for related
purposes**

[Assented to 30 June 1992]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Australian Nuclear Science and
Technology Organisation Amendment Act 1992*.

5 (2) In this Act, “**Principal Act**” means the *Australian Nuclear Science
and Technology Organisation Act 1987*¹.

Commencement

2. This Act commences on the day on which it receives the Royal
Assent.

Interpretation

3. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**Bureau**’ means the Nuclear Safety Bureau established by section 37;
‘**Director**’ means the Director of the Bureau;”.

5

Functions of Organisation

4.(1) Section 5 of the Principal Act is amended:

(a) by inserting after paragraph (1)(b) the following paragraph:

“(ba) to condition, manage and store radioactive materials and radioactive waste, arising from:

10

(i) the Organisation’s activities (including the production of radioactive materials for other persons); or

(ii) the activities of companies in which the Organisation holds a controlling interest (including the production of radioactive materials for other persons); or

15

(iii) the use by other persons of radioactive materials produced by the Organisation or such companies; or

20

(iv) the activities of other persons who are specified in the regulations;”;

(b) by inserting after subparagraph (1)(c)(i) the following subparagraph:

“(ia) in connection with the conditioning, management and storage of radioactive materials or radioactive waste; or”;

25

(c) by inserting after paragraph (1)(e):

“(ea) to make available to other persons, on a commercial basis, the knowledge, expertise, equipment and facilities of the Organisation by:

30

(i) providing training and management expertise; or

(ii) selling or leasing equipment; or

(iii) leasing land and facilities; or

35

(iv) taking any other action that the Organisation thinks appropriate;”;

(d) by omitting from paragraph (1)(j) “the training of scientific and research workers” and substituting “training”;

(e) by inserting after subsection (1) the following subsections:

40

“(1A) A regulation made for the purposes of subparagraph (1)(ba)(iv) must not have the effect of authorising the premises

*Australian Nuclear Science and Technology Organisation
Amendment No. 83, 1992*

on which the Lucas Heights Research Laboratories are situated to become a national nuclear waste repository.

“(1B) In subsection (1A):

5 ‘**national nuclear waste repository**’ means a site chosen by the Commonwealth, after the commencement of this subsection, for the storage of nuclear waste with a view to it never being moved to another site.”;

(f) by omitting subsection (3) and substituting the following subsection:

10 “(3) In undertaking its functions, the Organisation is to have regard to:

(a) the Commonwealth Government’s national science, technology and energy policy objectives; and

15 (b) the Commonwealth Government’s commercialisation objectives for public research institutions.”.

(2) Subject to subsection (3), for the purposes of paragraph 5(1)(ba) of the Principal Act as amended by this Act, any radioactive material or radioactive waste that, on the commencement of this Act, is stored on the Organisation’s premises is taken to be radioactive material and
20 radioactive waste arising from the Organisation’s activities.

(3) On and after 5 February 1995, subsection (2) does not apply to any radioactive material or radioactive waste that is the subject of order 3 of the orders made in the Land and Environment Court of New South Wales on 5 February 1992 in the matter of the Council of
25 the Shire of Sutherland v. the Australian Nuclear Science and Technology Organisation.

5.(1) After section 7 of the Principal Act the following section is inserted in Part II:

Immunity of Organisation etc. from certain State and Territory laws

30 “7A.(1) Subject to subsection (4), a law to which this section applies does not apply, and is taken never to have applied, in relation to:

(a) the Organisation; or

(b) the Organisation’s property or transactions; or

(c) anything done by or on behalf of the Organisation.

35 “(2) Subject to subsections (4) and (5), at all times during which the Organisation holds, or has held, a controlling interest in a particular company, a law to which this section applies does not apply, or is taken not to have applied, as the case requires, in relation to:

(a) the company; or

40 (b) the company’s property or transactions; or

(c) anything done by or on behalf of the company.

*Australian Nuclear Science and Technology Organisation
Amendment No. 83, 1992*

“(3) This section applies to a law of a State or Territory so far as the law relates to:

- (a) the use or proposed use of land or premises; or
- (b) the environmental consequences of the use of land or premises; or
- (c) radioactive materials or dangerous goods; or
- (d) licensing in relation to:
 - (i) employment; or
 - (ii) carrying on a particular kind of business or undertaking; or
 - (iii) conducting a particular kind of operation.

5

10

“(4) This section does not apply to a law of a kind referred to in subsection (3) if the law is specified in regulations made for the purposes of this subsection.

“(5) Subsection (2) does not apply in relation to any property or transaction of a company of a kind referred to in that subsection, or to anything done by such a company, if the property, transaction or thing is wholly unconnected with any matter that is within the scope of the Organisation’s functions or powers.

15

“(6) Nothing in this section implies that a law to which this section does not apply, applies in relation to:

20

- (a) the Organisation; or
- (b) the property or transactions of the Organisation; or
- (c) any act or thing done by or on behalf of the Organisation.

“(7) In this section:

25

‘law’ means a written law, and includes:

- (a) subordinate legislation; and
- (b) a provision of a law.”.

(2) On and after 5 February 1995, section 7A of the Principal Act as amended by this Act does not apply in relation to any radioactive material or radioactive waste that is the subject of order 3 of the orders made in the Land and Environment Court of New South Wales on 5 February 1992 in the matter of the Council of the Shire of Sutherland v. the Australian Nuclear Science and Technology Organisation.

30

6. After section 21A of the Principal Act the following sections are inserted:

35

Resignation

“21B. The Executive Director may resign from office by writing signed by the Executive Director and delivered to the Board.

Termination of appointment

“21C.(1) The Board may terminate the appointment of the Executive Director for misbehaviour or physical or mental incapacity.

5 “(2) The Board may terminate the appointment of the Executive Director if the Executive Director:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- 10 (b) is absent, except on leave of absence granted by the Board, from 3 consecutive meetings of the Board; or
- (c) is absent from duty, except on leave of absence granted by the Board, for 14 consecutive days or for 28 days in any 12 months; or
- 15 (d) fails, without reasonable excuse, to comply with his or her obligations under section 15 or 22.”.

Heading to Part VI

7. The heading to Part VI of the Principal Act is amended by adding at the end “COMMITTEE”.

20 **Repeal of section 25**

8. Section 25 of the Principal Act is repealed.

Money of Organisation

9. Section 27 of the Principal Act is amended by inserting in paragraph (3)(b) “(other than Part VIIA)” after “this Act”.

25 **Contracts**

10. Section 31 of the Principal Act is amended by omitting “\$200,000” and substituting “\$1,000,000”.

Repeal of section 37

11. Section 37 of the Principal Act is repealed.

30 **Insertion of new Part**

12. After Part VII of the Principal Act, the following Part is inserted:

“PART VIIA—NUCLEAR SAFETY BUREAU

***“Division 1—Establishment, functions and powers
of the Nuclear Safety Bureau***

35 **Establishment of the Nuclear Safety Bureau**

“37.(1) The Nuclear Safety Bureau is established.

“(2) The Bureau:

- (a) is a body corporate; and

- (b) has a seal; and
- (c) may sue and be sued.

“(3) The seal of the Bureau must be kept in such custody as the Bureau directs and must not be used except as authorised by the Bureau.

5

“(4) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the Bureau appearing on a document and must presume the document was duly sealed.

Functions of the Bureau

“37A.(1) The functions of the Bureau are: 10

- (a) to monitor and review the safety of any nuclear plant owned or operated by the Organisation; and
- (b) to provide technical advice to the Commonwealth on the safety of nuclear plant and related matters; and
- (c) such other functions as the Minister determines in writing. 15

“(2) A determination under paragraph (1)(c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(3) The Bureau may perform its functions to the extent only that they are not in excess of the functions that may be conferred on it by virtue of any of the legislative powers of the Parliament, and, in particular, may perform its functions: 20

- (a) in so far as it is appropriate for those functions to be performed by the Bureau on behalf of the Government of the Commonwealth as the national Government of Australia; and 25
- (b) for purposes for which it is appropriate for the Parliament as the national Parliament of Australia to authorise the Bureau to perform functions; and
- (c) by way of expenditure of money that is available for the purposes of the Bureau in accordance with an appropriation made by the Parliament; and 30
- (d) for purposes related to external affairs; and
- (e) for purposes in or in relation to a Territory.

“(4) In this section:

‘**nuclear plant**’ means a nuclear reactor or assembly of fissionable material in respect of which criticality is contemplated or possible; 35

‘**nuclear reactor**’ means a facility or device, including any plant associated with such a facility or device, in which a controlled nuclear chain reaction can be maintained without an additional source of neutrons.

Powers of the Bureau

“37B. The Bureau has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Restrictions on operation of nuclear plant

5 “37C.(1) The Bureau may, by instrument in writing given to the Organisation, impose such restrictions or conditions as the Bureau thinks appropriate on the operation of nuclear plant owned or operated by the Organisation.

10 “(2) In deciding whether to impose such conditions or restrictions, the Bureau must follow the procedures (if any) determined by the Minister in writing.

“(3) The Organisation must comply with any such conditions or restrictions.

Directions to Bureau

15 “37D.(1) Where the Minister is satisfied that it is desirable in the public interest to do so, the Minister must, by notice in writing to the Director give directions to the Bureau with respect to the performance of its functions or the exercise of its powers.

“(2) The Bureau must comply with any such directions.

20 “(3) The Minister must, within 15 sitting days of issuing a notice to the Director under this section, cause a copy of the notice to be tabled in each House of the Parliament.

“Division 2—Director and staff of the Nuclear Safety Bureau

Appointment of Director

25 “37E.(1) There is to be a Director of the Nuclear Safety Bureau, who is to be appointed by the Minister.

“(2) The Minister must not appoint a person as Director unless the Minister is satisfied that the person has qualifications relevant to, or special experience or interest in, a field related to the Bureau’s functions.

30 “(3) The Minister must not:

(a) appoint as Director a person who has attained the age of 65 years; or

(b) appoint a person as Director for a term that extends beyond the day on which that person will attain the age of 65 years.

35 Tenure of Director

“37F.(1) The Director holds office for such period, not exceeding 5 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

*Australian Nuclear Science and Technology Organisation
Amendment No. 83, 1992*

“(2) The Director is to hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Minister determines.

Duties of Director

“37G.(1) The Director is to manage the affairs of the Bureau. 5

“(2) All acts and things done by the Director in the name of, or on behalf of, the Bureau are taken to have been done by the Bureau.

Remuneration and allowances

“37H.(1) The Director is to be paid such remuneration as is determined by the Remuneration Tribunal. 10

“(2) Subject to the *Remuneration Tribunal Act 1973*, the Director is to be paid such allowances as are determined by the Minister.

Leave of absence

“37J.(1) Subject to section 87E of the *Public Service Act 1922*, the Director has such recreation leave entitlements as are determined by the Remuneration Tribunal. 15

“(2) The Minister may grant the Director leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation 20

“37K. The Director may resign from office by writing signed by the Director and delivered to the Minister.

Termination of appointment

“37L.(1) The Minister may terminate the appointment of the Director for misbehaviour or physical or mental incapacity. 25

“(2) The Minister may terminate the appointment of the Director if the Director:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or 30

(b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) fails, without reasonable excuse, to comply with his or her obligations under section 37M. 35

Disclosure of interests

“37M. The Director is to give written notice to the Minister of all direct and indirect pecuniary interests that the Director has or acquires in any business.

*Australian Nuclear Science and Technology Organisation
Amendment No. 83, 1992*

Acting Director

“37N.(1) The Minister may appoint a person to act as Director:

- (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
- 5 (b) during any period, or during all periods, when the Director is absent from duty or from Australia, or is for any other reason unable to perform the functions of the office.

“(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

- 10 (a) the occasion for the person’s appointment had not arisen; or
- (b) there is a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

15 **Staff of the Bureau**

“37P.(1) The Director may appoint such officers and engage such employees as the Director thinks necessary for the performance of the Bureau’s functions.

“(2) The Director may arrange with the Secretary of any Department of the Australian Public Service, or with a body established by an Act, for the services of officers or employees of that Department, or of that body, to be made available to the Bureau.

“(3) The terms and conditions of service or employment of persons appointed or employed under subsection (1) are such as are determined by the Minister.

“Division 3—Finance

Money of the Bureau

“37Q.(1) There is payable to the Bureau such money as is appropriated by the Parliament for the purposes of the Bureau.

30 “(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Bureau.

“(3) The money of the Bureau is to be applied only:

- 35 (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Bureau in the performance of its functions and the exercise of its powers; and
- (b) in payment of remuneration and allowances payable under this Part; and
- 40 (c) in making any other payment required or permitted to be made by the Bureau.

*Australian Nuclear Science and Technology Organisation
Amendment No. 83, 1992*

“(4) Money of the Bureau not immediately required for the purposes of the Bureau may be invested:

- (a) on deposit with the Reserve Bank of Australia or any other bank approved by the Treasurer; or
- (b) in securities of the Commonwealth; or
- (c) in any other way approved by the Treasurer.

5

Division 3 of Part XI of the Audit Act to apply

“37R.(1) The Bureau is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

“(2) Each annual report that the Bureau submits under section 63M of the *Audit Act 1901*, as that section applies because of subsection (1), must include particulars of each direction given by the Minister to the Bureau under section 37D that is applicable in relation to the financial year to which the report relates.

10

Exemption from taxation

15

“37S. The Bureau is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

Note: The general exemption from taxation in this section does not exempt the Bureau from fringe benefits tax (see section 66 of the *Fringe Benefits Tax Assessment Act 1986*) or sales tax (see, for example, section 20A of the *Sales Tax Assessment Act (No. 1) 1930*).

Contracts

“37T. The Bureau must not, except with the Minister’s approval, enter into a contract involving the payment or receipt by the Bureau of an amount exceeding \$200,000.

20

“Division 4—Miscellaneous

Reports of the Bureau

“37U.(1) The Bureau must submit to the Minister such reports relating to the performance of the Bureau’s functions as the Bureau considers appropriate.

25

“(2) The Bureau must submit to the Minister such reports relating to the performance of its functions as the Minister directs.

“(3) The Minister must, within 15 sitting days of receiving a report under this section, cause a copy of the report to be tabled in each House of the Parliament.

30

Delegation by Director

“37V. The Director may, by instrument in writing, delegate to:

- (a) a person appointed under subsection 37P(1); or
- (b) a person whose services are made available to the Bureau under an arrangement made under subsection 37P(2);

35

all or any of the Director’s powers under this Part.”.

*Australian Nuclear Science and Technology Organisation
Amendment No. 83, 1992*

Gifts, grants etc.

13. Section 38 of the Principal Act is amended by omitting “Subject to the approval of the Minister, the” and substituting “The”.

Repeal of section 40

5 14. Section 40 of the Principal Act is repealed.

Delegation by Minister

15. Section 42 of the Principal Act is amended by omitting from paragraph (1)(b) “40” and substituting “37D, 37N, 37T”.

NOTE

1. No. 3 of 1987, as amended. For previous amendments see Nos. 122 and 199, 1991.

*[Minister's second reading speech made in—
House of Representatives on 2 April 1992
Senate on 5 May 1992]*