

Environment Laws & uranium mining



The EPBC Review Final Report recommends that uranium mining remains a “Matter of National Environment Significance (MNES)” and that the Commonwealth retain powers to intervene in uranium mining and other Matters of National Environment Significance. We strongly support this recommendation but are concerned about other recommendations that would see the further deferral of powers to approve uranium projects to the states and territories.

This deferral of powers has already begun with the establishment of ‘bilateral agreements’ for the assessment of uranium projects and other MNES. Four uranium projects in WA were assessed under the bilateral system. Through this system we have witnessed a significant weakening of conditions on uranium projects and the politicising of decision making.

Federal oversight through assessments, approvals and through the ongoing regulation of uranium mines is critical. This is not duplicative but is an important check and balance for one of Australia’s most toxic industrial activities.

Initially “nuclear actions” will have to be assessed and approved based on “the whole of environment” impact – this means they would require a full environmental assessment. It is unclear if this would be retained under the proposal to make ARPANSA the regulator and with National Environmental Standards for nuclear actions or whether assessments and approvals would only be required for aspects of a project that involve radiation.

It is our understanding that ‘best practice’ national standards under the ARPANSA Act are yet to be developed. A 2018 review of ARPANSA guidelines found a number of areas of reform are needed and advocated for consistency on nuclear safety. Greater consistency could be achieved through greater role for a single federal agency, as opposed to further devolving powers to the states and territories and the different agencies in those regions.

EPBC Act 1999:

Section 22 What is a nuclear action?

(1) In this Act: nuclear action means any of the following:

- (a) establishing or significantly modifying a nuclear installation;
- (b) transporting spent nuclear fuel or radioactive waste products arising from reprocessing;
- (c) establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing;
- (d) mining or milling uranium ore;
- (e) establishing or significantly modifying a large-scale disposal facility for radioactive waste;
- (f) de-commissioning or rehabilitating any facility or area in which an activity described in paragraph (a), (b), (c), (d) or (e) has been undertaken;

Section 1.4 Recommended Reforms - Recommendation 1 (b)

“The nuclear MNES (section 21/22A) should be retained. In the first tranche of reforms, the Australian Government should immediately adopt the recommended National Environmental Standard for the protection of the environment from nuclear actions. In the second tranche of reform, the EPBC Act and the regulatory arrangements of the Australian Radiation Protection and Nuclear Safety Agency should be aligned, to support the implementation of best-practice international approaches based on risk of harm to the environment, including the community.”

In Summary, the Final Report:

- recommends that “nuclear actions” remain a Matter of National Environment Significance (MNES) this means all proposals that are a “nuclear action” eg uranium mining, need to be assessed and approved in accordance with national environmental laws (The EPBC Act).
- recommends that State and Territory Governments be accredited to assess and approve projects in-line with the EPBC Act and with “National Environmental Standards.” National Environmental Standards do not yet exist but would be legally enforceable standards. In the case of nuclear it is likely that National Environmental Standards would be derived from national and international standards on the nuclear industry. o Nuclear projects, including uranium mines would then be assessed and approved by state and territory governments, not the federal government.
- recommends a second phase of reform that *“the EPBC Act and the regulatory arrangements of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) should be aligned, to support the implementation of best-practice international approaches based on risk of harm to the environment, including the community.”*
- describes the section 140A prohibition on some nuclear actions (like nuclear power and reprocessing) reflects a policy choice and that to change this would also be a ‘policy’ or political decision – but notes that legislative changes would be required. Important to note that there is emphasis on elected parliamentarians making policy choices, a subtle hint on the lack of a mandate to lift the prohibition.



Environment Laws & Nuclear Power



The EPBC Review final report was handed to Government in November 2020. It was not made public until the end of Jan 2021. The final report does not make a specific recommendation to remove existing prohibitions on nuclear power. This is better than opening the floodgates of nuclear power but is not as good as clearly shutting the door.

On the issue of nuclear power the report says:
“Nuclear activities are regulated under the EPBC Act in 2 ways. The first is section 140A, which prohibits the Environment Minister from approving specific nuclear installations. This section reflects a policy choice of elected parliaments to ban specific nuclear activities in Australia, and any change in scope is similarly a policy choice of elected parliaments. That said, should Australia’s policy shift in relation to these types of nuclear activities, changes to s140A would be required.”

This position, or absence of a position on nuclear power in the interim report, makes nuclear power a political issue and fails to address the significant and irreversible environmental risks associated with nuclear power.

EPBC Act 1999 section 140A No approval for certain nuclear installations. The Minister must not approve an action consisting of or involving the construction or operation of any of the following nuclear installations: (a) a nuclear fuel fabrication plant; (b) a nuclear power plant; (c) an enrichment plant; (d) a reprocessing facility.

“Nuclear Power stations are not appropriate for Australia – and probably never will be... it makes no sense to build nuclear power in Australia. Nuclear power stations are highly controversial, can’t be built under existing law in any Australian state or territory, are a more expensive source of power than renewable energy, and present significant challenges in terms of the storage and transport of nuclear waste, and use of water”

Climate Council Australia

What did stakeholders say about nuclear

“Nuclear – expand limitations contained in section 140A of the EPBC Act that prohibit approval of certain nuclear installations to include all uranium mining and milling actions. Other stakeholders suggest reducing the scope of the nuclear trigger to remove duplication with State, Territory and other Commonwealth regulations (discussed later in this section).”

What did the review conclude about nuclear

“It is both appropriate and desirable that the Commonwealth maintains its oversight over the long-term risks of radiation arising from nuclear actions to the community and the environment. The Review recommends that regulation of nuclear actions should remain within the EPBC Act. Regulation should be made more consistent and efficient by aligning the requirements of the EPBC Act to the national and international best-practice approaches of the Commonwealth’s Australian Radiation Protection and Nuclear Safety Agency (Chapter 5). This should focus on protecting the community from the harmful effects of radiation and radioactive material, regardless of the activity being undertaken.”



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