EDO ENVIRONMENTAL DEFENDERS OFFICE (SA) INC

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Ph: (08) **8359 2222** SA Country Freecall: 1800 337 566
Office: 1st Floor, 182 Victoria Square, Adelaide, SA. Post: GPO Box 170, Adelaide, SA, 5001
Web: http://www.edosa.org.au

EDO(SA) SUBMISSION TO THE NUCLEAR FUEL CYCLE ROYAL COMMISSION JULY 2015

The Environmental Defenders Office (SA) Inc. ("EDO(SA)") is an independent community legal centre with over twenty years of experience specialising in public interest environmental and planning law. EDO(SA) provides legal advice and representation, undertakes law reform and policy work and provides community legal education.

Following the removal of federal government funding as of 30 June 2014, EDO(SA) is now independently funded by community donations, in kind support and a number of grants.

Executive Summary

EDO(SA) strongly urges the SA and Federal Governments, the Royal Commission and industry stakeholders to give meaningful effect to ongoing "community stakeholder participation" in respect of:

- the deliberations of the Royal Commission;
- improvements to the current legislative and regulatory mechanisms; and
- any current or future nuclear fuel cycle activities in SA and across Australia.

As highlighted by (a) the 2006 report of the International Nuclear Safety Group (constituted under the auspices of the International Atomic Energy Group), *"Stakeholder Involvement in Nuclear Issues"* (INSAG – 20, Vienna 2006) ("*the 2006 INSAG Report*") and (b) the NSW ICAC Report, *"Anti-corruption Safeguards and the NSW Planning System"* (February 2012), *("the 2012 NSW ICAC Report"*), there are significant social, economic and environmental advantages to such an approach.

The EDO(SA) submission summarises a number cost effective initiatives that would place Australia at the forefront of "community stakeholder participation" best practice, namely:

- Simplification of the Royal Commission consultation processes;
- Resourcing of independent information, training and advice services to community stakeholders in the context of both the Royal Commission and ongoing community participation under legislation and regulation; and
- Legislative and regulatory reform in regard to nuclear activity related decisions to provide greater community access to information, greater opportunities for community comment and community appeal and judicial review rights.

In addition, the EDO(SA) submission highlights the need for the removal of ministerial discretions that allow a minister to override advice from expert bodies such as the SA Radiation Committee.

Due to resource constraints, the EDO(SA) submission focuses on the legislative and regulatory regime in regard to the management, storage and disposal of nuclear and radioactive waste.

However, in regard to meaningful community stakeholder participation, the concerns expressed and the general principles identified in the EDO(SA) submission have equal application to the legislative and regulatory regimes that exist, or may need to be developed, in regard to: exploration, extraction and milling of minerals containing radioactive materials; the processing and manufacturing of

materials containing nuclear or radioactive substances; and the generation of electricity from radioactive materials.

Submission Overview

This submission consists of two parts.

Part 1 addresses three important preliminary issues that cast significant doubt upon the Commission's ability to fulfil its mandate to *"undertake an independent and comprehensive investigation into South Australia's participation in four areas of activity that form part of the nuclear fuel cycle."*

Preliminary Issue 1 - the Commission's failure to minimise the procedural barriers for community members to make submissions.

Preliminary Issue 2 - the Commission's failure to provide resourcing for community participation in the Royal Commission.

Preliminary Issue 3 - the Commission's failure to entrench, in its processes, international best practice in regard to meaningful community stakeholder participation.

Part 2 – in the context of meaningful community participation, EDO(SA) comment and recommendations are provided in relation to the adequacy of relevant SA and federal legislative and regulatory mechanisms.

PART 1 – PRELIMINARY ISSUES

Preliminary Issue 1 – Procedural Barriers to Community Participation in Regard to Submissions

EDO(SA) is very concerned that the complex and restrictive process for making submissions, including the requirements for: a cover sheet; typed and page numbered submissions; a witnessed oath or affirmation; and the using of the numbered questions in the Issues Papers - have the effect of deterring community members from making submissions and of creating substantial barriers to community members making submissions. In addition, requesting responses to specific numbered questions has the effect of restricting responses to only issues that the Commission considers relevant and dissuading comment on other issues.

Community members are further deterred by being told In the Submissions Guidelines document that *"If a person requires different arrangements to be made in order to make a submission, they are requested to contact the Commission to discuss those arrangements."*

EDO(SA) is very concerned that this legalistic and restrictive process creates the impression (rightly or wrongly) that the Commission is more interested in receiving submissions from well-resourced and "knowledgeable" industry stakeholders than from the broader community.

The Commission's approach to community participation in regard to submissions fails to give effect to the SA Government's "Vision for Community Engagement" (and the associated 6 Principles): see http://yoursay.sa.gov.au/assets/better-together.pdf

> *"Our vision is for government to make better decisions by bringing the voices of communities and stakeholders into the issues that are relevant to them. To make this happen, we want to nurture a public service which has the skills to engage with the community and drive a culture which respects and welcomes community input."*

In addition, it appears that the Royal Commission considers that the community stakeholder population extends no further than the South Australian community. Such a narrow approach is inconsistent with (a) the national (and international) impacts of the issues that are being considered

and (b) the Commission's invitations to national and international industry stakeholders to participate. The Royal Commission's global excursions to consult with, predominantly, international industry stakeholders highlight the differing approaches that the Royal Commission appears to be taking to community engagement and industry engagement.

The 2006 INSAG Report sets out key reasons supporting meaningful community stakeholder involvement:

1. The active involvement of stakeholders in nuclear issues can provide a substantial improvement in safety and can enhance public confidence and trust in, and the general acceptability of, the ultimate decisions made.
2. Stakeholder involvement may result in attention to issues that otherwise might escape scrutiny.
3. Timely opportunity for affected stakeholders to provide input can expedite the decision making process by ensuring that legitimate concerns are addressed early in the process.
4. Stakeholder involvement makes regulatory organizations and other authorities acutely aware that their actions are under public scrutiny. Transparency increases the motivation of individuals and institutions to meet their responsibilities.
5. The involvement of stakeholders may result in more practical, relevant and coordinated administrative, technical and socially responsible decisions on safety and other issues.
6. Stakeholder involvement compels decision-makers/operators/licensees to be aware that all their operations and other actions are under public scrutiny. This awareness serves to create strong incentives for achieving a high level of safety performance.

Preliminary Issue 2 – Resourcing of Community Participation

Firstly, In the context of an estimated budget of over $10 million, it is alarming and of deep concern that the Royal Commission process has failed to provide any resourcing for the provision of independent expert advice and information to community stakeholders at the very starting point of the consultation process. The process appears to be very clearly targeting industry stakeholders with the economic resources and in house expertise to engage in debate about highly technical scientific issues.

The 2006 INSAG Report clearly recognises the overarching requirement for the "*provision of appropriate resources for stakeholder involvement"* (page 11) as a prerequisite for *"effective stakeholder participation"*.

Secondly, the legislative changes to improve community engagement and consultation recommended by EDO(SA) in Part 2 of this submission, if implemented, will only be effective if representative groups within the Australian community are properly resourced to exercise those engagement and consultation options.

There is no benefit in raising community expectation of greater community engagement and consultation, if the practical reality is that the community does not have access to the advice, training, information to enable meaningful take up of those opportunities.

The increased community engagement and consultation that is envisaged has significant resourcing implications for conservation, environment protection and residents groups. It is counterproductive to have, in theory, greater community engagement and consultation if, in practice, the community does not have the skills, experience and advice to exercise those rights in a meaningful way.

The provision of those services (advice, training, information) must be done by organisations that are independent of government and by properly trained personnel (e.g. by NGOs such as EDO(SA)) to overcome concerns regarding real or perceived conflict of interest and confidentiality.

Such organisations are being defunded by the federal government. Defunding is counterproductive from: an economic perspective (the community must now seek assistance/advice from government departments and elected representatives (not a cost effective option)); an accountability perspective (community engagement and consultation rights create accountability only if they can be effectively exercised); and an environmental perspective (environmental values are best assessed and protected

when, in addition to government and industry stakeholders, community stakeholders are able to participate in a meaningful way).

Preliminary Issue 3 – International Best Practice in regard to Transparency/Accountability in Nuclear Activity Decision-making

Set out below, extracted from the 2006 INSAG Report, are some key guiding principles for meaningful stakeholder involvement– such involvement is required to ensure transparency and accountability at both the inquiry/Royal Commission stage and in subsequent government agency and industry decision-making processes.

Public Confidence:

1. The right of a stakeholder to be informed and to be involved in decisions that affect his/her well-being.
2. There should be no distinction between internal and external stakeholders. All members of society are entitled to easy access to objective and unbiased information.
3. Promotion of the use of nuclear technology should not be an objective of a comprehensive stakeholder involvement programme. Instead, the establishment of a dialogue among all stakeholders should be seen as an essential part of any complete nuclear programme and, as such, in the best interest of both internal and external stakeholders.
4. Issues that are raised by the public must be taken seriously and must be carefully and openly evaluated.
5. Reasonable issues and concerns that are presented by stakeholders should be factored into decisions.
6. Decision-makers/operators/regulators should be aware that public confidence is an important prerequisite for the credibility of their statements and acts, and thus for the success of any nuclear activity.

Trust:

1. Trust needs to become an integral building block of a comprehensive and successful stakeholder communications programme. For example, in an operational context, a high level of safety demonstrated continuously over time is necessary to provide the foundation for trust.
2. A prerequisite for achieving trust is timely, accurate and complete public information on abnormal events, incidents and accidents at nuclear facilities.

Communication:

1. Communication must be factual, timely, complete and understandable. Members of society must be provided with enough clear information to promote meaningful dialogue.
2. Individuals and organizations should have an opportunity to express their concerns and receive honest, credible and timely answers to their questions.
3. A starting point is to conduct surveys to understand the actual concerns of the public and to determine the level of interest in information about nuclear safety issues. Communication should focus on those issues in which interest is high, where there is a need for accurate information and about which decisions are being made.
4. Communication should include the provision of general information on nuclear safety issues to increase public knowledge of nuclear safety and radiation protection – including information on (a) potentially harmful consequences of the normal operation of various nuclear facilities and of abnormal events and accidents that either have occurred or are reasonably credible; and (b) successful operations.
5. Good communication programmes among all parties will establish and maintain constructive two way interaction.
6. Subject to security and commercial advantage considerations, restrictions on information should be limited.
7. The information exchanged in the participative process should be preserved in a fashion that allows subsequent analysis and feedback.
8. The communication of information and the solicitation of feedback should continue throughout the life of a project.

Decisions regarding high level waste repositories:

This is a major decision affecting all stakeholders, including national governments. The participation by stakeholders should be integrated into the legislation. According to the 2006 INSAG Report, experience shows that in democratic societies the construction of a new radioactive waste repository is not possible without the active consent of at least the population most directly affected.

Decisions regarding the management of radioactive waste:
The control of such waste is a matter of concern for the local authorities and population. These stakeholders have the right to be informed of issues relating to the storage of such waste and utilities and regulators should be obliged to involve them in any related decision making process.

Issues related to the security of nuclear sites and material:
Nuclear security is a matter of public concern. Communicating detailed information on security related issues is problematic due to the potentially sensitive or classified nature of the information. However, reasonable efforts should be pursued to make appropriate security related information available to the stakeholders, to the degree possible.

PART 2 - EDO(SA) Legislative and Regulatory Comment and Recommendations

EDO(SA) considers that the SA Government, the Royal Commission and the SA community must take a rigorous risk assessment and risk management approach to all activities involving any aspect of the nuclear fuel cycle.

The extreme importance of such an approach is reflected in:

- The objects of the *SA Nuclear Waste Storage Facility (Prohibition) Act 2000* (section 3) – "***to protect the health, safety and welfare of the people of South Australia and to protect the environment in which they live by prohibiting the establishment of certain nuclear waste storage facilities in this State."***
- The object of the Federal *Australian Radiation Protection and Nuclear Safety Act 1998* (section 3) -***"to protect the health and safety of people, and to protect the environment from the harmful effects of radiation".***

Within that context, EDO(SA) now takes this opportunity to comment upon, and make recommendations in relation to, the adequacy of current legislative and regulatory mechanisms regarding:

1. The building of facilities to manage, store and dispose of nuclear or radioactive waste in SA (Issue Paper 4);
2. The operation of storage and disposal facilities for intermediate or high level waste in SA (Issue Paper 4);
3. The transportation of nuclear or radioactive waste in SA(Issue Paper 4);
4. The importation of nuclear or radioactive waste into Australia (Issue Paper 4);
5. The processing and manufacturing of materials containing nuclear or radioactive substances In SA (Issue Paper 2); and
6. Community consultation, engagement processes and access to information in regard to the abovementioned activities.

The SA Radiation Protection and Control Act 1982 and the (Ionising, Non-Ionising & Transport) Regulations

- Regulate low and intermediate radioactive waste storage facilities (the Act).
- Specify maximum radiation exposure levels for the community and workers in the industry.
- Establish a licensing regime for radioactive waste handling activities.

It is noted that:

(a) The EPA has conducted a review of the *Radiation Protection and Control (Ionising Radiation) Regulations 2000* (IR Regulations) under the *Radiation Protection and Control Act 1982*. Amendments to the Regulations have been proposed to come into effect in September 2015; and
(b) The *Radiation Protection and Control Act 1982* is currently under review and the *Radiation Protection and Control Bill 2014* has been subject to public comment.

The EPA proposes that the IR Regulations, Transport Regulations and the Non-Ionising Regulations be amalgamated into one regulation – with the outcome that there would be a reduction in *"the regulatory burden for business by having easily accessible regulations"*.

Another purpose of the review was to establish a framework for national uniformity in radiation protection. On 13 February 2011 the Council of Australian Governments (COAG) resolved that nationally agreed legislative amendments should be given high priority.

The EPA recognises that, with the implementation of a nationally agreed framework, there will be a positive impact to business, with the reduction of regulatory burden associated with inconsistent regulations across jurisdictions.

It is disappointing that the review predominantly focuses upon reducing "regulatory burden" and has not included recommendations for greater community engagement and consultation – see EDO(SA) recommendations below. This appears to be a governmental trend whereby regulatory agencies, generally regarded as having been established to protect the public interest and to intervene where the market fails, are now transformed into economic development agencies.

The EDO has identified, and comments below on, some important aspects of the *Radiation Protection and Control Bill 2014.* However, due to resource constraints, has not reviewed the Bill in detail.

Recommendations for improvement:

The Radiation Protection Committee

1. The Radiation Protection Committee must have a community representative member (section 9).
Why? To ensure proper community engagement and consultation as part of the functions of the Committee.

2. When determining an application for a licence, the Minister should be required "to act upon the advice" of the Radiation Protection Committee, not merely be required to give "due consideration" to the Committee's advice (as is the current position under section 35 and clause 4 of the Joint Venture Schedule).
Why? Due to the clearly identified significant risks associated with nuclear fuel cycle activities and the need for the public to have confidence in the licensing process, the Minister should make licence determinations solely on the basis of expert scientific advice and not have a discretion to override the Committee's advice for (potentially) political or economic reasons.

Renewal of accreditations and authorities (licences or registrations)

The Minister should be provided with an unfettered discretion to refuse renewal applications. Renewal applications should be subject to the same requirements as new applications. Currently, under section 37(2), the Minister has a very limited discretion to refuse renewal applications.
Why? Due to the clearly identified significant risks associated with nuclear fuel cycle activities and the need for the public to have confidence in the renewal process, the Minister's renewal discretion should not be fettered.

Exemptions by the Minister

The Minister's discretion, under section 44, should be amended to only be exercised after the Minister has sought advice from the Radiation Protection Committee and only if the Committee's advice recommends the exercise of the discretion.

Why? Due to the clearly identified significant risks associated with nuclear fuel cycle activities and the need for the public to have confidence in the regulation of those activities, the Minister should only exercise the exemption discretion on the basis of expert scientific advice and not have a discretion to exercise the discretion for (potentially) political or economic reasons.

Penalties
The maximum monetary and imprisonment penalties in the Act and the Regulations for offences should be reviewed with a view to ensuring sufficient deterrence.
Why? The maximum monetary and imprisonment penalties must be set in the context of the significant potential commercial advantage that can be obtained through non-compliance with the Act and Regulations – see, for example, section 24(1), section 27(1), section 33A(1), section 33F. It is noted that the draft *Radiation Protection and Control Bill 2014* increases maximum penalties significantly. However, monetary penalties are of little use unless they are sufficient to impose a significant burden upon the offender.

General Objective
1. The word "endeavour" should be removed from general objective of the Act (section 23(1)).
Why? To place a more stringent obligation on the Minister and the Committee - they *"must …. ensure that exposure….. is kept as low as reasonably achievable".*

2. The general objective of the Act (section 23(1)) should be amended to require current scientific knowledge and environmental circumstances be taken into account when ensuring that exposure is "kept as low as reasonably achievable".
Why? It is contrary to the public interest that currently only "social and economic factors" are taken into account.

Public Register
The public register under the Act (section 38) is a register of all accreditations and authorities (licences or registrations) that have been *granted*. The register should also include copies of applications (e.g. mining licence applications – section 24(3); Division 3B accreditation applications). The register will need to extend to facilities licences (under section 29A).The register should not, as proposed in Clause 48 of the *Radiation Protection and Control Bill2014*, be subject to fee for obtaining copies.
Why? Transparency and accountability are essential if the community is to have confidence in the integrity of the licensing and accreditation processes under the Act.

Public notification
A requirement for public notification of all applications for accreditations and authorities must be included in the legislation.
Why? Transparency and accountability are essential if the community is to have confidence in the integrity of the licensing and accreditation processes under the Act.

Public consultation
Public consultation on and access to all applications for accreditations and authorities must be included in the legislation.
Why? Transparency and accountability are essential if the community is to have confidence in the integrity of the licensing and accreditation processes under the Act.

Dangerous Situations (Division 5)
There needs to be a public register that provides detailed information to the public regarding actions and directions given under section 42.
Why? Transparency and accountability are essential if the community is to have confidence in the integrity of the licensing, accreditation and risk management processes under the Act.

Third party "public interest" rights to review of decisions
Under section 41, only "persons aggrieved" have standing to apply to the Supreme Court (or SACAT, under the *Bill*) for review of a decision by the Minister in relation to an accreditation or authority: refusal; condition; suspension; cancellation; or direction.
Third party "public interest" litigants should be given standing to apply to the Supreme Court for review of a decision by the Minister in relation to an accreditation or authority: approval; condition;

suspension; cancellation; or direction. An evidentiary "case to answer" test would need to be satisfied by the public interest litigant before the review proceeds to a full hearing.
In order for such third party rights to have practical effect, provision must be made for the Supreme Court, upon application by a "public interest" third party prior to the substantive hearing, to make orders for indemnity in respect of costs and damages.
In addition, "public interest" litigation funding (through a small levy on accreditation and authority applications) should be available to "public interest" third party litigants to ensure that there is an even litigation "playing field".
Why? The significant community benefits of "public interest" litigation in terms of accountability of and community confidence in government decision-making processes is recognised in existing SA, Federal and international legislation and by independent corruption watchdogs. See the EDOSA submission to the SA Planning Review Expert panel on third party costs, standing and public participation for a detailed analysis of the importance of "public interest" litigation rights.

Proposed Civil Enforcement under the *Radiation Protection and Control Bill 2014*
The proposed civil enforcement provisions (Division 2) are a positive step to enabling accountability and meaningful community participation in the regulation of radiation activities. However, standing to make such applications should (under clause 67(5)) be provided as a matter of right (not at the Court's discretion) to "public interest" litigants. In addition, the security for costs/costs/damages discretions (in clause 67(12), (13), (17) & (18)) that act as significant and unsurmountable disincentives to "public interest" civil enforcement should not have application to "public interest" litigants.

Division 2 mirrors, to a large extent, the civil enforcement provisions in the *Development Act 1993* (section 85). The standing and costs discretions in section 85 have effectively prevented "public interest" civil enforcement.

Compliance and enforcement – the role of regulatory agencies under the *Radiation Protection and Control Bill 2014*
Irrespective of the proposed changes in the Bill, failure to adequately resource the compliance and enforcement roles of the regulatory agency will reduce community confidence in the system and increase the health and environmental risks that the legislation is intended to minimise. Third party civil enforcement should not and cannot be a substitute for governmental compliance and enforcement action.

The Federal Australian Radiation Protection and Nuclear Safety Act 1998 and Regulations 1999

- The legislation establishes the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) to regulate, by licencing, the construction or operation of nuclear waste storage or disposal facilities.

Recommendations for improvement:
Exemptions
The very broad "defence" and "national security" exemptions, under sections 7 and 8, need to be more clearly defined.
Why? Balancing Australia's "defence" and "national security" interests and the object of the Act *"to protect the health and safety of people, and to protect the environment from the harmful effects of radiation"* (section 3) requires some significant improvements to the very limited current checks on the exercise of these exemptions under the Act. For example, the matters that the decision-makers must take into consideration, in determining whether the "defence" and "national security" exemptions should be exercised, should be enumerated in the Act or Regulations.

The Application of the Act
The application of the Act should be extended beyond Commonwealth contractors/entities and their employees and Commonwealth places (sections 11&13).
Why? In order to ensure that the most effective safety and risk management mechanisms are in place, there needs to be a nationally consistent approach to the regulation of the construction or

operation of nuclear waste storage or disposal facilities, whether undertaken by federal government, state/territory or private entities.

Appointment of RHSAC and NSC Members
The Minister's discretion to decide which consumer and environmental groups he/she consults, in regard to appointing members to the RHSAC and NSC, needs to be limited to a defined list of such groups.
Why? In order to ensure that the community has confidence in the consultation process, such consultation should only be undertaken with reputable and widely recognised consumer and environment groups - it is not unknown for industry groups to establish "consumer" or "environmental" groups that are nothing more than disguised industry lobby groups.

Exemptions to the Facility Licence and Source Licence Requirements
Under sections 30 and 31, at the discretion of the CEO, a person or dealing can be exempted by declaration under the Regulations (Regs. 37 and 38). A decision by the CEO to refuse to make a declaration is reviewable under Regulation 66 – that right of review should be extended to allow "public interest" third parties to seek a review of decisions by the CEO to make a declaration (for example, under Reg. 37(1) and Reg. 38(5) & (6)).
Why? As already highlighted in relation to the *SA Radiation Protection and Control Act 1982*, there are significant community benefits attaching to "public interest" third party litigation in terms of accountability of, and community confidence in, government decision-making processes.

Facility and Source Licence Applications
Under Regulation 40, the CEO is required to give public notice of a facility licence application. The public notice and consultation process needs to be improved by: extending the process to include source licence applications and all facility licence applications (currently Reg. 40(3) is restricted to "nuclear installation" licence applications); publicising the applications on social media platforms, not just in traditional media and the Gazette; and having a specified minimum period for making submissions under the regulations (currently at the discretion of the CEO – see Reg. 40(3)(b)).
Why? As already highlighted, there are significant community benefits in having comprehensive and meaningful public consultation in terms of accountability of, and community confidence in, government decision-making processes.

Review of Licence Decisions
Under section 40, only a licence applicant or holder can ask the Minister to review a licence decision (including conditions). That person also has a subsequent right of review in the Administrative Appeals Tribunal (AAT). As, under the Act and Regulations, there are rights of public notice and consultation in regard to licence applications – applications for a review of licence decisions should be subject to: a public notice process; and third party "public interest" rights of review of the Minister's decision in the AAT.
Why? The current public notice and consultation process, under Regulation 40, acknowledges the community interest in the licencing process and decision-making. Currently, the licence review process excludes the community from the review process which significantly devalues the benefits of community engagement at the application stage. On review, any decision by the CEO to refuse a licence, impose conditions, suspend, cancel or amend a licence can be changed without interested community stakeholders being provided with notification, consultation or review rights.

Third Party "Public Interest" Civil Enforcement
Under section 43, it is only the CEO who may seek an injunction to restrain conduct that is or would be an offence under the Act. As under *SA Development Act 1993* in regard to the Environment, Resources and Development Court, third party "public interest" applicants should be given standing to apply to the Federal Court for permission to commence civil enforcement action to restrain such conduct. An evidentiary "case to answer" test would need to be satisfied by the public interest applicant before the applicant is granted leave to issue a summons to the alleged offender.
In order for such third party rights to have practical effect, provision must be made, for the Federal Court, upon application by a "public interest" third applicant prior to the substantive hearing, to make orders for indemnity in respect of costs and damages.
In addition, "public interest" litigation funding (through a small levy on licence applications) should be available to "public interest" third party applicants to ensure that there is an even litigation "playing field".

Why? The significant community benefits of "public interest" litigation in terms of accountability of, and community confidence in, government decision-making processes is recognised at state and Federal levels.

Notification of Licence Condition Breaches
Under Division 4 of the Regulations, a number of obligations are placed on licence holders in relation to notifying the CEO of licence breaches, accidents and changes in practice that will have significant implications for safety. Such information should be made readily available to the public through a free online public register.
Why? As already highlighted, there are significant community benefits to having open and transparent access to relevant information. Community confidence in, and the integrity of, the licencing system would be enhanced.

Public Register
There is no public register of licence applications or licences under the Act or the Regulations. An easily accessible free on line public register should be a basic requirement under any legislative scheme that licenses activities that have significant potential to impact upon *"the health and safety of people" and "the environment"* in relation to *"the harmful effects of radiation".*
Why? Transparency and accountability are essential if the community is to have confidence in the integrity of the licensing processes under the Act.

The Federal Nuclear Non-Proliferation (Safeguards) Act 1987 and Regulations 1987

- The legislation gives effect to Australia's obligations under a number of international conventions and agreements in relation to non-proliferation of nuclear weapons and nuclear safeguards in Australia (i.e. preventing nuclear materials/technology being diverted to non-peaceful uses).

Recommendations for improvement:

Exemption and Termination Declarations
Under section 11, the Minister may, by declaration, exempt nuclear material from the safeguard controls (permit or authority requirements) in Part II of the Act. Such declarations are legislative instruments (section 11(10)). However, the community should be provided with access to the declarations, via a public on line register.
Why? As already highlighted, there are significant community benefits attaching to community access to information in terms of accountability of, and community confidence in, government decision-making processes.

Permit and Authority Applications (under Part II)
Applications for a number of types of "nuclear activity" permits and applications for authority to communicate "nuclear" information are made to the Director of Safeguards of ASNO. The applications should be subject to a public notification requirement and a right of public comment.
Why? As already highlighted, there are significant community benefits attaching to community notification and comment in terms of accountability of, and community confidence in, government decision-making processes. In addition, public comment can contribute valuable information to the decision-making process.

Public Notification of Grant, Variation or Revocation of Permit or Authority
Under section 20, the Minister is required to give public notice in the Gazette. Regulation 4 specifies the information that must be published in the Gazette. Notification should also be given on social media platforms and in traditional media.
Why? As already highlighted, there are significant community benefits in having comprehensive and meaningful public notification in terms of accountability of, and community confidence in, government decision-making processes. In the 21st Century, very few people access or even know of the Gazette.

Review of Part II Permit and Authority Decisions
Permit and Authority applicants have a right of review in the Administrative Appeals Tribunal (AAT). Applications for a review should be subject to: a public notice process; and third party "public interest" rights of review of the Minister's decision in the AAT.

Why? The current public notice process, under section 20, acknowledges the community interest in the permit/authority process. Currently, the community is excluded from the review process. This significantly devalues the benefits of community notification at the application stage. On review, any decision by the Minister can be changed without interested community stakeholders being provided with notification, consultation or review rights.

The Register of Permit and Authority Holders
Under section 69, the Director must keep a register "in such form as the Minister directs". According to ANSO, this register is not publically available - apparently due to the confidentiality restrictions in section 71. It is questionable whether section 71 has application to the section 69 register information. The register should be publically available for free online and in hard copy.
Why? Transparency and accountability are essential if the community is to have confidence in the integrity of the permit and authority processes under the Act. A public register should be a basic requirement under any legislative scheme that licenses activities that have significant potential to impact upon health and safety and the environment.

ADF Immunity from Prosecution for Nuclear Terrorism Offences
The very broad "in connection with" "defence" and "security" exemptions, under sections 38A, need to be more clearly defined.
Why? Balancing Australia's "defence" and "security" interests and Australia's obligations under a number of international conventions and agreements requires checks on the exercise of the immunity under the Act. For example, the matters that the decision-makers/courts must take into consideration, in determining whether the ADF member was acting in connection with the defence or security of Australia, should be enumerated in the Act or Regulations.

Importation of Radioactive Substances - Customs (Prohibited Imports) Regulations 1956 (Cth), Regulation 4R

- Specific permission is required prior to any importation of radioactive waste into Australia, pursuant to the Customs (Prohibited Imports) Regulations 1956(Cth),and that permission must be obtained before ARPANSA will issue a licence authorising its possession.

Recommendation for improvement:
Ministerial and Authorised Officer Importation Permissions/Refusals
All such decisions should be publically notified and placed on a publically available, free online register.
Why? Transparency and accountability are essential if the community is to have confidence in the integrity of the importation processes under the Regulations. A public register should be a basic requirement under any legislative scheme that permits activities that have significant potential to impact upon health and safety and the environment.

Transportation of Radioactive Waste – Code for the Safe Transport of Radioactive Material

- Transportation of radioactive wastes in Australia must comply with the principles established in the Code of Practice for the Safe Transport of Radioactive Material which adopts international standards for transportation. The 2014 version of the Code is to be adopted in SA under the SA Transport of Radioactive Substances Regulations.

- As highlighted in the 2006 ISNG Report, the transport of radioactive material to and from a nuclear installation can be a matter of great concern for the public. Important details, such as the transportation routes, emergency plans and radiation surveys should be shared with the local authorities and population.

Recommendation for improvement to the Code:
Public Notification

A process of public notification of the transportation of waste needs to be incorporated in the Regulations. In addition, a publically available, free online register should be maintained that records transportation of wastes in Australia.
Why? Transparency and accountability are essential if the community is to have confidence in the integrity and safety of the transportation processes under the Regulations. Public notification and a public register should be basic requirements under any legislative scheme that permits activities that have significant potential to impact upon health and safety and the environment.

SA Planning Legislation

- The SA planning and development assessment system has been the subject of an 18 month review by an "Expert Panel". EDO(SA) and other community stakeholders have made extensive submissions to the Expert Panel regarding the need to retain and expand community engagement and participation in the system. See EDO(SA) submissions at http://www.edosa.org.au/reports . Draft legislation is due to be tabled in parliament in the next few months.

Recommendation:
In regard to the building of any facilities for the storage or disposal of nuclear waste in SA, it is imperative, that as likely "Major Projects" (under the current *Development Act 1993*), there be comprehensive community rights to access information about and comment upon any proposed facility development. As importantly, third party appeal rights (in regard to the decision and attaching conditions) should be afforded to community members who do comment. For the appeal rights to be of any practical use, the appeal process must be on a "no costs"/"no damages" basis – i.e. each party bears its own costs and no damages orders could be made against an unsuccessful third party.
Why? Transparency and accountability are essential if the community is to have confidence in the development assessment process in regard to "Major Projects" of significant public interest. Without a "no costs"/"no damages" safeguard, community members are unlikely to exercise appeal rights for fear of massive financial impacts, should their appeal fail.

The 2012 NSW ICAC Report emphasises the significance, for transparent decision making, of community participation:

> *"Meaningful community participation and consultation in planning decisions helps ensure that relevant issues are considered during the assessment and determination of plans and proposals. It also allows the community to have some influence over the outcome of decisions.*
> *Community participation and consultation requirements also act as a counter balance to corrupt influences. The erosion of these requirements in the planning system reduces scrutiny of planning decisions and makes it easier to facilitate a corrupt decision."* (at page 19)
>
> *"The limited availability of third party appeal rights under the EP&A Act means that an important check on executive government is absent. Third party appeal rights have the potential to deter corrupt approaches by minimising the chance that any favouritism sought will succeed. The absence of third party appeals creates an opportunity for corrupt conduct to occur, as an important disincentive for corrupt decision-making is absent from the planning system."* (at page 20)

Concerns regarding accountability and integrity in government decision-making processes are not restricted to NSW. In 2013, the SA Government established the office of Independent Commissioner Against Corruption to:

- identify and investigate corruption in public administration;
- assist in identifying and dealing with misconduct and maladministration in public administration; and

- prevent or minimise corruption, misconduct and maladministration in public administration through education and evaluation of practices, policies and procedures.

In SA, in regard to the FOI regime, the Ombudsman SA, in his *"Audit of state government departments' implementation of the Freedom of Information Act 1991 (SA)"* Report (May 2014) made the following observation:

> *"In summary, the evidence provided to the audit strongly suggests that ministerial or political influence is brought to bear on agencies' FOI officers, and that FOI officers have been pressured to change their determinations in particular instances. I have no reason to disbelieve this evidence."* (at paragraph 337)

This submission has been prepared by James Blindell on behalf of EDO(SA).