

# **Nuclear Facilities Prohibition Bill 2006**

## **Explanatory Notes**

### **General Outline**

#### **Objective of the Legislation**

The object of the legislation is to help protect the health, safety and welfare of the people of Queensland by prohibiting nuclear facilities, including uranium enrichment plants, nuclear power stations and nuclear waste sites in Queensland.

The Bill reflects community concerns about potential environmental and human health impacts and weapon proliferation. It proposes to legislate the current Queensland Government policy position as it applies to nuclear enrichment, energy generation and waste disposal (but not uranium mining) in Queensland.

The Bill sends a clear message that Queensland does not support a nuclear industry. It reflects strong concerns about potential environmental and human health impacts of nuclear facilities, the association with weapons proliferation and the risks posed by waste transportation and disposal.

The Bill proposes to prohibit the construction or operation of nuclear reactors and other major facilities in the nuclear cycle other than uranium mining and exploration. Specific exemptions to the prohibition apply to nuclear materials used for research and medical purposes and for the operation of nuclear powered vessels. New South Wales, Victoria and South Australia have, or are proposing to introduce, legislation having similar effect.

Enforcement provisions within the proposed Bill are similar to those in other legislation. Maximum penalty units for constructing or operating a nuclear facility are 1665 penalty units consistent with similar offences in the *Integrated Planning Act 1997* and the *Nature Conservation Act 1992*. The Bill also proposes that third parties have standing to bring proceedings for enforcement and restoration.

### **Means of Achieving Policy Objectives**

The Bill achieves the objectives by the creation of the *Nuclear Facilities Prohibition Act 2006*. The Bill proposes to prohibit the construction or operation of particular nuclear facilities.

### **Alternative Means of Achieving Policy Objectives**

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

### **Estimated Cost for Government Implementation**

There are no financial implications associated with this proposed legislation.

### **Consistency with Fundamental Legislative Principles**

The proposed Bill does not allow approvals under the *Integrated Planning Act 1997* or a mining tenement under the *Mineral Resources Act 1989* to be used for construction or operation of a nuclear facility. These provisions will apply retrospectively. However as there is no nuclear power industry in existence or in the planning stages in Queensland at present this breach of fundamental legislative principles is considered acceptable.

Sections 15 and 16 provide the Court with the discretion to attach enforcement orders for rehabilitation or restoration to the land. Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation have sufficient regard to the rights and liberties of individuals. The Bill therefore raises a fundamental legislative principle issue because of the potential effects on a land owner's ability to deal freely with his or her property, as an enforcement order requiring the rectification of damage caused by an offence against the *Nature Conservation Act 1992* may lower the saleability of the affected land. However, the impact on an individual's rights are considered justified given the broader public interest imperative in ensuring rehabilitation of land and rectification of damage caused by an offence against the Act.

### ***Recording of enforcement order on title of land***

These provisions ensure the ongoing effectiveness of an enforcement order by ensuring that it survives a change in title. Without these provisions, on a change in title it becomes impracticable for the original offender to comply with the order, while the new title-holder has no obligation to continue the rehabilitation or restoration. The provision is necessary because

rehabilitation of an area may take a period of years to decades to re-establish, and consequently, rehabilitation is often a long-term process.

The person retains the right to deal with the property. However, the provision may result in the value of the land being adjusted to reflect the costs of rehabilitation. As a consequence the provision will prevent persons who have committed an offence against the Act from benefiting from the increase in land value that may be created by the illegal activity. It also prevents individuals from circumventing the enforcement order by selling the land to another family member or company.

### ***Regard for rights and liberties of individuals***

The draft Bill makes quite extensive provision for removal of the enforcement order from the registrar's records. A person who has an interest in the land the subject of the order may apply to the chief executive for the order to be removed if—

- (a) the order has been cancelled by the court; or
- (b) the order has been substantially complied with; or
- (c) the person proposes alternative measures (for example, a registered covenant) ensuring the land will be restored or rehabilitated.

This process provides for the flexibility to adapt to changing technology whilst ensuring the rehabilitation or restoration outcomes are achieved. For example, the landholder may propose more effective and efficient means of rehabilitating an area of critical habitat and enter into an agreement to this effect. The landholder may also propose to register a covenant on the title to protect the area of critical habitat.

Where the request to remove the order from title is refused, or the application is approved subject to conditions, the Bill provides for the landholder appeal to the Court, thereby providing a means of review of the administrative decision.

### **Consultation conducted in development of the Bill**

The Office of the Coordinator General and Office of the Queensland Parliamentary Counsel have been consulted.

## **Notes on Provisions**

### **Part 1                      Preliminary**

Clause 1 specifies the short title of the Bill.

Clause 2 provides for the commencement of the Bill on a day to be fixed by proclamation.

Clause 3 sets out the objective of the Bill. The object is to help protect the health, safety and welfare of the people of Queensland by prohibiting the construction or operation of particular nuclear reactors and other facilities in the nuclear cycle.

Clause 4 clarifies that the Crown is bound by the Act but is not liable for offences

Clause 5 clarifies that this Act is unaffected by the operation of any other Act or law and that it, in turn, does not affect the operation of the *Radiation Safety Act 1999* or the *Medical Radiation Technologists Registration Act 2001*.

Clause 6 provides that definitions of particular words used in the Bill are contained in the schedule. These definitions are necessary to complement the Bill.

### **Part 2                      Prohibition on particular nuclear facilities**

Clause 7 sets out the scope of the prohibition relating to nuclear facilities.

Subclause 7(1) states a prohibition on constructing or operating a nuclear facility. By its definition the prohibition includes, subject to clause 7(2), a prohibition on any of the following:

- (a) a facility for converting uranium ore into uranium hexafluoride or another chemical to enable its enrichment;
- (b) an isotope separation plant or other facility for enriching nuclear material;

- (c) a fabrication plant or other facility for transforming nuclear material into a form suitable for use as fuel in a nuclear reactor;
- (d) a nuclear reactor, whether or not designed for generating electricity;
- (e) a reprocessing plant or other facility for the chemical separation of fuel that has been irradiated in a nuclear reactor;
- (f) a separate storage installation for storing or disposing of nuclear material in the nuclear fuel cycle used in or resulting from a nuclear facility under paragraph (a), (b), (c), (d) or (e).

It further specifies that the maximum penalty relating to subclause 7(1) is 1665 penalty units.

Subclause 7(2) sets out the exceptions to the prohibition. It clarifies that subclause 7(1) does not apply to the storage or disposal of the resultant radioactive waste material from research or medical uses, authorised use under the *Radiation Safety Act 1999* or the operation of a nuclear powered vessel.

Subclause 8(1) provides that a development approval granted under the *Integrated Planning Act 1997* does not give the authority to construct a nuclear facility. Similarly, subclause 8(2) provides that the construction or operation of a nuclear facility is not authorised as part of a mining tenement under the *Mineral Resources Act 1989*.

Subclause 8(3) clarifies that both subclauses 8(1) and (2) operate retrospectively as well as prospectively.

Subclause 9(1) provides that generating authorities are not authorised to connect a generating plant that uses a nuclear reactor to the transmission grid or supply network.

Subclause 9(2) clarifies that subclause 9(1) operates retrospectively as well as prospectively.

## **Part 3                      Enforcement**

### **Division 1                Enforcement orders**

The enforcement provisions of Part 3 Division 1 are modelled on similar provisions in the *Nature Conservation Act 1992*. The objectives of the Bill are enhanced by providing that third parties have standing to bring proceedings for enforcement and restoration.

Clause 10 provides that a person may begin civil proceedings to seek an enforcement order, including an interim enforcement order, from the Planning and Environment Court. The clause also provides that a person may apply for the cancellation or change to an enforcement order or interim enforcement order.

The procedural requirements in relation to court proceedings in the Planning and Environment Court are set out in the *Integrated Planning Act 1997* Chapter 4, Part 1, including in relation to costs, privileges, protections and immunities and the payment of witnesses of that Act.

Clause 11 provides the circumstances in which the court may make an interim enforcement order. Clause 11(3) states that an undertaking about damages cannot be required under an interim enforcement order.

Clause 12 specifies the circumstances in which the court may make an enforcement order. Statutory declarations and enforcement orders are to be used for the purpose of preventing an offence against the Act or to remedy damage resulting from an offence against this Act.

Declarations and enforcement orders will closely follow the common law. The main distinctions will arise out of the fact that they are not for the protection of individual proprietary interests, but are for the purpose of furthering the objectives of this Bill. Examples of how the declarations and enforcement orders will follow the common law are that they will be determined according to the civil standard of proof and will not bind a subsequent court considering the same facts under the criminal rules of evidence and procedure.

Clause 13 includes provision for enforcement orders to require a person to stop, not start or do anything required to stop committing an offence against the Act in subsections 13(1)(a)-(c). In addition, subsections 13(1)(d) and (e) provide for enforcement orders to require a person to return anything to as close as practicable to the condition it was in

immediately before an offence was committed and to do anything to comply with the Act.

Non-compliance with an enforcement order attracts the largest penalty contained in the Bill including up to 2 years imprisonment.

Clause 14 outlines the court's powers when making an enforcement order or interim enforcement order.

Clauses 15 and 16 provide the Court with the discretion to attach enforcement orders for rehabilitation or restoration to the land. The person who initiated the proceedings must notify the chief executive that an order has been made.

Subclauses 15(4)-(7) specify that if land that is the subject of an order is transferred to another person the transferee must comply with the order. However, the transferee will not be criminally liable for contravention of the order.

Clause 16 provides that the chief executive must notify the registrar of titles under the *Land Title Act 1994* of the enforcement order. Subclauses 16(2) and (3) specify that the registrar must keep records of the order in a specified, searchable manner.

Clause 17 sets out the process by which a person who has an interest in the land that is the subject of an enforcement order may apply to the chief executive for the particulars of certain enforcement orders to be removed from the registrar's records. The clause also sets out the requirements of form for such an application.

Clause 18 outlines the process which the chief executive must follow in dealing with an application made under clause 17.

Where the request to remove the order from title is refused, or the application is approved subject to conditions, the Bill provides for the landholder to appeal to the Court, thereby providing a means of review of the administrative decision.

Clause 19 contained in the Bill provides a clear process for the landholder to apply to the Chief Executive to have the order removed from the title of the land, where the order has been effectively complied with, or where the Chief Executive is satisfied the objectives of the order will be achieved through alternative means that are acceptable to relevant parties. This clause minimises the effect on the ability of a person to deal with their property

## **Division 2            General procedural provision**

Clause 20 sets out provisions for third parties to be engaged in proceedings. Subclauses 20(1) and (2) stipulate that a third party may, with consent, bring a proceeding under Part 3 on behalf of another entity and may have standing as a party in those proceedings. In addition, Subclause 20(3) relieves the entity on whose behalf the proceeding is brought from being a party to the proceedings. Subclause (4) requires an unincorporated body on whose behalf proceedings are being brought to provide the consent of the body's committee or other controlling or governing body. Subclause (5) allows an entity on whose behalf a proceeding is brought to contribute to, or pay, the legal costs of the party bringing the proceeding.

## **Part 4                    Miscellaneous provisions**

Clause 21 outlines the circumstances which trigger an obligation on the Minister to conduct a plebiscite to obtain the views of the people of Queensland. Subclause (2) specifies that these circumstances might include the Commonwealth Government facilitating or taking steps to facilitate the construction or operation of a prohibited nuclear facility in Queensland by:

- making or amending a law of the Commonwealth; or
- exercising any power under a law of the Commonwealth; or
- adopting a supportive or permissive policy position.

Subclause 21(3) establishes that, given the specified circumstances, the Minister must take steps to conduct a plebiscite to obtain the views of the people of Queensland about the construction of a nuclear facility in Queensland for purposes other than a purpose mentioned in section 7(2). Subclause 21(4) provides that the Minister must take those steps at a time he or she considers advantageous to the health, safety and welfare of the people of Queensland. Subclause 21(5) provides definitions for the purpose of clause 21.

Clause 22 places an obligation on executive officers of corporations to ensure the corporation complies with the Act. If the corporation commits an offence, each executive officer also commits an offence. A defence for an executive officer is provided if it can be proved they took reasonable



steps to ensure compliance by the corporation or if the person was not in a position to influence the conduct of the corporation in relation to the offence.

Clause 23 provides that the offences found at sections 13(4) and 21(2), to the extent the offence relates to an offence by a corporation against section 13(4), are misdemeanours. Any other offence under the Act is a summary offence.

Clause 23 provides for the making of regulations by the Governor in Council. Such regulations may impose offence penalties for contravention of the regulation.

## **Schedule**

The dictionary contains definitions of particular terms used in the Act.