

1987

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY
ORGANISATION BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
representing the Minister for Resources and Energy,
the Hon Barry O. Jones, MP)

OUTLINE

The purpose of the Australian Nuclear Science and Technology Organisation Bill (ANSTO Bill) is to establish a successor organisation to the existing Australian Atomic Energy Commission (AAEC) which was established under the Atomic Energy Act 1953. This Bill is part of a package of three Bills. The other two Bills are the Australian Nuclear Science and Technology Organisation (Transitional Provisions) Bill 1985 and the Atomic Energy Amendment Bill 1985, which provide for the necessary transitional arrangements and for repeal of those parts of the Atomic Energy Act 1953 which are no longer required or appropriate, such as the parts relating to the Australian Atomic Energy Commission and to security provisions.

The ANSTO Bill:

- (1) will provide for a new Organisation with functions which accord with current Government policy. These reflect the re-alignment of AAEC activities away from work on the nuclear fuel cycle, towards greater emphasis on applications of radioisotopes and radiation in medicine, industry, etc;
- (2) will provide for a governing Board of Directors of up to seven members including a Chairperson and Deputy Chairperson;
- (3) will also provide for an Advisory Council of up to eleven members, including at least one staff-elected member, to advise the Minister and the ANSTO Board on matters relating to the functions of the Organisation;
- (4) will provide a statutory basis for a Nuclear Safety Bureau and a Safety Review Committee, the functions of which will expand on the present AAEC Regulatory Bureau and Safety Review Committee respectively;
- (5) will not include repressive security provisions present in the Atomic Energy Act 1953.

FINANCIAL IMPACT

As the Organisation will take over the existing staff, assets, liabilities and financial estimates of the Australian Atomic Energy Commission, there is not expected to be any significant financial impact from enactment of this legislation in the short term. The members of the Board, the Advisory Council and the Safety Review Committee may be entitled to remuneration, as determined by the Remuneration Tribunal, however it is expected that any additional costs involved in these areas will be relatively minor, and will be able to be absorbed within the overall Budget allocation to the Organisation.

In the longer term it is anticipated the Organisation will become increasingly commercially oriented in the services provided, and revenue receipts should increase accordingly.

NOTES ON CLAUSES

PART I PRELIMINARY

Clause 1

Short title

This clause provides for the short title of the legislation.

Clause 2

Commencement

This clause provides for the legislation to come into effect on a day to be fixed by Proclamation.

Clause 3

Interpretation

This clause defines terms and expressions used in the legislation.

PART II - AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION

Clause 4Establishment of Organisation

The Australian Nuclear Science and Technology Organisation (ANSTO) is created and will take over the body corporate of the Australian Atomic Energy Commission (AAEC), which is to be abolished under the provisions of the Atomic Energy Amendment Bill 1985.

Clause 5Functions of the Organisation

This clause provides for the functions of the Organisation, outlined as follows:

5.(1) ANSTO is provided with functions better reflecting the directions in which Australia's principal nuclear research organisation should be heading. Not included are existing functions under the Atomic Energy Act 1953 relating to AAEC involvement in exploration for, and mining, treatment, purchase and sale of, uranium and the construction and operation of plant and equipment for nuclear power purposes. Included are functions dealing with research and development in relation to the production and use of radioisotopes and the use of isotopic techniques and radiation for medicine, science, industry, commerce and agriculture, and for the provision of services and sale of goods in these areas.

5.(2) This sub-clause prohibits ANSTO undertaking any research or development into the design or production of nuclear weapons or other nuclear explosive devices.

- 5.(3) This sub-clause requires the Organisation to have regard to national science and energy policy objectives.
- 5.(4) Sub-clause 5(1)(a)(iii) provides for ANSTO to undertake research and development in relation to such other matters as the Minister directs. Sub-clause 5(4) provides that the Minister shall only give such a direction if the Minister is satisfied this work would make effective use of the staff of the Organisation and would not unnecessarily duplicate activity by any other Commonwealth body.
- 5.(5) In the performance of its functions the Organisation may not exceed the functions that may be conferred upon it by virtue of the legislative powers of Parliament.

Clause 6

General powers of Organisation

This clause provides for the typical powers provided for Commonwealth statutory authorities, to enter contracts, hold or dispose of real or personal property, occupy, use and control land or buildings, undertake construction, to form or participate in companies, to appoint agents or attorneys or to act as an agent, to engage persons to perform services, to design, produce, construct and operate equipment and facilities etc.

Clause 7

Limitations on formation of companies etc

This clause imposes restrictions upon ANSTO similar to those imposed on other statutory authorities in relation to formation of subsidiary companies or taking shares in companies. They

provide for appropriate Ministerial approvals, and for Parliamentary oversight of ANSTO activities in this area.

PART III - THE BOARD OF DIRECTORS

Clause 8Establishment of the Board

The ANSTO Bill provides for a body corporate, the ANSTO, having defined functions and powers and for Board of Directors to govern the Organisation. This clause establishes that Board.

Clause 9Composition of the Board

This provides that the Board of ANSTO shall consist of a Chairperson, a Deputy Chairperson and not more than five other members. The Executive Director of the Organisation is to be an ex officio member of the Board, and other members will be appointed by the Governor-General. Only persons under the age of 65 years may be appointed as full-time members of the Board, and such persons may not be appointed for a period which extends beyond the day on which they reach 65 years of age.

A majority of the members of the Board must be from outside the Organisation. Appointed members of the Board may be appointed for a period of up to 5 years, and will be eligible for re-appointment.

The Minister will be empowered to appoint deputies for members of the Board except for the Chairperson, Deputy Chairperson and Executive Director, and these deputies may attend meetings of the Board when the respective members are unable to attend.

Provision is made for the Board to continue to function and exercise its powers in the event of a vacancy in the office of Executive Director or there being only one appointed member of the Executive for a period of up to three months.

Clause 10

Functions of the Board

The Board is to ensure the proper and efficient performance of the functions of the Organisation. Its express powers include determination of the policy of the Organisation with respect to any matter and the direction of the Executive Director (clause 19(1)). The Board is to have regard to relevant policies of the Commonwealth Government in the performance of its functions.

Clause 11

Directions to the Board (by the Minister)

This clause empowers the Minister to give directions to the Board where the Minister is satisfied it is desirable to do so in the public interest.

Clause 12

Remuneration and allowances

This clause makes the usual provisions for remuneration and allowances for appointments to Statutory Authorities. Such payments will be limited to non-staff members.

Clause 13

Resignation

Consistent with usual practice, appointed members may submit a written resignation to the Governor-General.

Clause 14Termination of appointment

Appointments of appointed members may be terminated by the Governor-General for reasons of misbehaviour or physical or mental disability of the member.

The Governor-General shall terminate appointments of appointed members if they become bankrupt, are absent from 3 consecutive meetings of the Board without leave of absence, or fail to provide the disclosure of interests required under clause 15 of this Bill.

Clause 15Disclosure of interests

Members with any direct or indirect pecuniary interest in any matter to be considered by the Board will be required to disclose the nature of such interest to a meeting of the Board. Any such disclosure of interest is to be noted in the minutes of the meeting and the member shall not take part in any deliberation of or decision on the matter unless otherwise determined by the Minister or the Board.

Clause 16Meetings of the Board

This clause sets out the requirements for conduct of meetings of the Board.

Meetings may be convened by the Chairperson as necessary to ensure the efficient performance of the Board's functions. The Chairperson will be obliged to convene a meeting on receipt of a written request by at least two other members. The Minister will also have the authority to convene meetings of the Board.

The Chairperson will normally preside at meetings, but if unavailable the Deputy Chairperson will preside. In the absence of both the Chairperson and Deputy Chairperson, the Board members present will appoint one of themselves to preside at the meeting.

A quorum for a meeting will require a majority of the members holding office to be present. To ensure the independence of the Board another requirement for a quorum is that the majority of the members present must be non-staff members.

Where a member is absent from a meeting because of conflict of interest, as required under clause 15, a quorum will be maintained provided there would have been a quorum if that member were present, and provided a majority of the remaining members are non-staff members. Questions arising at meetings will be determined by a majority of votes by members present and voting, with the person presiding at the meeting having a deliberative vote and, in the event of a tied vote, also a casting vote.

Clause 17

Acting appointments

This clause empowers the Deputy Chairperson to act in the office of Chairperson when that office is vacant or when the Chairperson is absent from duty or from Australia or otherwise unable to perform the functions of that office.

The Minister will have the power to appoint a member of the Board to act as Deputy Chairperson when that office is vacant, or when the Deputy Chairperson is absent from duty or from Australia or otherwise unable to perform the functions of that office. Such appointments in the case of a vacancy will be restricted to a maximum period of 12 months. The Minister may specify the circumstances under which the appointment of the member in the instrument of appointment is to have effect.

The Minister may also have the authority to determine the terms and conditions to apply during the period of the acting appointment, and may terminate such an appointment at any time. A person appointed under the provisions of this clause may resign by writing delivered to the Minister.

PART IV - EXECUTIVE DIRECTOR

Clause 18Executive Director

This clause establishes a statutory office of Executive Director of the Organisation, to be appointed by the Board. Persons over the age of 65 will not be eligible for appointment to this office, and appointments to this office may not be made for periods extending beyond the attainment of the age of 65 for the person appointed.

Members of staff of the Organisation will not be able to participate in deliberations or decisions concerning the appointment of the Executive Director, to ensure there is no conflict of interest in such appointments.

Clause 19Duties of the Executive Director

The Executive Director will be responsible for the management of the day to day operations of the Organisation, subject to the directions of and in accordance with policies set by the Board.

Clause 20Tenure of the Executive Director

The Executive Director may be appointed for a period of up to 5 years, but will be eligible for reappointment. Appointment to this office will be subject to terms and conditions determined by the Board.

Clause 21Remuneration and allowances

Remuneration for the Executive Director will be determined by the Remuneration Tribunal, in line with normal practice for statutory officers, and the Executive Director may be paid such allowances as are determined by the Board, subject to the provisions of the Remuneration Tribunals Act 1973.

Clause 21ADisclosure of Interests

The Executive Director will be required to give written notice to the Minister of all direct or indirect pecuniary interests that the Executive Director has or acquires in any business. This provision is consistent with the current disclosure of interests requirement for senior public servants.

Clause 22Acting Executive Director

The Board will have the authority to appoint a person to act as Executive Director when this office is vacant or when the appointed Executive Director is unable to carry out the functions of the office or is absent. In the case of a vacancy, such appointments will be limited to no more than 12 months.

The circumstances in which a person may act in this office, and terms and conditions of appointment, except for remuneration, may be determined by the Board, which may also terminate such appointments at any time.

An officer who is appointed to act in the office of Executive Director will continue to be paid his or her normal remuneration and allowances. In addition the officer, whilst acting in this office, will also be paid any additional level of remuneration and allowances required to reach the level paid to the Executive Director.

PART V - THE STAFF OF THE ORGANISATION

Clause 23

Staff of Organisation

This clause gives the Executive Director the authority to appoint officers and engage employees, and to second Australian Public Service officers and employees with the agreement of the relevant Departmental Secretary.

Terms and conditions of service or employment of persons appointed or engaged will be determined by the Board subject to the approval of the Public Service Board.

PART VI - SAFETY REVIEW

Clause 24Establishment and functions of Nuclear Safety Bureau

This clause gives statutory recognition to the body known as the Regulatory Bureau established by the Australian Atomic Energy Commission. This body will now be known as the Nuclear Safety Bureau, and will be responsible to the Minister for monitoring and reviewing the safety of any nuclear plant operated by the Organisation, including the nuclear reactor HIFAR. The Bureau may be given other functions by the Board.

Clause 24ASafety Review Committee

This clause will require the Minister to establish a Safety Review Committee. This Committee will take over the functions of the existing Australian Atomic Energy Commission Safety Review Committee, established under section 20 of the Atomic Energy Act 1953, to periodically assess and report on the effectiveness of the standards, practices and procedures to ensure the safety of operations of the Organisation. In addition the Committee will be empowered, either on its own initiative or at the request of the Minister or Board, to investigate and report on any matter arising out of the operations of the Organisation that may have adverse consequences or implications in relation to the safety of members of staff of ANSTO or the general public.

The Committee will be required to produce an Annual Report which is to be tabled in Parliament by the Minister. The Minister may also table such other reports by the Committee as the Minister considers to be of sufficient importance to warrant such tabling.

The Committee will consist of between 2 and 6 members, appointed by the Minister. The Minister shall appoint one member of the Committee to be the Chairperson of the Committee and another to be the Deputy Chairperson. To ensure the independence of the Committee, a majority of members must be drawn from outside of the Organisation. The Committee will have the power to obtain advice or assistance from any member of the staff of ANSTO.

A member of the Committee may resign from the Committee in writing signed by the member and delivered to the Chairperson of the Organisation.

The Minister will have the power to determine the procedures to be followed in relation to meetings of the Committee.

The Minister will have the power to determine whether members of the Committee will be remunerated, but the amounts of such remuneration will be determined by the Remuneration Tribunal.

PART VII - FINANCE

Clause 25

Money of Organisation

The Organisation will be paid monies appropriated by the Parliament. The Minister for Finance may direct the amounts and times at which these monies are paid to the Organisation. These monies may only be used for payment or discharge of expenses, charges, obligations and liabilities incurred or undertaken by the Organisation in carrying out its functions, including payment of remuneration and allowances specified elsewhere in this legislation.

The Organisation may invest any monies not immediately required or deposit monies with an approved bank, in Commonwealth securities, or in any other manner approved by the Treasurer.

Clause 26

Estimates

In line with normal practice, the Organisation will be required to produce estimates of receipts and expenditure for each financial year, or other periods if the Minister so directs, and to submit these estimates to the Minister by the date directed. Monies of the Organisation may be expended only in accordance with Estimates of Expenditure which have been approved by the Minister.

Clause 27

Application to Organisation of Division 3 of Part XI of Audit Act 1901

This clause provides that the Organisation will be subject to the provisions of Division 3 of Part XI of the Audit Act 1901. In annual reports prepared pursuant to the provisions of section 63M of the Audit Act 1901 the Organisation will be required to publish details of any directions issued by the Minister under clause 11 of this Bill.

Clause 28

Liability to taxation

The Organisation is not subject to any taxes imposed under Commonwealth, State or Territory legislation.

Clause 29

Contracts

The Organisation will be required to seek the Minister's approval before entering into any contract for an amount exceeding \$200 000.

Clause 30

Borrowing from the Commonwealth

This clause provides that the Minister for Finance may lend money to the Organisation on behalf of the Commonwealth, out of money appropriated by Parliament for the purpose, on such interest rates and other conditions as that Minister determines.

Clause 31

Borrowing otherwise than from the Commonwealth

This clause provides that the Organisation may also borrow money from sources other than the Commonwealth, subject to the written approval of the Treasurer. The Treasurer may on behalf of the Commonwealth guarantee the repayment of such amounts and interest.

Clause 32

Dealings with securities

This clause empowers the Organisation to deal in securities, subject to the written approval of the Treasurer. The Treasurer may guarantee, on behalf of the Commonwealth, the repayment of any amounts borrowed or raised by securities and any interest payable thereon.

Clause 33

Organisation may give security

The Organisation will be able to use the whole or any part of its assets as security for borrowings or liabilities.

Clause 34

Borrowings not otherwise permitted

The Organisation will not be able to borrow or otherwise raise money except under the provisions set out in clauses 30, 31 and 32.

Clause 35Commercial revenue

Any commercial revenue received by the Organisation in the course of the performance of its functions will be payable into Consolidated Revenue, unless retention of the whole or part of such revenue is approved by the Minister and the Minister for Finance. Any revenue retained under this provision may be applied only as determined by the Minister.

PART VIII - MISCELLANEOUS

Clause 36

Gifts, grants etc

With the approval of the Minister the Organisation may accept gifts, grants, bequests and devises and may act as the trustee of money or property vested in it on trust.

Clause 37

Trust money

Any money received or held by the Organisation on trust must be paid into an account opened and maintained subject to the requirements of section 63J of the Audit Act 1901 relating to bank accounts, and any such account may only be used for trust money.

Money or property held by the Organisation on trust may be applied or dealt with only in accordance with the powers and duties of the Organisation as trustee, and such money may be invested, subject to the terms of the trust or current laws.

Sections 63K and 63L of the Audit Act 1901 relating to keeping of accounts and audit of accounts and financial records to have effect in relation to any money or property held in trust by the Organisation.

Money received or held on trust, and expenditure of such money, are not to be included in estimates required under the provisions of clause 26(1) of this Bill.

Clause 38Advisory Council

This clause requires the Minister to establish an Australian Nuclear Science and Technology Advisory Council to advise the Minister and the Board on matters relating to the functions of the Organisation.

The Advisory Council will consist of up to 11 members, including a Chairperson and Deputy Chairperson, to be appointed by the Minister. The Council will include at least one staff member of the Organisation, to be elected by the staff in such manner as the Minister determines. The majority of members must be drawn from outside the staff of the Organisation. Members may be appointed for terms up to 5 years, but will be eligible for reappointment. Members of the Council may resign in writing delivered to the Chairperson of the Board.

The Chairperson of the Council will preside at meetings of the Council if he or she is present. In the absence of the Chairperson, the Deputy Chairperson shall preside, or in the absence of both of these, the members of the Advisory Council present shall elect one of their number to preside.

The Minister may determine procedures to be followed at or in relation to meetings of the Council including the convening of meetings, requirements for a quorum and the manner in which questions arising at meetings will be decided. Any determination of procedures by the Minister under this clause must be notified to the Council in writing.

Subject to agreement by the Minister, members of the Advisory Council may be remunerated with such remuneration being determined by the Remuneration Tribunal. Members may also be paid such allowances as prescribed, subject to the provisions of the Remuneration Tribunals Act 1973.

Clause 39Advisory committees

Under this clause, the Minister may establish advisory committees as considered necessary to advise the Board on particular matters or classes of matters relating to the functions of the Organisation. Under the Atomic Energy Act 1953 the equivalent power had been vested in the Australian Atomic Energy Commission, but in practice appointments to major advisory committees were made through the Minister, and this clause formalises that practice.

Length of term of appointment of persons to serve as members of advisory committees will be specified in the instrument of appointment, and members may be eligible for reappointment. Members of an advisory committee may resign, in writing, delivered to the Chairperson of the Board. The Minister has authority to determine whether members of advisory committees should be remunerated, but the level of any such remuneration will be determined by the Remuneration Tribunal. Members may also be paid any allowances prescribed, subject to the provisions of the Remuneration Tribunals Act 1973.

Clause 40Delegation by Minister

The Minister will be able to delegate, in writing, any of the powers conferred on him or her under this legislation, except the following:

- (1) the power to give directions on matters in relation to which the Organisation may undertake research and development work (sub-clause 5(1)(iii));
- (2) the power to appoint deputies of members other than the Chairperson, Deputy Chairperson or Executive Director (sub-clause 9(10)) (correction of a drafting error which referred to sub-clause 9(9));

- (3) the power to give directions to the Board in the performance of the function or exercise of the powers of the Organisation (clause 11);
- (4) the power to appoint an Acting Deputy Chairperson, to determine the terms and conditions on which a person appointed under the provisions of this clause is to act and to terminate appointments made under this clause (clause 17);
- (5) the power to establish the Safety Review Committee, to appoint its members, the Chairperson and the Deputy Chairperson and to determine whether members of the Committee should be remunerated (sub-clauses 24A(1), (9), (11) and (16));
- (6) the power to direct the Board on the timing of and form in which the Organisation's Estimates are to be prepared, and to approve such Estimates (clause 26);
- (7) the power to approve the Organisation entering into contracts of amounts exceeding \$200,000 (clause 29);
- (8) the power to establish the Australian Nuclear Science and Technology Advisory Council, to appoint members of the Council and determine the manner of election of the staff representative on the Council, to appoint the Chairperson of the Advisory Council, to determine the procedure to be followed at meetings of the Council and to determine whether Council members should be remunerated (clause 38); and
- (9) the power to determine the constitution, the functions and the manner of carrying out the functions of the Joint Consultative Committee (clause 43).

Clause 40ADelegation by the Treasurer

Under this clause, the Treasurer will be able to delegate to an officer of the Treasury, all or any of the Treasurer's powers in relation to the borrowing and securities provisions contained in clauses 31 and 32. This provision is in line with amendments proposed by the Treasury for incorporation into the enabling legislation of other Commonwealth statutory authorities.

Clause 41Delegation by the Board

The Board may also delegate any of its powers conferred under this legislation, but only to a member of the Board or to officers or employees of the Organisation. A delegate under this provision will be subject to the directions of the Board in the exercise of any power so delegated.

Clause 42Delegation by the Executive Director

The Executive Director may delegate, in writing, any of his or her powers conferred under this legislation, but only to officers or employees of the Organisation. A delegate under this provision will be subject to the directions of the Executive Director in the exercise of any power so delegated.

Clause 43Joint Consultative Committee

This clause gives a statutory basis to continue the Joint Consultative Committee already established by the Australian Atomic Energy Commission in pursuit of the Government's

industrial democracy objectives. The Committee will comprise representatives of the Organisation, representatives of organisations of officers and full-time employees of the Organisation, and/or representatives of officers and employees of the Organisation. The composition and functions of the Committee, and the manner in which these functions are carried out, will be determined by the Minister.

Clause 44

Regulations

This clause empowers the Governor-General to make regulations.

