

NSW Government Response to the Inquiry into the Transportation and Storage of Nuclear Waste¹

Recommendation 1: The current Federal Government proposals for the Repository and the Store cannot be justified and should be abandoned.

Recommendation 2: The current transport proposals to the Repository (and the Store) should, therefore, also be abandoned.

Recommendation 3: In the interim, Lucas Heights should continue to act as a waste facility, subject to a public inquiry into the storage facilities on site to identify operating conditions which will ensure world's best practice.

Recommendation 4: Consequently, during the interim period of storage at Lucas Heights:

- a. a new site selection process based on contemporary overseas models should be undertaken as a priority, incorporating community acceptance criteria.
- b. a public inquiry should be instigated by the Federal Government to consider the viability and practicality of alternative technologies and sources for radioisotope provision in Australia. Issues for consideration would include:
 - i. whether or not medical and industrial isotopes can be produced from alternative sources and whether this can be achieved before the current facility has expired;
 - ii. the economic and industry impact of importing medical isotopes; and
 - iii. whether or not it is necessary for research funding to be allocated to the development of alternative sources for radiopharmaceutical production.
- c. the operating licence for the Replacement Research Reactor (RRR) should be deferred. An inquiry should be undertaken by the Federal Government into the need for and possible uses of the RRR. Issues for consideration would include:
 - i. a review of the licensing processes and conditions applied to the reactor;
 - ii. security issues relating to the reactor site;
 - iii. the impact on jobs and Australian nuclear research of not proceeding with the replacement reactor;
 - iv. whether an effective solution to the problem of the final management of nuclear waste has been identified;
 - v. emergency management and response implications of the new facility; and
 - vi. whether there has been adequate consultation with the community, local government and the NSW Government.

¹ Parliament of NSW, Joint Select Committee on the Transportation and Storage of Nuclear Waste, Report No. 53/01, February 2004.

The NSW Government accepts these four recommendations. The NSW Government is categorically opposed to the construction of a new nuclear waste² storage facility in NSW, and to the transportation of nuclear waste through NSW. However, power of implementation lies with Commonwealth under its *Australian Radiation Protection and Nuclear Safety Act 1998* and *Australian Nuclear Science and Technology Organisation Act 1987*.

On 5 May 2004, the Premier wrote to the Prime Minister asking that the Commonwealth Government give serious consideration to the Inquiry's recommendations. On 6 August 2004, the Federal Minister for Science, the Hon Peter McGauran MP, replied to this letter on behalf of the Prime Minister. The response provided no new information. It failed to respond to the Inquiry's recommendations and offered no commitment to an open process with adequate consultation, as sought by the Premier. This correspondence has been tabled in the NSW Parliament.

The Premier will now write to the newly elected Commonwealth Government to again seek a Commonwealth response to the Inquiry's recommendations.

The NSW Government supports Recommendation 4 (a) in-principle. However, notwithstanding any new site selection process that may be undertaken by the Commonwealth Government, the NSW Government remains unequivocally opposed to the siting of any new nuclear waste storage facility in NSW.

Recommendation 5: The Federal Government should accept liability for radioactive waste and indemnify state and local government, and the public against the impacts of any radioactive waste incidents.

The NSW Government accepts this recommendation. The NSW Government has already asked the Commonwealth Government to consider this recommendation. The Premier will now write to the newly elected Commonwealth Government asking it to implement this recommendation.

Recommendation 6: The NSW Department of Environment and Conservation should complete the inventory of non-ANSTO storage sites as a matter of urgency identifying, in particular, those sites where upgrading of facilities is required.

The NSW Government accepts this recommendation.

The NSW Government has responsibilities to regulate low and intermediate level radioactive waste, such as waste derived from the use of radioactive gauges in farming and industry and radioisotopes used in hospitals.

² In this response, "nuclear waste" refers to waste from the nuclear fuel cycle generated by the Commonwealth's nuclear reactor at Lucas Heights. "Radioactive waste" refers to the waste generated by beneficial medical and industrial activities within the jurisdiction of NSW.

Since 1 July 2004, under the NSW *Radiation Control Act 1990*, premises on which radioactive substances are kept must be registered with the Department of Environment and Conservation (DEC). The Department is already compiling the inventory of radioactive waste storage sites and identifying any sites that require upgrading to meet regulatory requirements. The majority of the inventory has been compiled and is expected to be completed by the end of 2004.

Recommendation 7: The NSW Department of Environment and Conservation should liaise with the Sydney Water Corporation to ensure a proper risk assessment be carried out at the Cronulla Sewerage Outfall. In addition to emission levels in the ocean, reporting should cover environmental, human health and biophysical impacts, similar to that carried out at other Sydney Water facilities.

The NSW Government accepts this recommendation.

During the Inquiry, Sutherland Shire Council claimed that treated waste water discharged by the Australian Nuclear Science and Technology Organisation (ANSTO) into the Cronulla Sewerage Treatment Plant, and then from the Cronulla Sewerage Outfall, presents a health risk. ANSTO denied this, stating that the waste water is well below World Health Organisation radioactivity limits.

DEC advised the Inquiry that the waste water is the subject of a trade waste agreement between Sydney Water and ANSTO. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) has regulatory power over the agreement, as it relates to a Commonwealth facility. ARPANSA advised the Inquiry that it found the agreement to be satisfactory.

Because ARPANSA is the regulator, the NSW Government's powers in relation to the waste water discharge are limited to those it can exercise over Sydney Water's role.

Sydney Water advises that wastewater from the site contains low levels of radioactivity resulting from the production of nuclear medicines. The discharge levels allowed under the agreement are set within internationally accepted standards and ensure that, by the time wastewater is received at the Cronulla Wastewater Treatment Plant, radioactivity levels are equal to or less than the limits prescribed by the World Health Organisation for drinking water.

The agreement requires ANSTO to monitor discharges to ensure compliance with these levels, and Sydney Water undertakes random audits of ANSTO's monitoring to verify the rigour of the analysis.

Sydney Water advises that there has never been a breach of the radioactivity related conditions of the agreement.

Notwithstanding these assurances, the Government believes that it would be a prudent precautionary measure for the recommended risk assessment to be undertaken. The Government has asked the Department of Environment and Conservation to require Sydney Water to commission an independent risk assessment at the Cronulla Sewerage Outfall.

Recommendation 8: The Minister for Utilities should direct the Sydney Water Corporation to provide a copy of the ANSTO Trade Waste Agreement to Sutherland Shire Council.

The NSW Government accepts this recommendation. The Agreement, *Consent to Discharge Industrial Trade Wastewater No. 4423*, is publicly available on Sydney Water's website. The Minister for Energy and Utilities provided a copy of the Agreement to Councillor Bligh, Mayor, Sutherland Council by letter dated 14 July 2004.

Recommendation 9: ANSTO should acknowledge that spent fuel is waste, and in dealing with the Australian public, should identify it as waste.

Recommendation 10: ARPANSA should supplement the current Australian (NHMRC Code) waste classifications, Categories A, B, and C, with an equivalent range of effective dose rates (sieverts/hr) for each classification.

Recommendation 11: ARPANSA should develop a quantitative definition for Category S waste (NHMRC Code), to include effective dose rates thus doing away with the current "definition by exclusion".

Recommendation 15: ARPANSA should set waste acceptance criteria for any near-surface burial repository to exclude all long-lived intermediate level waste.

Recommendation 16: ARPANSA should require ANSTO to provide effective dose rate (sievert/hour) information for all waste containers. The dose rate will be provided for waste before conditioning as well as being measured on the outside of the container.

The NSW Government accepts these five recommendations dealing with technical definitional issues. However, power of implementation lies with the Commonwealth under its *Australian Radiation Protection and Nuclear Safety Act 1998* and *Australian Nuclear Science and Technology Organisation Act 1987*. The NSW Government has already asked the Commonwealth Government to consider these recommendations. The Premier will now write to the newly elected Commonwealth Government asking it to implement these recommendations.

Recommendation 12: ARPANSA should liaise with ANSTO and DEC to identify and properly secure any intermediate level waste considered suitable for use in "dirty bombs".

The NSW Government accepts this recommendation. As reported in response to Recommendation 6, DEC is already completing an inventory of all intermediate and low level radioactive waste that falls within NSW's jurisdiction.

Australia has signed and ratified the International Atomic Energy Agency's (IAEA) *Joint International Convention on the Safety of Spent Fuel Management and Radioactive Waste Management*, which requires stringent annual reporting on all safety and security aspects of the storage of radioactive waste. DEC complies with this requirement by providing information annually through ARPANSA to the IAEA.

In the case of ARPANSA and ANSTO, power of implementation lies with the Commonwealth. The NSW Government has already asked the Commonwealth Government to consider this recommendation. The Premier will now write to the newly elected Commonwealth Government asking it to implement this recommendation.

Recommendation 13: The New South Wales Government should formally forward a copy of this report to ARPANSA.

The NSW Government considers that it is appropriate to forward the report to the Prime Minister. As already reported, the Premier wrote to the Prime Minister on 5 May 2004 asking that the Commonwealth Government give serious consideration to the Inquiry's recommendations. A copy of the report was sent with the letter.

Recommendation 14: That the federal government identify any proposed road transport routes through Sydney.

To the extent that the Commonwealth Government should identify any proposals it has, or is contemplating, that would involve the transport of nuclear waste through NSW, the NSW Government supports this recommendation. However, this should not be interpreted to mean that NSW will contemplate any such proposal. The NSW Government remains unequivocally opposed to the transportation of any nuclear waste through NSW.

Recommendation 17: Risk assessments should be carried by New South Wales Agencies (including Police, NSW Fire Brigades, NSW Health, and the Department of Environment and Conservation), in consultation with the Commonwealth for any

transport proposals. This assessment should include consideration of the risk of potential terrorist activities.

Recommendation 18: NSW Agencies including Police, NSW Fire Brigades, NSW Health, and the Department of Environment and Conservation should, in consultation with the Commonwealth, detail and cost the emergency services requirements to best manage any transport proposals.

The NSW Government accepts that the recommended risk assessments and emergency services studies should be undertaken. However, the Government believes that the Commonwealth Government should accept lead responsibility to implement these recommendations and consult with the nominated NSW agencies.

The NSW Government believes that the Commonwealth should be more consultative in developing its storage and transport proposals. In the 5 May 2004 letter to the Prime Minister, the Premier highlighted that fact that recommendations involving areas of State responsibility are contingent on clarification of the Commonwealth Government's position, and greater information-sharing by Commonwealth authorities.

If the Commonwealth Government accepts these recommendations and provides sufficient information about any transport proposals, the NSW Government will direct its relevant agencies work with the Commonwealth agencies to implement these recommendations.

Recommendation 19: A formal agreement should be negotiated between the NSW Government and the Federal Government on any proposals to store and transport radioactive waste in New South Wales, based on the above risk assessments.

This agreement would include:

- The Commonwealth to arrange an assessment of the transport proposals by the IAEA's Transport Safety Appraisal Service,
 - This assessment should consider all possible modes of transport, including sea, depending on the site location being assessed;
- Clearly defined roles and responsibilities (clarify jurisdictional uncertainties);
- Tracking of waste material;
- Emergency services requirements (resourcing, training, responses);
- Risk minimisation;
- Prevention of accidents;
- No liquid wastes to be transported;
- Community acceptance criteria; and
- Independent monitoring by NSW to certify or ensure that the relevant codes are adhered to.

Recommendation 20: Any agreement be based on the principle that the Federal Government bear the full costs incurred by the community (including local councils) of any transport and storage proposals.

The NSW Government is categorically opposed to the construction of a new nuclear waste storage facility in NSW, and to the transportation of nuclear waste through NSW.

However, the NSW Government will direct its relevant agencies to work with the Commonwealth to negotiate an appropriate agreement if:

- the Commonwealth Government announces any proposals to construct a nuclear waste storage facility in NSW or to transport nuclear waste through NSW; and
- legal advice indicates that the NSW Government would be unable to block any such proposals; and
- the Commonwealth Government provides sufficient information about any such proposals; and
- the Commonwealth Government directs its agencies to cooperate with NSW agencies;
- the Commonwealth Government has conducted the necessary risk assessments and studies (Recommendations 17 and 18); and
- the Commonwealth Government agrees to work with NSW to implement these recommendations.

Recommendation 21: The NSW State Government should obtain legal advice on the Federal Government's constitutional power relating to nuclear technology.

The Commonwealth Government has gone to great lengths to override the operation of relevant NSW laws. The NSW Government has previously sought legal advice on the Commonwealth's powers in this area which indicated that State law cannot override Commonwealth law. The NSW Government believes there is no reason to seek further legal advice at this time. However, if the Commonwealth Government announces any proposals to construct a nuclear waste storage facility in NSW, the NSW Government will pursue all avenues at its disposal, including legal processes, to block any such proposals.

Recommendation 22: In the event the Federal Government fails to adopt the committee's recommendations 1 to 4:

The NSW Government should amend the Uranium Mining and Nuclear Waste Facilities (Prohibition) Act to prohibit:

- the construction and operation of nuclear waste facilities in New South Wales (with the exception of an interim waste facility at Lucas Heights), and
- the transportation of reactor sourced radioactive waste (with the exception of stocks of existing spent fuel).

Legal advice indicates that the proposed legislative amendments would not be constitutionally valid, or effective. However, if the Commonwealth Government announces any proposals to construct a nuclear waste storage facility in NSW, the NSW Government will pursue all avenues at its disposal, including legal processes, to block any such proposals.