

 Australian Government Department of Defence	NOTING BRIEF FOR CHIEF NUCLEAR POWERED SUBMARINE TASKFORCE: AGS SCOPING PAPER ON DOMESTIC LEGAL ISSUES
Division: International Policy & Agreements	Reference: BN44296037
For information: NPS Capability, NPSM Delivery & Industry, NPSM Executive, Technology, Stewardship, Security	Due date: 23 Mar 22 Routine

Purpose

1. To inform you of the key conclusions from the AGS scoping paper on domestic legal issues affecting the RAN's nuclear-powered submarines (NPS).

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Recommendations

2. That you:
 - a. Note that AGS has finalised a scoping paper on domestic legal issues affecting the RAN's nuclear-powered submarines at Attachment A.
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 - b. s42
 - c. s42

<p>s47C</p>	<p>a. Noted / Please discuss b. Noted / Please discuss c. Noted / Please discuss d. Noted / Please discuss e. Agree / Please discuss</p>
<p>s22</p>	<p>s22</p>
<p>s47E(d) A/FAS IP&A</p>	<p>JD Mead, AO VADM, RAN CNPSTF</p>
<p>23 Mar 22</p>	<p>22 Mar 22</p>

Contact Officer: s47E(d)	Tel: s47E(d)
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Way ahead

8. The AGS Scoping Paper will inform Taskforce efforts to determine a position on a regulatory framework, a potential new regulatory body and associated timelines for this work during the current consultation period. Given the likely scale and complexity of legislative change required, this paper also underlines **s42**

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Consultation

9. The following people were consulted on this brief:

- a. Nuclear Powered Submarine Taskforce, Head Nuclear Powered Submarine Capability, **s47E(d)**
- b. Nuclear Powered Submarine Taskforce, Assistant Secretary Stewardship Systems, **s47E(d)**
- c. Nuclear Powered Submarine Taskforce, Deputy General Counsel, Defence Legal, **s47E(d)**

Attachment:

1. AGS Scoping Paper



FOR: Assistant Minister for Defence
INFO: Deputy Prime Minister
THROUGH: Secretary CDF
CC: VCDF, FASMECC

Action Requested by: 27 February 2023

Reason for Urgency: To enable launch of public consultation on 1 March 2023

APPROVAL TO ANNOUNCE REFORMING DEFENCE LEGISLATION AND CALL FOR PUBLIC SUBMISSIONS

Key Issues:

s34(3)

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Recommendations:

That you:

1. **approve** the consultation paper, public website content, and talking points at Attachments A to C; and
2. **approve** the launch of the public consultation process on or around 1 March 2023.

Decision

Approved/Not approved

Approved/Not approved

Media Considerations:

Once the public consultation commences, the consultation process and substantive reforms are likely to generate interest from the media and other Defence stakeholders. Whole-of-Government talking points have been prepared at Attachment A.

Signature
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Matt Thistlethwaite

16 February 2023

Minister comments:

Cleared by

s47E(d)

9 February 2023

Contact Officer

s47E(d)

Sensitivity: Yes.

1. The reforms cover a wide range of issues that may draw considerable interest from media, key stakeholders (including veterans groups and industry partners), state and territory governments, and international counterparts. It will also be important to manage expectations of various interest groups on matters that are not addressed in the proposed reforms.
2. Public commentary may associate the proposed reforms with other high profile initiatives, including decisions surrounding nuclear-powered submarines and other AUKUS advanced capabilities, the Defence Strategic Review and the Royal Commission into Defence and Veteran Suicide. While the reforms will support and enable other Australian Government initiatives, the call for public submissions will not seek views on defence matters beyond the scope of the proposed legislative reforms.

Financial Impacts: No.

3. No financial impacts have been identified to date.

Systems/legislation/deregulation: Yes.

4. The agreed reforms will substantially amend defence legislation, including the *Defence Act 1903*, s47C
5. Defence industry and other stakeholders will be consulted to identify and manage any regulatory impact, which is expected to be minimal at this stage.

Consultation: Yes.

6. Defence consulted the following external people during development of the consultation paper and Whole-of-Government talking points:
 - a. Department of the Prime Minister and Cabinet:
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 - b. Attorney-General's Department:
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 - c. Department of Veterans' Affairs:
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 - d. Department of Home Affairs:
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e. Department of Finance:

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f. Department of Foreign Affairs and Trade:

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g. The Treasury:

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h. Australian Signals Directorate:

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i. Australian Security Intelligence Organisation:

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j. Australian Federal Police:

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k. Department of Climate Change, Energy, the Environment and Water:

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Attachments:

Attachment A Whole-of-Government talking points.

Attachment B Consultation paper.

Attachment C Text for public website.

Background

7. **s34(3)**

8. Once enacted, the proposed reforms will:

- a. Introduce authorisation frameworks to support: the use of and defence against modern and emerging technologies (including cyber, electronic effects, quantum and artificial intelligence); training and technology development activities; and the collection, use and sharing of information for defence purposes.
- b. Modernise and consolidate the legal framework to address tangible and intangible aspects of defence security, broadening the scope from security of defence premises to security of Australia's military capabilities.
- c. Introduce a legislative mechanism for the Defence Minister to create exemptions from State and Territory laws where necessary for defence purposes.
- d. Provide for greater interoperability with our key partners, **s47C** [REDACTED] to better reflect modern defence partnerships and composition of visiting forces.
- e. Modernise existing regulation-making powers in order to protect the Australian community and Australia's national interests.

9. Engagement and public consultation will facilitate public debate and help identify opportunities for policy and regulatory improvement. It will also help to provide reassurance to the public that the reforms will future-proof our defence and national security arrangements and be used to counter misinformation campaigns.

10. The public consultation is intended to:

- a. Provide a genuine opportunity for stakeholders to contribute to the reform process, enabling the Australian Government to better understand and anticipate stakeholder issues, and identify appropriate solutions.
- b. Provide a mechanism to educate and address questions on why the reforms are needed and to manage community expectations on the scope of the proposed reforms.
- c. Enable the Australian Government to provide assurances that any legislative powers relating to Defence's functions and activities would include appropriate limitations and safeguards.
- d. Enable understanding of any impact of the proposed reforms on local communities, businesses and economies.
- e. Ensure the proposed reforms are aligned with community expectations.
- f. Engender public support for the reforms as the legislation is progressed.

11. Defence has developed the paper at Attachment B in consultation with other key Commonwealth agencies to provide information and appropriate focus to the public consultation.

12. Subject to ministerial agreement, Defence proposes that the public consultation commence on or around 1 March 2023, through launch of a page on Defence's public website (text at [Attachment C](#)) calling for public submissions. The consultation paper and arrangements for the public to make submissions will be available on the website.
13. The public consultation will remain open for submissions for a period of six weeks (that is from 1 March 2023 to 12 April 2023). Public submissions will generally be published on the internet site, unless there are reasons not to do so – i.e. they are defamatory or the author does not consent to publication.
14. **s47C**
 15. Whole-of-Government talking points have also been developed ([Attachment A](#)), as the reforms require close collaboration with other Commonwealth agencies to ensure they are appropriately aligned with other Australian Government initiatives and legislative reforms. A unified position across the Commonwealth will be necessary for successful implementation of the reforms.
 16. Defence intends to commence engagement with several key stakeholder groups in advance of and in parallel with the public consultation. In particular:
 - a. Ensuring Defence attachés and overseas posts are positioned to address queries from international partners when the public consultation commences.
 - b. Foreshadowing the consultation to State and Territory governments through a relevant officials' forum (facilitated by Department of the Prime Minister and Cabinet).
 - c. Engaging directly with other key stakeholders, including veterans and defence industry groups, immediately after the announcement, in recognition of their interest in defence matters.
 17. Defence will brief you further on these activities as they progress.