



Discussion Paper: The legal and regulatory framework to support Naval Nuclear Power Safety



Overview

Through the AUKUS security partnership, Australia, the United Kingdom and the United States are committed to promoting a free, open, secure and stable Indo-Pacific. The first major AUKUS initiative, Australia's acquisition of conventionally-armed, nuclear-powered submarines, will enhance the capacity to defend Australia and its national interests.

In delivering this capability, the Australian Government is prioritising the highest standards of nuclear safety. The Australian Naval Nuclear Power Safety Bill 2023 (ANNPS Bill) and the Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023 (Transitional Bill) continue the Australian Government's considered, phased approach to building an enduring legislative and regulatory framework for responsible nuclear stewardship.

The ANNPS Bill, when enacted, would enable the establishment of a new fit-for-purpose regulatory framework to ensure nuclear safety within Australia's nuclear-powered submarine enterprise and capability lifecycle. The Transitional Bill would enable the transition of any licences issued by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) where they correspond to 'regulated activities' under the ANNPS Bill.

Nuclear-powered submarines are designed to operate in hostile undersea environments in remote locations far from Australia's territorial limits. The Australian Government acknowledges the inherent risks associated with this technology where it is not supported by a fit-for-purpose regulatory framework. These include risks to human life, the environment, our social licence to operate nuclear-powered submarines and Australia's relationship with its international partners. This legislation is reflective of the Australian Government's recognised need to:

- protect the health and safety of people, and the environment, from the harmful effects of radiation;
- implement proper operating conditions for regulated activities;

- prevent accidents; and
- mitigate the consequences of accidents (if they occur).

This legislation creates a framework for regulating the nuclear safety aspects of Australia's nuclear-powered submarine enterprise to protect the health and safety of people and the environment. It creates a comprehensive suite of nuclear safety duties for those engaging in particular activities relating to nuclear-powered submarines, supporting facilities and the handling of naval nuclear propulsion material. Those obligations are supported by offences and penalties that reflect the need for Australia to establish the highest standards for nuclear safety of the nuclear-powered submarine enterprise.

The ANNPS Bill also establishes the Australian Naval Nuclear Power Safety Regulator (Regulator) - an independent, specialised and dedicated regulator with functions and powers to regulate the unique circumstances associated with nuclear safety across the nuclear-powered submarine enterprise. The Regulator will have significant compliance and enforcement powers which support its role in monitoring and, where necessary, enforcing compliance in relation to nuclear safety aspects of the nuclear-powered submarine enterprise.

This legislation does not alter in any way the moratorium on civil nuclear power in Australia, a feature of Australian law since the late 1990s.

The Australian Government is committed to transparent and continuous community engagement on the nuclear-powered submarine legislative and regulatory framework. This Discussion Paper seeks to support public understanding of the ANNPS Bill, containing a detailed summary of its development, structure, scope, operation and content. It also outlines future opportunities for the community to share views and remain informed on the development of legislation and regulations for Australia's conventionally-armed, nuclear-powered submarine enterprise.

Contents

Overview of Discussion Paper	4
1. Why is legislation required?	5
2. How has the ANNPS Bill been developed?	9
3. How will the ANNPS Bill operate?	12
4. How is the Australian Government engaging the public on the development of this legislation?	18

Overview of Discussion Paper

This Discussion Paper addresses the following questions:

1. Why is legislation required?

Background information about the nuclear-powered submarine capability, the Optimal Pathway, and rationale for why a new legislative and regulatory framework is necessary.

➡ See page 5

2. How has the ANNPS Bill been developed?

Design principles which have influenced the development of the ANNPS Bill and an explanation of the planned legislative and regulatory framework governing the nuclear-powered submarine capability.

➡ See page 9

3. How would the ANNPS Bill operate?

An overview of the core features of the ANNPS Bill, including how it would establish a new regulatory framework, the new regulatory agency and its powers, and how each of these features would operate.

➡ See page 12

4. How is the Australian Government engaging the public on the development of this legislation?

How engagement has occurred to date and future opportunities for community input.

➡ See page 18

Notes:

- The ANNPS Bill and Transitional Bill have been introduced as a legislative package into Parliament. The Transitional Bill contains measures to enable the transition of licences (if any) between regulatory frameworks.
- This Discussion Paper summarises and complements the Explanatory Memorandum which has been introduced to Parliament alongside the ANNPS Bill. In the event of any inconsistency, the Explanatory Memorandum prevails over this document.

1. Why is legislation required?

On 14 March 2023, the leaders of Australia, the United Kingdom and the United States announced their agreement to a phased approach for Australia's acquisition of conventionally-armed, nuclear-powered submarines (Optimal Pathway). This agreement for the delivery of an enduring nuclear-powered submarine capability for Australia is a key outcome of Pillar 1 of the AUKUS trilateral security partnership. The AUKUS partnership will deliver significant long-term strategic benefits for Australia, the United Kingdom and the United States. It is enhancing the combined industrial capacity of each partner nation, encouraging increased cooperation and strengthening trilateral supply chains.

The Optimal Pathway agreed by AUKUS partners will:

- deliver Australia a conventionally-armed, nuclear-powered submarine capability as soon as the early 2030s;

- elevate all three partner nations' industrial capability to produce and sustain advanced and interoperable nuclear-powered submarines for decades to come; and
- expand our individual and collective undersea presence in the Indo-Pacific and contribute to global security and stability in the region.

Importantly, the Optimal Pathway has been designed to ensure Australia is equipped to safely and securely operate and sustain its nuclear-powered submarine capability. This includes through leveraging lessons learned from the United Kingdom and the United States on the safe construction, operation, maintenance and disposal of nuclear-powered submarines and related facilities.

Australia's pathway to acquiring a nuclear-powered submarine capability is set out in Figure 1 below. Further information about the Optimal Pathway can be found [here](#).



Figure 1: AUKUS NPS Pathway (Source: [Optimal Pathway | Australian Submarine Agency \(asa.gov.au\)](#))

A new Regulator to deliver Australia's nuclear-powered submarine program

On 6 May 2023, the Deputy Prime Minister announced the Australian Government would establish a new independent statutory regulator as part of its commitment to delivering Australia's conventionally armed, nuclear-powered submarines. This is to be named the Australian Naval Nuclear Power Safety Regulator.

The new Regulator will have the functions and powers necessary to regulate the unique circumstances associated with nuclear safety across the lifecycle of Australia's nuclear-powered submarine enterprise, including associated infrastructure and facilities.

The definition of nuclear safety in the ANNPS Bill broadly includes:

- (a) in all cases – protecting the health and safety of people, and the environment, from the harmful effects of ionising radiation and non-ionising radiation;
- (b) the implementation of proper operating conditions for *regulated activities*;
- (c) the prevention of accidents relating to *regulated activities*; and
- (d) the mitigation of the consequences of any accidents (if they occur).

The Regulator will be independent of the Australian Defence Force's chain of command and directions from the Department of Defence.

The Regulator will be a fundamental part of a system of regulation. It will work with existing Australian regulators to support the safety of our submariners, Australian and international communities, and the environment.

The Regulator will be a non-corporate Commonwealth entity within the Defence portfolio and will report directly to the Minister for Defence.

A pre-requisite for the head (Director-General) and deputy head (Deputy Director-General) of the Regulator is that both candidates have the competence, independence, technical expertise and relevant experience to properly discharge the functions of the office. It will not be possible to appoint an ADF member to either office.

Legislative change is required, in part, to implement this Australian Government decision.

Existing legislative and regulatory landscape

Australia has decades of nuclear safety regulatory experience, and a robust framework to regulate current domestic civilian nuclear activities in fields such as nuclear science, medical research and uranium mining. However, this framework was not designed in contemplation of the unique activities associated with naval nuclear propulsion in a military context.

With passage of the *Defence Legislation Amendment (Naval Nuclear Propulsion) Act 2023*, the Australian Government has already taken the first step to establish a legislative framework for the safe delivery of the nuclear-powered submarine capability.

That Act made several amendments to existing Commonwealth legislation - the *Australian Radiation Protection and Nuclear Safety Act 1998* (ARPANS Act) and *Environment Protection and Biodiversity Conservation Act 1999* - to clarify arrangements for the performance of current regulatory functions that might be necessary to support Australia's nuclear-powered submarine capability.

Primary legislation regulating Australia's existing nuclear-related activities, and the function of each, is broadly detailed in Table 1 on the following page. This table also highlights how the decision to acquire a nuclear-powered submarine capability will increase Australia's nuclear footprint significantly, growing into areas that have not previously been expressly considered by Australia's Parliament. These considerations include the unique submarine hazards and risks that are not captured in the existing legislation set out in Table 1 on the following page.

Table 1: Overview of relevant existing Commonwealth legislation

Existing Legislation	Purpose of Existing Legislation	Interaction with ANNPS Bill
<i>ARPANS Act</i>	Establishes a regulatory framework for radiological protection and nuclear safety of the Australian public and establishes ARPANSA as the national regulator for Commonwealth activities involving nuclear safety and radiological protection.	Generally, this Act would not apply in relation to 'regulated activities' (as defined within the ANNPS Bill). The new Regulator, not ARPANSA, would serve as the regulator in relation to nuclear safety where relevant to the nuclear-powered submarine enterprise.
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	<p>Establishes a regulatory framework for the protection of the environment from significant impacts and ensures ecologically sustainable development.</p> <p>Actions that are taken by Australian Government entities, or those likely to have a significant impact on a matter of national environmental significance require an environmental assessment and approval from the Environment Minister, unless granted an exemption.</p> <p>These actions include the following 'nuclear actions':</p> <ul style="list-style-type: none"> • establishing or significantly modifying a nuclear installation, a nuclear power plant, or a plant for preparing or storing fuel for use in a nuclear reactor; • transporting spent nuclear fuel or radioactive waste products arising from reprocessing; • establishing or significantly modifying a facility for storing radioactive waste products arising from reprocessing; • mining or milling uranium ores, excluding operations for recovering mineral sands or rare earths; and • decommissioning or rehabilitating any facility or area in which an activity described above has been taken. 	The ANNPS Bill would not displace the operation of this Act. There are no further changes required to the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .
<i>Work Health and Safety Act 2011</i>	Forms part of a national framework for the protection of the health, safety and welfare of all workers and workplaces, by eliminating or minimising risks (as far as reasonably practicable).	The ANNPS Bill would not displace the operation of this Act, and contains specific provisions to this effect.
<i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>	<p>The primary purpose of the <i>Nuclear Non - Proliferation (Safeguards) Act 1987</i> is to implement Australia's obligations under:</p> <ul style="list-style-type: none"> • the Treaty on the Non-Proliferation of Nuclear Weapons; • the Comprehensive Safeguards Agreement; • the Additional Protocol to the Comprehensive Safeguards Agreement; • Nuclear Cooperation Agreements; • South Pacific Nuclear Free Zone Treaty; • the Convention on the Physical Protection of Nuclear Material; and • the International Convention for the Suppression of Acts of Nuclear Terrorism. <p>This Act also acknowledges the Australian Safeguards and Non-Proliferation Office as the national safeguards regulator.</p>	<p>The ANNPS Bill would not displace the operation of this Act.</p> <p>Under the new system, which is designed to operate alongside existing legislation to the extent possible, there is no requirement to amend this Act, including the functions of the Director of Safeguards.</p> <p>Regulatory responsibility for safeguards and physical security of nuclear material will remain with the Australian Safeguards and Non-Proliferation Office.</p>

Existing Legislation	Purpose of Existing Legislation	Interaction with ANNPS Bill
<p><i>Security of Critical Infrastructure Act 2018</i></p>	<p>Establishes a framework for the protection of Australia's critical infrastructure sectors, including the defence industry.</p> <p>The <i>Security of Critical Infrastructure Act 2018</i> provides obligations for owners and operators of certain critical infrastructure assets including:</p> <ul style="list-style-type: none"> • the requirement to report information to the Register of Critical Infrastructure Assets; • mandatory cyber incident reporting requirements; and • the requirement to produce and comply with a Critical Infrastructure Risk Management Program. 	<p>The ANNPS Bill would not displace the operation of this Act.</p> <p>There may be potential overlap between the ANNPS Bill and the <i>Security of Critical Infrastructure Act 2018</i> in the regulation of defence industry assets, including at the Osborne Naval Shipyard. It will be necessary to coordinate with the Department of Home Affairs to manage the interaction between the ANNPS Bill and the <i>Security of Critical Infrastructure Act 2018</i>, in order to manage interfaces and minimise the potential regulatory burden on relevant industry and Commonwealth stakeholders.</p>

As outlined in this Discussion Paper, the new legislative and regulatory framework has been developed cognisant of Commonwealth regulatory frameworks. Through comprehensive consultation, the ANNPS Bill has been developed having careful regard to the expertise of existing regulators, including ARPANSA. Once established, the new Regulator will operate within a system of regulation, collaborating with existing regulatory agencies, to promote, enhance and monitor nuclear safety in the delivery of the nuclear-powered submarine capability.

Unique submarine hazards and risks

The requirement for a fit-for-purpose, specialised regulatory framework for nuclear-powered submarines is driven by the unique circumstances in which this

capability will operate and accompanying hazards and risks. The environments in which submarines operate are inherently hazardous (underwater, in varying sea states) with dangerous materials in close proximity (including explosive ordnance).

While nuclear-powered submarines have a number of roles, they are naval vessels designed to operate in hostile undersea environments. Regulating the nuclear safety aspects of this enterprise requires a system that is calibrated to addressing the unique hazards and risks associated with this sensitive military capability.

2. How has the ANNPS Bill been developed?

Following the passage of the *Defence Legislation Amendment (Naval Nuclear Propulsion) Act 2023*, the ANNPS Bill represents the second legislative step towards Australia acquiring conventionally-armed, nuclear-powered submarines. The development of the ANNPS Bill was informed by:

- the Australian Government's Optimal Pathway to acquire nuclear-powered submarines, announced on 14 March 2023;
- the Australian Government's stated regulatory approach for the nuclear-powered submarine enterprise, including the establishment of the new Regulator, announced on 6 May 2023;
- the need to develop and adjust a regulatory approach for the nuclear-powered submarine enterprise incrementally, corresponding to relevant activities conducted under the Optimal Pathway; and
- a recognised need to ensure any new regulatory framework was coherent and harmonised with existing regulatory arrangements.

Early phases of the Optimal Pathway will deliver supporting infrastructure and facilities. Regulation of these activities is therefore a primary focus of the ANNPS Bill, although it also includes requirements for activities involving Australia's nuclear-powered submarines once they are acquired and then constructed. The more detailed technical requirements for ensuring nuclear safety (to primarily be achieved through the development of licence conditions, in subordinate legislative instruments) will be developed in the coming years and will correspond with Australia's phased approach to delivery of the Optimal Pathway.

Principles and drafting approach

In designing the new regulatory system, various factors and inputs have been considered, including:

- the interdependencies between a naval nuclear propulsion plant, a nuclear-powered submarine

platform and associated facilities, infrastructure and activities required across the lifecycle of a submarine;

- the military context and operational use of the capability;
- the expectations of the Australian Parliament and Australian people that the Regulator is an independent entity;
- the nature of the future regulated community, being specialised, and experienced at operating in sensitive environments;
- the need to ensure the ANNPS Bill aligns with relevant domestic and international best practice (including nuclear safety standards and guidance of the International Atomic Energy Agency);
- the need for the Regulator and operators to incrementally develop highly specialised and technical expertise and in cooperation with peer regulators in the United Kingdom and United States;
- the functions of existing Australian Government regulators; and
- the ongoing need to ensure compliance with Australia's nuclear non-proliferation obligations, including the Treaty of Rarotonga, the Treaty on the Non-Proliferation of Nuclear Weapons, the Agreement Between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons, the Protocol Additional to The Agreement Between Australia and the International Atomic Energy Agency For The Application of Safeguards In Connection With The Treaty On The Non-Proliferation of Nuclear Weapons (AP).

Drafting of the ANNPS Bill has occurred across four key phases, described in Figure 2 on the following page.

Figure 2: Stages of ANNPS Bill Development



The development of the ANNPS Bill was also informed by:

- relevant Commonwealth laws, including, for example, the *ARPANS Act*, the *Regulatory Powers (Standard Provisions) Act 2014*, the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, and the *Work Health and Safety Act 2011*; and
- relevant international standards and approaches to regulating nuclear safety, including International Atomic Energy Agency Safety Standards that provide guidance for applying a management system for facilities and activities.

Regulatory framework

The Bill establishes the broad parameters of the legislative and regulatory framework that will support delivery of Australia’s nuclear-powered submarine capability. The focus now is on regulating the nuclear safety aspects of facilities and infrastructure in Australia that are required to support the Optimal Pathway.

The framework will be matured over time, eventually comprising:

- primary legislation (initially the ANNPS Bill, but also including possible future legislative amendments for supporting later stages of the Optimal Pathway);
- subordinate legislation (regulations); and
- other substantive decisions and guidance documents issued by the Regulator.

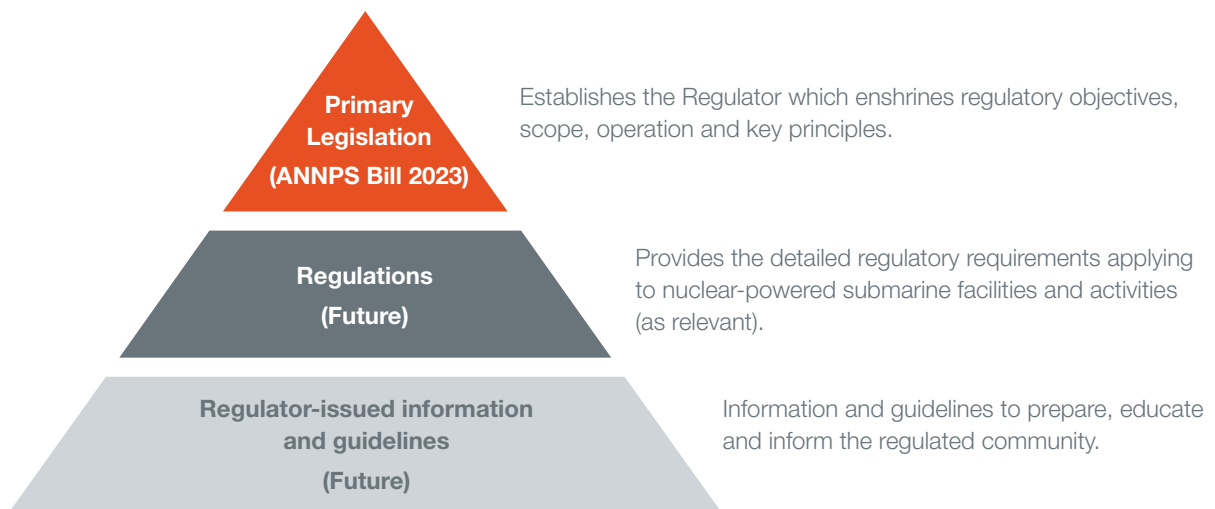


Figure 3: Regulatory framework

The **ANNPS Bill** establishes the fundamental objectives, operation and function of the framework which are not likely to be regularly altered, and should only be amended with scrutiny and debate through a Parliamentary process. This includes the core objects related to nuclear safety.

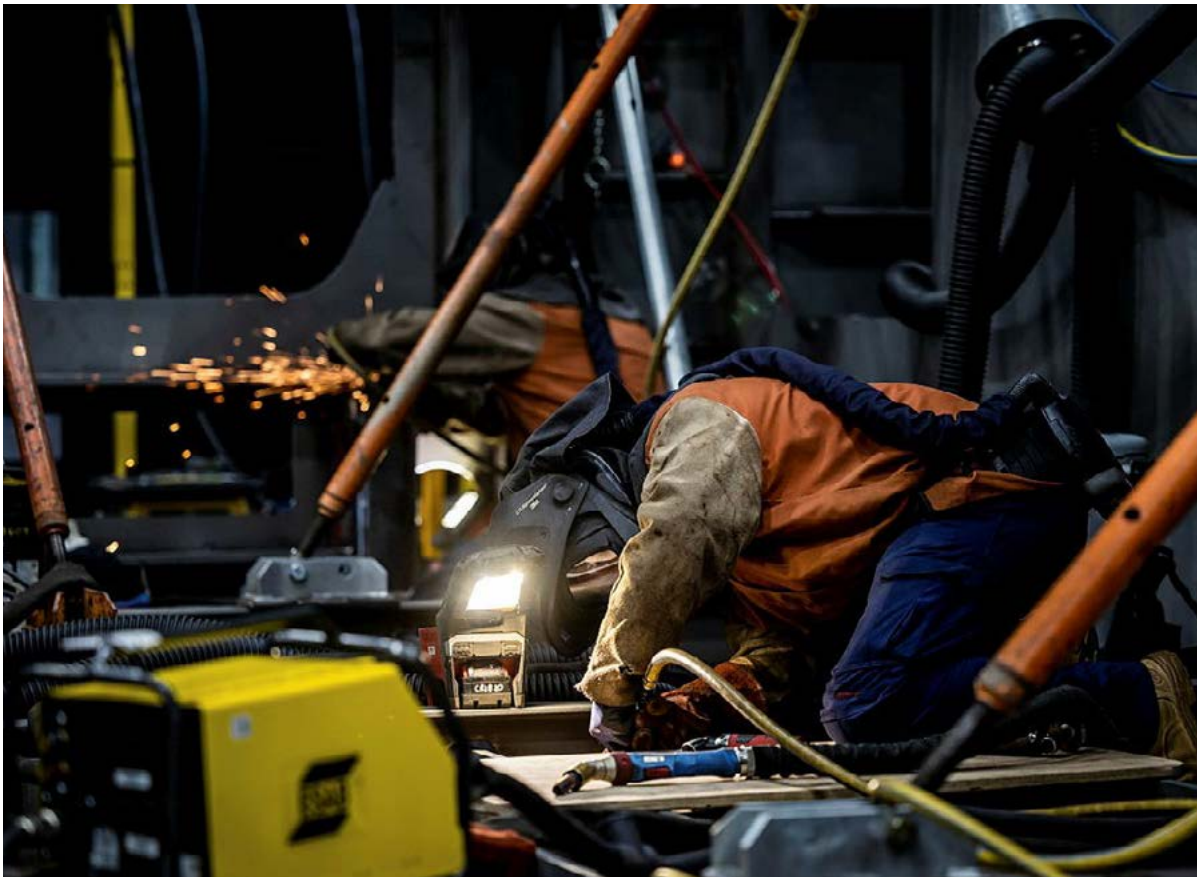
The ANNPS Bill would enable the Regulator to issue licences to authorise the range of regulated activities that are to be undertaken across the nuclear-powered submarine enterprise. The Regulator will only be able to issue such a licence where statutory criteria are fulfilled – which include being satisfied that an applicant will be able to comply with the conditions applicable to a relevant licence.

The ANNPS Bill would also enable the Regulator to make a range of other decisions about a licence – including varying a licence or suspending or cancelling a licence. Those decisions could only typically be made on satisfaction of compliance and safety-related requirements specified in the ANNPS Bill.

Regulations will contain technical-level detail on the regulatory requirements that will apply to entities operating within the nuclear-powered submarine enterprise. Regulations are disallowable instruments and remain subject to parliamentary scrutiny.

Development of regulations for the nuclear-powered submarine capability will be led by the future Regulator, with a focus on nuclear safety, radiological protection, compliance with international law and will clearly outline the requirements applying to the regulated community.

Consistent with standard Australian regulatory practice, it is expected that the ANNPS Bill and regulations will be supplemented with **information and guidelines** which, whilst having no legal effect, are designed to prepare, educate and inform the regulated community and assist in compliance.



Osborne Naval Shipyard, South Australia

3. How will the ANNPS Bill operate?

This section summarises the structure and content of the ANNPS Bill as it was introduced to Parliament. This section should be read alongside the Explanatory Memorandum introduced with the ANNPS Bill, which explains the content and purpose of each provision and prevails in the event of any inconsistency with the below.

Key terms defined in the ANNPS Bill are identified in this section in *italics*.

The ANNPS Bill:

- ✓ Affirms the paradigm that the operator is responsible for safety.
- ✓ Establishes obligations focused on nuclear safety for the Australian nuclear-powered submarine capability backed by civil and criminal penalties.
- ✓ Provides the framework for regulation (for example, monitoring and, where necessary, enforcing compliance with nuclear safety requirements to be undertaken by the new Regulator).
- ✓ Is initially focused on supporting facilities and infrastructure but is drafted in a manner that anticipates future regulation of activities involving *Australian submarines*.

The ANNPS Bill does not:

- ✗ Comprehensively determine how regulation of the nuclear-powered submarine capability will be undertaken (this detail will be contained in future regulations).
- ✗ Detail the regulatory requirements for the operation of Australian conventionally-armed, nuclear-powered submarines (regulations and potentially further amendments to primary legislation may be required once this aspect is settled in the future).
- ✗ Enable the regulation of United Kingdom and United States submarines, which are sovereign immune.

Overview of the ANNPS Bill

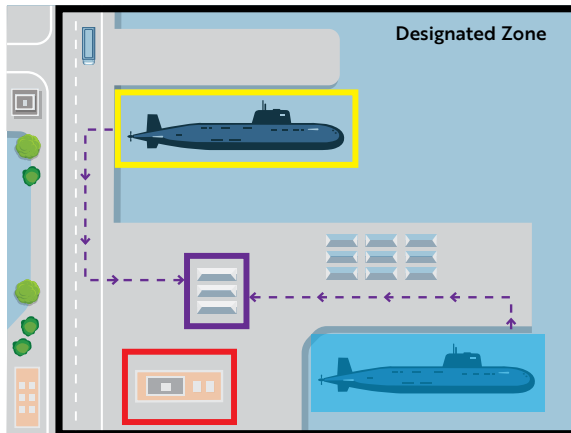


Figure 4. The Bill identifies a number of regulated activities, including:

- Facility Activity
- Submarine Activity
- Material Activity
- UK/US Submarines - **not regulated**

The ANNPS Bill's primary purpose is to promote nuclear safety of *regulated activities*.

Broadly, *AUKUS submarines* are conventionally-armed, nuclear-powered submarines operated, or under construction, for naval or military purposes.

The activities to be regulated by this Bill are called *regulated activities*. There are three types of *regulated activities*.

- (1) *Facility activities* - activities that relate to particular facilities (called *naval nuclear propulsion facilities* (or *NNP facilities*)) that are relevant to *AUKUS submarines* (such as facilities to construct an *AUKUS submarine* or maintain naval nuclear propulsion plant for an *AUKUS submarine*).
- (2) *Submarine activities* - activities that relate to *AUKUS submarines* themselves (such as constructing or operating an Australian nuclear-powered submarine).
- (3) *Material activities* - activities that relate to certain material, equipment and plant (called *NNP material and NNP equipment or plant*) which emit or produce radiation and are from, or for use on, *AUKUS submarines*.

Regulated activities can only occur in *designated zones* (which are particular areas in Australia) or in relation to *Australian submarines* wherever they are located. At the commencement of the Act there are to be two zones designated for relevant purposes – HMAS *Stirling* in Western Australia and at the Osborne Naval Shipyard in South Australia.

Nuclear safety duties

There are general *nuclear safety* duties that apply to any person who conducts a *regulated activity*. These are duties to ensure *nuclear safety* and apply to all persons who conduct a *regulated activity*, whether or not they are authorised to do so by a *licence*.

Licence holders are subject to *nuclear safety* duties that apply only to them, such as the duty to establish, implement and maintain a *nuclear safety* management system, report *nuclear safety incidents* and comply with *licence* conditions.

A person who breaches a *nuclear safety* duty may be subject to civil or criminal penalties for the breach. There are varying levels of civil and criminal penalties, depending on the duty involved and the person to whom the duty applies.

Australian naval nuclear power safety licences

Under the ANNPS Bill, a person would need to be authorised by an *Australian naval nuclear power safety licence* to conduct a *regulated activity*, and comply with the conditions of the *licence*.

Only *Commonwealth-related persons* can apply to the *Regulator* for a *licence* and be a *licence holder*. *Commonwealth-related persons* are defined in the ANNPS Bill and include industry partners who are *Commonwealth contractors*. However, other people may also be authorised under the *licence*. The ANNPS Bill outlines who is authorised under a *licence*.

On receiving an application for a *licence*, the *Regulator* must decide whether to issue the *licence*. The *Regulator* will only be able to issue such a *licence* where statutory criteria are fulfilled – which include being satisfied that an applicant will be able to comply with the conditions applicable to a relevant *licence*.

The *Regulator* can also impose conditions on the *licence*, as well as vary, suspend or cancel the *licence*. These decisions could be made on fulfilment of compliance or safety-related criteria.

The Australian Naval Nuclear Power Safety Regulator, the Director-General and the Deputy Director-General.

The ANNPS Bill establishes the Australian Naval Nuclear Power Safety Regulator.

The Regulator has various functions relating to regulated activities, such as monitoring, and, where necessary, enforcing compliance.

The Regulator consists of the Director-General, Deputy Director-General, staff, other persons assisting the Regulator, and inspectors. These people are members of the Regulator and they assist the Regulator in the performance of its functions.

The Director-General is the head of the Regulator and is responsible for its administration and performance of functions. A person must not be appointed as the Director-General or Deputy Director-General unless the Minister is satisfied that the person has the competence, independence, technical expertise and relevant experience to properly discharge the functions of the office. To maintain the operational independence of the Regulator from the Australian Defence Force and the Department of Defence, the Director-General or Deputy Director-General cannot be a serving member of the Australian Defence Force.

Adapting nuclear safety to the military context

Regulating nuclear safety within the nuclear-powered submarine enterprise must be informed by the military context. Submarines are intended to be operated in a variety of roles, including in hostile underwater environments - for the defence of Australia.

The ANNPS Bill includes the following mechanisms that support nuclear safety in the military context:

- **ministerial directions power:** The ANNPS Bill would provide the Minister for Defence with a limited power to give the Regulator a direction about the performance of its functions and the exercise of relevant powers. The purpose of this power is to provide a mechanism to ensure that the functions of the Regulator do not prejudice, and are not contrary, to national security during an emergency. If a direction is given, it must be specific, rather than broad or general in nature. Should the power be exercised, the Bill would require that the Minister must table, in each House of Parliament, a statement that such direction was given to the Regulator. However, nuclear safety duties will continue to apply to persons conducting regulated activities (including in relation to the operation of a nuclear-powered submarine).

- **nuclear safety duties:** The ANNPS Bill imposes an obligation that those conducting regulated activities must ensure nuclear safety as far as “reasonably practicable”. These duties allow those conducting regulated activities to take into account the military context.

Reflecting the importance of nuclear safety, these mechanisms are limited in their application:

- The ministerial directions power is only exercisable in exceptional circumstances where the Minister for Defence is satisfied that it is necessary to give the direction to the Regulator in the interest of national security and to deal with an emergency.
- The concept of “reasonably practicable” for nuclear safety duties is well established in Australian law and derived from similar obligations in the Work Health and Safety Act 2011.

There is no mechanism by which the application of nuclear safety duties could be interrupted.

Compliance and enforcement powers of the Regulator

The ANNPS Bill sets out the powers that an inspector may exercise to monitor and ensure compliance, and investigate non compliance, inspectors also have powers to investigate nuclear safety incidents.

Inspectors’ powers include entering monitoring areas and investigation areas, conducting searches, operating equipment, and securing or seizing evidence. Some of the inspectors’ powers may only be exercised with a warrant or consent.

Inspectors also have powers to give directions, improvement notices and prohibition notices, and to make requirements of persons. An inspector may be assisted by other persons, called persons assisting, who may exercise the same powers as the inspector.

The Regulatory Powers (Standard Provisions) Act 2014 provides for the enforcement of civil penalty provisions of the ANNPS Bill.

Other matters outlined in the ANNPS Bill

The ANNPS Bill also outlines miscellaneous matters, such as:

- the application of the ANNPS Bill outside Australia;
- the liability of the Commonwealth to be prosecuted for an offence against the ANNPS Bill or to be subject to proceedings for contravening a civil penalty provision;

- the interaction between the ANNPS Bill and the *ARPANS Act*, the *Nuclear Non Proliferation (Safeguards) Act 1987* and workplace health and safety laws;
- the interaction between the ANNPS Bill and State and Territory laws, and having regard to relevant international agreements; and
- the delegations, regulations and other instruments that can be made under the ANNPS Bill.

Regulations to be made under the ANNPS Bill

While the detail of regulations continues to develop as a parallel body of work to the development of legislation, the broad nature and scope of these regulations are established by enabling powers in the ANNPS Bill.

The ANNPS Bill authorises the Governor-General to make regulations on certain matters that are prescribed, as well as any matters necessary or convenient for giving effect to the legislation.

The ANNPS Bill explicitly authorises the making of regulations including for:

- **regulated activities and designated zones** – activity levels for *NNP equipment or plant*, activities that are not *material activities*, *NNP equipment or plant*, and areas to be *designated zones*;
- **incident reporting** – incidents that are *nuclear safety incidents* and requirements for reporting to the *Regulator* on such incidents;
- **licences** – information to be contained in an application for a *licence*, matters of which the *Regulator* must be satisfied in deciding whether to issue a *licence*, the conditions of a *licence* (which must be necessary for ensuring *nuclear safety*), and aspects around *licence* suspension and review applications;
- **remuneration and allowances** of the *Director-General* and *Deputy Director-General* in certain instances;
- **annual reporting** – matters to be included in the annual report, and matters for which the *Director-General* must provide the Minister with a report;
- **operation of other laws and international agreements** – modification to the application of the ANNPS Bill in relation to nuclear material and associated items within the meaning of the *Nuclear Non-Proliferation (Safeguards) Act 1987*,

non-application of other State or Territory laws in relation to a *regulated activity*, and specification of any international agreements a person must have regard to in performing *functions* conferred under the ANNPS Bill; and

- **exemptions** – matters required or permitted to be prescribed by regulations, and provisions of the ANNPS Bill to which the *Regulator* may provide an exemption.

How will the ANNPS Bill operate at a practical level?

This section provides a broad outline of how regulation would be undertaken within the parameters of the ANNPS Bill.

Designated zones

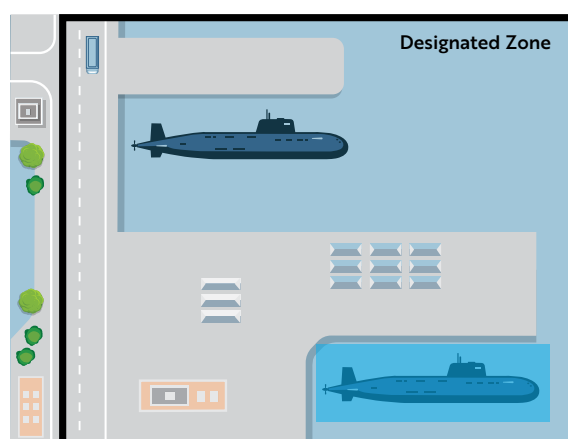


Figure 5.

- Designated Zone
- UK/US Submarines - not regulated

The ANNPS Bill first requires that *designated zones* at HMAS *Stirling* in Western Australia and the Osborne Naval Shipyard in South Australia be described by regulations, with all designated areas made known to the public.

This concept is essential for addressing a scenario where there are multiple *licence* holders for different activities under the new regulatory regime, and there is a requirement to move or deal with *NNP materials* or equipment in the approved limits within a *designated zone*. An approved area, within a *designated zone*, would be proposed by the *licence* holder and approved by the *Regulator*, where appropriate.

For example, the *ARPANS Act* would not ordinarily apply in relation to *regulated activities* within the zone. However, regulations may ‘carve out’ relevant *material activities* to restore the application of this Act in relation to activities that ordinarily require the authorisation of an ARPANSA source licence (for example, because they have no connection with the nuclear-powered submarine enterprise). This might include, for example, an X-Ray machine for a hospital which falls within a *designated zone*, or equipment ordinarily used for non-destructive testing.

Where activities need to occur outside the *designated zone*, regulations would need to be made to modify or vary the limits of an existing zone that had been designated.

Nuclear safety duties and Australian nuclear-powered submarine safety licences

The ANNPS Bill would impose *nuclear safety* duties when undertaking *regulated activities*. These duties, and the categories of persons to whom they apply, are listed below:

- ensure *nuclear safety* – any person who conducts a *regulated activity*;
- be authorised by a *licence* – any person conducting a *regulated activity*;
- establish, implement and maintain a *nuclear safety* management system – *licence* holder;
- report *nuclear safety incidents* – *licence* holder;
- ensure competence and supervision of persons conducting *regulated activities* – *licence* holder;
- comply with *licence* conditions – *licence* holder and *authorised persons*; and
- implement and comply with a *nuclear safety* management system – *authorised persons*.

The ANNPS Bill also establishes a licencing regime for *regulated activities* that will enable licencing conditions to be developed and calibrated. *Licence* conditions can be prescribed by regulations and specified by the *Regulator*. Conditions can specify the interaction with other *regulated activities* conducted in the *designated zone*.

There will be civil and criminal penalties for contraventions and offences - including breaches of licencing conditions and contraventions of *nuclear safety duties*. The *Regulator* will have powers to issue licences, impose and vary *licence* conditions, suspend or cancel *licences* if certain conditions are met.

How is regulation undertaken?

Broadly, inspectors appointed under the ANNPS Bill would have powers for:

- *monitoring powers* – to monitor compliance with the ANNPS Bill determining whether information is correct and investigating nuclear safety incidents; and
- *investigation powers* – to investigate non-compliance (for example, contraventions of *civil penalty provisions*).

Monitoring powers

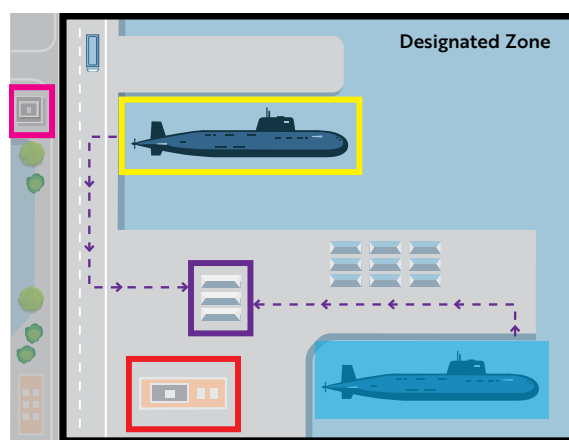


Figure 6. The Bill would establish monitoring areas:

- Designated Zone
- Australian Submarine
- NNP Facility
- NNP material or NNP equipment or plant
- UK/US Submarines - **not** regulated
- Premises (other than premises used as a residence) outside a monitoring area

General example of how monitoring powers may be exercised:

- An inspector can enter, at any time, a monitoring area and exercise monitoring powers.
- A monitoring area can be within a designated zone ■, an NNP facility within a designated zone ■, other premises within the designated zone, or an Australian submarine regardless of its location ■.
- Inspectors cannot exercise monitoring powers on a foreign naval or government vessel. This means they cannot exercise monitoring powers on a UK or US submarine ■.
- Inspectors can enter premises (other than premises used as a residence) ■ outside a monitoring area in order to gain entry into a monitoring area.
- Inspectors must have regard to safety and security when exercising powers.

The powers include the ability for inspectors to search, examine, observe, inspect, take measurement, make recordings and make copies of documents.

Inspectors may:

- enter, at any time, a *monitoring area* and exercise *monitoring powers*, with no consent or warrant required, but need to identify themselves; and
- enter an adjacent area (other *premises*) which is outside the *designated zone* (i.e. outside the *monitoring area*) to gain entry to a *monitoring area*.

If an *inspector* reasonably believes a provision of the ANNPS Bill has been contravened or reasonably believes a thing is *evidential material* they can secure or seize evidential material if it is not practicable to obtain a warrant or the circumstances are serious and urgent if it is not practical to apply for a warrant.

Investigation powers

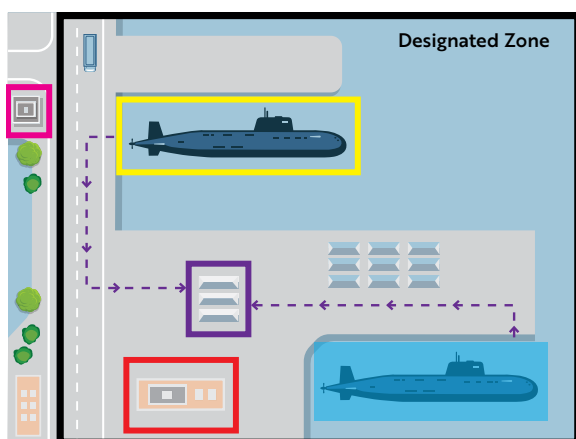


Figure 7. The Bill would establish investigation areas:

- Designated Zone
- Australian Submarine
- NNP Facility
- NNP material or NNP equipment or plant
- UK/US Submarines - **not** regulated
- Premises (other than premises used as a residence) outside an investigation area

General example of how investigation powers may be exercised:

- An inspector can only enter an investigation area with the consent of a relevant person in the investigation area or under an investigation warrant.
- An investigation area can be an Australian submarine, a designated zone, a NNP facility within a designated zone ■, other premises within a designated zone ■, **any other premises within Australia** or an Australian submarine regardless of its location ■.
- Inspectors cannot exercise investigation powers on a foreign naval or government vessel (this means they cannot exercise investigation powers on a UK or US submarine).
- Inspectors can enter premises (other than premises used as a residence) ■ outside an investigation area in order to gain entry into an investigation area.
- Inspectors must have regard to safety and security when exercising powers.

Under the ANNPS Bill, *inspectors* would have *investigation powers* to search, inspect, examine, take measurements, make recordings, conduct tests and seize materials. Entry into *premises* to exercise *investigation powers* is only allowed if consent is given, or if there is a warrant. Generally, *investigation powers* could only be exercised for the purposes of an investigation of a contravention of an *offence* or *civil penalty provision*. *Inspectors* may:

- enter an adjacent area (other *premises*) which is outside the *designated zone* (i.e. outside the *monitoring area*) to gain entry to an *investigation area*;
- exercise *investigation powers* outside the *designated zone*;
- require the production of documents, regardless of whether this document is present within the *investigation area*; and
- use force against things as necessary and reasonable, for example opening doors, drawers and safes.

Operation within a system of regulation

The *Regulator* will be required to operate within a system of regulation alongside other Commonwealth regulators, such as ARPANSA, Comcare, the Australian Safeguards and Non-Proliferation Office, the Department of Home Affairs, the Defence Seaworthiness Regulator, and the Department of Climate Change, Energy, the Environment and Water.

The ANNPS Bill clarifies that the new *Regulator* can consult and cooperate with other entities, including AUKUS partner peer regulators. This is particularly important for Submarine Rotational Force – West, where Australian facilities under the regulatory responsibility of the new *Regulator* will be supporting UK and US submarines.

4. How is the Australian Government engaging the public on the development of this legislation?

Consultation on the ANNPS Bill

The Australian Government is committed to continuing to inform and engage Australians as the legislative and regulatory framework develops.

The ANNPS Bill is currently before the Australian Parliament. The ANNPS Bill has been referred to the Senate Standing Committee on Foreign Affairs, Defence and Trade for an inquiry and report. Progress of the ANNPS Bill can be tracked through Parliament [here](#).

Future consultation on regulations and regulatory impact

The ANNPS Bill, if passed by Parliament, will provide the legislative framework within which future regulations will prescribe further regulatory requirements necessary for nuclear safety. Regulations to support nuclear-

powered submarine facilities and infrastructure are currently under development, and will become law following the usual process set out below.

Under Australian Government requirements, policy makers are required to engage in a genuine and timely way with affected stakeholders. Regulations will be developed consistent with these requirements, in order to understand the regulatory impacts and avoid creating cumulative or overlapping impacts.

The Australian Government will continue to provide updates on engagement opportunities and other matters related to nuclear-powered submarine legislation and regulations on the Department of Defence's website.

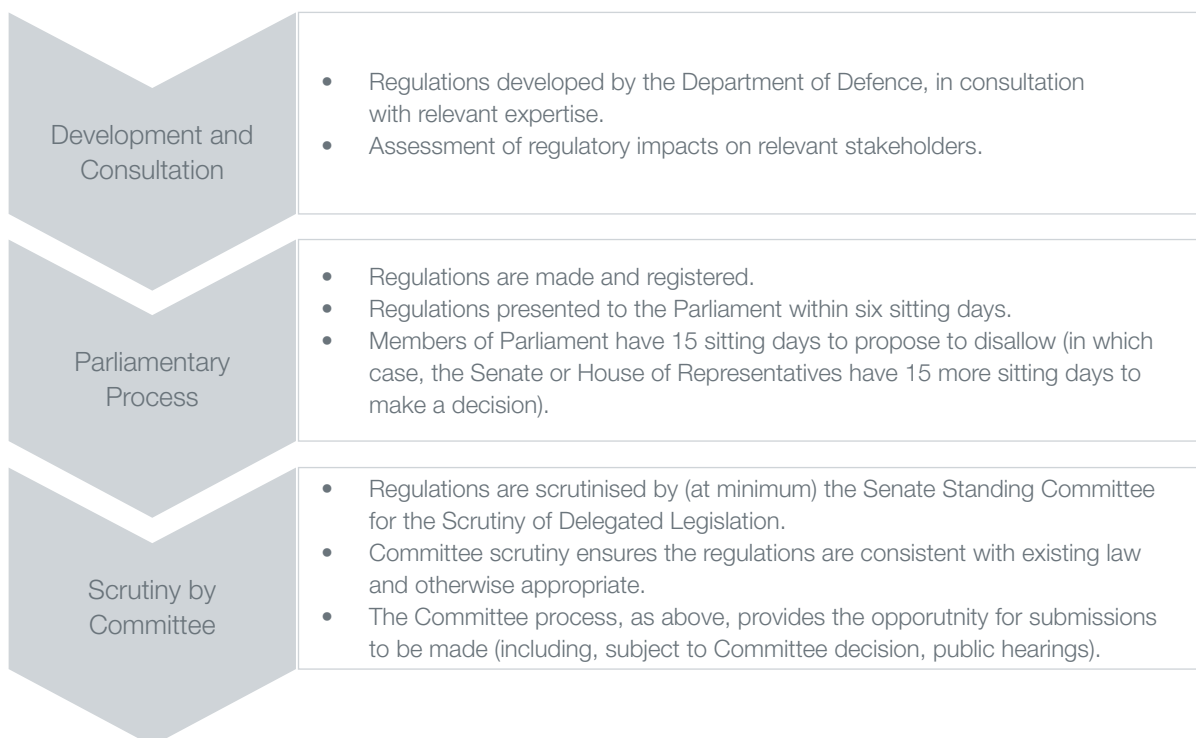


Figure 8: Standard regulation-making process