



Australian Government

Radiation Health and Safety Advisory Council

14 February 2017

Dr Carl-Magnus Larsson
Chief Executive Officer
ARPANSA
619 Lower Plenty Road
YALLAMBIE VIC 3085

Dear Carl-Magnus,

**ARPANSA'S ROLES AS REGULATOR AND RADIATION HEALTH AND SAFETY
ADVISOR FOR A NATIONAL RADIOACTIVE WASTE MANAGEMENT FACILITY**

In the event that a site is identified that may be considered suitable for a National Radioactive Waste Management Facility (**NRWMF**) to be owned by the Australian Government (**the Proponent**), it will need to be licensed and regulated by the Commonwealth's radiation protection and nuclear safety regulator, ARPANSA. The Radiation Health and Safety Advisory Council (**RHSAC**) recognises the multi-faceted roles of ARPANSA including its regulatory role and that of principal adviser to the Commonwealth Government on radiation safety. The RHSAC considers that in accordance with best practice it is imperative that the CEO of ARPANSA maintain independence in relation to the NRWMF. RHSAC's advice below summarises the background and details its recommendations.

BACKGROUND

The *National Radioactive Waste Management Act 2012* (Cth) (**NRWM Act**) makes provisions in relation to the selection of a site for, and establishment and operation of, a radioactive waste management facility. Once a site is selected, regulatory processes under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) and the *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth) (**ARPANS Act**) must be followed. These include environmental assessment under the EPBC Act and the assessment and decision making regarding applications for licences under the ARPANS Act to prepare a site for, construct and operate a facility, and to transport radioactive material to the NRWMF.



ARPANSA'S ROLE

ARPANSA's function is to protect the health and safety of people and to protect the environment from the harmful effects of radiation for all Commonwealth activities. ARPANSA regulates Commonwealth entities and their contractors and will regulate the proposed NRWMF. ARPANSA also provides expert advice on radiation protection, striving to maintain the role of trusted, transparent and unbiased adviser with extensive scientific and technical knowledge and experience.

Providing Expert Advice

During the NRWMF site identification phase, ARPANSA may, if requested, provide advice on what constitutes best practice for radioactive waste management and technical advice on aspects important to the site characterisation studies. However, RHSAC endorses ARPANSA's strict approach that such advice should only be to clarify best practice criteria for the protection of people and the environment and the international framework for safety, and be transparent in issuing such advice. Similarly, to maintain actual and perceived independence and to avoid real or perceived conflict of interest; and avoid bias or apprehended bias in the assessment process; ARPANSA should limit itself to factual advice to the Department of Environment in relation to the EPBC Act process. No advice that may be understood as pre-empting conclusions as to the feasibility of the project from the perspective of health and safety should be provided. The RHSAC has noted that ARPANSA has published Regulatory Guides as guidance to the Proponent¹.

Regulation and Licensing

The matters that will be taken into account before a licence is issued are specified in the ARPANS Act and the Australian Radiation Protection and Nuclear Safety Regulations 1999 (Cth) (the Regulations). The CEO will also, in accordance with the Regulations, invite public submissions and take into account the content of all public submissions before a licence is issued. In exercising the above functions, the CEO must take all reasonable steps to avoid any conflict of interest between the CEO's regulatory functions and the CEO's advisory or other functions. The CEO of ARPANSA must, in deciding whether to issue a licence take into account international best practice in relation to radiation protection and nuclear safety².

¹ Regulatory Guide for Siting of Controlled Facilities; Regulatory Guide: Licensing of Radioactive Waste and Disposal Facilities v2; new version under finalisation.

² Section 32(2) ARPANS Act.



International Best Practice Principles - Independence

A fundamental element of an international best practice national radiation regulation framework is the operation and maintenance of a regulatory body with the legal powers and technical competence necessary. The regulatory body shall be able to make decisions in line with its statutory obligations for the regulatory control of facilities and activities, and be able to perform its functions without undue pressure or constraint³. The regulatory body shall be independent in its safety related decision making and hold functional separation from entities having responsibilities or interests that could unduly influence its decision making. The IAEA states that to be effectively independent from undue influences on its decision making, the regulatory body:

- (a) Shall have sufficient authority and sufficient competent staff;*
- (b) Shall have access to sufficient financial resources for the proper and timely discharge of its assigned responsibilities;*
- (c) Shall be able to make independent regulatory judgements and regulatory decisions, at all stages in the lifetime of facilities and the duration of activities until release from regulatory control, under operational states and in accidents;*
- (d) Shall be free from any pressures associated with political circumstances or economic conditions, or pressures from government departments, authorized parties or other organizations;*
- (e) Shall be able to give independent advice and provide reports to government departments and governmental bodies on matters relating to the safety of facilities and activities. This includes access to the highest levels of government;*
- (f) Shall be able to liaise directly with regulatory bodies of other States and with international organizations to promote cooperation and the exchange of regulatory related information and experience.⁴*

and of relevance:

2.9 No responsibilities shall be assigned to the regulatory body that might compromise or conflict with its discharging of its responsibility for regulating the safety of facilities and activities.

and

2.12 Where several authorities are involved in the authorization process, the regulatory requirements shall apply, and they shall be applied consistently and without undue modification.⁵

The IAEA further states that the regulatory body shall perform its functions in a manner that does not compromise its effective independence. This includes discharging its responsibilities in such a way as to preserve its effective independence.⁶

³ **Governmental, Legal and Regulatory Framework for Safety**, General Safety Requirements, IAEA Safety Standards Series No. GSR Part 1 (Rev. 1), Requirement 4 at 6.

⁴ Ibid, Requirement 4, Section 2.8 at 6.

⁵ Ibid at 7.

⁶ Ibid, Requirement 17 at 20.



ARPANSA should operate in a manner that ensures it is capable of discharging its responsibilities and carrying out its functions effectively, efficiently and independently. The RHSAC recommends that ARPANSA continues to be guided by international best practice to facilitate proper regulation throughout and beyond various stages of the NRWFMF project.

Communication and Consultation

The IAEA has recently reinforced through its draft guide: **Communication and Consultation with Interested Parties by the Regulatory Body** recommendations to Member States that “*The regulatory body should develop and implement a strategy and a culture of transparency and openness, and to involve, when appropriate, interested parties in order to establish and maintain trust in its independence, competence, integrity and impartiality*”⁷. The IAEA recommends that implementing a high level of transparency and openness enables a regulatory body to demonstrate its ability to make effectively independent judgements and decisions, and its freedom from undue influences that might adversely affect safety. Further, the IAEA recommends that in relation to the regulator’s role:

Demonstration of its effective independence is a key factor for the regulatory body being recognized by interested parties as reliable and trustworthy. In any interaction with interested parties, the regulatory body should not be unduly influenced into taking any action which could compromise safety, or which would call its independence into question. In this respect, it should be recalled that the final decision on regulatory matters always lies with the regulatory body.

*The regulatory body is responsible for the regulatory oversight of safety and should not be biased for or against nuclear or radiation uses. This should be a fundamental communication message to interested parties, including the regulatory body’s own staff.*⁸

RHSAC fully supports the IAEA’s guidance on the regulator’s independent role its interaction with interested parties. There will be numerous Government agencies (including the Proponent) that will be engaging with stakeholders and the community in relation to the NRWFMF, and it is therefore of vital importance that ARPANSA ensures that its independence is clear and uncompromised. RHSAC recommends that ARPANSA communicates directly to stakeholders and the public on the roles and expectations of its regulatory and advisory sections.

⁷ IAEA 2015 Communication and Consultation with Interested Parties by the Regulatory Body – Draft Safety Guide DS 460.

⁸ Section 1.11, IAEA 2015 Communication and Consultation with Interested Parties by the Regulatory Body – Draft Safety Guide DS 460.



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RHSAC'S RECOMMENDATIONS

RHSAC recommends in relation to the NRWMF that ARPANSA:

- Continue to exhibit best practice for a regulatory body by ensuring its independent operation;
- Frame and clearly communicate its independence as the radiation protection and nuclear safety regulator to NRWMF stakeholders early;
- Maintain an actual and perceived independence for ARPANSA's regulatory role and act cautiously with regard to any matter that could result in real or perceived conflicts of interest;
- Ensure ARPANSA has the resources to engage with stakeholders in relation to the NRWMF licence application process;
- Enter into clear publicly stated agreements (e.g. communications protocols) with other Commonwealth agencies to maintain clear independence as the regulator;
- Formulate a clear strategy for stakeholder and community engagement and consultation;
- Ensure ARPANSA's communication material on the NRWMF licence assessment process, and technical and scientific information on radioactive waste management is easy for the public to access and understand.

Yours sincerely

<signed>

Roger Allison

Chair

Radiation Health and Safety Advisory Council