

## **Liberal's to transfer EPBC Act Approval of uranium mining to States & Territories, using ARPANSA Codes as a 'National Standard', fails the public interest test**

***Briefing by Independent Environment Campaigner David Noonan – 28 August 2020***

The federal Liberal gov's "[Streamlining Environmental Approvals Bill](#)" amends the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in a flawed and controversial response to the Samuel Review EPBC Act Interim Report. Any EPBC legislation must await the Final Report and not pre-empt development of credible "National Standards" for real environmental protection.

The national interest in EPBC Act protection of Matters of National Environmental Significance (NES) is at risk. Significant concern exists over proposed 'devolution' (transfer) of EPBC Act Approval powers to States and Territories. State Approvals of major resource, mining and development projects are mired in '*conflict of interest*', corporate influence and vested - not public - interests.

This Briefing focuses on EPBC Act "Protection of the Environment from Nuclear Actions" Section 21 & 22 [controlled actions in uranium mining and milling](#). In this case, the EPBC Act protected Matter of NES is "*the environment*" - requiring "*whole of environment*" scope of impact assessments.

The [Samuel Review](#), Box 12 **Nuclear activities** (p.52) states: "*To be able to ensure community confidence in these 'nuclear' activities, the Commonwealth should maintain the capacity to intervene. To achieve this, the key reform directions proposed by the Review are:*

- *The National Environmental Standards for MNES should include one for nuclear actions. To provide community confidence, the Standard should reflect the regulatory guidelines and protocols of all relevant national laws and requirements.*"

However, the Samuel Review (p.110) specifies inadequate [ARPANSA](#) Codes as a 'National Standard' for nuclear action assessments; OR use of State frameworks judged compliant with these Codes.

In addition, "graded" (limited) assessments as set out in ARPANSA Codes are to replace the scope of "whole of environment" impact assessments for nuclear actions - including for uranium mining.

This Briefing presents an initial critique of the proposed transfer of EPBC Act Approval powers to the States and of the use of ARPANSA Codes as a National Standard for uranium mining nuclear actions.

State control of EPBC Approvals is proposed through use of unenforceable "Bilateral Agreement" instruments, with little or no State law in place to even reflect the requirements of the EPBC Act. The Bill provides for 'National Standards' to be added to Bilateral Agreements rather than legislated.

ARPANSA Codes can reflect vested nuclear industry practices rather than best scientific evidentiary standards. For instance, in [outdated 1991 era](#) ionising radiation occupational exposure limits.

Community confidence requires the EPBC Act retains Approval powers at a federal level and retains the "whole of environment" scope of assessment in nuclear actions as required in national laws.

Australia already has a [failing record](#) in regulation of uranium mining, in [environmental protection](#) and [mine rehabilitation](#) issues. Transferring Approvals to States and use of ARPANSA Codes in graded assessments will further compromise environmental protection standards and practise.

By January 2021 South Australia will be the only Australian jurisdiction conducting uranium mining. A [case study](#) of BHP Olympic Dam provides a cogent context to evaluate the Bill & Samuel proposals.

A [BHP mine expansion proposal](#) for the Olympic Dam copper-uranium mine is currently under assessment, with [EIS Guidelines set](#) jointly by the federal and SA governments in May 2020.

In June the Prime Minister [announced](#) a joint ‘fast track’ Taskforce to prioritise and “accelerate” approvals to BHP at Olympic Dam, as one of fifteen selected priority EPBC Act major projects. The PM stated: “...we are determined to get out of the way”; And: “Ultimately, our objective is the streamlining of Commonwealth and state processes to a point of ‘single touch approvals’”.

The Environment Department’s “[EPBC Act Major Projects](#)” web-page claims BHP’s Olympic Dam EPBC Act Referral 2019/8570 is: “determined to have national economic or strategic significance”.

Federal fast track of BHP’s Olympic Dam mine expansion already raises serious concern that credible assessment of key feasible public interest Alternatives to BHP’s mine proposal will be compromised:

- An Alternative Mine Water Supply: Rather than a proposed 50 % expansion of BHP mining water from the Great Artesian Basin, threatening the integrity of unique and [fragile Mound Springs](#) listed as an EPBC Act Endangered Ecological Community and of significant ongoing cultural and spiritual importance to Traditional Owners;
- A safer more stringent ionising radiation occupational exposure limit for uranium mine workers: Compared to [outdated 1991 era 20 mSv/annum standard](#) in ARPANSA Codes, or to prior BHP Commitments to a maximum worker exposure limit of 10 mSv/annum;
- Safer “downstream” construction method tailings storage facilities: Rather than BHP’s proposed risky lower cost “upstream” design Tailings Storage Facility 6, an “[Extreme consequence tailings dam](#)” with potential for a catastrophic embankment failure to cause fatality to 100 BHP employees and to cause irrecoverable environmental impacts. [TSF 6](#) was approved without impact assessment and without any federal Approval Conditions;
- [Indigenous Peoples rights](#) to Free, Prior and Informed [Consent](#): Rather than [BHP legal privileges](#) under a 1982 Indenture “State Agreement’ that override Aboriginal Heritage;
- The need to assess [a feasible no-uranium sales alternative](#) for Olympic Dam mine: With all uranium to be retained on-site and discharged to the tailings waste system.

If passed by the Senate, the transfer of EPBC Act Approval powers to the State of SA will fatally compromise the integrity of Approval Conditions to BHP’s Olympic Dam uranium mine expansion.

The Alternatives cited would be denied or further downgraded under State ‘conflict of interest’ control and in use of ARPANSA Codes as a ‘National Standard’ for this nuclear action Matter of NES.

BHP’s influence in mining water from the GAB will likely override due exercise of [EIS Guidelines requiring Assessment of an Alternative Mine Water Supply](#). BHP plans to extract 50 million litres of GAB water a day for a 25-year period. BHP should have to pay for an alternative water supply.

Importantly, “whole of environment” scope of uranium mining impact assessment [encompasses](#) social, economic, cultural and spiritual impacts, and not just environmental & radiological impacts. This scope is necessary to respect Indigenous rights and interests to protect their country & culture.

Untenable BHP Olympic Dam legal privileges overriding Cultural Heritage are now under scrutiny before the federal Parliament’s Juukan Caves Inquiry, see [Submission No.73](#) by David Noonan.

It is typical that uranium mining [disproportionately affects Indigenous People](#). ARPANSA Codes do not provide an appropriate basis to assess or respect Indigenous and Cultural Heritage issues.

The Department of Environment, including through the Office of the Supervising Scientist, holds the primary federal expertise in assessment and regulation of uranium mining - not the ARPANSA Agency.

ARPANSA acknowledges that their Regulations are not intended for assessment of uranium mining:

*“To establish the significant impact criteria, the EPBC Act and its regulations rely upon the ARPANSA Regulations for the EPBC Act’s nuclear activity level for triggering a nuclear action. This presents a challenge as the activity levels and concentrations within the ARPANSA Regulations are not intended for the assessment of NORM, including uranium mining activities. ... The ARPANSA Regulations and the activity levels and concentrations provided were designed for use in assessment and licencing of Commonwealth controlled facilities.”* ([ARPANSA submission to the Samuel Review](#), p.11)

ARPANSA has failed to demonstrate a public interest understanding of uranium tailings waste issues.

In 2019 ARPANSA provided advise toward Ministerial Decisions to not assess two BHP Olympic Dam EPBC Act Referrals: for a massive new Tailings Storage Facility 6 & an associated [Evaporation Pond 6](#).

[“Statement of Reasons”](#) for EPBC Act Decisions requested by the author reveal that in each case ARPANSA advised the BHP Referrals are nuclear actions to establish *“a large scale disposal facility for radioactive waste”*. But inexplicably, the Agency claimed the proposed BHP actions were: *“unlikely to constitute an additional impact to the environment from a radiation perspective”*.

Despite the [fact TSF 6 was a know “Extreme” consequence tailings dam](#) with a catastrophic failure potential to cause irreversible environmental impacts through dispersal of [toxic tailings waste](#).

BHP was [complicit](#) in the [Samarco](#) tailings dam [disaster](#) in Brazil and has betrayed [International safety efforts](#) to reduce mine tailings dam risks. BHP has failed the ‘safety first’ test in pursuing a risky low cost ‘upstream’ construction method for its massive new Tailings Storage Facility 6.

An International Report [“Safety First: Guidelines for Responsible Mine Tailings Management”](#) (June 2020) has Recommended a ban on new ‘upstream’ tailings dams on safety grounds.

[Recommendations](#) (Dec 2019) by Joint National and State Environment Groups on BHP’s Olympic Dam mine expansion provide a strategic guide to required pre-conditions and standards in uranium mining. The Joint Groups [submission](#) discusses a range of public interest issues in uranium mining.

My experience is relevant: including some sixteen years as an Australian Conservation Foundation (ACF) Campaigner 1996-2011 based in Adelaide; as lead author consultant on three Joint Env. NGO submissions (ACF, Conservation SA, and Friends of the Earth Australia) to BHP EPBC Act Olympic Dam Referrals in 2019; and with 25 years involvement across public interest issues in Olympic Dam copper-uranium mine operations.

**For further information on uranium mining see:** <https://nuclear.foe.org.au/olympic-dam/>

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**Background: Samuel Review proposes ARPANSA Codes as a ‘nuclear action’ National Standard, with “graded” assessments to replace required “whole of environment” scope of assessments**

The Samuel Review of the EPBC Act discusses “**Nuclear Activities**” at Box 12 p.52, stating in part:

*“... The second way nuclear activities are regulated under the EPBC Act is the so-called ‘nuclear trigger’ (section 22(1)), whereby ‘nuclear actions’ that are likely to have a significant impact on the environment need to be assessed and approved by the Commonwealth. In practice, this trigger primarily captures:*

- *mining projects, including uranium mining, and rare earth and mineral sand mining, transport and milling activities that result in radioactive by-products that exceed the certain thresholds, ...*

*Uranium and other projects assessed under the ‘nuclear trigger’ require a whole-of-environment assessment. ...*

*To be able to ensure community confidence in these ‘nuclear’ activities, the Commonwealth should maintain the capacity to intervene. To achieve this, the key reform directions proposed by the Review are:*

- *The National Environmental Standards for MNES should include one for nuclear actions. To provide community confidence the Standard should reflect the regulatory guidelines and protocols of all relevant national laws and requirements.”*

The Samuel Review sets out a proposed new National Standard for nuclear actions at “**Protection of the Environment from Nuclear Actions**” (p. 110). Samuel Review calls for ARPANSA Codes to guide assessment and approval standards on nuclear actions - including uranium mining, stating:

*“Actions including mitigation and management measures must be consistent with the codes for nuclear activities developed by ARPANSA.*

*OR state and territory frameworks where they are assessed as compliant with the ARPANSA codes.”*

The **ARPANSA submission to the Samuel Review** of the EPBC Act supports graded assessments:

The **Executive Summary** (p.3) states: *“The terminology, classification and assessment of nuclear actions should be redefined to ensure a graded approach is taken to the process so that it aligns with international guidelines that have been adopted into Australian codes, guides and regulatory practice.”*

And the “**Assessment requirements for nuclear actions**” (p.13) states:

*“The overarching international approach used in Australian codes and guides for radiation protection is the use of a graded approach for the assessment and regulatory control of activities involving radioactive materials. ...*

*The current requirement in the EPBC Act requiring a complete environmental assessment for nuclear actions is not consistent with a graded approach.”*