



Local government and community perspective

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Local government and community perspective

Good morning and thank you very much for the opportunity to present a local government and community perspective, there are generally many, and rightfully so, on radiation exposures and standards.

This conference finds us at an important point in the development of nuclear policy in Australia, not only due to the current significant infrastructure developments such as the reactor and waste repositories, but also with respect to what could only be considered emerging nuclear regulation in Australia. I think with the promulgation of ARPANSA an important step was taken but we are very much as I see it in a development phase with respect to nuclear regulation.

Following considerable public attention during the Commonwealth Research Reactor Review in 1993, the Commonwealth embraced the unavoidable, that Australia needed appropriately independent nuclear regulation for nuclear development including government developments. As a former member of the Safety Review Committee, which was a Minister for Science appointed body that carried out what could loosely be described as audits of ANSTO four times a year, and also now as a member of the ARPANSA Council and the ARPANSA Nuclear Safety Committee, I have had some interest over the last decade in issues of nuclear regulation. This has been combined with a role in local government to work towards ecologically sustainable development including human health protection at the local government level. So I have taken perhaps an interest in perspective on the issue of nuclear regulation from that local level.

I should mention as an aside that with the agreement of John Loy, the CEO of AARPANSA, we are currently working towards a position where I can be a local government contact on AARPANSA, the Nuclear Safety Committee in particular, for other local government areas in Australia which aren't represented because of the issue of the numbers and the size of the committee.

In light of the urgency of developing a fully effective and accountable nuclear regulation process in Australia, I want to use the presentation today as an opportunity to identify a number of limitations in the evolving Commonwealth nuclear regulatory approach from both the general perspective and with respect to things like exposure standards. I begin with recognising however that recent developments in nuclear regulation in Australia, particularly the establishment of ARPANSA, has been an improvement in nuclear regulation. A number of dedicated and hard working people are members of the ARPANSA organisation and committees nevertheless the fundamental problems with the legislation and the need to seize the day with respect to developing a demonstrably effective regulative process still require urgent attention.

I will talk briefly now about the Act itself, the Australian Radiation Protection and Nuclear Safety Act. I want to use the current Commonwealth Government development of a replacement nuclear reactor at Lucas Heights as an example of some of the current regulatory difficulties in Australia. My comments are also applicable though to other government and private nuclear developments particularly as the Environment Protection and Biodiversity Conservation Act 1999, which is the Commonwealth Planning Act if you like, falls well short of best practice land use planning for Commonwealth and private developments. So I think a lot of responsibility defers to the regulation process to try to regulate facilities which may not have been planned very well in the first place.



During the preliminary and legislative processes for the ARPANSA Act a number of public and local government organisations made submissions to government raising concerns about the narrowness of the Act. One of these, from us, was based on a paper by Tim Robertson, Barrister, who has had a lot of environmental law experience and particularly advising us with respect to the nuclear industry and this type of paper and papers commissioned from, I think, very eminent experts internationally and in Australia, have given us a lot of information about some of the difficulties that we thought were going to appear with the way in which the ARPANSA Act was framed. The principle criticisms that we had at that time in my view remain, and are weaknesses in the Act and I want to allude to two principally of these. First of all, a single individual, the Chief Executive Officer, has predominant control and accountability for regulatory decision-making, including licensing. The other members of ARPANSA are essentially government department personnel and there is an important distinction with respect to the ability to advise on key critical issues with respect to one's capacity in an organisation notwithstanding the fact that the Council and the safety committees of ARPANSA will advise the CEO, I think really the buck stops with one person within ARPANSA and that needs to be a very, very responsible position.

Secondly, the other point which we brought up at that time as well was that public participation in the nuclear regulatory process, particularly licensing, is cursory and involves simple consultation, what I call simple consultation, rather than an opportunity for the public to have an important interactive process with the development of licenses in particular, and what I am particularly referring to here is an activity used internationally where the public can test information, particularly at public hearing processes and there is a very big gulf between what I call cursory consultation of the public, asking what they think, and actually interacting with the public because let's face it, and we face this problem in local government all the time, if the public are going to be responsible, well first of all, if the public are going to be at risk, but secondly, if they are going to be responsible for doing something about environment protection by the way in which they go about their daily lives, they need to be involved in the sort of process which protects them and which shows them what they have to do. So I think meaningful public consultation is quite critical in the area of standard setting in Australia. I want to frame my concerns about the current state of the Act in these ways by putting three questions.

First of all, and there is a preliminary to the question, in state jurisdictions in Australia a more open and accountable decision making process for planning land use has devolved power and development approval to local democratic institutions. It seriously involves the public in major development proposals and provides a merits review by independent adjudicators. For example in New South Wales, particularly under the Planning Act but also under the Environment Regulatory Acts, the public can interact very closely, particularly on major hazardous industry developments. There are public hearings and there is independent testing of significant scientific and other information. The opportunity for public participation in planned decision making in the development process is considered by most to be vital to the integrity of the planning system, so the question I pose is, why should such a proactive process not occur at the Commonwealth planning and regulation level in Australia, when in fact it occurs at the state government planning and regulation level? It seems to me that government, particularly large government facilities, Commonwealth Government facilities in Australia, have to get over a lower bar for planning purposes and for regulation purposes than would occur at the state level.



The second point, the US Nuclear Regulatory Commission is obliged to engage in both community consultation and public hearings for major nuclear facility construction and operating licenses in the United States. An Appeal Board may further correct errors or facts of law occurring at the original hearings. At the operational licensing stage a public hearing process has been at the request of any person who is interested or affected by a decision. So, why for example should not these best practices apply in Australia? It is worth noting, with respect to the current replacement reactor proposal that that proposal is said to be being assessed by government under similar requirements to those of power reactors in the United States so I think the analogy applies.

Thirdly, the environment protection component of the ARPANSA Act, the environment protection component as opposed to just the human health protection component, is very weak. While environment protection is mentioned in the Act few structural or procedural processes in the Act are focused on achieving ecologically sustainable development. The precautionary principle is not currently well implemented, particularly with respect to management of long live nuclear waste and waste management and disposal. I should mention that the ARPANSA Council is currently considering this issue and the CEO, John Loy, has expressed some interest in this issue of environment protection generally, as opposed to just human health protection. So there is some movement on that question but, I think again, the Act is very weak in this particular way.

The public is questioning whether the ARPANSA Act was framed in order to achieve world's best practice in nuclear regulation. It is clear from a comparison of the Act within international regulatory processes that either the Act has missed the mark, or the government is content with a relatively low level of scrutiny and accountability with respect to nuclear regulation.

I will turn now briefly to regulatory approaches in Australia as opposed to the Act itself. Serious public concerns are emerging with respect to regulatory practice in Australia which risk, in my view, serious erosion in public confidence in that process. These concerns involve, firstly, whether ARPANSA will follow a world's best practice process by way of information required of proponents in awarding licenses, the type of information that is provided, how public that information is and, particularly, by publicly visible testing of critical information for Commonwealth nuclear developments and I am an advocate very strongly of independent public hearings where appropriate testing of information can be seen to be done and everyone, particularly those communities that will be at risk, are given a fair go to probe the accuracy of that information.

Secondly, the use of the as low as reasonably achievable social and economic factors taken into account, or, Allara Principle, which John referred to, for determination of appropriate actions for human and environment protection from radiation, is very much under community question. In contrast to state based environment protection regulation Allara is often used within the nuclear industry in Australia to allow radiation exposure up to a perceived acceptable level, rather than encouraging diminishing levels of radiation exposure. So in practice, in Australia, there is no regulatory process or standards process which encourages elimination of exposures or pollution. As with many things, it seems that it is the way in which the Allara Principle is used that is quite critical, it can be used very subjectively and perhaps like the Freedom of Information Act if it is used in the right way, it can be effective, but if it is used in the wrong way, it can reflect a culture of secrecy and poor standard setting. I think what is quite clear, is that the evolving regulatory process in Australia will determine to some degree how the



Allara Principle is used in Australia and a very high level of quality has to be set in that respect.

And thirdly, with respect to Australian approaches, radiation exposure codes in Australia require generally both Commonwealth and state government agreement thereby potentially resulting in non uniformity of standards or lowest common denominator standards for exposure being developed which do not in practice encourage exposure minimisation. Now the advent of ARPANSA and particularly the Radiation Health Committee in trying to promote uniformity of standards is again obviously a step in the right direction, but I think the potential for lowest common denominator standards must be recognised and particularly where things like cost to industry or cost to government come into play, it behoves ARPANSA to demonstrate publicly that it is the risk minimisation approach which is predominant and that other factors are secondary to primary health care and environment protection.

So in conclusion, the nuclear regulation practice in Australia, as we currently see it, must be seen to go beyond the basic requirements of the ARPANSA Act notably by way of increased public openness and accountability and by demonstrable commitment to minimising radiation pollution and exposure. Otherwise the ARPANSA Act and the nuclear regulatory system in Australia is at risk of being seen to adopt a minimalist approach to regulation compared with international and Australian state regulatory processes for human health and environment protection. Presently in Australia there is a vital opportunity to develop a regulatory structure which will put facts and information to the test, not half regulation but full regulation and thorough scrutiny of all the facts behind decision-making and development decision-making in Australia.

I think in thinking back to Professor McLeod's excellent presentation of yesterday mentioning faith, hope and charity in nuclear development in Australia, the status of nuclear development in Australia may explain the current secrecy and apparent avoidance of scrutiny for many decision making processes in nuclear activity in Australia, and one wonders whether in light of Professor McLeod's presentation, this isn't because the industry in Australia may have a difficulty in making a cogent case and justifiable case for many actions that it undertakes in Australia at this point in time. And obviously, I think we look to government and we look to ARPANSA to set a high standard of assessment of developments, particularly in the licensing stage, so that ARPANSA is not protecting a lack of information or a lack of scrutiny, but is in fact exposing that and is therefore leading to better policy development. Clearly the types of outcomes from nuclear industry development in Australia are too important I think for ARPANSA to do anything otherwise particularly because we are not only talking about safety and environment protection but also about significant costs to the community and I think, in fact, we're also talking about the shape of future nuclear policy in Australia, which will be very much affected by the type of regulatory process which is now being put in place.

Thank you very much.