

Make your mark in the Law Society Journal



Lawyers appreciate the Law Society Journal as a source of practical, up-to-date and authoritative information. In turn, the Law Society Journal depends on its supporters for the contributions which make it such a valuable resource.

Original research, reviews of legislation and cases, papers on matters of topical interest to legal practitioners and seminar papers written as articles are all welcome.

Contributions and enquiries should be directed to:
Michelle Lam, Senior Editor
email Michelle.Lam@lawsociety.com.au

Your expertise will be shared throughout law practices, universities and government departments and, while you will not receive any payment for your contribution or its reproduction or communication, such exposure may have a positive impact on your professional reputation.

International nuclear law challenges

Recent news of a future bilateral agreement between Australia and India for uranium export have put nuclear law and safety in the spotlight again.

Last month marked Prime Minister Julia Gillard's first trip to India as leader and the start of negotiations for a nuclear agreement between the two countries. Years of refusing to export uranium to India had been an "obstacle" to Australia/India relations, the PM said.

It's been an ongoing issue for Australia because India is not a party to the Treaty on the Non-Proliferation of Nuclear Weapons, says Helen Cook, senior associate at international law firm Pillsbury Winthrop Shaw Pittman LLP.

"[It] does not have a comprehensive IAEA [International Atomic Energy Agency] safeguards agreement in place, has nuclear weapons capabilities and there are concerns regarding its nuclear liability regime", she adds, issues that have historically prevented countries, including Australia, from doing nuclear business with it.

"India has seven new nuclear power plants under construction and plans to construct another 56 before 2025, so it could be an important export market for Australia," she says. Something the PM obviously recognises.

Yet, "Australia is known as having some of the most stringent requirements in bilateral agreements," Cook told *LSJ*.

She says Australia is a very active member of the international nuclear community, being a party to the Treaty on the Non-Proliferation of Nuclear Weapons and a supplier of uranium to the international market.

"Implementing our international commitments, we have a number of important bilateral cooperation agreements in place to facilitate the commercial supply of Australian uranium for foreign markets for peaceful purposes."

And for private uranium mining companies seeking to export to foreign markets, Australian export controls, which give effect to its multilateral and bilateral commitments, will be an important legal issue, Cook explains.

"When Australian uranium is going around the world and through the nuclear fuel cycle in foreign countries, the Australian government is monitoring activities, making sure it is not diverted from peaceful to non-peaceful purposes."

An Australian lawyer (recently admitted to the California Bar), Cook works on global nuclear projects and has been practising in Dubai, Abu Dhabi and now with Pillsbury in Washington DC, one of the only law firms with a dedicated group of nuclear lawyers offering nuclear law advice



internationally. She was back in Sydney recently to give a lecture at Sydney University's Centre for International Law. In attendance were many from the Australian Nuclear Science and Technology Organisation (ANSTO), Australian Radiation Protection and Nuclear

"Everyone is focusing on ways to make sure that another Fukushima doesn't happen."

Safety Agency (ARPANSA), Engineers Australia, Sydney University academic staff and consultants and lawyers interested in nuclear issues.

That Australia's legal minds should be interested is not surprising. According to the World Nuclear Association, Australia has 31 per cent of the world's uranium reserves. It is also the world's third largest producer of uranium oxide concentrate, which is exported mainly to the US, EU and Japan, strictly for use in power generation for peaceful purposes.

But nuclear law remains a

niche practice, with important nuclear law work mostly done by lawyers in the government on non-proliferation issues, Cook says.

After Fukushima

Nuclear safety is also a continuing issue, with news reports already flagging "substantial weaknesses" in India's safety regulations.

Cook says the March 2011 Fukushima accident was a wake-up call to the international nuclear industry which should use it as an impetus to reassess existing laws and enhance cooperation.

"There needs to be a greater recognition that an accident that occurs in one country is a global accident," Cook says.

In fact, the international nuclear community is now looking at proposals to strengthen the Convention on Nuclear Safety after a second extraordinary meeting of the contracting parties.

Held in August, the extraordinary meeting's report called

for the international levelling up of safety standards, effective implementation of those standards and periodic reviews on the effectiveness of the implementation of the standards (tinyurl.com/Scjr4jc). Contracting parties, including Australia, also reported on actions taken and changes made in their national regulations in areas such as plant design basis, the impact of natural hazards and station blackout.

Although Australia does not have any commercial nuclear power plants, it reported (tinyurl.com/8bvdyde7) on the actions taken by nuclear safety regulator, the ARPANSA, and the ANSTO, including conducting "stress tests" of the Opal research reactor at Lucas Heights in Sydney.

"One of the challenges brought home by Fukushima is how to plan for the unpredictable. The international community is considering lessons learned – what went right and what went wrong. Everyone is focusing on ways to make sure that another Fukushima doesn't happen," Cook says.

She points out that the nuclear sector is already one

Helen Cook says nuclear law practice is "highly technical, very politically sensitive and full of legal challenges".

PHOTO: ERNEST FRATCZAK

of the most highly regulated industries – internationally and nationally. "While change may be a slow process, inertia and complacency in the area of international and national nuclear law are, however, unacceptable."

And it is at the national level where there is more scope to implement rapid change through nuclear regulation and to be more forward looking. Lessons from Fukushima, advances in nuclear technology and responses to future nuclear issues can and should be quickly implemented, Cook says.

This is important because even after Fukushima, as is the case with India, countries are continuing with new-build nuclear plants (55 are under construction, and hundreds more planned) – albeit at a more conservative pace – and taking on board lessons learned.

MICHELLE LAM