



*Australian Government Solicitor*

## **DEED OF INDEMNITY**

**BETWEEN**

### **COMMONWEALTH OF AUSTRALIA**

represented by the Department of Industry, Innovation and Science

**AND**

### **AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION**

**AND**

### **ANSTO NUCLEAR MEDICINE PTY LTD**

Prepared by  
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*Handwritten signature in blue ink.*

**THIS DEED** is made on the 21 day of April

2016

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**, as represented by the Department of Industry, Innovation and Science ('the Commonwealth')

**AND**

**AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION**, ABN 47 956 969 590, a body corporate established by the *Australian Nuclear Science and Technology Organisation Act 1987* ('the Act') ('ANSTO')

**AND**

**ANSTO NUCLEAR MEDICINE PTY LTD**, ABN 84 165 322 752, an ANSTO controlled subsidiary company incorporated in the State of Victoria ('ANM')

**WHEREAS:**

- A.** ANSTO's primary functions as specified in section 5 of the Act include research and development in nuclear science and technology, the production and use of radioisotopes, and the use of isotopic techniques and nuclear radiation. To carry out its statutory functions, ANSTO owns and operates a nuclear plant that includes the OPAL nuclear research reactor at Lucas Heights. ANSTO also owns and operates other Ionising Radiation emitting facilities that include the Camperdown Cyclotron Facility in Sydney and the Australian National Tandem Accelerator for Applied Research at Lucas Heights. ANSTO may acquire other nuclear plant and Ionising Radiation emitting facilities from time to time.
- B.** In performing its functions under the Act, ANSTO also has or will have responsibility for:
- a. managing, storing and conditioning Ionising Radiation emitting material and waste;
  - b. transporting nuclear waste and materials for disposal both within Australia and overseas; and
  - c. transporting radioactive materials including radioisotopes to destinations such as hospitals both within Australia and overseas.

These responsibilities either exist presently or will exist when any new nuclear facility or waste management facility or process is established in the future.

- C.** ANSTO incorporated ANM on 10 September 2013 to be a Public Non-Financial Corporation to construct and operate a purpose built nuclear processing facility and a waste processing facility on ANSTO land at Lucas Heights. Pursuant to clause 5 in its constitution, ANM must only perform acts or carry on activities which ANSTO

itself has power to perform under the Act. The activities that ANM are likely to perform include activities in support of ANSTO's responsibilities described in Recital B.

- D.** ANSTO has an insurance policy that covers some aspects of ANSTO's and ANM's risk as set out in the Deed; however, the maximum level of cover that ANSTO can obtain from its insurer may be insufficient to cover ANSTO and ANSTO Officers or ANM and ANM Officers from liability that might be incurred from the conduct of the activities authorised under the Act for ANSTO or any of its subsidiaries.
- E.** The Commonwealth has agreed to indemnify ANSTO, ANM and their respective officers for damage or liability caused by Ionising Radiation that is not covered by ANSTO Insurance in accordance with the terms and conditions set out in this Deed.

## IT IS AGREED AS FOLLOWS:

### 1. Interpretation

#### 1.1 In this Deed unless the context otherwise requires:

**"Act"** means the *Australian Nuclear Science and Technology Organisation Act 1987*;

**"ANM"** means ANSTO Nuclear Medicine Pty Ltd, ABN 84 165 322 752, a subsidiary company of ANSTO;

**"ANM Contractor"** means a person or party providing goods or services directly or indirectly to ANM;

**"ANM Officer"** means a person who is from time to time, or has been:

- a. a member of the Board of Directors of ANM; or
- b. an officer, employee, or agent of ANM; or
- c. an ANM Contractor or an officer, employee or agent of an ANM Contractor;

**"ANSTO"** means the Australian Nuclear Science and Technology Organisation, and for the purposes of this Deed includes any successors in title to ANSTO;

**"ANSTO Contractor"** means a person or party providing goods or services directly or indirectly to ANSTO;

**"ANSTO Indemnity"** means the deed of indemnity between the Commonwealth and ANSTO dated 27 August 2008;

**"ANSTO Officer"** means a person who is from time to time, or has been:

- a. a member of the Board of Directors of ANSTO under Part III of the Act; or

- b. the Chief Executive Officer under Part IV of the Act; or
- c. an officer, employee, or agent of ANSTO; or
- d. an ANSTO Contractor or an officer, employee or agent of an ANSTO Contractor;

**"ANSTO Insurance"** means the insurance policies that either ANSTO or ANSTO Officers or ANM or ANM Officers obtain from time to time during the term of this Deed relating to ANSTO or ANM activities;

**"ARPANSA"** means the Australian Radiation Protection and Nuclear Safety Agency;

**"Commencement Date"** means the date on which this Deed is signed by the parties or if signed on separate days, the date of the last signature;

**"Confidential Information"** means information that:

- a. is by its nature confidential;
- b. is designated by the parties as confidential; or
- c. the parties know or ought to know is confidential;

but does not include information which:

- d. is or becomes public knowledge other than by breach of this Deed or by any other unlawful means; or
- e. is in the possession of a party without restriction in relation to disclosure before the date of receipt by that party;

**"Deed"** means this document and any other document expressly incorporated as part of this document;

**"Ionising Radiation"** means electromagnetic or particulate radiation capable of producing ions directly or indirectly, but does not include electromagnetic radiation of a wavelength greater than 100 nanometres.

1.2 In this Deed, unless the contrary intention appears:

- a. words importing the singular include the plural and vice versa;
- b. words importing one gender include each other gender;
- c. clause headings do not form part of the Deed and must be disregarded in the interpretation of it;

- d. words importing persons include a partnership and a body whether corporate or otherwise;
- e. reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time; and
- f. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 Any reading down or severance of a particular provision does not affect the other provisions of this Deed.

## **2. Termination of ANSTO Indemnity**

2.1 The Commonwealth and ANSTO agree that the ANSTO Indemnity is terminated with effect from the Commencement Date.

2.2 A proceeding or claim against ANSTO or an ANSTO Officer for which the Commonwealth would have been liable under the ANSTO Indemnity will be dealt with as a proceeding or claim to which this Deed applies.

## **3. Term of the Deed**

3.1 This Deed shall apply to events which occurred prior to the Commencement Date, and to events which occur during the term of this Deed, or of this Deed as extended under this clause 3.3.

3.2 The term of this Deed is a period of ten (10) years unless terminated earlier in accordance with this Deed.

3.3 The Commonwealth may, in its absolute discretion, extend the Deed for a further term of 10 years on the same terms contained in this Deed (not including this clause 3.3) by notification to ANSTO and ANM of the extension within the period of three months prior to the expiration of the original term of this Deed.

## **4. Indemnity**

4.1 Subject to the provisions of this Deed, the Commonwealth shall indemnify and at all times hereafter keep indemnified:

- a. ANSTO and ANSTO Officers; and
- b. ANM and ANM Officers;

from and against any loss (including legal costs and expenses) or liability incurred or suffered by them arising from any proceeding or claim by any person against them for injury to persons or damage to property caused by Ionising Radiation, whether directly or indirectly.

- 4.2 The indemnity in clause 4.1 extends to proceedings or claims between the following:
- a. ANSTO and ANSTO Officers;
  - b. ANSTO Officers;
  - c. ANM and ANM Officers;
  - d. ANM Officers;
  - e. ANSTO and ANM; or
  - f. ANSTO Officers and ANM Officers.
- 4.3 The indemnity in clause 4.1 does not apply to the extent that ANSTO or ANSTO Officers or ANM or ANM Officers are entitled to recover for the loss or liability from ANSTO Insurance.
- 4.4 Clauses 4.1 and 4.2 are limited to a proceeding or claim for injury or damage incurred as a result of, or arising out of, or in connection with:
- a. ANSTO acting in accordance with its functions under section 5 of the Act or under the directions of the Minister responsible for ANSTO, the ARPANSA, or any other Commonwealth Minister, officer or agency with relevant powers.
  - b. ANM exercising functions which are consistent with ANSTO's functions under section 5 of the Act or under the directions of the Minister responsible for ANSTO, the ARPANSA, or any other Commonwealth Minister, officer or agency with relevant powers.
- 4.5 The indemnity in this clause 4 shall operate both in favour of ANSTO and ANM, notwithstanding that the conduct of an ANSTO Officer or an ANM Officer (as the case may be) giving rise to a proceeding or claim constituted serious or wilful misconduct. However:
- a. the indemnity shall not operate in favour of an ANSTO Officer or an ANM Officer where the Officer is guilty of serious or wilful misconduct; and
  - b. ANSTO or ANM (as the case may be) shall, if so directed by the Commonwealth (and at the Commonwealth's expense), seek contribution or indemnity from an ANSTO Officer or ANM Officer whose serious or wilful misconduct has given rise to a proceeding or claim covered by this indemnity.

## 5. Handling of Claims

- 5.1 As soon as practicable after becoming aware of a proceeding or claim covered by this indemnity, or of an event which might reasonably be thought to give rise to such a proceeding or claim, ANSTO or ANM (as the case may be) shall notify the Commonwealth thereof.
- 5.2 Subject to this clause, the Commonwealth shall have the right to direct ANSTO and ANSTO Officers or ANM and ANM Officers (as the case may be) in relation to the defence or settlement of the proceeding or claim. ANSTO and ANSTO Officers or ANM and ANM Officers (as the case may be) shall provide to the Commonwealth all assistance requested by the Commonwealth in relation to dealing with the proceeding or claim. Without being exhaustive, the Commonwealth's power of direction shall extend to the making of any counter-claim or of any claim against a third party, the recovery of costs and the institution of an appeal. The Commonwealth shall not give a direction interfering in any way with:
- a. the proper performance by ANSTO of its statutory functions; or
  - b. ANM's management of its corporate governance in accordance with the *Corporations Act 2001*.

## 6. Termination

- 6.1 The parties may terminate this Deed by mutual agreement by deed.
- 6.2 Should ANSTO or ANM, or subject to clause 6.6 an ANSTO Officer or an ANM Officer, fail to perform any provision of this Deed, (herein called a 'default') the Commonwealth shall have the right, in addition to any other rights which it may have under the general law, to:
- a. declare that the indemnity no longer applies to the proceeding or claim to which the default related; or
  - b. if the default occurred on the part of ANSTO, terminate this Deed; or
  - c. if the default occurred on the part of ANM (and there was no default on the part of ANSTO), terminate this Deed in respect of ANM and its officers only.
- 6.3 In the event of a declaration under clause 6.2(a):
- a. the Commonwealth shall be released from its obligation to indemnify ANSTO and ANSTO Officers or ANM and ANM Officers (as the case may be) in relation to the proceeding or claim to which the declaration related; and
  - b. any moneys already paid by the Commonwealth in relation to that proceeding or claim, whether on account of legal costs, damages or otherwise, shall, to the extent that they represent a loss suffered by the

Commonwealth as a result of the default, be a debt due from ANSTO and the ANSTO Officer or ANM and the ANM Officer (as the case may be) in default to the Commonwealth and payable on demand.

6.4 In the event of termination under clause 6.2(b):

- a. the Commonwealth shall be wholly released from its obligation to indemnify ANSTO, ANSTO Officers, ANM or ANM Officers (as the case may be); and
- b. any moneys already paid by the Commonwealth in relation to the proceeding or claim in respect of which the default occurred, whether on account of legal costs, damages or otherwise, shall, to the extent that they represent a loss suffered by the Commonwealth as a result of the default, be a debt due from ANSTO and the ANSTO Officer or ANM and the ANM Officer (as the case may be) in default to the Commonwealth and payable on demand.

6.5 In the event of termination under clause 6.2(c):

- a. the Commonwealth shall be wholly released from its obligation to indemnify ANM and ANM Officers; and
- b. any money already paid by the Commonwealth in relation to the proceeding or claim in respect of which the default occurred, whether on account of legal costs, damages or otherwise, shall, to the extent that they represent a loss suffered by the Commonwealth as a result of the default, be a debt due from ANM and the ANM Officer in default to the Commonwealth and payable on demand.

6.6 If the default referred to in clause 6.2 is the default of an ANSTO Officer or ANM Officer (as the case may be) then, subject to this clause, the Commonwealth may not exercise its rights under clause 6.2 in relation to ANSTO or any other ANSTO Officer, or ANM and any other ANM Officer (as the case may be), not in default. In that event, clauses 6.3, 6.4 and 6.5 shall apply only in relation to the ANSTO Officer or ANM Officer (as the case may be) in default. This clause 6.6 does not apply for the benefit of ANSTO or ANM (as the case may be), unless ANSTO or ANM (as the case may be) has taken all reasonable steps to avoid the said default.

## 7. Disputes

7.1 The parties agree that any dispute arising in relation to this Deed will be dealt with as follows:

- a. first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- b. secondly, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;

- c. thirdly, the parties have 10 business days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure for example, to the Australian Commercial Dispute Centre Limited (ACDC) in Sydney; and
- d. lastly, if:
  - (i) there is no resolution or agreement; or
  - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days,

then, any party to the dispute may commence legal proceedings.

## **8. Disclosure of Information**

- 8.1 A party receiving Confidential Information (the Receiving Party) from another party (the Disclosing Party) under this Deed agrees not to disclose that Confidential Information to any other person without prior approval in writing from the Disclosing Party.
- 8.2 The Disclosing Party may impose any conditions or restrictions it considers appropriate when giving its approval under clause 8.1.
- 8.3 A Receiving Party will not be in breach of this clause 8 where the Confidential Information is disclosed by the Receiving Party:
  - a. to its responsible Minister;
  - b. in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - c. within the Receiving Party's organisation, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
  - d. under an authorisation or a requirement of the law.
- 8.4 This clause 8 will survive the expiration or termination of this Deed.

## **9. Applicable Law**

- 9.1 This Deed is governed by and is to be construed in accordance with the laws for the time being in force in New South Wales and the parties agree that the Courts of that State have jurisdiction to entertain any action in respect of, or arising out of, this Deed.

**10. Assignment**

- 10.1 Neither ANSTO nor ANM shall assign, in whole or in part, their benefits under the Deed without the prior written consent of the Commonwealth.

**11. Entire Agreement or Variation**

- 11.1 This Deed constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements whether oral or written between the parties in respect of its subject matter.
- 11.2 No agreement or understanding varying this Deed shall be legally binding on the parties unless effected by a deed.

**12. Waiver**

- 12.1 A waiver by a party in respect of a breach of a provision of this Deed by another party shall not be deemed to be a waiver in respect of any other breach and the failure of a party to enforce at any time any of the provisions of this Deed shall in no way be interpreted as a permanent waiver of such provision.

**13. Notices**

- 13.1 Any notice or other communication to be given or served pursuant to this Deed shall be in writing, signed or authorised by an authorised person and shall be delivered by hand or sent by pre-paid post or electronic means.

a. in respect of the Commonwealth, to:

Head of Division  
Science and Commercialisation Policy Division  
Department of Industry, Innovation and Science  
Industry House  
10 Binara Street  
CANBERRA CITY ACT 2601

GPO Box 9839  
CANBERRA ACT 2601

E-mail: jane.urquhart@industry.gov.au

b. in respect of ANSTO, to:

Chief Executive Officer  
Australian Nuclear Science and Technology Organisation  
Locked Bag 2001  
KIRRAWEE DC NSW 2232  
Telephone: (02) 9717 3717

E-mail: ceo@ansto.gov.au

c. in respect of ANM, to:

Mr Doug Cubbin  
Chairman  
ANSTO Nuclear Medicine Pty Ltd  
Locked Bag 2001  
KIRRAWEE DC NSW 2232

E-mail: doug.cubbin@ansto.gov.au

13.2 A notice or other communication is deemed to have been given or duly served:

- a. if delivered by hand, upon delivery;
- b. if in the form of a letter sent by prepaid post, upon the expiration of two business days after the date on which it was sent; and
- c. if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

13.3 A party may change its address for notice by notice in writing to the other parties.

#### **14. Insurance**

14.1 At the time of execution of this Deed, ANSTO maintains insurance that is relevant to ANSTO and ANM's activities. ANSTO or ANM, as the case may be, shall notify the Commonwealth of any changes or intended changes to ANSTO Insurance during the term of this Deed that would reduce ANSTO Insurance below the following limits:

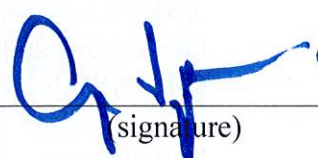
- a. workers' compensation as required by law;
- b. general liability insurance to a value of \$100 million including nuclear liability to a value of \$50 million;
- c. professional indemnity insurance to a value of \$100 million;
- d. directors and officers liability to a value of \$100 million;
- e. property loss, destruction or damage to a value of at least \$50 million; and
- f. loss, destruction or damage of property in transit to a value of at least \$5 million.

14.2 ANSTO shall, on request, provide the Commonwealth with proof of insurance in accordance with clause 14.1.

14.3. This clause 14 continues in operation for so long as any obligations remain in connection with the Deed.


**EXECUTED AS A DEED**

**SIGNED, SEALED AND DELIVERED**  
 for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
 acting through and represented by the  
 Department of Industry, Innovation and Science  
 by the Hon Christopher Pyne MP,  
 Minister for Industry, Innovation and Science

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 (signature)

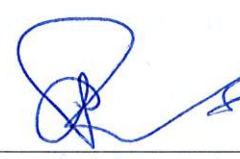
in the presence of:

KACEY LAM  
 (name of witness)

)   
 (signature of witness)


**SIGNED, SEALED AND DELIVERED**  
 for and on behalf of  
**Australian Nuclear Science and  
 Technology Organisation**  
 ABN 47 956 969 590 by the  
 Chief Executive Officer

ADRIAN PATERSON  
 (name of signatory)

)  
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 )  
 )   
 (signature)

in the presence of:

STEVEN MCINTOSH  
 (name of witness)

)  
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 )   
 (signature of witness)

**SIGNED, SEALED AND DELIVERED**  
 for and on behalf of  
**ANSTO Nuclear Medicine Pty Ltd**  
 ABN 84165322752 by:

DOUGLAS CUBBIN  
 (name of Director)

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 )  
 )  
 )  
 )  
 )   
 (signature)

and:

DEBRA NEWMAN  
 (name of witness)

)  
 )  
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 (signature)