

Radiation Protection and Control Bill 2013 and explanatory report

Issued October 2013

EPA 994/13: This information sheet explains proposed amendments to the current Radiation Protection and Control Act 1982 and includes the provisions to adopt aspects of the National Directory relating to radiation protection principles, management requirements for radiation sources and provision for the future adoption of documents, and the Code of Practice for the Security of Radioactive Sources.

Introduction

In South Australia, the *Radiation Protection and Control Act 1982* (the Act) regulates activities involving radiation sources and provides for the protection of people and the environment from the harmful effects of radiation. This includes providing for the licensing of certain activities, and registration of certain items and premises which involve radiation sources.

The Act is being amended as it has not undergone substantial revision since commencement in 1982. As a result, many of the standard administrative and enforcement provisions are outdated.

In addition, national commitments have been made via the Australian Health Ministers' Conference (AHMC) and the Council of Australian Governments (COAG) to implement a uniform national framework for radiation protection. The main national initiatives that require implementation under the Act are the [National Directory for Radiation Protection](#) (National Directory) and the national [Code of Practice for Security of Radioactive Sources](#) (Security Code).

National Directory for Radiation Protection

Edition 1 of the National Directory was developed by the Radiation Health Committee and published in August 2004 by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). It was subsequently endorsed by the AHMC as the uniform national framework for radiation protection in Australia.

The purpose of the National Directory is to provide nationally uniform and agreed requirements for the:

- protection of people and the environment against exposure or potential exposure to ionising and non-ionising radiation
- safety of radiation sources, including provision for the national adoption of codes and standards
- clear regulatory statements for adoption by the Commonwealth, States and Territories into their legislation.

AHMC agreed that following consideration and approval of the provisions of the National Directory, the regulatory elements would be adopted in each jurisdiction as soon as possible, using existing regulatory frameworks.

Some aspects of National Directory, relating to the regulation of certain activities, have already been adopted into the Act via Part 12 of the *Statutes Amendment (Budget 2010) Act 2010*. This includes the requirement for a Facilities Licence (section 29A of the Act); Licence to Possess a Radiation Source (section 33A); and Accreditation of Third Party Service Providers (Division 3B).

The draft Radiation Protection and Control Bill 2013 (the Bill) includes provisions to adopt aspects of the National Directory relating to radiation protection principles, management requirements for radiation sources and provision for the future adoption of documents forming part of the National Directory.

Code of Practice for Security of Radioactive Sources

During 2006, COAG agreed to a National Chemical, Biological, Radiological and Nuclear Security Strategy to provide a framework to strengthen and enhance Australia's existing arrangements. In addressing the security of radiological materials, COAG agreed to a number of recommendations. These include the establishment of a national regulatory scheme for the storage, possession, use and transport of certain radiological materials to minimise the risk of such materials being misused.

A significant component of the response to COAG's decision was the publication by ARPANSA of the *Code of Practice for the Security of Radioactive Sources* (Security Code). The Security Code sets out a graded approach for the security of sealed sources. That is, the level of security applied is proportional to the likelihood of unauthorised accessed and the consequences of malicious use.

The majority of provisions in the Security Code requiring legislative underpinning will be prescribed in regulations under the Act. However, some amendments are required to the Act to facilitate this. In essence, these amendments are:

- an applicant for an accreditation or authority may be required to undergo a security background check
- a person who has failed a security background check must be directed by the Minister not to access or deal with security enhanced sources
- an accreditation or authority under the Act may be suspended or cancelled if it relates to a security enhanced radioactive source and the holder of the accreditation or authority has failed a security background check
- the owner or 'responsible person' (ie the person with overall management responsibility at the time) is legally responsible for ensuring persons who use or handle a radioactive material or operate radiation apparatus are licensed.

More detailed requirements of the Security Code will be prescribed in the regulations once the Bill has been passed by Parliament.

The process of amending the Act

Following consultation on the draft Bill, it will be amended as necessary and settled. Approval will then be sought to introduce the Bill to Parliament where it will be debated by both the Upper and Lower Houses. The Bill will repeal the current Act and replace it in its entirety. The legislation is known as a Bill until it is passed by both Houses of Parliament.

Once the Bill is passed it is known as an Act. Given that it will be a new Act, as opposed to an amendment Act, all the current regulations will lapse making it necessary to draft new regulations. Further consultation will take place on any changes to the regulations.

Once the new regulations have been drafted and the necessary consultation has taken place, approval will be sought to make the new regulations. A proclamation under the *Administrative Arrangements Act 1994* will be made to commit the administration of the new Act to the appropriate Minister.

In the following explanation of the Bill, **clause** refers to the individual provisions of the Bill whereas **section** refers to the provisions of the current Act.

Overview of the proposed amendments

Objects and principles and general duty of care

The current section 23 under the Act provides the 'general objective'. This states that any person must, 'in carrying on an activity related to radioactive substances or ionising radiation apparatus, endeavour to ensure that exposure of persons to ionising radiation is kept as low as reasonably achievable, social and economic factors being taken into account.' This does not apply to exposure of a person while the person is undergoing radiotherapy.

The general objective was introduced at the inception of the Act and has not been amended since. While it has proved a useful guide in enforcement of the Act, it is in need of review in order to provide more specific guidance on how the objective is to be applied.

Further, the National Directory also specifies that 'legislation must include the objective of protecting the health and safety of people and the environment from the harmful effects of ionising and non-ionising radiation'. It goes on to state that regulatory frameworks must follow specified principles and requirements to ensure that the objective of the legislation is met. These principles include, amongst others, the radiation protection principles, which:

... in regard to ionising radiation, include justification of practices to ensure that benefits outweigh the detriment, limitation of radiation doses (see Schedule 1) to individuals from all practices, and optimisation of protection and safety so that individual doses, the number of people exposed and the likelihood of exposure are all kept as low as reasonably achievable, economic and social factors being taken into account.¹

The National Directory also specifies management requirements:

... to provide for responsible persons to establish a safety culture, establish quality assurance programs, reduce the probability of human error leading to accidents, make appropriate training and information available to staff, allocate sufficient resources to enable safety and security of radiation sources over their lifetime (including disposal), and provide the qualified expertise necessary to observe the requirements.²

The 'objects and principles' (clause 3 of the Bill) ensure that these national requirements are met, including supporting implementation of the Security Code, while the 'general duty of care' (clause 56) clarifies the application of the objects and principles to persons and the enforcement mechanisms. A person who breaches the general duty of care will not be, on account of the breach alone, guilty of an offence. However, compliance with the duty may be required through issuing a protection order. A person will be guilty of an offence if he does not comply with the protection order.

These provisions will apply to exposure of a person while the person is undergoing radiotherapy, since the general duty will now be linked to the radiation protection principle, ie that exposure must be justified, limited and optimum. Therefore, exposure to radiation for therapeutic purposes will not be a breach of the general duty provided it follows the radiation protection principle.

Responsible persons

The National Directory states that 'a responsible person is to be primarily responsible for radiation protection and safety'.³ The role of the responsible person is broadly outlined in the management requirements (as stated above) specified in the National Directory.

The National Directory provides that the responsible person 'in relation to any radioactive source, ionising or non-ionising radiation apparatus, nuclear installation, prescribed radiation facility or premises on which unsealed radioactive sources are stored or used means the person:

- a having overall management responsibility including responsibility for the security and maintenance of the source, apparatus, installation or facility;

¹ ARPANSA ['National Directory for Radiation Protection'](#) (2011), page 3

² ARPANSA ['National Directory for Radiation Protection'](#) (2011), page 3

³ ARPANSA ['National Directory for Radiation Protection'](#) (2011), page 3

- b having overall control over who may use the source or apparatus, installation or facility; and
- c in whose name the source, apparatus, installation or facility, would be registered if this is required⁴.

The definition of responsible person in the Bill has mirrored that of the National Directory.

To ensure that a responsible person is primarily responsible for radiation protection and safety, in accordance with the National Directory, section 33 (offence for registered owner to cause, suffer or permit unlicensed person to operate radiation apparatus) of the Act has been expanded to apply to the responsible person, as well as the owner (section 33 is provided for in clause 36 of the Bill).

A new clause has also been included in the Bill to apply the same offence in relation to radioactive materials, which will affect both owners and responsible persons.

Putting the onus on the responsible person, in addition to the owner, to ensure only licensed persons are operating radiation apparatus or using or handle radioactive materials, will assist in reducing the probability of human error, maintain the safety of radiation sources, and enhance accountability for radiation safety.

Security enhanced sources

The purpose of the Security Code is to 'set out the security requirements to be implemented by persons dealing with a radioactive source in order to decrease the likelihood of the unauthorised access to, or acquisition of, the radioactive source by persons with malicious intent⁵. The Security Code classifies category 1, 2 and 3 sources as 'security enhanced sources', which require more stringent security requirements to be put in place.

In order to support this, the Bill refers to security enhanced sources in the objects and principles, and in clause 49 (suspension and cancellation of accreditations and authorities) to state that an accreditation or authorisation may be cancelled or suspended if the accreditation or authority relates to a security enhanced radioactive source and the holder of the accreditation or authority has failed to pass a security background check.

Most significantly, a new clause has been included for 'protection of security enhanced sources' to ensure that the Minister can restrict a person's access to security enhanced sources if there is evidence to indicate that they pose a threat to the security of the source.

Offence for causing a radiation risk

The Act currently contains a series of specific offences set largely within the licensing and registration requirements, and relating to unauthorised use or handling. These offences are necessary; however they are more regulatory in nature and are not linked to the harm or risk of harm that a breach of the Act might present.

The penalty framework in the Act contrasts with the approach taken in the *Environment Protection Act 1993* (sections 79 and 80), the *Food Act 2001* (sections 13 and 14) and the *Work Health and Safety Act 2013* (sections 31–33) which all seek to penalise cases where a person has caused harm (actual or potential) or has been responsible for an unsafe environment.

Part 4 of the Bill provides new offences relating to causing a radiation risk, with clause 53 relating to causing a serious radiation risk, and clause 54 relating to causing a radiation risk.

The advantage of a risk-based offence is that it focuses on the outcome and the risk that person presents to others. This contrasts with the largely regulatory nature of the offences currently provided for in the Act. The circumstances under which the offence is committed and the specific factors of the case will influence the resultant outcome, rather than non-compliance with set criteria. Causing actual or potential harm may be variable depending upon the situation and the burden of proof will rest with the prosecution to convince a court that this has occurred.

⁴ ARPANSA [National Directory for Radiation Protection](#) (2011), pg 57

⁵ ARPANSA [Code of Practice for the Security of Radioactive Sources](#) (2007), pg 1

The maximum penalties reflect the absolute worst case scenario in which the provisions could be applied. It is up to the determination of the court what penalty to apply in any particular circumstance. The penalty actually imposed in a particular situation may be far less than the maximum penalty. A higher maximum penalty applies if the risk is caused intentionally or recklessly.

Orders

The Bill seeks to introduce a number of new provisions, under Division 1 of Part 6, to allow that orders may be issued by the Minister. The Bill provides for two types of orders, 'protection orders' and 'reparation orders'.

A protection order would be issued in the event that a person is undertaking an action or activity in contravention with the Act (including the general duty of care) or a condition of an accreditation or authority (licence or registration), in particular an action or activity which is causing harm to people or the environment through exposure to radiation.

A protection order may include any condition necessary to eliminate or mitigate the risk of harm or actual harm being caused, such as requiring the person to take, discontinue or not commence specified actions.

A reparation order would be issued in the event that an action or activity has already taken place in contravention with the Act or a condition of an accreditation or authority, which has caused harm to people or the environment through exposure to radiation. A reparation order may include conditions requiring a person to undertake certain actions or make payment in order to make good any resulting damage to people or the environment. The Bill also provides for a 'reparation authorisation' which may be issued to a third party in order to allow the third party to undertake the action necessary to make good on the resulting damage caused by the person.

These orders provide an alternative enforcement mechanism to strict liability prosecutions through the court. The sole purpose of an order is to mitigate and remediate harm rather than penalising the person. An order can therefore achieve a more desirable outcome for all parties and ensure that actions are taken as soon as possible to stop further harm being caused.

Maximum penalties

The relatively consistent maximum penalty that most offences under the Act attract (\$10,000) is currently less than penalties in equivalent Acts that also seek to protect public health and safety.

In many instances the maximum penalty does not accurately reflect the severity of the offence. For example, if a person fails to follow a direction of the Minister in relation to the disposal of a radiation source after a licence or registration is suspended or cancelled, the maximum penalty is \$10,000. This is grossly inadequate for these types of offences given the risk that improper disposal creates and the financial gain of not following the direction which may exceed the maximum penalty.

Similarly, the maximum penalty for issuing false or misleading information in relation to the Act is \$10,000. Again this is grossly inadequate considering the radiation risk that may result and the fact that the financial gain associated with issuing false or misleading information may exceed the maximum penalty.

The Act also does not make allowance for higher maximum penalties for body corporates than for a natural person. Given that the Act regulates many individuals as well as businesses which include multi-billion dollar international companies, it is inappropriate in many instances to apply one maximum penalty to all situations.

All maximum penalties in the Act have therefore been revised. The clause-by-clause explanation which follows includes an explanation of new maximum penalties.

Draft Radiation Protection and Control Bill 2013

Clause-by-clause explanation

Part 1 – Preliminary

Clause 1: Short title

Clause 1 names the *Radiation Protection and Control Act 2013*.

Clause 2: Commencement

Clause 2 provides the usual mechanism for the commencement of the Act by a date to be fixed by proclamation.

Section 3: Objects and principles

Clause 3 provides a new section for the objects and principles of the Act.

Subclause 1(a) accords with the National Directory's 'Objective of radiation protection legislation' which states 'legislation must include the objective of protecting the health and safety of people and the environment from the harmful effects of ionising and non-ionising radiation'⁶.

Subclause 1(b) accords with the purpose of the Security Code, which is to 'decrease the likelihood of the unauthorised access to or acquisition of the radioactive source by persons with malicious intent'⁷.

Subclause 1(c) ensures that the principles of ecologically sustainable development, as set out in the Environment Protection Act 1993, are taken into account when considering the long-term management of a site where radiation sources are present. This includes consideration of future uses of a site and the potential impacts radiation sources may have on people or the environment, and ensuring that these impacts are appropriately managed.

Subclause 2 provides for the 'radiation protection principle' in accordance with the National Directory which states that each Australian jurisdiction must follow the principles and requirements specified; including the 'radiation protection principles in regard to ionising radiation, include justification of practices to ensure that benefits outweigh the detriment, limitation of radiation doses (see Schedule 1) to individuals from all practices, and optimisation of protection and safety so that individual doses, the number of people exposed and the likelihood of exposure are all kept as low as reasonably achievable, economic and social factors being taken into account.'⁸

Clause 4: Interpretation

Clause 4 provides definitions for terms used throughout the Bill. New definitions have been included to accommodate changes to other areas of the Bill. Current definitions under the Act are almost entirely unchanged, except for two deletions:

registered occupier – this definition has been removed as it is obsolete (ie not actually used in the existing Act).

registered owner – this definition has been removed as it is only included for the purposes of the existing section 33 of the Act ('Offence for registered owner to cause, suffer or permit unlicensed person to operate radiation apparatus'). It is proposed that this section be amended to refer to the owner rather than the registered owner. This is to ensure that the provision applies even if the owner is not legally registered as the owner as required by the Act.

⁶ ARPANSA [National Directory for Radiation Protection](#) (2011)

⁷ ARPANSA [Code of Practice for the Security of Radioactive Sources](#) (2007)

⁸ ARPANSA [Code of Practice for the Security of Radioactive Sources](#) (2007)

The following definitions have been added:

associate – for the purposes of clause 64 ('effect of charge') to provide that a charge imposed on land under Part 6 of the Act (when an amount is recoverable from a person) has priority over any prior charge on the land that operates in favour of an associate; and clause 65 ('orders made by ERD Court') to provide that the benefits to, or action of, an associate of a person is a relevant consideration for certain orders by the ERD Court. The complete definition is set out in subclause 2 of the interpretation.

Subclause 3 further specifies the definition of 'beneficiary' for the purposes of the definition of 'associate'. Subclause 3 provides that a 'beneficiary' of a trust include an object of a discretionary trust, ie where the beneficiaries or their entitlements to the trust are not fixed, but are determined by the criteria set out in the trust instrument by the settlor. This is sometimes referred to as a family trust.

This is a standard provision which appears regularly in South Australian legislation, including the Environment Protection Act 1993 and approximately 15 other South Australian Acts.

contravene – includes a failure to comply with a legally binding condition or direction.

deal with – to clarify the definition of 'deal with' for the purpose of clause 52 ('Powers to deal with dangerous situations').

District Court – to clarify that the 'District Court' means the Administrative and Disciplinary Division of the District Court of South Australia.

domestic partner – to clarify the meaning of 'domestic partner' within the definition of 'associate'.

environment – to provide a definition for 'environment' as the Bill has a focus on preventing harm to the environment from radiation as well as harm to people.

ERD Court – many matters under the Bill will now be referred to the Environment Resources and Development (ERD) Court rather than the Supreme Court (as is currently prescribed) in order to ensure the court has the necessary expertise to make determination in relation to radiation matters.

exploration – to provide clarification of the meaning of 'exploration' for the purposes of the definition of 'mining'. This helps to clarify which activities are excluded from the ambit of 'mining' under the Bill.

general duty of care – refers to clause 56 of the Bill which prescribes a 'general duty of care'.

health practitioner – to provide clarification about how clauses 49 and 51 of the Bill apply to health practitioners. The requirements for health practitioners are no different than for any other profession. They are specifically clarified as they are a prominently regulated profession under the legislation.

health services – same as for 'health practitioner'.

identity check – for the purposes of clause 42 which provides that the Minister may require applicants for an accreditation or authority to undergo an identity check. This is provided for in accordance with the Security Code. The definition will be prescribed in the regulations in accordance with the requirements set out in Schedule E of the Security Code.

information discovery order – refers to an 'information discovery order' issued under clause 21 of the Bill.

in situ recovery – to provide further clarification of the meaning of 'in situ recovery' for the purposes of the definition of 'mining'. This clarifies which activities are covered by the ambit of 'mining' under the Bill.

National Directory – to clarify what the National Directory is and what documents are included in its scope.

owner – the definition for owner has not been changed, however subclause 4(a) has been added to provide further clarification that the owner is the person in whose name the facility, source or premises is, or would be required to be, licensed or registered. This is to ensure that provisions relating to the owner apply even if the facility, source or premises is not registered as required.

possession – subclause 4(b) provides further clarification regarding the definition of ‘possession’, including exclusions to the definition. This is to ensure that a Licence to Possess a Radiation Source, under clause 37, would not be required in certain situations, ie when responsibility for control of the radiation source under the Act rests with another person, during transport or when the radiation source is part of a diagnostic or therapeutic procedure.

principles of ecologically sustainable development – specifies that the principles referred to in clause 3 of the Bill (‘objects and principles’) are those set out under section 10(1)(a) of the Environment Protection Act 1993.

protection order – refers to a ‘protection order’ under clause 57 of the Bill.

radiation facility – specifies that a ‘radiation facility’ means a facility of a class prescribed in the regulations. The class of facility referred to is already prescribed in the current regulations.

reparation authorisation – refers to a ‘reparation authorisation’ under clause 61 of the Bill.

reparation order – refers to a ‘reparation order’ under clause 59 of the Bill.

repealed Act – refers to the current Act which will be repealed.

responsible person – specifies who the ‘responsible person’ is for the purposes of clauses 29 and 36. These clauses put a legal responsibility on the ‘responsible person’ to ensure persons who use or handle radioactive materials or operate radiation apparatus are appropriately licensed. This accords with the National Directory and Security Code.

security background check – provided for the purposes of clauses 33, 42, 49 and 51 to ensure that persons who have or are seeking to have access to security enhanced radioactive sources can be required to undergo a security background check and have that access restricted if they fail the check. This accords with the Security Code. The definition will be prescribed in the regulations in accordance with the requirements set out in Schedule E of the Security Code.

security enhanced radioactive source – clarifies those radioactive sources which are considered to be ‘security enhanced’. This accords with the Security Code. The definition will be prescribed in the regulations in accordance with the definitions set out in Schedule B of the Security Code for a ‘security enhanced source’. Security enhanced radioactive source are classified as Category 1, 2 or 3 under the Security Code.

seizure order – refers to a ‘seizure order’ under clause 19 of the Bill.

spouse – clarifies the definition of ‘spouse’ for the purposes of the definition of ‘associate’.

Clause 5: Interaction with other Acts and laws

Clause 5 provides standard wording to state that the Act does not limit or derogate from the provisions of any other Act or law. This serves the same purpose as section 6 (‘Application of Act’) in the current Act. However, subsection 1 of the Act has been removed as it is no longer necessary to include such a provision in new Acts since it is already stated under section 20 of the *Acts Interpretation Act 1915*.

Part 2 – Administration and enforcement

Division 1 – Minister

Clause 6: Delegation

Clause 6 serves the same purpose as section 8 in the current Act (‘Delegation’).

Division 2 – Radiation Protection Committee

Clause 7: The Committee

Clause 7 provides for the numbers and expertise required by members of the Radiation Protection Committee (the Committee). Currently the Act states that the Committee must be made up of 10 members and allocates an area of expertise for which each member must represent. The presiding member must be an officer or employee of the EPA.

This criteria was restrictive and it has previously been difficult to identify committee members to fill all of these requirements. A more flexible approach is proposed whereby the Committee can consist of six to nine members, rather than the current 10, and members can collectively represent the list of expertise attributes.

The list of expertise has been revised to be less prescriptive. Similar expertise have been combined and a new attribute added:

- The requirements for ‘a radiologist’ and ‘a radiographer with expertise in the field of human diagnostic radiography’ has been combined and replaced with a requirement for expertise in ‘radiology or human diagnostic radiography’.
- The requirement for ‘a medical practitioner with expertise in the field of nuclear medicine’ will be retained, stating a requirement for expertise in ‘nuclear medicine’.
- The requirements for a person with expertise in ‘the industrial uses of radiation’ and ‘the scientific uses of radiation’ have been combined and replaced with a requirement for expertise in ‘industrial or scientific uses of radiation’.
- The requirements for ‘a person with expertise in the field of health physics’ and ‘a person with expertise in the field of genetics and a knowledge of radiation genetics’ have all been combined and replaced with a requirement for expertise in ‘health, health physics or medical physics’.
- The requirement for ‘a person with expertise in the mining and milling of radioactive ores’ has been largely unchanged. It will be replaced with a requirement for expertise in ‘mining or processing of radioactive ores’.
- The requirement for ‘a person with expertise in the field of environmental sciences’ is largely unchanged. This will be replaced with a requirement for expertise in ‘environmental science’.
- A new requirement will be added for expertise in ‘representing the interests of the general public’ in order to provide representation on the Committee.

Clause 8: Terms and conditions of office

Clause 8 of the Bill is the same as section 10 (‘Terms and conditions of office’) in the current Act. This is unchanged from the current section.

Clause 9: Presiding member and deputy presiding member

Clause 9 provides that a presiding member must be appointed to chair at meetings of the Committee and a deputy presiding member to chair in absence of the presiding member. This amendment will clarify that a deputy presiding member must be appointed. Section 10(2) of the current Act only refers to the appointment of a deputy for members and does not specifically refer to the presiding member. This is despite the reference to a deputy presiding member in Section 11(2).

The requirement for the presiding member to be an officer or employee of the EPA has been removed as this is not strictly necessary.

Clause 10: Functions of Committee

The areas the Committee can advise on have been broadened, and now include a reference to advising on the formulation of radiation protection codes and standards, and provides technical advice on radiation protection and safety relating to human health and the environment. None of the current functions have been removed.

Clause 11: Committee's procedures

Clause 11 of the Bill replaces section 11 of the current Act ('quorum'). The new section will maintain all the same provisions at the current section, however the numbers needed for a quorum has been amended to 'one half the total members plus one' in order to reflect the amendment to required Committee numbers.

A number of new provisions have been included to allow the Committee greater flexibility for meetings and making decisions. This will ensure the legislation clearly allows the Committee to hold meetings via teleconference or other methods where all members are able to communicate with one other and can consider issues out of session.

Clause 12: Sub-committees

Subsection 14(1) of the current Act provides for four subcommittees which are to be established. None of the subcommittees provided for have been formed in recent years; in practice the committee forms working groups as the need arises. These provisions have therefore been removed. All other provisions will be retained without change. This allows the Minister to establish subcommittees of the Committee on specified matters.

Clause 13: Application of Public Section (Honesty and Accountability) Act

This clause is retained without change (section 15 under the current Act).

Clause 14: Provision of services

This clause is retained without change (section 13 under the current Act).

Division 3 – Environment Protection Authority

Clause 15: Functions of EPA under this Act

Clause 15 is a standard provision to ensure that the EPA has the power to enforce any functions assigned to it under this or any other Act. Currently no functions are assigned under any other Act for this purpose.

Division 4 – Authorised officers

Clause 16: Appointment of authorised officers

Clause 16 of the Bill replaces section 16 of the current Act.

Subclause 1 has been amended to remove the restriction that authorised officers must be an officer of the public service of the state and instead indicates that the Minister may appoint a 'suitably qualified person'. This may include, for example, a council officer or an officer of another government department or agency who is appropriately qualified.

Additional provisions have been included under subclauses 2 and 3 to prescribe that an appointment as an authorised officer may be made 'subject to conditions or limitations' and that the Minister may vary or revoke an appointment at any time. This is necessary given that under subclause 1 any suitably qualified person may be appointed as an authorised officer.

Subsections 3 and 4 under section 16 of the current Act have been removed from this clause as they will be replaced by clause 17 of the Bill ('identity cards').

Clause 17: Identity cards

Clause 17 is a new section to provide for identity cards. Under the current Act a certificate of identification is required, rather than an identity card. This clause incorporates subsections 3 and 4 under section 16 of the current Act and provides further provisions relating to the issuing of identity card and the details which should be included.

A new provision has also been included stating that an authorised officer must, on ceasing to be an authorised officer for any reason, immediately return his or her identity card to the Minister. A \$500 maximum penalty applies to this provision. This will help to maintain control over authorised officer cards, particularly since authorised officers may be appointed outside the public service of the state under the revised clause 16 provisions.

Clause 18: Powers of authorised officers

Clause 18 of the Bill replaces section 16 of the current Act. This clause has been substantially reviewed to reflect section 87 of the Environment Protection Act 1993 ('powers of authorised officers'), which provide greater detail in relation to the powers of authorised officers.

These amendments do not substantially alter the powers of authorised officers under the Act; only provide greater clarification about their powers as well as greater clarification about the right of the individuals they are dealing with (eg the right to compensation).

Subsection 16(8) of the current Act prescribes that 'a person is not required to answer a question if the answer to the question would tend to incriminate the person'. The definition of 'person' includes a body corporate as well as a natural person.

The current provision goes beyond the self-incrimination privileges afforded to bodies corporate under common law. A High Court decision in 1993 [*Environment Protection Authority v. Caltex (NSW)*] determined that an incorporated company is not entitled to the same privilege against self-incrimination as a natural person.

This provision has therefore been amended to provide that 'a *natural* person is not required to answer a question if the answer to the question would tend to incriminate the person' (subclause 12). This will remove the protection against self-incrimination for a body corporate.

Clause 19: Provisions relating to seizure

Clause 19 provides new provisions relating to seizure, which mirrors section 89 of the Environment Protection Act 1993. Seizure provisions under the current Act are covered under subclause 18(10).

Only one substantial change has been made to the seizure provisions. Clause 19 of the Bill makes provision for the issuing of seizure orders. A seizure order must be in the form of a written notice and once issued it is an offence for a person to remove or interfere with the item to which the order relates without the approval of the Minister.

Clause 20: Hindering persons engaged in administration of Act

Clause 20 relates to the hindering of persons engaged in administration of the Act. It combines several offences under the current Act with several new, similar offences. Subclause 20(a) is currently provided for under section 17(6); subclause 20(b) is under section 17(7); subclause 20(c) is broadly under section 45; subclause 20(e) is under section 17(9); and subclause 20(g) is broadly under section 20.

The remaining subclauses, 20(d), a person in charge of premises subject to an inspection must not refuse to provide assistance if requested, and 20(f), must not use abusive, threatening or insulting language to an authorised officer, are new offences.

Division 5 – Power to require or obtain information**Clause 21: Information discovery orders**

Clause 21 makes new provisions for 'information discovery orders'. This clause mirrors section 96 of the Environment Protection Act 1993. Currently provisions relating to the furnishing of information are prescribed under subsection 17(c). The new clause 21 formalises arrangements for the furnishing of information and provides greater clarity.

Provisions relating to self-incrimination have also been included under subclauses (6) and (7) to ensure that a natural person's right to protection against self-incrimination is maintained.

Clause 22: Obtaining of information on non-compliance with order or condition of accreditation or authority

Clause 22 provides for taking action on non-compliance with an information discovery order under clause 21. This section mirrors section 97 of the Environment Protection Act 1993 and allows the Minister, or another person authorised for the purpose, to take such action as is reasonably required to obtain the information in question.

Division 6 – Miscellaneous

Clause 23: Annual report

Clause 23 has been amended to remove current subsection 22(2) since these requirements are already specified under section 12 of the *Public Sector Act 2009*.

Part 3—Radiation protection and control

Division 1 – Radioactive materials

Clause 24: Licence to test for developmental purposes

Clause 24 replaces section 23A in the current Act. This clause is unchanged except for increases to the maximum penalties for an offence under subclause 24(1).

The current maximum penalty for this offence under the Act is \$50,000 or imprisonment for five years. This is far lower than equivalent offences under the Environment Protection Act 1993 (\$120,000 for a body corporate or Division 1 fine for a natural person) or the *Mining Act 1971* (\$120,000). Given the serious harm to people and the environment that can be caused by the mining radioactive ores without proper controls, the high licence fees associated with this licence and the potential for malevolent misuse of radioactive material obtained via mining without a licence, it is prudent to have a substantially high penalty as an effective deterrent.

The revised maximum penalties provide different penalties for a body corporate (\$500,000) and a natural person (\$100,000 or imprisonment for 10 years).

Subclauses relating to applications and fees have been removed as these are instead prescribed under clauses 42 and 44 of the Bill respectively.

Clause 25: Licence to carry out mining or mineral processing

Clause 25 remains unchanged except for increases to the maximum penalties for an offence under subclause 25(1).

The current maximum penalty for this offence under the Act is \$50,000 or imprisonment for five years. As with clause 24, it is prudent to have a substantially high penalty to provide an effective deterrent given the serious potential harm, the high licence fees and the potential for malevolent misuse of the radioactive material obtained.

The revised maximum penalties provide different penalties for a body corporate (\$500,000) and a natural person (\$100,000 or imprisonment for 10 years).

Subclauses relating to applications and fees have been removed as these are instead prescribed under clauses 42 and 44 of the Bill respectively.

Clause 26: Limits of exposure to ionising radiation for mining or mineral processing operations not to be more stringent than limits fixed under certain codes, etc

This clause is retained without change (section 26 of the Act).

Clause 27: Operations for enrichment or conversion of uranium not to be carried on until proper controls imposed

This clause is retained without change (section 27 of the Act), except for revision to the maximum penalties specified for this offence. This provision is in place to prohibit the enrichment or conversion of uranium, since there are no laws in place in Australia to regulate this activity. Both the *Environment Protection and Biodiversity Conservation Act 1999* and the *Australian Radiation Protection and Nuclear Safety Act 1998* specify that any action relating to the construction or operation of uranium enrichment plant is prohibited and that these activities must not be approved.

A substantially high penalty is necessary to provide an effective deterrent, with the current penalty of \$50,000 or imprisonment for five years being inadequate for this purpose.

The revised maximum penalties provide different penalties for a body corporate (\$1,000,000) and a natural person (\$200,000 or imprisonment for 20 years).

Clause 28: Licence to use or handle radioactive materials

Clause 28 replaces section 28 of the current Act. This clause is unchanged except for increases to the maximum penalties for an offence under subclause 28(1).

The current penalty for using or handling a radioactive material without a licence is \$10,000. A licence under clause 28 is often held by people working in industry with large radioactive sources and medical staff using radioactive materials on patients for diagnostic or therapeutic purposes. The risk associated with an unlicensed person using or handling radioactive materials can be significant. It is proposed to increase this penalty to \$50,000 to better reflect the potential risks associated with this offence and provide a more effective deterrent. This is also in line with the Security Code which requires more stringent regulation regarding access to radioactive sources.

Subclauses relating to applications, fees and temporary licences have been removed as these are provided under clauses 42 and 44 of the Bill.

Clause 29: Offence for owner or responsible person to cause, suffer or permit unlicensed person to use or handle radioactive materials

Clause 29 makes it an offence for the owner or responsible person to cause, suffer or permit unlicensed persons to use or handle radioactive materials. Clause 28 requires that a person must not use or handle a radioactive material unless authorised to do so by a licence under that clause. This is similar to the existing section 33 offence, which relates to radiation apparatus and is in line with the National Directory.

Putting responsibility on the owner or responsible person to ensure only licensed persons are using or handling radioactive materials will assist in reducing the probability of human error, maintain the safety of radioactive materials, and enhance accountability for radiation safety.

A maximum penalty of \$250,000 for a body corporate and \$50,000 for a natural person (or the responsible person) applies to this offence. Given that in many cases radioactive materials are being used on patients for therapeutic purposes, the consequences of allowing unlicensed persons to use or handle radioactive materials can have serious repercussions.

Clause 30: Registration of premises in which unsealed radioactive materials are handled or kept

Clause 30 is retained largely unchanged, except to increase the maximum penalties for an offence under subclause 30(2).

A maximum penalty of \$250,000 for a body corporate and \$50,000 for a natural person applies to this offence. It is necessary for premises with unsealed radioactive materials to be registered in order for the EPA to know the location of radioactive materials and ensure that proper measures are in place to control the radioactive material and maintain safe use and storage within the premises. If the necessary controls are not in place this may result in exposure of staff to significant radiation hazards. Radioactive materials may also be disposed of or managed improperly, resulting in exposure to the environment and broader community. In the case of high activity radioactive materials this could have serious implications. An offence against this clause could therefore be extremely serious and must carry with it a sufficiently high penalty to provide an effective deterrent.

Subclauses relating to applications and fees have been removed as these are instead provided for under clauses 42 and 44 of the Bill respectively.

Clause 31: Facilities licence

Clause 31 is retained largely unchanged, except to increase the maximum penalties for an offence under subclause 31(2).

A maximum penalty of \$500,000 for a body corporate and \$100,000 of imprisonment for 10 years for a natural person applies to this offence. The current maximum penalty is \$100,000, which does not differentiate between a natural person and body corporate. The types of facilities which require licensing under this clause are associated with large quantities

of radioactive material, high radiation levels and significant potential radiation risks. These are not standard activities and therefore require unique considerations and licence conditions. Undertaking an activity of this type without a licence and without the proper controls in place could therefore have serious implications.

Subclauses relating to applications and fees have been removed as these are instead provided for under clauses 42 and 44 of the Bill respectively.

Clause 32: Registration of sealed radioactive source

Clause 32 is retained largely unchanged, except to increase the maximum penalties for an offence under subclause 32(2).

A maximum penalty of \$250,000 for a body corporate and \$50,000 for a natural person applies to this offence. It is necessary for sealed radioactive sources to be registered in order for the EPA to know the location of radioactive materials and ensure that radioactive sources are constructed, contained, shielded and installed in accordance with the regulations to minimise unnecessary exposure to radiation. If radioactive sources are not registered and the proper controls are not in place, people could be exposed to excessive levels of radiation, whether this be staff, patients or the general public.

Subclauses relating to applications and fees have been removed as these are instead provided for under clauses 42 and 44 of the Bill respectively.

Clause 33: Protection of security enhanced radioactive source

Clause 33 allows for the protection of security enhanced radioactive sources in accordance with the Security Code.

This clause supports the implementation of 2.1.5–2.1.8 and 2.3.1–2.3.5 of the code, which require that persons accessing security enhanced sources must undergo a security background check or (in some cases) be accompanied by a person who has undergone a security background check. If a person for some reason failed a security background check but could demonstrate that they have a legitimate reason to access a security enhanced source, that they did not present a security risk and would be accompanied at all times by a person who had passed a security background check (in accordance with the Security Code), the Minister would have the ability to determine that the person does not pose a threat to the security of a security enhanced source and allow this to occur.

If a person contravenes a direction given to the person under this clause, a maximum penalty of \$50,000 or imprisonment for 10 years applies. If a person attempts to access a security enhanced source after they have been determined by the Minister that they pose a security risk and have been directed not to access a security enhanced source this could be a very serious offence, particularly if it is determined that the person was attempting to access the source for malevolent purposes.

Division 2 – Radiation apparatus

Clause 34: Licences to operate radiation apparatus

Clause 34 replaces section 31 of the current Act. This clause is unchanged except for increases to the maximum penalties for an offence under subclause 34(1).

The current penalty for operating radiation apparatus without a licence is \$10,000. A licence under clause 34 is often held by medical staff using radiation apparatus on patients. The risk associated with an unlicensed person operating a radiation apparatus is therefore significant. It is proposed to increase this to \$50,000 to better reflect the potential risks associated with this offence and provide a more effective deterrent. This is also in line with the Security Code which requires more stringent regulation regarding access to radioactive sources.

Subclauses relating to applications, fees and temporary licences have been removed as these are instead provided for under clauses 42 and 44 of the Bill.

Clause 35: Registration of radiation apparatus

Clause 35 replaces section 32 of the current Act. This clause is unchanged except for increases to the maximum penalties for an offence under subclause 35(2).

A maximum penalty of \$250,000 for a body corporate and \$50,000 for a natural person applies to this offence. It is necessary for radiation apparatus to be registered in order for the EPA to know the location of radioactive apparatus and ensure that the apparatus has been constructed, shielded and installed in accordance with the regulations to minimise unnecessary exposure to radiation. If radiation apparatus are not registered and the proper controls are not in place, people could be exposed to excessive levels of radiation, whether this be staff, patients or the general public.

Subclauses relating to applications and fees have been removed as these are instead provided for under clauses 42 and 44 of the Bill respectively.

Clause 36: Offence for owner or responsible person to cause, suffer or permit unlicensed person to operate radiation apparatus

Clause 36 replaces section 33 of the current Act. The clause has been amended to extend its application to any 'owner' rather than just a 'registered owner' to ensure it applies even in situations where the owner has not registered the apparatus as required under the Act.

The clause has also been amended to apply to the 'responsible person'. This is in line with requirements of the National Directory which states that regulatory frameworks must include 'management requirements to provide for responsible persons to establish a safety culture, establish quality assurance programs, reduce the probability of human error leading to accidents, make appropriate training and information available to staff, allocate sufficient resources to enable safety and security of radiation sources over their lifetime (including disposal), and provide the qualified expertise necessary to observe the requirements'.

A maximum penalty of \$250,000 for a body corporate and \$50,000 for a natural person (or the responsible person) applies to this offence. Given that in many cases radiation apparatus are being used on patients, the consequences of allowing unlicensed persons to operate radiation apparatus can have serious repercussions.

Division 3 – Licence to possess a radiation source

Clause 37: Licence to possess a radiation source

Clause 37 replaces section 33A of the current Act. This section is retained largely without changes except to provide for differential penalties for a body corporate and natural person. The currently maximum penalty of \$100,000 applies to both a natural person and a body corporate. While this may be an effective deterrent for an individual from possessing a radiation source without a licence, a more significant penalty is needed to provide the same level of deterrent for a body corporate given that this includes multi-billion dollar companies. A maximum penalty of \$500,000 is therefore provided for a body corporate.

Subclauses relating to applications and fees have been removed as these are provided for under clauses 42 and 44 of the Bill respectively.

Division 4 – Accreditation of third party service providers

Clause 38: Accreditation process

Clause 38 replaces section 33B of the current Act. The clause is retained without change.

Subclauses relating to applications, fees and the requirement for accreditation holders to be a 'fit and proper person' have been removed as these are specified in clauses 42 and 44.

Clause 39: Authority conferred by accreditation

Clause 39 replaces section 33C of the current Act. The clause is retained without change.

Clause 40: Reliance on professional advice

Clause 40 replaces section 33D of the current Act. The clause is retained without change.

Clause 41: Offences

Clause 41 replaces section 33F of the current Act. The clause is retained without change except to increase the maximum penalty under subclause 1 from \$10,000 to \$20,000 to bring it into alignment with other offences under this clause. An offence under subclause 1 is no less serious than other offences under this clause and the maximum penalty needs to reflect this.

Division 5 – General provisions with respect to accreditations and authorities

Clause 42: Application for an accreditation or authority

Clause 42 is a new clause which consolidates requirements for making an application for an accreditation or authority. Currently these requirements are provided for separately under each accreditation or authority.

Two new provisions have also been included. The first is subclause 2(a), which provides that the Minister may, before determining an application, require the applicant to undergo an identity or security background check (or both). This is in accordance with the Security Code. Subclause 2(b) is a requirement currently prescribed in section 34 of the Act.

The second is subclauses 4 and 5 which provide that any Act may be a 'prescribed Act' in the regulations and that if the applicant has contravened this Act or a prescribed Act then the Minister may refuse to grant an accreditation or authority. This is to ensure that there are grounds for refusing applications when the applicants have a history of offences against similar legislation which would indicate that they are not suitable to hold an accreditation or authority under the Act.

Clause 43: Minister required to refer certain matters to Committee

Clause 43 replaces section 35 of the current Act. This clause has been amended to provide that, only applications for licences under clauses 24, 25 or 31 must be referred to the Committee for its advice. Licences under these clauses represent significant activities.

It is not necessary to refer applications for licences under clauses 28 and 34 to the Committee as these licences are issued to individuals only for the purposes of using or handling radioactive materials and operating radiation apparatus. Applicants for these licences are required to either demonstrate that they have the necessary qualifications or undertake an exam to demonstrate that they have the appropriate knowledge to hold the licence. A determination of the application can be made on this basis and there is little that the Committee can add to this process in terms of advice.

Licences under clause 37, a licence to possess a radiation source, are issued provided applicants meet the criteria set out in clause 42 of the Bill. Conditions on these licences are standard, depending on the type of radiation source in possession. While the Committee will be consulted in relation to the standard conditions placed on these licences, there is little that the Committee can add to this process in terms of advice on individual applications.

The Committee has been consulted on this amendment and supports it.

Clause 44: Annual fee payable for accreditations and authorities

Clause 44 is a new section which consolidates requirements for prescribing fees for accreditations and authorities. Currently these requirements are prescribed separately under each accreditation or authority section.

This clause provides a new head power for prescribing late fees under the Act. Currently when holders of accreditations and authorities do not pay the prescribed annual fee on time, accreditations and authorities expire without consequence. While individuals may then be committing an offence under the Act by undertaking an activity, or possessing an item without the appropriate licence or registration they must first be investigated and then prosecuted through the court system. Prescribing late penalties would act as an effective deterrent to late-paying accreditation and authority holders without the need to undertake prosecutions.

Clause 45: Conditions of accreditations and authorities

Clause 45 replaces section 36 under the current Act. This clause has been retained without change except to review penalties under subclause 4. The current maximum penalty is \$50,000 or imprisonment for five years. This penalty has been amended in the Bill to \$500,000 for a body corporate and \$100,000 or imprisonment for 10 years for a natural person. This penalty for a natural person is in line with similar offences under the Environment Protection Act 1993 and the Mining Act 1971. While this may be an effect deterrent for an individual from contravening a condition of an

accreditation or authority, a more significant penalty is needed to provide the same level of deterrent for a body corporate given that this includes multi-billion dollar companies. A maximum penalty of \$500,000 is therefore applied for a body corporate.

Clause 46: Term of accreditations and authorities and their renewal

Clause 46 replaces section 37 of the current Act. The clause has been retained without change except to include provisions relating to temporary licences. Currently these provisions are provided for separately under each accreditation or authority section.

Clause 47: Register of accreditations and authorities

Clause 47 replaces section 38 of the current Act. The clause has been amended to include a number of new provisions.

Subclause 2 prescribes that the register must be kept available for inspection by any person during ordinary office hours and the register may be made available to the public by electronic means. This will help to ensure that the public has reasonable access to the register.

Subclause 3 makes provisions for the charging of fees for access to any part of the register. Consideration to setting fees will be part of amendments to the regulations. Fees will only be set if it is necessary to recover costs related to providing information from the register. In setting any fees, efforts will be made to ensure fees are reasonable and do not prohibit access by the public to the register.

Subclause 4 provides that the Minister may restrict access to information included in the register if the Minister considers that it is necessary to do so to avoid a security risk. This is to ensure that access to information for the register can be refused in situations where, for example, a person is known to have failed a security background check and attempted to access information relating to the location of security enhanced sources.

Clause 48: Transfer or surrender of accreditations and authorities

Section 40 of the current Act has been split into two sections in the Bill, clauses 48 and 49. Clause 48 relates to the surrender of accreditations and authorities. New provisions have been included to allow that licences under clauses 24, 25 and 31 may only be surrendered with the approval of the Minister. The Minister may then approve the surrender or impose further conditions on the licences and approve surrender of the licence provided the conditions are met.

Licences under clauses 24, 25 and 31 relate to uranium mining and mineral processing, and activities involving large quantities or high concentrations of radioactive material. It is therefore inappropriate to allow licence-holders to surrender their licences at any time without any obligation to undertake further action. These new provisions will ensure that the Minister is able to require remediation of a site, if necessary, before the licence is surrendered.

A new subclause has also been included to allow a registration to be transferred to another person with the permission of the Minister. This is to account for situations where, for example, a business has been sold and ownership of a radiation source must therefore be transferred but re-applying for registration is not deemed necessary as the source has not changed location and has recently been tested for compliance.

Clause 49: Suspension and cancellation of accreditations and authorities

Clause 49 replaces the remaining provisions of section 40, which were not covered in clause 48. A number of changes have been made to these provisions in accordance with requirements under part 2.9 of the National Directory which states 'an Authority must be able to suspend, vary or cancel an authorisation if there is evidence to suggest that:

- a the authorisation was obtained improperly;
- b the holder of an authorisation has contravened a condition of the authorisation;
- c the holder of an authorisation has been convicted of an offence against the legislation, under which the authorisation was granted, or other relevant legislation;
- d unless the authorisation is suspended, varied or cancelled there would be a risk to the health and safety of people or to the environment;

- e unless the authorisation is suspended, varied or cancelled there would be security risk from access to the radioactive source;
- f the holder has ceased to hold a qualification or meet other criteria, which formed the basis on which the authorisation was granted;
- g the holder of an authorisation has consistently made decisions that compromised radiation safety; or
- h the holder of an accreditation has ceased working in a capacity for which accreditation is required.'

The maximum penalty under subclause 11 has been increased from \$10,000 to \$50,000. Contravening or failing to comply with a direction of the Minister is a serious offence and the penalty needs to be increased to provide an effective deterrent.

Clause 50: Review of decisions

Clause 50 replaces section 41 of the current Act. This clause is retained without changes other than to specify that applications for review are to be made to the District Court, rather than the Supreme Court. It is not necessary for most cases to be considered at the level of the Supreme Court. Cases can be escalated if necessary.

Clause 51: Obligation of holders of accreditations and authorities to notify Minister of certain matters

Clause 51 is a new provision to allow certain circumstances in which a holder of an accreditation or authority must notify the Minister. These circumstances are if they fail a security background check or if the holder of a licence to operate radiation apparatus or a licence to use or handle a radioactive materials, relating to their professional practice, has their right to practice suspended, cancelled or limited. The person's accreditation or authority may subsequently be revoked, particularly if it is determined that there is a danger to people or the environment as a result.

Division 6–Dangerous situations

Clause 52: Powers to deal with dangerous situations

Clause 52 replaces section 42 of the current Act. This clause has been retained with only minor changes to clarify that a person may be directed to leave a place if there is a threat of exposure to excessive radiation and that penalties apply if a person hinders or obstructs a person operating in accordance with this clause or fails to comply with a direction given under this clause. These are not new offences (section 17 of the current Act specifies these offences), but are specified here for clarity.

Part 4 – General offences

Clauses 53 and 54: Causing serious radiation risk and causing a radiation risk

Clauses 53 and 54 are new provisions. Other equivalent areas of public health and safety regulation, which deal with areas such as environmental harm, the sale or supply of unsafe food or the operation of an unsafe workplace, include a general offence where persons may cause harm through their use of radiation. This includes offences under sections 79 and 80 of the *Environment Protection Act 1993*.

For the purposes of clause 54: a person causes a **radiation risk** if the person commits an act involving a radiation source that harms, or has the potential to harm, presently or in the future, the health or safety of a person or the environment, **and** the harm or potential harm is **not** trivial but is **not** of a high impact or on a wide scale.

For the purposes of clause 53: a person causes a **serious radiation risk** if the person commits an act involving a radiation source that harms, or had the potential to harm, presently or in the future, the health or safety of a person or the environment, **and** the harm or potential harm is of a high impact of on a wide scale.

By focusing on risk, the offence applies as much to situations where harm might have occurred as it does to cases where it has occurred. The penalty for the offence takes into account the state of mind of the person who caused the harm.

A person who intentionally or recklessly commits an act which will lead to a radiation risk, faces a higher penalty than someone who inadvertently and unintentionally creates a risk.

The maximum penalties reflect the absolute worst case scenario in which the provisions could be applied. It is up to the determination of the court what penalty to apply in any particular circumstance. The penalty actually imposed in a particular situation may be far less than the maximum penalty. The maximum penalties prescribed are much higher than those prescribed under similar offence in other legislation. This is to reflect both the fact that the maximum penalties in other legislation are somewhat outdated (ie maximum penalties for similar offences under the Environment Protection Act 1993 have not been revised since 2002) and that offences under this provision in the Act are potentially much more severe.

A radiation incident (whether caused intentionally or as a result of negligence) could expose people and the environment to dangerously high levels of radiation on a widespread scale. Adverse health effects may occur soon after exposure or some time, often many years, after exposure (ie the later development of cancer). Aside from physical harm, a radiation incident can also cause significant monetary costs for remediation, disruption to businesses and society (eg if evacuation or abandonment of an affected area is necessary) and significant emotional trauma. The following maximum penalties are therefore prescribed:

- Intentionally and recklessly causing a serious radiation risk:
 - in the case of a body corporate – \$5,000,000
 - in the case of a natural person – \$1,000,000 or 15 years imprisonment or both
- Causing a serious radiation risk:
 - in the case of a body corporate – \$2,500,000
 - in the case of a natural person – \$500,000 or 10 years imprisonment or both
- Intentionally and recklessly causing a radiation risk:
 - in the case of a body corporate – \$1,000,000
 - in the case of a natural person – \$200,000 or five years imprisonment or both
- Causing a serious radiation risk:
 - in the case of a body corporate – \$500,000
 - in the case of a natural person – \$100,000 or two years imprisonment or both

Like all offences under the Act, to initiate a prosecution under this section a person must be appointed as an authorised officer under clause 16 of the Bill. Currently, only some officers of the EPA are appointed as authorised officers. Therefore, members of the public will not be able to use these provisions to take another party to court.

While these provisions are broad, their intention, like similar provisions under the Environment Protection Act 1993, is that they only be used in unusual situations where the seriousness of the offence exceeds the maximum penalty which could be applied for other specific breaches of the Act (such as a breach of licence condition). To further demonstrate where and how these clauses would be applied, a number of example scenarios have been shown below.

It should also be noted that the Bill includes a new clause, under clause 75, for a General Defence. The General Defence will apply to any offence under the Act and states:

In proceedings for an offence against this Act, it is a defence if the defendant proves that he or she exercised due diligence to prevent the commission of the offence.

This means that a person can not be charged with an offence under clause 53 or 54 if he or she can demonstrate that they took what reasonable and practicable measures they could to stop the offence from occurring.

- **Example 1:** A hospital treating a patient with radiotherapy (through the use of a linear accelerator) gives the patient an excessive dose of radiation, resulting in serious side effects in the patient. The hospital is found to have not carried out essential calibration checks on equipment and had not exercised due diligence. The patient suffered non-life threatening burns as a result.

This offence could be prosecuted as a breach of a condition of their Licence to possess a radiation source under clause 37. Through a condition of their licence, the licensee would be required to comply with the *Code of Practice for Radiation Protection in the Medical Applications of Ionizing Radiation*, which includes requirements regarding equipment calibration. Therefore, not complying with these requirements would constitute a breach of licence condition.

However, if the damage was so great (eg if it was shown that the person died as a result or their life was seriously threatened) that it was felt to exceed the maximum penalty attached to the offence for a breach of licence condition, the hospital could be prosecuted under clause 53 or 54.

- **Example 2:** Poorly secured and packaged radioactive material is being transported in a vehicle not displaying transport placards. The vehicle gets into an accident resulting in a radioactive material being spilt on a public road. Some of the material makes its way into the stormwater system.

Both the consigner and the carrier of the radioactive material have requirements under regulations 5 and 6 of the *Radiation Protection and Control (Transport of Radioactive Substances) Regulations 2003* in relation to securing and packaging the material. The driver of the vehicle also has requirements under regulation 7 in relation to reporting any damage to the package. Depending on the specific circumstances leading up to and surrounding the incident either the consigner, carrier, driver, or all could be prosecuted. A maximum \$10,000 penalty is attached to each offence under these regulations.

Given that some of the material made its way into the stormwater system, which could result in significant damage to the environment and subsequently peoples health, the radiation risk provision under clause 54 may also be applied. Who would be prosecuted under this provision would depend on the specific circumstances surrounding the incident.

- **Example 3:** An employee at a uranium mine removes some radioactive material from the site and keeps it at their home. The radioactivity of the material is low-level and there is no evidence to suggest that injuries were caused as a result.

Clause 37 prescribes that a person must not be in possession of a radiation source unless authorised by a licence to possess a radiation source. The person may therefore be prosecuted under this provision. A maximum penalty of \$100,000 may apply to a natural person for this offence.

Given that the material is low-level, there is little evidence to suggest the injuries would have resulted. The penalty under clause 37 is substantial so there would be little justification to apply the radiation risk provision under clause 54.

Clause 55: Alternate finding

When considering cases and determining penalties the court should be given the maximum discretion. Where a person is charged with serious radiation risk and the court believes that the matter involves only a radiation risk, the court could find the person guilty of the lesser charge. Similarly, if the person were to be charged with the more serious offence of knowingly or recklessly causing the risk and the court did not find a case for the intentional element but that the person did commit the offence, the court can then find the person guilty of the lesser offence of simply causing the risk. Clause 55 provides for this.

Part 5 – General duty of care

Clause 56: General duty of care

Clause 56 replaces section 23 of the Act. Clause 56 expands on the 'general objective', prescribed under section 23, to provide for protection of the environment from radiation, the security of radiation sources, consideration of the principles of ecologically sustainable development and enforcement of the general duty of care through a protection order under Part 6.

Subclause 3 provides that the general duty of care may be enforced through an order issued under Part 6 of the Bill. In practice this could provide an important vehicle for administration of the Act. In most cases an administrative power such as this is always the first response, with prosecution only considered when the order is not complied with. Thus the general duty is the basis for a remedial order and a person in breach of it does not, by that fact alone, commit an offence.

Subclause 2 removes the therapeutic exemption currently in section 23(2) and instead extends to all medical treatment that involves radiation exposure by referring to the radiation protection principle. It is acknowledged that in radiotherapy the dose to target tissue is differentiated from the dose to other parts of the body, such that optimisation in radiotherapy equates to giving the optimum therapeutic dose to target tissue and minimising the damage to normal tissues outside the target area by keeping doses to these tissues as low as reasonably achievable.

A general duty gives broader enforceability to the Act, beyond specific licence or registration controls. It also places an onus on owners and users of radiation devices and sources to take appropriate measures to protect the health and safety of people and the environment from the harmful effects of radiation.

Part 6 – Civil remedies

Division 1 – Orders issued by Minister

Clause 57: Protection orders

Clause 57 provides for protection orders. This is similar to an environment protection order under section 93 of the Environment Protection Act 1993. A protection order can be issued to secure compliance with the general duty; a condition of an accreditation or authority; or any other requirement imposed by or under the Act. In particular, a protection order would be issued to require a certain action or activity to cease where the action or activity is being undertaken, in contravention of the Act or a condition on an accreditation or authority, which is causing actual harm or potential harm to people or the environment.

A protection order may impose any requirement for the purpose for which the order is issued, for example that a person discontinues or does not commence a certain activity or undertake specified action within a specified timeframe. A protection order does not place any penalty on the person to whom it is issued. A prosecution will only take place if the order is not complied with. This provides an effective enforcement tool under the Act without the need to undertake a prosecution. It also provides clarity to the person to whom the order is issued regarding the actions to be taken to comply with the order and the next enforcement steps to be taken if the order is not complied with (ie prosecution).

A maximum penalty of \$100,000 is prescribed for not complying with a protection order or for hindering or obstructing a person complying with a protection order.

Clause 58: Action on non-compliance with protection order

Clause 58 provides that the Minister may take any action required by the order if it is not complied with and that any costs incurred in taking this action can be recovered from the person to whom the order was originally issued. This is to ensure that any action or activity which is causing harm, or potential harm, to people or the environment can be ceased and the harm or risk dealt with in the event that the person does not comply with the order. It will also create an effective deterrent to any person, on whom an order is issued, who does not intend to comply with the order since the necessary action will be undertaken at their expense in any case.

Clause 59: Reparation orders

Clause 59 provides for reparation orders. A reparation order can be issued if a person has caused harm to people or the environment by a breach of the general duty of care; a contravention of a condition of an accreditation or authority; or a contravention of the Act. A reparation order requires that the person undertake specified action within a specified period to make good any resulting damage or make payments to enable action to be taken to address the harm.

A reparation order does not place any direct penalty on the person to whom it is issued, although it may require the person to make payments for a specified purpose. A prosecution will only take place if the order is not complied with. This provides an effective tool for requiring the remediation of damage resulting from a contravention of the Act or a condition on an accreditation or authority, without the need to undertake a prosecution. They can provide a more desirable result for all parties while ensuring that any harm is addressed in a timely manner.

A reparation order is distinct from a protection order in that a protection order is issued to stop harm, or further harm, from occurring, whereas a reparation order is issued to address harm that has already been caused.

A maximum penalty of \$100,000 is prescribed for not complying with a reparation order.

Clause 60: Action on non-compliance with reparation order

Clause 60 provides that the Minister may take any action required by the order if it is not complied with and that any costs incurred in taking this action can be recovered from the person to whom the order was originally issued. This is to ensure that any action necessary to address harm caused to people or the environment can be undertaken in the event that the person does not comply with the order. It will also create an effective deterrent to any person, to whom an order is issued, who intends to not comply with the order since the necessary action will be undertaken at their expense in any case.

Clause 61: Reparation authorisation

Clause 61 provides a new provision for reparation authorisations. A reparation authorisation can be issued to a person to allow that person to undertake specified action on the Minister's behalf to make good any harm caused to people or the environment resulting from a contravention of the Act or a condition of an accreditation or authorisation.

Subclause 7 prescribes that the Minister may recover costs and expenses incurred in taking action under a reparation authorisation as a debt from the person who caused the relevant harm.

Reparation authorisations will ensure that harm to people or the environment can be addressed in a timely matter without the need for a prosecution even if the person who caused the harm is not in a position to undertake the necessary actions themselves.

Clause 62: Related matter

Clause 62 is provided to ensure that a person cannot claim compensation from the Minister, the Crown, an authorised officer, or another person acting under the authority of the Minister, in circumstances where they are undertaking actions in accordance with this part to avoid or minimise harm to people or the environment or to make good on harm already caused to people or the environment, which has been caused by another person. If it is appropriate to seek compensation, a third party can still seek to claim compensation from the person who caused the harm or risk of harm.

Clause 63: Registration of orders or authorisations by Registrar-General

Clause 63 provides a mechanism for orders and authorisations to be registered in relation to the relevant piece of land.

In the case of orders this is to ensure that any reparation orders requiring long-term actions to be taken to make good any harm caused to people and the environment will still apply even if the land is sold.

In the case of authorisations this is to ensure that any activities or radiation sources associated with the land, which requires an authorisation will continue to apply without interval.

Clause 64: Effect of charge

If it is necessary to recover costs associated with taking action under Part 6 (ie to recover costs associated with taking action to avoid, minimise or make good harm caused by another person) and the costs cannot be immediately recovered, a charge may be imposed on land so that if the land is sold then the relevant costs are recovered through the sale of the land.

Subclause 64(a) prescribes that a charge imposed on land under this part has priority over any prior charge on the land that operates in favour of a person who is an associate of the owner of the land. The definition of associate is provided under subclause 4(2). An associate includes, in broad terms, an immediate family member, a beneficiary of the same trust or a business associate.

Division 2 – Orders issued made by Environment, Resources and Development Court

Clause 65: Orders made by the Environment, Resources and Development Court

Clause 65 provides that an application may be made to the Environment Resources and Development (ERD) Court for an order in relation to a contravention of the Act. An application may be made by the Minister, any person whose interests are affected by the subject matter of the application, or by any other person with the permission of the ERD Court.

This provides a 'civil remedy' alternative to taking action against persons in contravention of the Act. This contrasts with the offence provisions (criminal offences) throughout the Act.

Through this clause, third parties negatively impacted by a person's contravention of the Act can apply to the court, which can order the payment of costs or expenses, compensation or damages for loss resulting from the breach of the Act.

Part 7 – Miscellaneous

Clause 66: Adoption of documents forming part of National Directory

Clause 66 provides that the Minister may, by notice in the Gazette, adopt a document forming part of the National Directory. Ministers have agreed nationally to adopt provisions of the National Directory. This clause will allow relevant documents to be adopted more easily and ensure that South Australia's legislation is in line with other Australian jurisdictions.

It should be noted that the current Act, under subsection 43(4), already allows documents to be adopted as part of the regulations.

Clause 67: Confidentiality

Clause 67 replaces section 19 in the current Act. It expands the confidentiality provision to be more comprehensive and includes standard provisions used across other legislation to ensure that information provided by persons in accordance with the Act remains confidential.

Clause 68: Exemptions

Clause 68 replaces section 44 in the current Act. Subclause 1 has been expanded to allow exemptions to be granted to a specified source or premises as well as a person. This will enable exemptions to incorporate, for example, new technological developments which may render certain legislative provisions unnecessary.

The maximum penalties have been revised upwards to differentiate minor indictable offences as more serious.

Clause 69: Offences and the Environment, Resources and Development Court

Clause 69 clarifies that offences constituted by the Act (other than major indictable offences) lie within the criminal jurisdiction of the ERD Court. Currently offences under the Act lie within the criminal jurisdiction of the Supreme Court. The Supreme Court no longer deals with the level of offences generally relevant to the Act. The ERD Court is more appropriate for dealing with offences as they can ensure that the specialist expertise necessary is available for consideration of offence under the Act.

Clause 70: Constitution of the Environment, Resources and Development Court

It is necessary to include the provisions prescribed under clause 70 in order for the ERD Court to deal with offences under the Act. These are standard provisions used in other legislation relevant to the ERD Court, for example section 222 of the *Natural Resources Management Act 2004*.

Clause 71: Commencement of prosecutions

Clause 71 provides standard provisions relating to timeframes for commencing proceedings for offences against the Act.

Clause 72: Offences by body corporate

Clause 72 replaces section 47 without change.

Clause 73: Vicarious liability

These are standard provisions which make employers or principals liable for offences against the Act committed by employees or agents. Many other Acts contain such provisions, for example section 213 of the *Natural Resources Management Act 2004*.

Clause 74: Continuing offences

Clause 74 replaces section 48. Changes have been made to some wording, but these changes do not influence the substance or meaning of the provision.

Clause 75: General defence

Clause 75 provides for a general defence. This ensures that persons who have taken all reasonable and practicable measures to prevent an offence from occurring can, on this basis, defend themselves against prosecution under any part of the Bill.

Clause 76: Notice of defence

Clause 76 provides for the requirement to notify the Minister in writing if a person is intending to utilise a defence under any part of the Bill.

Clause 77: Statutory declarations

Clause 77 replaces subsection 34(b) of the current Act. Subsection 34(b) only applies to information relating to an application. Clause 77 expands the application of this provision to any information required to be provided in accordance with the Act. This will ensure that information can be verified if necessary when, for example, determining whether an offence against the Act has been committed.

Clause 78: False or misleading statement

Clause 78 replaces section 45 in the current Act without change except to update the maximum penalty from \$10,000 to \$20,000.

Clause 79: Evidentiary provisions

Clause 79 replaces section 49 of the current Act. The provisions have been expanded [namely clauses 79(2), (3) and (5) to (7)] to update the provision and account for other changes in the Bill. The purpose of these evidentiary provisions is to facilitate proof of the commission of offences by stating that certain matters are 'proved in the absence of proof to the contrary'.

Clause 80: Service

Clause 80 replaces section 50 in the current Act. The clause provides the mechanisms in which a document or notice must be served on a person. The provisions have been expanded to allow for other multimedia such as email. These are standard provisions included in many other acts, for example section 125 of the *Fisheries Management Act 2007*.

Clause 81: Recovery of fees

Clause 81 specifies that fees or other amounts payable under this Act are recoverable by action in a court as a debt due to the Minister. This provision is an amalgamation of various subsections throughout the current Act which specify that fees payable for accreditation, authorisations and for recovery of costs may be recovered by action in a court as a debt due to the Minister. This provides a broader provision which will apply throughout the Act, rather than specifying it in each section. This will ensure it applies to all existing situations where costs of fees are recoverable, as well as to new provisions in the Act relating to fees and recovery of costs.

Clause 82: Recovery of technical costs associated with contraventions

Clause 82 ensures that technical costs incurred by the Minister of the Department associated with contraventions under the Act may be recovered. This is in line with the government's 'user pays' principles.

Clause 83: Review of Act

Clause 83 provides that the Act must be reviewed every 10 years. This is in accordance with section 2.5 of the National Directory.

Clause 84: Regulations

Clause 84 replaces section 43 of the current Act. The regulation-making powers under the Act have been reviewed to bring them up to date with standard regulation-making powers under other legislation (such as the Environment Protection Act 1993 and the *South Australian Public Health Act 2011*) and account for other amendments to the Act.

Subclause (1) has been broadened to state that regulations may be made as are necessary for the purposes of this Act. This is broader than the current statement under subsection 1 in order to allow for the objects and principles under the Act. This is the key regulation-making power under the clause and the remaining subsections largely only provide clarification regarding the regulation-making powers specified under subclause (1).

Changes have been made to provisions for the maximum penalties which can be prescribed in the regulations to allow a higher penalty for a minor indictable offence. A new subclause has also been provided to allow expiation fees to be prescribed in the regulations. Currently any offence against the Act or regulations requires a prosecution to take place. However, there are situations where an offence is of such a minor nature that prosecution through the court is needlessly time consuming for all parties involved, for example, administrative offences. Where expiation fees are prescribed for offences in the regulations this will enable a penalty to be applied without the need to undertake a prosecution. Consultation with stakeholders will occur before any amendments are made to the regulations.

Schedule 1 – Application of the Act to the Roxby Downs Joint Venturers

Schedule 1 relates to the *Roxby Downs (Indenture Ratification) Act 1982* and is retained without change.

Schedule 2 – Repeal and transitional provisions

Schedule 2 prescribes regulatory arrangements for transition from the current Act to the new Act. This prescribes that:

- authorised officers appointed under the current Act will remain as appointed officers under the new Act with conditions on their appointment taken to continue to apply,
- members of the Radiation Protection Committee vacate their positions upon repeal of the current Act so that new appointments can be made in accordance with the revised Committee requirements,
- accreditations and authorisations granted under the current Act will remain in force under the new Act,
- exemptions granted under the current Act will remain in force under the new Act, and
- directions relating to dangerous situations will remain in force under the new Act.

Disclaimer

This publication is a guide only and does not necessarily provide adequate information in relation to every situation. This publication seeks to explain your possible obligations in a helpful and accessible way. In doing so, however, some detail may not be captured. It is important, therefore, that you seek information from the EPA itself regarding your possible obligations and, where appropriate, that you seek your own legal advice.

Further information**Legislation**

Legislation may be viewed on the Internet at: <www.legislation.sa.gov.au>

Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet
Adelaide Service SA Centre
108 North Terrace
Adelaide SA 5000

Telephone: 13 23 24
Facsimile: (08) 8204 1909
Website: <shop.service.sa.gov.au>

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