Agreement in Principle

Mr FRANK SARTOR (Rockdale—Minister for Climate Change and the Environment, and Minister Assisting the Minister for Health (Cancer)) [7.56 p.m.]: I move:

That this bill be now agreed to in principle.

The Radiation Control Amendment Bill 2010 implements aspects of the Council of Australian Governments National Chemical, Biological, Radiological and Nuclear Security Strategy and progresses the implementation of the Code of Practice for the Security of Radioactive Sources. It specifically addresses potential problems with the security of radioactive sources. Since the last major review of the Radiation Control Act in 2002, the significance of the security of radioactive sources has become increasingly important—for example, to prevent the deliberate misuse of radioactive material in acts of terrorism.

The Radiation Control Act 1990 was originally drafted to ensure safe storage, use and disposal of radioactive substances and radiation apparatus used in healthcare and other industries. This bill augments the existing legislation, in particular in regard to the security of radioactive sources and safeguarding against the deliberate, as well as accidental, misuse of these substances. The security provisions apply only to high activity or security-enhanced radioactive sources that are essential in many aspects of our lives. They are used to sterilise medical supplies, to irradiate donated blood for transfusion, in cancer research and treatment, and in non-destructive safety testing of engineered structures, such as aircraft wings and bridges. There are between 40 and 50 locations only in New South Wales where these sources exist. It does not apply to ordinary X-ray machines and scanners. It does not apply to doctors, nurses, dentists and radiologists delivering such services across hundreds of locations in New South Wales. It does not apply to any Commonwealth activities, such as the Australian Nuclear Science and Technology Organisation facility at Lucas Heights.

Radioactive sources remain radioactive at all times. We have an obligation to ensure that they do not fall into the wrong hands. To do this, the bill requires the introduction of a security background and identity checking scheme similar to those already in place for unsupervised access to explosives and precursor chemicals. The security code will require that security-enhanced radioactive sources have a responsible person who is required to ensure that physical security measures are taken to stop unauthorised access to a source or its removal. They will be required to prepare and implement an individual security plan for each particular location. The plans must be approved by a radiation security assessor who is accredited by the Department of Environment, Climate Change and Water [DECCW]. The plans will be outcomes based rather than prescriptive.

In many cases enhanced radioactive sources will be fixed in one location. It will be up to the responsible person to assess the security requirements for operators and, if necessary, to ensure the relevant security and background clearances are obtained. The responsible person will be assisted in achieving that and will be held accountable for failing to comply with security requirements. The provision of false or misleading information in relation to security plans, in applications for licenses and in responding to notices will be an offence. The bill allows the Environment Protection Authority [EPA] to require that a responsible person provides a financial assurance so that, in the event of a mishap, it is that person, not the community, who pays for the clean-up or other costs arising from harm to the environment. Importantly, abandoning a radioactive substance will also be made a specific offence for the first time.

Exemption provisions are included in the bill to make allowance for emergency and other situations. Exemptions granted in other circumstances will need to satisfy the EPA that this will not have a significant adverse effect on the safety of people, property or the environment. The exemptions have been included in the bill also to accommodate the emergence of rapidly changing technology and to deal with unforeseen circumstances. The bill addresses the State Plan priority of cutting red tape with the introduction of a single company or organisation-based management licence issued by the EPA. Under the current system, each item of radiation apparatus or sealed source device must be managed separately. The proposed changes to this system mean that a single instrument will cover all radioactive substances, radiation apparatus and sealed source devices in the possession of an organisation or company.

For example, NSW Health holds approximately 1,523 individual registrations with the EPA across the eight area health services. These will be reduced to a single management licence for each area health service, listing and covering all of the items they own or possess. The Sydney South West Area Health Service currently holds 307 registrations, but will now be required to hold and process only one management licence covering all the items it owns or possesses. Across the board, the proposed system reduces the number of regulatory instruments required by approximately 90 per cent. These changes to the licensing system are modelled on similar changes enacted in Victoria, and care has been taken to leave safeguards in place to preserve the existing standards of radiation safety. The changes will also allow the EPA to apply more resources to compliance inspections and audits, and penalties will apply to failure to fulfil the safety requirements.

Additional measures in the bill to improve the effectiveness of the licensing and accreditation system include: a list of grounds which the EPA may take into account when considering renewals, suspensions or cancellations of licences and accreditations; provision of a 60-day period of grace after a licence or accreditation expires, during which it can be renewed; and providing examples of matters that the EPA can take into account in deciding if a person is fit and proper to hold a radiation licence. In 1999 the National Competition Policy Review of Radiation Protection Legislation made recommendations regarding the issue of national uniformity of the legislation. The Australian Health Ministers' Conference agreed that national uniformity would be dealt with through a national directory for radiation protection, rather than through the less flexible means of model legislation. This bill includes changes that are needed to better align the Act with the national directory.

These changes incorporate the three important international radiation protection principles of justification of a practice, optimisation of protection, and dose and risk limitation. These principles are essential in minimising the risks of cancer development by applying clear guidance on the exposure of medical patients, medical staff and members of the public to harmful ionising radiation. These principles are being applied to radiation protection legislation throughout the world, and this bill directly incorporates them into New South Wales legislation for the first time.

Further national alignment of radiation protection legislation is provided with the inclusion of mining and minerals processing industries in the bill. Until now, this sector had been exempted from regulation, and these exemptions have now been removed due to the amendments to the national directory. To avoid undue complexity for industry, the new requirements will be administered through the existing regulatory framework for mines, and the Director General of Industry and Investment New South Wales will become the responsible regulatory authority for the administration of radiation protection relating to radioactive ores on mine sites.

The EPA will continue to have oversight of discrete radioactive sources and apparatus. The Department of Environment, Climate Change and Water and the Department of Industry and Investment will ensure that the legislative framework clearly establishes the regulatory responsibilities of each agency in respect of New South Wales mining operations. As a result of the shared arrangements between Industry and Investment and the EPA, the section 38 provisions for ministerial consultation and cooperation in these matters across portfolios will be updated. The bill will also allow for the appointment of an additional member to the Radiation Advisory Council with expertise in mining and minerals processing. This will ensure a permanent source of technical advice to the Government for policy development. The bill also contains provisions for improvements in the efficiency of administration of enforcement actions and a broadening of the ability of the EPA to take actions in situations involving danger to people or the environment.

The nature of radiation means that detection relies on specialist equipment or the effects of radiation may take many years to manifest. For these reasons, prosecutions will now be able to be commenced within 12 months of the date that officers of the EPA become aware of the offence, rather than within 12 months of the offence taking place, as is currently the case. The methods of service of documents are also updated in the bill to better align with more contemporary methods of communication. The cost-recovery process will be aligned with the Protection of the Environment Operations Act 1997, and will be subject to the same limitations. The current Radiation Control Act allows notices to take action to be issued only where a breach is occurring or there is unnecessary exposure to or contamination by radiation. It does not allow the regulatory authority to issue a notice if it considers that harm is likely to occur.

This bill provides for an authorised officer to issue a notice if they believe there is likely to be unnecessary exposure to or contamination by radiation or a contravention of a requirement under the legislation. Notices will also be able to require a person to refrain from doing something, and will now also have extraterritorial effect in situations where the action of a person outside New South Wales is causing harm in New South Wales. The bill also provides for several other administrative actions to improve the effectiveness of notices to take action and directions to deal with dangerous situations. Public access to information will be improved through a public register of licence holders, so the community can check whether a person is authorised to undertake specific activities involving radiation.

The proposed amendments to the Radiation Control Act in this bill were developed with the support of the New South Wales Radiation Advisory Council, which includes representatives from key professional radiation associations. The council also includes representatives of other government departments, including WorkCover and the Department of Health. The Department of Industry and Investment, the NSW Police Force and the Department of Premier and Cabinet were also consulted. Responses to a public discussion paper in 2009 showed that there is widespread stakeholder support for the proposals in the bill. I commend the bill to the House.