

Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [4.36 p.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

This bill is the first major review of the Radiation Control Act since the Radiation Control Amendment Act 2002 implemented the recommendations of the National Competition Policy Review of radiation protection legislation. Since that time, the significant issue of the security of radioactive sources has arisen—that is, the potential for their deliberate misuse in acts of terrorism, for example, a "dirty bomb".

The Radiation Control Act 1990 was originally drafted to ensure the safe storage, use and disposal of radioactive substances and radiation apparatus used in health care and by industry, and to minimise accidents associated with radioactive substances and radiation apparatus. This legislation does not address any part of the nuclear fuel cycle, as activities associated with nuclear reactors or mining for uranium continue to be banned in New South Wales.

The facility at Lucas Heights is run by the Australian Government, under the Australian Nuclear Science and Technology Organisation Act 1987. New South Wales is excluded from having any powers over such Commonwealth facilities and its activities, even those carried out by contractors or subcontractors in the territory of New South Wales.

This bill adds provisions relating to the security of radioactive sources to the Act, in addition to the protection of people and the environment from exposure to harmful radiation. It implements the radiological aspects of the COAG National Chemical, Biological, Radiological and Nuclear Security Strategy and progresses the legislative implementation of the Code of Practice for the Security of Radioactive Sources. These amendments are essential for safeguarding against the deliberate misuse of certain radioactive sources.

The small number of high activity or security enhanced radioactive sources are essential to 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 safely testing of engineered structures like aircraft wings and bridges.

But we have an obligation to ensure that they do not get into the wrong hands.

To safeguard against these radioactive sources falling into the wrong hands, a security background and identity checking scheme will be introduced, similar to those that are already in place for unsupervised access to explosives and precursor chemicals.

The Security Code requires that a "person responsible" for a security enhanced radioactive source take actions to ensure the source is secure.

The person responsible will be required to ensure that physical security measures are taken so that attempts to gain unauthorised access or remove a source are detected and responded to. They will be required to prepare and implement a security plan which demonstrates how the requirements of the security code are satisfied.

These plans must be approved by a Radiation Security Assessor who will be accredited by the Department of Environment, Climate Change and Water [DECCW] for this purpose.

Abandoning a dangerous radioactive source will also be made a specific offence for the first time.

Failure to comply with these security requirements will be an offence, as will be the provision of false or misleading information in relation to security plans and other matters, such as applications for licences and responding to notices.

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 to also accommodate the emergence of rapidly changing technology and to deal with unforeseen circumstances.

The bill also allows the EPA to require a person responsible for a radioactive source to provide a financial assurance, so that the responsible person, not the community, pays for the clean-up or other costs arising from any harm to the environment.

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 had to 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, the New South Wales Health Department holds approximately 1523 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 [AHS] covering all of the items they own or possess. For example, the Sydney South West AHS currently holds 307 registrations, but will now be required to hold and process only one management licence covering all the items that they own or possess. 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 in 2007 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 also 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 they can be renewed.
- 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. A key recommendation of the review was that "jurisdictions are to participate fully and unconditionally in the formulation and implementation of the National Directory for Radiation Protection". Major changes to implement these recommendations were made in New South Wales in 2002 and additional changes that are needed to better align the Act with the National Directory have been included in the bill.

These changes incorporate 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 here with the inclusion of mining and minerals processing industries in the bill. This sector had until now 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 [DII] 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. DECCW and DII 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 DII 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, to ensure a permanent source of technical advice to the Government for policy development.

The bill also contains provision 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. The 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 actions of a person outside New South Wales are 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.

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.