



# Legislative Council

## Radiation Control Amendment Bill

### Hansard - Extract

12/06/2002

#### Second Reading

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.31 p.m.]: I move:

That this bill be now read a second time.

The Radiation Control Act 1990 is primarily about making certain that New South Wales has effective legislation in place to ensure the safe storage, use and disposal of radioactive substances and radiation apparatus used in health care and by industry, and to minimise incidents and accidents associated with radioactive substances and radiation instruments. It must be clearly understood, however, that the Act in no way relates to radiation safety for the nuclear facility at Lucas Heights, which is solely a Commonwealth responsibility.

This bill implements the recommendations of an extensive review of the Radiation Control Act, the first such comprehensive review since its gazettal in 1990. The proposals seek to implement certain recommendations of a National Competition Policy review of Australian radiation protection legislation that must be implemented by 30 June 2002 in order to secure National Competition Policy second tranche payments from the Commonwealth. They also include certain recommendations of the New South Wales Environment Protection Authority, which administers the Act, and others of the Radiation Advisory Council of New South Wales, which advises the Minister on the need to amend the legislation.

The National Competition Policy review was requested by the Council of Australian Governments in December 1998 and was undertaken by the States and Territories under the co-ordination of the Australian Radiation Protection and Nuclear Safety Agency. Queensland, however, declined to participate as it had recently reviewed its radiation protection legislation. A steering committee made up of senior officers from Commonwealth, States and Territories radiation protection agencies was formed by the National Radiation Health Committee to conduct the review. New South Wales fully participated and was represented on the steering committee by the Environment Protection Authority.

The review commenced on 8 August 2000 and an issues paper was released for public comment from October 2000 to December 2000. After receipt and assessment of all the submissions a draft final report was released to the public in March 2001. The final report of the review was published in May 2001 and the New South Wales Government endorsed the review and its 19 recommendations in November 2001. A major long-term aim of this radiation protection legislation reform program is to achieve consistency in radiation protection and safety provisions for all of Australia. This will benefit business by reducing the complexity of the safety laws covering the sale, use and disposal of radioactive substances and radiation apparatus.

Uniformity will also remove current restrictions to the free movement of trained professionals and radiation apparatus, such as medical diagnostic imaging and radiation therapy apparatus, among the States and Territories. These changes will also seek to set uniform requirements, standards and protocols for the reporting of radiation accidents and incidents. This should lead to consistent data being gathered nationally, which will provide a sound basis for planning the prevention and minimisation of such incidents in the future. The Australian Health Ministers Conference on 4 August 1999 agreed that uniform radiation protection would be best achieved through the development of a national directory for radiation protection.

The directory would provide a framework for ionising and non-ionising radiation safety and regulatory provisions that could be adopted within existing jurisdictional legislative frameworks. It would be dynamic—changing over time as new agreements were reached between jurisdictions. The States, the Territories and the Commonwealth would use it to guide future changes to existing legislation. Issues for inclusion in the directory could be raised by any of a number of interested parties. In New South Wales these would include State agencies such as the EPA, the Cabinet Office, WorkCover, the Department of Health, the Department of Mineral Resources, and the Department of Transport. Individuals working with radioactive substances or radiation apparatus and professional organisations could also raise issues.

A comprehensive round of research and consultation would be conducted at a national level prior to implementation of any agreed provisions of the national directory. To achieve this, the process would need to meet the requirements of the principles and guidelines for national standard setting and regulatory action by ministerial councils and standard-setting bodies established by the Council of Australian Governments and also the regulation review requirements of all the individual States and Territories. The final adoption and inclusion of any document in the national directory would require a majority vote of 10 out of 13 of the members of the National Radiation Health Committee, and the endorsement of the Australian Health Ministers Conference.

New South Wales is in a good position to influence the national uniformity agenda because its existing

legislation, when introduced a decade ago, was best practice. Implementation of the national directory should serve to bring other jurisdictions into line with New South Wales on many issues. The national directory is now at an advanced state of development. While New South Wales already has a radiation safety framework that mirrors fairly closely the framework in the national directory, some modifications to the New South Wales legislation will be required, a few of which are included in the current bill, whereas most will be made progressively over several years.

Indeed, a number of the legislative provisions associated with the development of the national directory that were recommended by the National Competition Policy review cannot be implemented before the 30 June 2002 deadline set by the Council of Australian Governments for implementation of the review's recommendations. These provisions are the subject of a detailed implementation plan prepared by the Australian Radiation Protection and Nuclear Safety Agency. It is expected that the Australian Health Ministers Council will endorse the implementation plan shortly and will submit it to the National Competition Council as a transitional plan to satisfy the requirements for National Competition Policy payments to jurisdictions.

The legislative proposals contained in the Radiation Control Amendment Bill 2002 prepare the way for the implementation of the national directory. Further, the bill comprehensively addresses those recommendations of the National Competition Policy review that can be implemented by the 30 June 2002 deadline set by the Council of Australian Governments. The proposals also pick up some additional matters that emerged from a comprehensive review of the legislation conducted by the Environment Protection Authority and the Radiation Advisory Council.

The proposals in the present bill are as follows: minor changes to the current wording of the objective of the Act so as to ensure consistency across all jurisdictions, in accordance with recommendation 1 of the National Competition Policy review; and documents forming part of the national directory for radiation protection to be adopted and given statutory effect in New South Wales. This is achieved by including a definition of the national directory in the bill and by making provision in the bill for the adoption of relevant parts of the national directory by notice published in the *Government Gazette*. Currently, the Act contains no requirement that it be reviewed periodically. In accordance with recommendation 8 of the National Competition Policy review, provision is made in the bill for review of the Act after a period of no more than 10 years. This, too, is in line with good practice and the Government's policy for regular reviews of legislation.

The present bill provides for membership of the Radiation Advisory Council to be increased from 14 to 16, by adding a representative of the WorkCover Authority, because of that agency's role in the protection of occupationally exposed persons, and an expert in naturally occurring radioactivity, because of the increasing public concern about radiation in the environment and its environmental hazards. In addition, the bill proposes that the designation "radiotherapist" in the current Act be updated to "radiation oncologist". The bill seeks to clarify the roles of the Environment Protection Authority and the Radiation Advisory Council in relation to determination of applications for licences, registrations and accreditations. It does so by making the Environment Protection Authority both responsible and accountable in the District Court for such matters while retaining the authority's capacity to seek, and to take into consideration, the advice of the Radiation Advisory Council on them. The bill seeks to amend the definition of "environment" to achieve consistency with the more contemporary definition used in the Protection of the Environment Operations Act 1997.

As I have just indicated, the bill seeks to clarify the roles of the Environment Protection Authority and the Radiation Advisory Council in relation to determination of applications for licences, registrations and accreditations. It does so by making the Environment Protection Authority both responsible and accountable in the District Court for such matters, while retaining the authority's capacity to seek, and to take into consideration, the advice of the Radiation Advisory Council on them. This solution has the advantage that it will retain the Radiation Advisory Council's current *modus operandi* while at the same time putting it beyond legal doubt. It is consistent with contemporary corporate governance models, including the emerging model in the national directory for radiation protection, and will be more administratively efficient than other models considered, such as mandatory referrals to the council.

Further, given the high regard that the Environment Protection Authority has for the Radiation Advisory Council and its members, and the clear dependence of the authority on the expert advice of the council, I am confident that the positive interactions between the two bodies will continue. However, I am also committed to careful oversight of these changes to ensure that they work effectively and I would consider further fine-tuning of the Act over time, if necessary. Some miscellaneous amendments are proposed that relate to the issuing of notices by authorised officers of the Environment Protection Authority, the qualifications of authorised officers and the granting of exemptions. The proposed amendments based on the National Competition Policy review were released to the public in all jurisdictions during the development of the final report of the National Competition Policy review of radiation protection legislation.

An issues paper was released from October to December 2000. Following the analysis of the submissions received, a draft final report of the review was released to the public in March 2001. The New South Wales Government participated fully in this review and endorsed its recommendations in November 2001. During development of the final report of the review, the National Radiation Health Committee also undertook a series of consultation meetings in each jurisdiction. Participants included the respondents to the issues paper, stakeholders invited by the jurisdictions, members of radiation advisory councils and committees, and radiation safety agencies, including the New South Wales Environment Protection Authority. Almost all respondents supported these recommendations and, in particular, moves for greater national uniformity. I have set out the detail of the bill. In conclusion, I remind the House that the reforms proposed in this bill are a necessary start to the process of steering radiation protection legislation in the direction of national uniformity. These reforms are also integral to New South

Wales' commitment to National Competition Policy agreements initiated in 1995 to review existing legislation and justify any restrictions to competition in terms of overriding concerns for the health and safety of people and the environment. I commend the bill to the House.