

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Radiation Protection Bill 2006

EXPLANATORY STATEMENT

Circulated with the authority of
Simon Corbell MLA,
Minister for Health

EXPLANATORY STATEMENT

Outline

This is a Bill to repeal and replace the *Radiation Act 1983*. It establishes a system to regulate the use of ionising radiation in the Territory, and makes provision for the future regulation of non-ionising radiation. (The terms ionising radiation and non-ionising radiation are defined in the Bill at clause 8).

The approach taken in the Bill is based on the National Directory for Radiation Protection Edition 1.0 (the Directory), published by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). The Directory was developed by the National Radiation Health Committee (established under the auspices of ARPANSA with representatives from the States and Territories) in response to the recommendations of a national competition policy review of the radiation protection legislation across Australian jurisdictions. The Directory is a statement of a nationally agreed approach to regulating the use of radiation in Australia.

National standards for regulating non-ionising radiation have not been finalised, and as such, have not been included in the Bill. The Bill makes provision for the addition of sources of non-ionising radiation to the scheme.

A significant feature of the Bill is the reference to the Directory as the national standard. A number of matters of detail of the scheme will be prescribed by regulation, often by reference to the Directory.

Revenue/Cost Implications

The cost of administering the Bill will be met from existing resources. In future, some additional sources of radiation (non-ionising radiation sources) will be regulated once national standards are agreed for them. (The Bill makes provision for additional sources to be added to the scheme by regulation). Regulation of these additional sources of radiation will require additional resources. The provision of these resources are being considered as part of the normal budget process.

Formal Clauses

Part 1- Preliminary:

Clause 1 sets out the title of the Bill.

Clause 2 sets out the commencement provision. The Bill will commence on a date fixed by the Minister, or on 1 July 2007 if it has not commenced by then. This will ensure there is adequate time to put in place arrangements for the new legislation, including necessary regulations.

Clause 3 provides the objects of the Act.

Clause 4 sets out the radiation protection principle. The Radiation Council and other decision makers under the Bill must be guided by this principle.

Clause 5 provides for a dictionary of terms used within the Bill and notifies that the dictionary is located at the end of the Bill.

Clause 6 advises that the notes included within the Bill are explanatory and do not form part of the Act.

Clause 7 advises that this Bill is subject to other legislation, including the Criminal Code and the Legislation Act.

Part 2 – Important Terms

This Part defines the important terms used in the Bill. Many other definitions are included in the dictionary.

Clause 8 defines “radiation,” “ionising radiation” and “non-ionising radiation.” X-rays and the radiation from radioactive substances are examples of ionising radiation. Microwaves, ultraviolet radiation and radiofrequency radiation are examples of non-ionising radiation.

Clause 9 defines “radiation source,” “radiation apparatus,” “radiation facility,” and “radioactive material.” Radiation facilities will be defined by regulation and will include facilities such as nuclear power plants. Note that things can be prescribed to be radiation apparatus by regulation. It is intended that this will be used to remove doubt in cases where there is some uncertainty.

“Radiation facility” is defined by reference to the regulation. These will be facilities such as nuclear power stations (although it is unlikely that such a facility will be established in the Territory).

Clause 10 defines “regulated radiation source” by reference to the regulation. The regulation for this Act will specify the level of ionising radiation emissions at which a radioactive material or apparatus will be regulated, based on the levels set out in the Directory.

Prohibited radiation sources will be defined by regulation (and are excluded from the definition of regulated radiation source). These will be sources for which there is no legitimate use, such as weapons grade plutonium.

Clause 11 sets up the definition of dealing with a radiation source. Dealing with a regulated radiation source will be prohibited without a licence (as set out in Clause 59). Note that a person does not possess a radiation source only because they have had it injected or implanted as part of a medical procedure.

Part 3 – Radiation Safety

This Part sets out provisions regarding radiation safety, including the safety duties that apply to all people who deal with regulated radiation sources, arrangements for licensing and registration of radiation sources, provisions regarding abandonment of sources and emergency powers.

Clause 12 sets out the duty to take reasonable steps to ensure that dealing with a regulated radiation source causes no harm to people and the environment.

Clause 13 sets out the duty on a person dealing with a radiation source to ensure that no-one is exposed to radiation in excess of the dose limit. The dose limit will be set by regulation in accordance with the national standards set out in the Directory. This provision does not apply to people being exposed to radiation as part of a diagnostic and therapeutic procedure, who are covered by the next provision.

Clause 14 sets out the duty to ensure that those who are the subject of diagnostic and therapeutic radiation procedures do not receive excessive doses of radiation.

Clause 15 allows incorporated documents and approved codes of practice to be considered in determining whether a safety duty has been complied with. These will be the nationally agreed codes of practice and standards set by the Australian Radiation Protection and Nuclear Safety Agency.

Clause 16 makes provision for people to apply for licences to deal with regulated radiation sources. The Council can seek further information from an applicant and may refuse to consider an application if the information is not provided.

Clause 17 requires the Council to make a decision about an application for a licence, and sets out the relevant considerations. The considerations include the matters set out in the Directory. Provision is made to expand the relevant considerations by regulation in the event that the Directory is further developed with more standards, such as competency standards.

The Council is required to refuse a licence if issuing it would not be in the public interest, including whether a dose limit would be exceeded. This would include, for example, where the Council was not satisfied that the proposed dealing would be carried out safely.

Clause 18 sets out the form of a licence: it must be in writing, specify the sources to which it relates and the dealing that it authorises.

Clause 19 makes provision for licences to be subject to conditions, which may be prescribed by regulation or imposed by the Council.

Clause 20 provides that licences can be issued for up to three years.

Clause 21 requires licensees to notify the Council of a change of address. It is important for the Council to be able to follow up licensees in the event of a breach of a licence or a dangerous incident. This offence is strict liability because of the potential safety issues that may arise if a licensee cannot be found.

Clause 22 empowers the Council to amend a licence on its own initiative. The licensee must be given opportunity to comment (unless the licensee asked for the amendments).

Clause 23 allows licensees to apply for a licence to be amended. The Council may seek further information from the applicant and can consider any matters it may consider in deciding an application under Clause 17.

Clause 24 provides that a licence to deal with a radiation source is cancelled if the radiation source becomes prohibited. Radiation sources become prohibited when a regulation is made to that effect.

Clause 25 makes provision for people to apply for registration of regulated radiation sources. The Council can seek further information from an applicant and may refuse to consider an application if the information is not provided.

Clause 26 requires the Council to make a decision about an application registration, and sets out the relevant considerations. The considerations include the matters set out in the Directory. Provision is made to expand the relevant considerations by regulation in the event that the Directory is further developed with more standards, such as further standards for registration of sources of non-ionising radiation.

The Council is required to refuse to register a radiation source if issuing it would not be in the public interest, including whether a dose limit would be exceeded. This would include, for example, where the Council was not satisfied that the source would not be able to safely stored.

Clause 27 sets out the form of a registration: it must be in writing, identify the source and set out where the source must be stored.

Sub-clause (2) provides that the applicant for registration becomes the registered owner (a term used throughout the Bill) if the applicant is successful.

Clause 28 allows the Council to impose conditions on a registration.

Clause 29 provides that a source may be registered for up to three years.

Clause 30 requires the registered owner of a radiation source to notify the Council of a change in address within 14 days. It is important for the Council to be able to follow up registered owners in the event of a breach of a condition or a dangerous incident. This offence is strict liability because of the potential safety issues that may arise if a registered owner cannot be found.

Clause 31 empowers the Council to amend a registration on its own initiative. The registered owner must be given opportunity to comment (unless the registered owner asked for the amendments).

Clause 32 makes provision for a registered owner to apply for amendment to a registration. The Council can require the applicant to provide further information and may consider any matters that it may consider in deciding an application for registration under Clause 26.

Clause 33 provides that the registration of a source is automatically cancelled if the source becomes prohibited. Radiation sources become prohibited when a regulation is made to that effect.

Clause 34 sets out the grounds on which the Council can take disciplinary action against a licensee, or a registered owner. Those grounds are that the Council is satisfied on reasonable grounds that the person provided information to the Council that was false or misleading or that the person has contravened the Act or another law.

Clause 35 sets out the disciplinary action the Council can take. These include reprimanding the person, requiring they undertake training, and amending, suspending, or cancelling their licence or registration. The Council can also disqualify a person from holding a licence or being a registered owner for a period of time, or until the person undertakes some specified training.

Clause 36 set out the procedure the Council must follow in taking disciplinary action. The Council must give the person written notice of the proposed action and allow them opportunity to respond. The response from the person must be considered. The Council must give notice of the Council's decision.

These various disciplinary actions take effect 14 days after notice is given to the person.

Clause 37 empowers the Council to immediately suspend a licence (or just some dealings under a licence) or registration. The test for doing so is set out in sub-clause(3) and requires the council to consider whether immediate suspension is in the public interest. In most cases, consideration of the public interest will be consideration of whether it is safe to allow the person to continue to own or deal with a radiation source given their breach of the Act or the fact they should not have been licensed or allowed to become a registered owner.

Suspension notices will end when the Council takes action in the disciplinary proceedings, or when the Council decides that no further action is to be taken. Suspension notices will end after 8 weeks (if not ended earlier by the Council). This will ensure that a person whose licence or registration is suspended will not be disadvantaged unduly if the Council takes a long time to resolve the disciplinary proceedings.

Clause 38 sets out the effect of a licence or dealing suspension, which is that the relevant dealings are no longer authorised. A person who deals with a radiation source commits an offence unless the dealing is authorised by a licence.

Clause 39 sets out the effect of suspension of a registration. Licences that authorise dealing with that specific source will be taken to be suspended.

Clause 40 requires a licensee to return their licence to the Council if it has been suspended, amended or cancelled.

Clause 41 requires the Council to give the licensee an amended version of their licence once the licensee returns it to Council. If a licence has only been partially suspended and the suspension ends, the Council must provide a fresh version of the licence with the previously suspended part restored.

Clause 42 makes it an offence to abandon a radiation source. This carries a serious penalty because of the potential for abandoned sources (particularly radioactive material) to be used in an act of terrorism.

Clause 43 empowers the Council to direct authorised persons to deal with abandoned radiation sources. Authorised persons can be directed to keep the source in possession pending legal proceedings, destroy the source, make it harmless or dispose of it. The Council can ask another person to deal with the source; this person may dispose of the source as required by the Council, and is taken to be appropriately licensed to do so.

Clause 44 makes it so that a person who abandons a radiation source is liable to the Territory for costs incurred in taking action under the previous clause.

Clause 45 empowers the Council to direct an authorised person to take possession of a prohibited radiation source, or ask another person to take possession of the source and dispose of it.

An authorised person may keep the prohibited source in possession pending legal proceedings, destroy the source, make it harmless or dispose of it. Another person may dispose of the source as required by the Council, and is authorised to deal with it for that purpose.

Clause 46 makes it so that a person from whom a prohibited source is taken must pay the costs of disposing of the source.

Clause 47 empowers the Minister to make an emergency order if he or she reasonably believes that it is necessary to prevent or minimise the risk of serious harm to the health and safety of people, property or the environment, arising from a radiation incident. The definition of radiation incident is in sub-clause(5).

An emergency order can authorise the Chief Executive to make a series of requirements designed to protect the health and safety of people, and to protect the safety of the environment.

An order can authorise detention of people, but only if it is necessary to carry out tests to see if the person, because of contamination, poses a risk to the health and safety of others or the environment, or if it is necessary to prevent that person contaminating other persons or the environment.

Sub-clause (4) makes it an offence to fail to take all reasonable steps to comply with a requirement made by the Chief Executive.

Clause 48 makes provision for compensation to be paid if the acts or omissions of the Chief Executive under clause 44 causes a person to suffer loss. Compensation is not payable to the extent that the loss is covered by an insurance policy or to the extent that the person contributed to their own loss. Compensation will also not be payable if the loss would have occurred despite the action or omission of the Chief Executive.

This clause make provision for a person to apply to the Minister for payment of compensation.

Clause 49 requires the Minister to accept a claim of compensation if satisfied that the applicant is entitled and, if so, tell the applicant how much will be paid and how it was worked out. The Minister is taken to have refused an application if it is not decided within 28 days (which will trigger the applicants rights to take the matter to Court under Clause 51).

Clause 50 allows a person to whom an offer of compensation is made to accept or reject it. If accepted, the Territory must pay the compensation.

Clause 51 allows the person to seek recovery of the compensation in Court.

Part 4 – Offences

This part sets out the main offences for the Bill. As the note points out, the *Environment Protection Act 1997* also has offences concerning pollution of the environment, which included pollution with radiation. Accordingly, this part does not contain an offence of causing harm to the environment as these are covered by sections 137, 138 and 139 of the *Environment Protection Act 1997*.

Clause 52 defines safety duty to be the duties set out in Clause 12, Clause 13 and Clause 14.

Clause 53 makes it an offence to fail to comply with a safety duty. Those duties require that a person dealing with a source must take reasonable steps to ensure that no harm results, that the relevant dose limits are not exceeded and that patients are not exposed to more radiation than their doctor specifies. Absolute liability applies to the requirement for a person to comply with a safety duty: because of the inherently dangerous nature of radiation, a person is to be required to comply whether or not they know about the duty or whether they have made an honest and reasonable mistake about it.

Strict liability applies to the element of failing to comply with the duty. Again, the inherently dangerous nature of radiation requires that a person take special care to avoid harming others and ensuring that the dose limits are not exceeded. While it is appropriate that a person not be liable if they make an honest and reasonable mistake that results in their failure to comply, it is not appropriate to require that the person intentionally, recklessly or negligently fail to comply before an offence is committed.

Clause 54 makes it an offence for a person to fail to comply with a safety duty and expose anyone to the risk of death or serious harm. It will be an offence if the person is reckless or negligent as to exposing someone to the risk. Again, absolute liability applies to the element of being required to comply with a safety duty because of the inherently dangerous nature of radiation.

Clause 55 makes it an offence for a person to fail to comply with a safety duty and cause the death of or serious harm to another person. It will be an offence if the person is reckless or negligent as to causing the death or serious harm. Again, absolute liability applies to the element of being required to comply with a safety duty because of the inherently dangerous nature of radiation.

Clause 56 makes it an offence for a person to fail to comply with a safety duty and expose property or the environment to a substantial risk of substantial damage. It will be an offence if the person was reckless or negligent about exposing the property or the environment to the risk. Again, absolute liability applies to the element of being required to comply with a safety duty because of the inherently dangerous nature of radiation.

Clause 57 provides that a Court can make a range of alternative verdicts for the offences of failing to comply with a safety duty. The alternative verdicts are failure to comply with a condition of licence or registration, and, in each case, a lesser offence of the same kind. The alternative verdict can only be reached if the defendant has been given procedural fairness in relation to the finding of guilt.

Clause 58 makes it an offence to fail to comply with the conditions of a licence. This is a strict liability offence and carries a substantial penalty because of the inherently dangerous nature of radiation and radioactive substances.

Clause 59 makes it an offence to deal with a regulated radiation source without a licence. Sub-clause (1) covers the situation where a person deals with a radiation source and knows the dealing is not authorised under a licence. Sub-clause (2) covers the situation where deals with a radiation source and did not know, but ought to have known that the source was a regulated source and the dealing was not authorised under a licence. Sub-clause (3) deals with the situation where a person did not know the dealing was not authorised under a licence. That is, sub-clause (3) is a strict liability offence; a person who makes an honest and reasonable mistake about whether the dealing was authorised will not be guilty of an offence. As with other strict liability offences in the Bill, the inherently dangerous nature of radiation and radioactive substances requires that the offence be strict liability.

Sub-clauses (5) and (6) make it so that a Court can find a person guilty of the negligence or strict liability offence in sub-clause (2) and (3) instead of the intention offence in sub-clause (1), if the person has been given procedural fairness in relation to it. Likewise, a Court can find a person guilty of the sub-clause (3) offence instead of the negligence offence.

Clause 60 makes it a offence to own a regulated radiation source unless it is registered. The inherently dangerous nature of radiation requires that this offence be strict liability. Sub-clause (2) provides an exception for manufacturers, who can possess a source they have manufactured for 90 days after finishing it without having to register it.

Clause 61 makes it an offence to fail to comply with a condition of the registration of a radiation source. The conditions on registrations will generally relate to the safety of people using them and others who might be exposed to radiation as a result of their use. For this reason it is appropriate to have a significant penalty, and for the offence to be strict liability.

Clause 62 makes it an offence to deal with a prohibited radiation source. Prohibited sources will be sources for which there is no legitimate use, such as weapons grade plutonium. The serious consequences of dealing with such sources is the reason for the very high penalty.

Clause 63 makes it an offence to fail to notify the Council of a dangerous event. The obligation will be to immediately advise the Council of the event (sub-clause (1)) and then to provide further information required by the Council (sub-clause (2)). Dangerous events will be prescribed by regulation, and will match the events set out in Schedule 13 of the Directory.

Clause 64 sets out provisions for the criminal liability of the officers of corporations. In summary, an executive officer of a corporation will be liable for an offence by the corporation if the executive officer was reckless about whether the offence was committed, that officer had been in a position to influence the corporation's conduct, and he or she failed to take all reasonable steps to prevent the commission of the offence. The purpose of this provision is to ensure that senior managers within corporations that are involved in owning and dealing with regulated radiation sources ensure that they do everything reasonably within their power to ensure that their corporation complies with the legislation.

Part 5 – Administration

Clause 65 establishes the Radiation Council, and provides that it represents the Territory when exercising its functions.

Clause 66 sets out the Council's functions, which are to make decisions in regard to the licensing and registration system established by the Act and to advise the Minister on radiation protection issues.

Clause 67 empowers the Council to delegate its functions to a public servant or to one of its members. This will allow the Council to realise some efficiencies in its routine operations, and to act promptly in emergency situations without having to formally convene. The Council will retain control over arrangements for delegations.

Clause 68 empowers the Minister to appoint members of the Council. Sub-clause (2) sets out who must be on the Council, which includes a member of the public, a specialist radiologist, an expert in the physical and biological properties of radiation and a person selected by the Minister to have expertise that can assist the Council. The Minister will be able to appoint more members as necessary. For example, the Minister will be able to appoint members with expertise in non-ionising radiation once non-ionising sources become regulated.

Clause 69 specifies that Council members are appointed for up to 3 years. Council members can be reappointed.

Clause 70 requires the Minister to appoint a Chair and Deputy Chair.

Clause 71 empowers the Minister to end a Council member's appointment for misbehaviour, bankruptcy, being convicted of a serious offence, failure to act with honesty and diligence, failure to disclose interests, unapproved absences and for physical or mental incapacity.

Clause 72 sets out the functions of the Chair of the Council.

Clause 73 sets out the functions of the Deputy Chair, which is to carry out the Chair's functions in his or her absence.

Clause 74 requires Council members to act with honesty, care and diligence in exercising their functions.

Clause 75 requires Council members to take reasonable steps to avoid conflicts of interest.

Clause 76 requires that disclosure of interests in matters before the Council be a standing item on the agenda of the Council.

Clause 77 requires Council members to disclose their interest in matters before the Council. The Council can decide whether the member should stand aside from decision making on the matter; the member whose interests are under consideration must not be present for this decision. The level of interest required for a disclosure of interest is defined in the provision.

Clause 78 requires the Chair of the Council to report to the Minister on disclosure of interests and decisions taken by the Council, both as they happen and in an annual summary. The summary must be provided to a relevant committee of the Legislative Assembly.

Clause 79 protects Council members from civil liability for actions taken in exercising functions under the Bill, provided that they are acting honestly and not acting recklessly.

Clause 80 allows the Council to set its own schedule of meetings, but requires that the Council meet at least once every three months. The Chair can call meetings at his or her discretion, but must call a meeting if required by the Minister or any two members of the Council.

Clause 81 sets out who presides at meetings of the Council.

Clause 82 sets the quorum of the Council at half of the appointed members.

Clause 83 provides that questions before the council are decided by majority vote, with the vote of the presiding member being a casting vote if necessary.

Clause 84 empowers the Council to set its own procedures, and makes provision for Council meetings to take place by forms of remote communication (such as telephone).

Clause 85 requires the Council to provide advice to the Minister concerning radiation protection issues on request.

Clause 86 establishes the Radiation Register and requires the Council to keep it. It must include details of licences, registrations, disciplinary action and exemptions.

Clause 87 empowers the Council to correct mistakes in the Register.

Part 6 – Enforcement

Clause 88 defines “connected” and “occupier” for this part of the Bill.

Clause 89 empowers the Chief Executive to appoint public servants to be authorised officers for the Bill.

Clause 90 empowers the Chief Executive to issue identity cards to authorised officers and sets out the requirements for them. Sub-clause (3) makes it an offence for a former authorised officer to fail to return his or her identity card.

Clause 91 contains a general power for authorised officers to enter premises. It describes the circumstances in which the power to enter may be exercised, including entry with the consent of the person in control of premises, entry under warrant, and entry without consent or a warrant.

Clause 92 requires authorised officers to produce their identity cards when asked to do so by the person in control of premises that they enter. An authorised officer who does not produce his or her identity card must leave the premises.

Clause 93 explains the way in which an authorised officer can obtain the consent of the person in control to enter premises. The purpose of this provision is to ensure that the person’s consent is fully informed. Among other matters, the authorised officer must ask the person in control to sign a written acknowledgement of consent. If a written acknowledgement of consent is not produced in court in subsequent proceedings, the Court must find that the person in control of premises did not consent to the entry.

Clause 94 sets out the general powers of authorised officers in relation to premises that they enter under this Part of the Bill. These powers will enable the authorised officers to examine things, make copies, take samples, open packages, operate plant or equipment, take measurements, conduct tests, make records, seize items, and to ask questions or obtain information. Authorised officers may also ask another person at the premises for assistance in doing any of these things. These comprehensive powers are essential to ensure that authorised officers can effectively monitor compliance with the proposed Act.

Sub-clause (2) obliges a person to take reasonable steps to comply with a request for assistance, making it an offence not to do so.

Clause 95 gives an authorised officer the power to seize things on premises that he or she has entered under this Part of the Bill. The kinds of things that an authorised officer can seize are items that the authorised officer is satisfied are connected with any offences against the legislation that are related to the authorised officer’s reasons for entering the premises. An authorised officer can also seize any things covered by a warrant. Authorised officers also have the power to seize things if the authorised officer is reasonably satisfied that the seizure is necessary to stop the thing from being concealed, lost or destroyed, or used to commit an offence.

The provision also allows authorised officers to seize items if satisfied that they pose a risk to the health or safety of people, or a risk of damage to property or the environment.

Seized items may be removed, or the authorised officer may leave them at the premises and restrict access to them. It is an offence to interfere with an item that has been restricted, without the approval of the authorised officer. This is a strict liability offence, to ensure that people cannot frustrate a seizure or investigation.

Clause 96 explains that authorised officers can apply to a magistrate for a search warrant. Search warrants can be issued if a magistrate is satisfied that there is likely to be evidence of an offence under the legislation at premises either currently or within the next 7 days. A warrant issued by a magistrate must contain details such as when it is to be executed, the items that it applies to, the offence that it relates to, the actions that it authorises and the period for which it remains in force.

Clause 97 sets out the methods by which an application for a search warrant may be made to a magistrate if the authorised officer is not able to make the application in person. This provision is included to cover situations where search warrants are needed urgently, for example, because it is thought that evidence might be lost or destroyed if the search is not carried out promptly. The application may be made by such methods as phone, fax, radio or other forms of communication. This clause also includes procedural provisions for recording applications for warrants and the terms of any warrant issued as a result.

Clause 98 includes a general requirement that authorised officers must announce that they are authorised to enter premises before they seek entry under the warrant. This requirement may not apply if the authorised officer believes on reasonable grounds that immediate entry is necessary for reasons of safety or to preserve evidence at the premises.

Clause 99 requires authorised officers to give details of a search warrant to the person in control of premises that are to be searched under the warrant. The person in control must also be given a written statement of their rights and obligations.

Clause 100 makes it clear that a person in control of premises is generally entitled to be present during a search. This right is not absolute – a person can be excluded if his or her presence would impede the search, or if he or she is under arrest and being present at the search might interfere with the objectives of the search.

Clause 101 explains that an inspector must give a receipt for any items seized to the person from whom they were taken. This provision is necessary so that seized items can be returned to the correct person, when they become available to be returned.

Clause 102 enables an item found at the premises to be moved elsewhere for examination or processing in order to decide whether the item can be seized under the search warrant. This provision is necessary because it is not always immediately apparent whether an item comes within the terms of a search warrant, and in these circumstances it is desirable to have a clear legal basis for moving items found on premises. The person in control of premises or their

representative is entitled to observe while the item is examined or processed at the other location.

Clause 103 provides a right of access to documents or other things that are seized under this part of the Bill. The right of access applies to any person who would be entitled to inspect the item if it had not been seized.

Clause 104 deals with the return of seized items. It sets out the circumstances in which items must be returned to the owner, or in which compensation is to be paid to the owner for the loss of the thing seized. In brief, these circumstances are:

- where, within six months of seizure, no infringement notice has been served on the owner; an infringement notice was served but was then withdrawn, or no prosecution is subsequently initiated against the owner; an infringement notice is served but disputed, and no conviction results; a prosecution has been initiated but the person not been found guilty; or
- the chief executive decides, before the item has been forfeited to the Territory, that no offence has been committed or that the offence should not be prosecuted.

Clause 105 deals with the forfeiture of things that have been seized under this chapter of the Bill. It explains that if a forfeited item has not been returned, destroyed or otherwise disposed of, and no application has been made to disallow its seizure, the item is forfeited to the Territory and it may be sold, destroyed or otherwise disposed of as directed by the chief executive.

Clause 106 makes provision for the destruction of things seized under this part of the Bill that pose a risk to the health and safety of people, or a risk of damage to property or the environment. An authorised person can require the person in charge of premises to destroy the thing, or if the thing has been seized, the authorised officer can destroy it. The costs of destroying the thing can be recovered by the territory from the owner or the person in charge of premises where the thing was.

Clause 107 makes provision for a person who claims to be entitled to possession of a thing seized under this part of the Bill to apply to the Magistrates Court for an order for return of the item. The claimant is required to serve the Chief Executive with a copy of his or her application.

Clause 108 sets out the test the Magistrates Court must apply in deciding an application under the previous clause. The Court must order return if the person would be entitled to the thing, it is not connected with an offence and possession of the thing would not itself be an offence. The Court can order return of the thing, compensation if there has been a loss in value of the thing, and make an order for costs.

Clause 109 requires authorised officers to take all reasonable steps to minimise inconvenience, detriment and damage when exercising powers or functions under the legislation. If damage does occur, the authorised officer must notify the owner of the thing that was damaged.

Clause 110 enables a person to claim compensation from the Territory for loss or expenses arising from the exercise, or purported exercise of functions under this chapter of the Bill. Any court of competent jurisdiction can decide applications for compensation.

Part 7 – Review of Decisions

Clause 111 sets out the decisions that can be made under the Bill that will be reviewable.

Clause 112 provides that an application can be made to the AAT for review of reviewable decisions.

Clause 113 requires the Council to give written notice of reviewable decisions to people who are affected by it. The notice must comply with the code of practice in force under section 25B of the *Administrative Appeals Tribunal Act 1989*.

Part 8 – Miscellaneous

Clause 114 empowers the Minister to exempt people, radiation sources and dealings from the requirements of the Bill if satisfied that the exemption will not pose a significant threat of harm to the health and safety of people and the environment. Conditions can be set on an exemption, and they have no effect to the extent that it is inconsistent with a regulation. Further criteria for exemption can be set by regulation; such criteria will likely be drawn from the Directory.

Exemptions are disallowable instruments, giving the Legislative Assembly oversight of the Minister's power to grant them.

Clause 115 makes it an offence for members of the Council, former members, those acting under the direction of Council and those providing advice, assistance and expertise to the Council to disclose or make a record of “protected information” gained about a person in the course of carrying out a function under the Bill.

Disclosures and records made of the purpose of this Bill or another law are exempt. Sub-clause (4) sets out a series of additional exceptions.

Clause 116 empowers the Minister to approve codes of practice for the Bill. Such an approval is disallowable in the Legislative Assembly.

Clause 117 provides for notification of incorporated documents on the Legislation Register. The Chief Executive must prepare a document containing relevant details about incorporated documents, which must be notified on the Legislation Register.

Clause 118 requires the Chief Executive to make incorporated documents available for inspection free of charge and at reasonable times.

Clause 119 makes provision for the Minister to give evidentiary certificates for prosecution proceedings in relation to a range of administrative and technical matters.

Clause 120 empowers the Minister to determine fees for the Bill. Fee determinations are disallowable.

Clause 121 empowers the Minister to approve forms for the Bill. If a form is approved for a purpose, it must be used. Approved forms are notifiable instruments.

Clause 122 empowers the Executive to make regulations for the Bill, and allows such regulations to apply, approve and incorporate instruments in force from time to time.

Clause 123 allows exemptions to be made by regulation.

Clause 124 allows the regulations to impose conditions on licences and registrations to protect the public interest.

Clause 125 requires the Minister to review the operation of the Act and provide a report to the Legislative Assembly as soon as practicable after 1 July 2016.

Part 9 – Consequential Amendments and Repeals

Clause 126 provides that this Bill amends the *Clinical Waste Act 1990* and the *Dangerous Substances Act 2004*, as set out in schedule 1.

Clause 127 sets out the list of legislation repealed. This list comprises the *Radiation Act 1983* and all the regulations and instruments made under it.

Part 10 – Transitional

Clause 128 provides definitions for this part.

Clause 129 makes it so that a licence under the existing Radiation Act will be considered a licence under the new legislation. Such licences are taken to have conditions included in a licence under the Bill.

Clause 130 makes it so that irradiating apparatus registered under existing Radiation Act will be considered registered under the new legislation. Such registrations will be taken to have conditions for registration of a radiation source under the Bill.

Clause 131 grants power to make regulations to prescribe additional transitional matters necessary because of the enactment of this Bill. Such a regulation can modify the operation of this part of the Bill.

Clause 132 provides that this transitional part expires 2 years after the Bill commences.

Schedule 1 – Consequential amendments

Part 1.1 Clinical Waste Act 1989

This amendment updates the reference to radioactive material defined in the *Radiation Act 1983* to the definition in the Bill.

Part 1.2 Dangerous Substances Act 2004

This amendment updates the reference to radioactive material defined in the *Radiation Act 1983* to the definition in the Bill.

The Dictionary sets out the definitions for terminology used in the Bill.