

**2022**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**RADIATION PROTECTION AMENDMENT BILL 2022**

**REVISED EXPLANATORY STATEMENT**

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# Radiation Protection Amendment Bill 2022

## REVISED EXPLANATORY STATEMENT

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This revised explanatory statement relates to the Radiation Protection Amendment Bill 2022 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

The Statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

This revised explanatory statement has been prepared to address comments made in relation to the Bill by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in Scrutiny Report No 15 published on 27 April 2022.

### OVERVIEW OF THE BILL

The objective of the Radiation Protection Act 2006 (the Act) is to protect the health and safety of people, protect property and the environment from the harmful effects of radiation. All States and Territories, including the Australian Government, have legislation to control the dealing with ionising radiation within their jurisdiction. All jurisdictions adopt the radiation protection principle that requires that regulatory and safety controls be in place to ensure any exposure to ionising radiation is necessary, limited and justified.

In the ACT, the Act regulates the use of ionising radiation through a licencing and registration framework, as supported through the adoption of regulatory and safety codes as published by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). All states, including the ACT, adopt the regulatory principles of the ARPANSA National Directory for Radiation Protection (NDRP) in order to promote a uniform framework on safe dealings with radiation. The Radiation Protection Regulation 2007 (the Regulation), together with any ARPANSA regulatory documents adopted by the Act, provide detail for the ACT's radiation protection regulatory framework.

This Bill proposes changes to the Act and the Regulation to further radiation safety controls, improve regulatory capability, and promote consistency with other states and territories as guided by the NDRP, stakeholder feedback, information from other jurisdictions, and

recommendations from the ACT Health 2018 Review Report of the Radiation Protection Act 2006.

Specifically, the Bill provides for the following changes:

- i. The Chief Health Officer (CHO) be responsible for decisions about an application to deal with, or register, a radiation source;
- ii. Radiation Advisory Committee (RAC) to advise the CHO and Minister on radiation safety matters
- iii. Improve the construction and use of enforcement provisions and tools including improvement notices and prohibition notices;
- iv. Allow the Minister to temporarily exempt people from the Act in response to an emergency radiation incident;
- v. Establish rules for the appointment and use of Radiation Safety Officers (RSO) and service providers; and
- vi. Allow the CHO to publish certain information held on the ACT's radiation register.

The Bill ensures the ACT Government proactively addresses the impacts associated with radiation materials, while providing appropriate safeguards to maintain public health and environmental safety standards, particularly in a COVID-19 context. Notwithstanding this, the approach is similar to those adopted or developed in other Australian jurisdictions in accordance with regulatory principles of the NDRP and the Codes and Standards that make up the ARPANSA Radiation Protection Series.

A detailed explanation of each clause of the Bill follows. Discussion about the Bill's engagement with human rights are outlined within this explanatory statement.

## **COST AND BENEFITS STATEMENT**

The costs and benefits of the proposed Bill are examined in detail by a Regulatory Impact Statement (RIS) as presented with this Bill. The RIS found that the measures proposed by the Bill are likely to improve government's regulatory capability, business efficiency and are not associated with a unjustifiable regulatory burden or known risk to public health. Stakeholder consultation in 2018 and 2021 found broad support for change proposed by the Bill.

## **CONSISTENCY WITH HUMAN RIGHTS**

This section provides an overview of the human rights which may be engaged by the Bill and a discussion on legitimacy, limitation and proportionality for each right engaged. The proposed amendments to the Act have been considered in the context of the objects of the Human Rights Act 2001 (HRA) and section 28(1) of the HRA which provides that in deciding whether a limit on human rights is reasonable, all relevant factors must be considered, including the following:

- a) the nature of the right affected
- b) the importance of the purpose of the limitation
- c) the nature and extent of the limitation
- d) the relationship between the limitation and its purpose and

- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The Bill also supports the following rights under the HRA:

- The right to life.

The Bill engages the following rights under the HRA:

- Privacy and reputation.
- Rights to presumption of innocence.
- Right to liberty and security of person.

### The right to life

The right to life has been interpreted by the United Nations' Human Rights Committee as meaning that States must take appropriate measures to address the general conditions in society that may give rise to threats to the right to life or prevent individuals from enjoying their right to life with dignity and that environmental degradation and climate change are a threat to present and future generations enjoyment of the right to life. Thus, it has stated that 'implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.'<sup>1</sup>

This Bill engages and supports the right to life through the implementation of radiation safety measures (specifically the requirement to appoint a RSO and that a RMP be prepared for regulated radiation sources). The requirement to develop a RMP and appoint a RSO is anticipated to foster a positive radiation safety culture and facilitate timely identification, reporting and mediation of any radiation safety risks. In recognising that exposure to ionising radiation is directly associated with health and environmental impacts, this Bill supports the right to life in the context of environmental preservation through new requirements regarding notification of disposed radiation sources.

### The right to privacy and reputation

Section 12(a) of the HRA provides that a person has the right to not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The right to privacy and reputation is engaged in relation to Division 3.3A of the Bill through the establishment of a public register of persons authorised to deal with sources that emit ionising radiation (the register). The right to privacy is engaged as certain information collected by the CHO in accordance with the Act may be published online.

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<sup>1</sup> UN Human Rights Committee (HRC), [General comment no. 36, Article 6 \(Right to Life\)](#), 3 September 2019, CCPR/C/GC/35.

### *The nature of the right affected and extent of the limitation*

The right to privacy is a fundamental right to protect a person's privacy and reputation from unreasonable interference or denigration.

The Bill was developed to minimise any undue interference with a person's right to privacy and reputation by restricting the type of information available on the register. Personal information collected by the CHO that is not directly related to a person's capacity to deal with radiation will be omitted, such as a person's residential address, employment details, age, gender, and academic qualifications. If considered in the public interest and objective of the Act, the CHO may make information in the Register publicly available such as a person's licensing status, expiry date, unique license number, and any limitations or conditions of their license. Information available in the Register would not exceed information available in comparable health licensing registers, or licensed professions such radiation licence registers in NSW<sup>2</sup>, VIC<sup>3</sup>, QLD<sup>4</sup> and SA<sup>5</sup>, or the Australian Register of Health Practitioners<sup>6</sup>. In keeping with best practice, ACTHD will update its application forms to clearly advise and seek consent of applicants to publish information collected and stored in the Register, which may be published by the CHO (including in a web-based format) where in the public interest. Applicant's will be encouraged to submit any representations against publication should they be of the view that the display of personal information is not in the public interest.

The limited scope of the Register works to ensure the provision's engagement on the right to privacy is limited. Importantly, the provision does not enable for the publication of other personal information about a current or former licence-holder such as their date of birth, residential or business address. The Bill also allows the CHO to correct any error or omission from the Register either on the CHO's own initiative, or at the request of an interested party. As part of the application process, all people applying for a licence to deal with a regulated radiation source under the Act, will be made aware that collected information will be stored on the Radiation Register and may appear in a publicly accessible format.

### *The importance of the purpose of the limitation*

The Parliament of Victoria, in introducing the Radiation Amendment Bill 2010, which provided for the publication of licence radiation, was [found to be compatible](#) with the *Charter of Human Rights and Responsibilities Act 2006 (VIC)* on the grounds a public register “*does not arbitrarily interfere with the right to privacy because it enables the secretary to disclose information for an important purpose - to enable management licence-holders to confirm whether particular employees, contractors and applicants for employment currently hold an appropriate use licence.*”<sup>7</sup>

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<sup>2</sup> Radiation Control Act 1990 (NSW), s13C

<sup>3</sup> Radiation Act 2005, s138 (VIC)

<sup>4</sup> Radiation Safety Act 1999 (QLD), Division 1

<sup>5</sup> Radiation Protection and Control Act 2021 (SA), s77

<sup>6</sup> Health Practitioner Regulation National Law (ACT), Part 7

<sup>7</sup> Parliament of Victoria. Legislative Assembly, 56<sup>th</sup> Parliament, 1<sup>st</sup> Session, Book 2 (February 2010). Radiation Amendment Bill 2010. Pg 493.

Similar to the Radiation Amendment Bill 2010 (VIC), the Bill is seen to engage the right to privacy and reputation under the HRA. This engagement is considered to be minimal, reasonably restricted, and in pursuit of a specific purpose - being to ascertain whether an individual holds an appropriate authority to deal with radiation. The Register is currently maintained by the Radiation Council and the Bill proposes to transfer this responsibility to the CHO. Information to be stored in the Register has not changed. The risk posed by not having a register presents the inability to accurately regulate persons licensed to deal with ionising radiation, and therefore maintain safeguards to protect the health and safety of people, property, and the environment from its harmful effects.

The establishment of a Register was supported by stakeholders during a 2021 survey and seeks to support businesses in their credentialling of staff and gain health consumer confidence. Establishing the Register also assists other jurisdictions in their regulation of radiation licenses under automatic mutual recognition (AMR) provisions of the *Mutual Recognition Act 1992 (Cwth)*. AMR provides safeguards to maintain standards and protect consumers, workers and others by being able to easily identify whether a person has an appropriate licence. While other less restrictive policy options were considered to give effect to a public register of radiation licenses, legislative change to the Act was considered necessary to ensure the engagement did not unreasonably interfere with a person's privacy as protected by the *Information Privacy Act 2014*, and to ensure such engagements are duly considered and subject to debate in the ACT Legislative Assembly.

#### The right to the presumption of innocence

The application of strict liability in offences, whether applying to the entire offence or to select elements of the offence, engages the presumption of innocence under s22(1) of the HR Act by removing the fault elements from an offence or aspects of the offence. This right is engaged by the Bill's use of strict liability under s22, s30 and s62A for offences relating a person's failure to update their licence and registration details, and to notify the CHO of the disposal of a registered radiation source.

For the relevant offence this means that it will be sufficient for the prosecution to establish the factual elements without needing to prove fault or a mental element in regard to the offence. Accordingly, whilst a person will be able to raise the defence of reasonable and honest mistake of fact, it will not be a defence to claim ignorance of, or mistaken belief about a person's obligation to notify the CHO of a change in licence or registration details or source disposal. It is noted that any defendant alleged of breaching strict liability offences has a range of defences available to them under the *Criminal Code 2002* such as 'mistake of fact' or 'intervening conduct or event'.

Offences relating to the update of contact information already appear within the Act as strict liability. This Bill only provides that a licence holder or registration holder must notify the CHO of a change in licence or registration details and not the Radiation Council.

Although these offences engage the presumption of innocence under the HRA s22(1), strict liability offences are not inherently incompatible with human rights. In the ACT, dealings

with ionising radiation sources and the registration of such sources are regulated activities, and therefore there is an assumption of responsibility by those regulated under the licencing structure. This responsibility and the application of strict liability is necessary given the degree of harms that may arise from dealings with radiation sources. The offences' purpose is to ensure ACT Government has an accurate and up-to-date record of regulated radiation sources and people authorised to use radiation sources. The lack of having up-to-date records of such information may result in negative implications to the health and safety of people, property and the environment by not being able to regulate the harmful effects of ionising radiation through ensuring they meet safety standards. This is of particular importance to support ongoing regulatory activities relating to the safe dealings with ionising radiation. Maintaining accurate licensing information is also critical to supporting the operation of a public licensing register (as provided for by this Bill) and facilitating regulatory discussions with other jurisdictions for authorisations operating under the AMR provisions of the *Mutual Recognition Act 1992 (Cwth)*.

### The right to the liberty and security

Section 18 of the HRA provides that everyone has the right to liberty and security of person and that no-one may be arbitrarily arrested or detained.

The right to liberty and security is engaged in relation to new sections 115(1) and 115(2) of the Bill through the establishment of offences which include the potential for imprisonment. Section 115(1) provides an offence with a maximum penalty of 50 penalty units, imprisonment for 6 months or both and section 115(2) provides an offence with a maximum penalty of 1,000 penalty units, imprisonment for 3 years or both. These sections engage the right to liberty and security as the maximum penalties allows the court to imprison a person found guilty of this offence, thereby depriving that person of liberty. Any penalty requiring imprisonment under the Act can only be imposed by a relevant Court following consideration to totality of circumstances that relate to any alleged offending behaviour. The maximum penalty for an offence under s115 is comparable with existing offences under the Act for failing to comply with a safety duty that causes in the death or serious harm of a person.

Section 115 provides an offence for the reckless use of protected information, or intentional misuse of protected information to endanger a person's health or safety, or damage to property or environment. If protected information were used to intentionally cause harm, then s115(2) provides a significant maximum penalty of 3 years imprisonment to deter such behaviour, irrespective of whether an intended harm eventuated. The offences' purpose is to discourage certain behaviour that may cause a serious impact to the safety of people, property, and the environment, and instead encourage a positive radiation safety culture and promote voluntary compliance. The purpose of imposing a legal burden such as a maximum penalty, that may include a term of imprisonment, is to ensure the effectiveness of enforcement and compliance with the Act, by imposing a duty on persons entrusted with protected information.

A maximum imprisonment term of 3 years may be imposed by a Court for proven breaches of s115(2) in having regard to the totality of circumstances. This penalty is considered

appropriate and necessary given the offence concerns the intentional disclosure of protected information to cause harm. An imprisonment term may be imposed under s115(2) in recognising offending behaviour may result in a wide range of community, business, public and environmental harms. A sufficient penalty is required to deter such behaviour. For example, offending behaviour under s115(2) may be associated with terrorist-like activities or espionage-like activities. Subsection 115(1) prescribes for a lesser potential term of imprisonment of up to 6 months for the reckless misuse of protected information. The reckless misuse of protected information is already an established offence under the Act.

Although these offences engage the right to liberty and security, offences which may include a term of imprisonment are not inherently incompatible with human rights. As outlined by section 28 of the HRA, such offences may be reasonably justifiable in a free and democratic society. After having consideration to the HRA and the range of behaviour that could satisfy any proven breach of s115 of the Act, providing for a maximum penalty that may include imprisonment for the reckless or intentional release of information is considered appropriate and proportionate.



## CLAUSE NOTES

### **Clause 1**                      **Name of Act**

This is a technical clause that names the short title of the Act upon its passage in the ACT Legislative Assembly. The name of the Act will be the *Radiation Protection Amendment Act 2022*.

### **Clause 2**                      **Commencement**

This clause provides that the Act will commence 2 months after its notification day.

### **Clause 3**                      **Legislation amended**

This clause lists the legislation amended by the Bill. The Bill will amend the *Radiation Protection Act 2006*. The Bill also amends the Radiation Protection Regulation 2007 and *Public Health Act 1997*.

### **Clause 4**                      **Legislation repealed**

This clause lists the legislation repealed by the Bill. The Bill will repeal the approved form relating to client consent to the use of solaria. This form is to be repealed as it is no longer in use.

### **Clause 5**                      **Radiation Protection Principle, Section 4(2)**

This clause amends section 4 of the Act to substitute reference to the Radiation Council to the Radiation Advisory Committee (advisory committee). The advisory committee is established by the Bill and must have regard to the Radiation Protection Principle as defined by the National Directory for Radiation Protection.

### **Clause 6**                      **Meaning of *deal* with radiation source** **New section 11 (1) (ea)**

This clause amends section 11 of the Act to update the meaning of to ‘deal’ with a radiation source to include ‘inspect and assesses the safety of the radiation source to ensure compliance with this Act’. This update is to enable for the licensing of ‘approved testers’ or ‘service providers’ in the ACT. Enabling for service providers in the ACT is a key radiation safety measure recommended by the NDRP and is accepted safety practice in other jurisdictions. While ‘approved testers’ or ‘service providers’ already operate in the ACT, this update will remove any doubt as to their authority to deal with a regulated radiation source.

It is acknowledged that larger health service providers may have existing specialist staff who are sufficiently trained and experience to *deal* with radiation for testing purposes. This licensing provision does not seek to exclude any sufficiently trained person from applying for licence to deal with a radiation source for testing or compliance purposes if considered to be suitable through licensing processes.

## **Clause 7 - 8                    Sections 13(3) and 14**

This clause replaces ‘doctor’ to ‘health practitioner’ to clarify current legislative arrangements that health practitioners may order a medical procedure for a person using a regulated radiation source such as an x-ray. This clause does not alter the operation of Act and seeks to only clarify existing legislative interpretation and operational practices. Clause 8 inserts a new note to further advise the reader that a health practitioner includes a doctor registered under the *Health Practitioner Regulation National Law (ACT)*.

## **Clause 9                            Divisions 3.2 and 3.3**

Clause 9 of the Bill inserts new Divisions 3.2 and 3.3 of the Act regarding the administration of licence applications to deal with a regulated radiation source, registration of a regulated radiation source. Clause 9 also inserts new Division 3.3A, 3.3B and 3.3C regarding the Radiation Register, Radiation Management Plans and improvement notices and prohibition notices. These new divisions as inserted by Clause 9 are described below.

### Division 3.2

Clause 9 of the Bill substitutes sections 16 - 24 of the Act relating to application for a licence to deal with a regulated radiation source (licence applications), decisions about licence applications, and related provisions. These sections are renamed as Division 3.2.

This new division establishes the Chief Health Officer (CHO) as the decision maker for licence applications to deal with a regulated radiation source, including placing conditions on licences, amendments and licence terms. Authorising the CHO to make decisions regarding radiation-related licence applications is consistent with other Australian States and Territories and other health licensing frameworks. This change also aims to improve business efficiencies and government accountability in licencing decisions. With exception to establishing the CHO as the statutory authority with responsibility for licenses and related updates to improve wording, existing sections 16-24 of the Bill remain unchanged.

Clause 9 also inserts new section 17A to the Act to provide that the CHO must have regard to defined factors in determining whether an applicant is a suitable person to hold a licence. These include consideration as to whether the applicant has relevant skills or experience, if they have been subject to disciplinary action, or convicted of an offence against the Act or corresponding law.

New section 21 of the Bill includes an offence for failing to update the CHO of any change to licence name of address details within 14 days of the change. This offence is a strict liability offence and includes a maximum penalty of 20 penalty units. This section also prescribes the CHO as the regulatory authority to be advised of any change in licence details. This Bill does not make any change to the construction of the offence provision, maximum penalty or time period in which a change in details must be reported.

### Division 3.3

Clause 9 of the Bill substitutes sections 25 - 32 of the Act relating to applications to register a regulated radiation source (source registration), making decisions about source registrations and related provisions. These sections are renamed as Division 3.3.

Similar to new Division 3.2, this substitution establishes the CHO as the decision maker for applications for source registrations, including placing conditions on registrations, amendments and registration terms. New section 26A provides that the CHO must have regard to defined factors in determining whether an applicant is a suitable person to own a registered regulated source registration. These factors include the applicant's relevant skills or experience and whether the person has been subject to disciplinary action, convicted of an offence against the Act or corresponding law, and ability to satisfy any relevant requirements of the National Directory for Radiation Protection (NDRP).

Under new section 25 of the Act, the CHO must also consider if it is in the public interest that the source be registered and anything relevant in relation to the applicant's ability to comply with the Act.

Dealings with regulated radiation sources have potential to have significant and long-lasting impacts on human and environmental health if used incorrectly or inappropriately. New sections 17A and 26A aim to minimise these risks by providing that only suitable persons are eligible to deal with, and own regulated radiation sources.

Clause 9 also amends section 25 of the Act to provide that a person must submit a Radiation Management Plan (RMP) in applying for a radiation source to be registered. RMPs are established by new section 33C as inserted by this Bill. New section 28 establishes conditions that a registration is automatically subject to a condition that the registered owner maintains a RMP and Radiation Safety Officer (RSO) as outlined in their RMP. RSOs are established by new section 33C as inserted by this Bill.

Clause 9 of the Bill inserts new subsection 33(3) into the Act to provide that the CHO must within 7 days, give written notice to a person whose registration has been automatically cancelled. No other changes are made to section 33 regarding the automatic cancellation of a registration.

### Division 3.3A

New Division 3.3A requires the CHO to keep and maintain a register of all radiation licences, registered radiation sources and anything else prescribed by regulation (the Radiation Register). The Radiation Register was previously maintained by the Radiation Council. New section 33A prescribes the information that must be maintained in the Radiation Register for licences and registrations respectively. The Bill also provides that certain information held in the Register be made available for public inspection. Other jurisdictions, including QLD, NSW and SA provide for a publicly accessible register of radiation licences to assist organisations perform staff credentialing and sharing of limited regulatory information between states and territories.

If the CHO considers to be in the public interest, the CHO may also make available information in the Radiation Register pertaining to radiation sources. Any consideration to

the publishing of information relating to regulated sources would be subject to a strict public interest test under new subsection 33A(4) to ensure safety, security, privacy and businesses are not adversely impacted by release of information. In view of the sensitive information associated with registered radiation source, the CHO should take a conservative approach regarding the release of any registered radiation source information and consult the RAC (or comparable radiation advisory body) regarding the public's utility of accessing such information to ensure health consumer and business concerns are appropriately balanced.

### Division 3.3B

Clause 9 of the Bill also inserts new division 3.3B 'Radiation Management Plan' into the Act. This division sets out the definition and purpose of a RMP and RSO. This clause also inserts new section 33E that provides that the CHO may determine a qualification required for an RSO under the Act by notifiable instrument and that an instrument may adopt or apply a law or instrument of another jurisdiction. As a CHO determination relates to technical safety matters, it is appropriate that any determination is a notifiable instrument rather than a disallowable instrument.

The CHO will consult the Radiation Advisory Committee (as proposed by Part 5 of the Bill) prior to making any determination under section 33E to ensure that a determination considers any potential business disruption, implementation issues and the promotion of occupational and radiation safety principles in workplaces. In addition, the CHO is accountable to the Minister for Health regarding the performance of their statutory functions.

Any determination made under new section 33E would not be applied retrospectively and would be communicated to registered radiation source owners. In the event that a determination requires existing radiation management plans to be updated, radiation source owners would be alerted to the need to amend their existing radiation management plans (including any change to a nominated RSO) in accordance with section 33F (3) as contained in the Bill. Any such action taken by the CHO under section 33F (3) is a reviewable decision, which ensures that any radiation source owner who is concerned about the impacts of a decision may seek a review of the decision.

Providing that the CHO may apply a law or instrument of another jurisdiction is to provide for a nationally consistent regulatory framework for radiation protection to the greatest extent possible. An ongoing commitment to strive for national uniformity in radiation safety management was first established in 1999 by the former Australian Health Ministers' Conference.

Any instrument or law of another jurisdiction as adopted by the Act, including any material adopted by the CHO under new section 33E, is taken to be an incorporated document under the Act. As required, the Director-General may publish an incorporated document notice for an incorporated document. An incorporated document notice is a notifiable instrument. In accordance with sections 117 and 118 of the Act, an incorporated document notice aims to improve regulatory transparency and accessibility of incorporated laws or instruments by ensuring there are clear citations that direct a reader to an applied law, and that copies of adopted laws are available for inspection at no cost.

An RMP, as described by new sections 33B and 33C of the Act must be submitted with an application to register a radiation source and contain certain information relating to the source. Under new section 33C, an RMP must include information about proposed dealings with the source, security, potential hazards, how safety duties are to be met, and RSO information. The preparation and submission of RMPs are widely accepted as industry and government best-practice to ensure a registering authority and an applicant have considered the potential benefits and consequences of source registration and that the applicant is aware of their legal obligations to radiation safety in registering a radiation source. New section 25(4) as inserted by this Bill also provides that the CHO may, by written notice, require an applicant amend an RMP if satisfied the plan does not suitably address requirements of s33C. Any such request is a reviewable decision.

### Division 3.3C

Clause 9 of the Bill also inserts new division 3.3C ‘Improvement notices and prohibition notices’ into the Act. This division sets out the circumstances in which an improvement notice or prohibition notice may be issued, the contents of improvement notices and prohibition notices, and the available penalties that may arise in failing to comply with a notice. Improvement notices and prohibition notices are compliance tools that can be immediately exercised by authorised officers as an alternative to infringement notices or prosecution in response to an identified risk. They are not directly associated with a financial penalty, however it is noted that a notice may have financial or business implications if it restricts a dealing with a regulated radiation source. A court may also impose a financial penalty for failure to comply with a notice if proven in court.

In recognising that improvement notices and prohibition notices may have an immediate and restrictive impact on a person’s ability to deal with a radiation source, their use is restricted to remedy an alleged contravention of the Act related to a safety duty or dealing with a regulated radiation source. This limitation ensures that improvement notices and prohibition notices are not used arbitrarily or to expose a regulated entity to criminal penalty for minor or administrative contraventions that do not align with the objectives of the Act.

New section 33H provides that prohibition notices can only be issued on a reasonable ground that a safety duty has been contravened in relation to a regulated radiation source and that the contravention poses a series or immediate risk to health, property or environment. A prohibition notice may also be issued for failure to comply with an improvement notice within a prescribed compliance period. Issue of clearance notices under new section 33J seeks to provide certainty to regulated entities regarding the lifting or easing of an issued prohibition notice.

The maximum penalty for failing to comply with a prohibition notice is greater than failure to comply with an improvement notice. New section 33K prescribes a maximum penalty of 100 penalty units for failing to comply with an improvement notice and 400 penalty units for failing to comply with a prohibition notice.

**Clause 10**                    **Return of amended, suspended or cancelled licences**  
**Section 40 (1)(a)**

Clause 10 amends existing section 40 of the Act regarding the amendment, suspension or cancellation of licences. These changes are required as a consequence to other changes presented by the Bill.

**Clause 11**                    **Disposal etc of prohibited radiation source**  
**Section 45 (2)**

Clause 11 amends existing section 45(2) of the Act to improve readability and clarity within the provision regarding what an authorised person may do after they take possession of a regulated radiation source.

**Clause 12**                    **New section 46A**

Clause 12 of the Bill inserts new section 46A ‘Emergency exemption’ into the Act.

The provision authorises with Minister to exempt a person from a requirement under the Act for a period not longer than 12 months if the Minister considers it reasonably necessary to lesson a serious or immediate risk to people, property or environment. This section is intended to facilitate a quick remediation response to a radiation related incident where existing legislative mechanisms might reasonably impact a response. For example, the Minister might authorise agencies to deal with a radioactive spill, or contaminated soil without a licence if an immediate response is required. Wherever practicable, the Minister should not make such an exemption without consultation with the RAC or equivalent group with expertise in radiation safety. Consultation with radiation safety experts helps to ensure any exemption to the Act is well informed, aligned with public interests, and accords with the Radiation Protection Principle and the ‘as low as reasonably achievable’ (ALARA) principle of radiation safety.

**Clause 13**                    **New section 60A**

Clause 13 of the Bill inserts new section 60A regarding dealings with an unregistered radiation source.

New section 60A establishes a new offence under the Act for a person that owns a regulated radiation source and another person deals with the source in a manner that is not authorised by licence. The offence prescribes a maximum penalty of 100 penalty units.

Unregistered regulated radiation sources have not been assessed and/or deemed by the regulator to be safe and appropriate for its intended use and therefore may pose a risk on use. Registration processes provide the CHO with opportunity to conduct important safety checks regarding the source, the immediate environment in which the source is to be operated, as well as related safety information such as the sources’ RSO and RMP. This offence is constructed to extend an owner’s responsibility for an unregistered sources to taking all

reasonable steps to prevent any unauthorised dealings on the grounds that the dealing could pose a risk to human or environmental health.

**Clause 14**                      **New section 62A**

Clause 14 of the Bill inserts new section 62A ‘Failure to notify chief health officer of disposal of a radiation source’ into the Act. This section requires people holding registration for a regulated radiation source advise the CHO of disposal of the source with 14 days. A maximum penalty of 50 penalty units may apply under this section. Strict liability applies to subsection 62A(1)(c) of this section, being that the person does not advise the CHO within 14 days of a disposed radiation source. This notification period aligns with similar offences under section 22 of the Act for failing to notify the CHO of a change in name or address details.

This provision is required to ensure ACT Health has visibility of the full life cycle of radiation sources for regulatory purposes. Disposal of sources, if performed incorrectly, may also have an ongoing detrimental effect to public or environmental health. Notification of deposited sources enables the ACT to log where radiation sources are disposed of and use this information to ensure disposal sites do not unreasonably contaminate the environment or compromise future utility of the site. ACT Health will continue to work with utilities and the Environment, Planning and Sustainable Development Directorate regarding disposal sites.

**Clause 15**                      **Section 63(2)(c)**

Clause 15 of the Bill amends section 63(2)(c) of the Act regarding a person’s failure to notify the regulatory authority of a dangerous event. This clause updates reference to the Radiation Council with the CHO as a consequence of other amendments made by the Bill.

**Clause 16**                      **Section 64(6)**

Clause 16 of the Bill amends section 64(6) of the Act regarding the criminal liability of executive officers. This provision is updated to reflect new offences for which an executive officer might be found liable as inserted by this Bill.

**Clause 17**                      **Administration Part 5**

Clause 17 of the Bill substitutes Part 5 of the Act regarding the Radiation Advisory Committee (RAC).

New Part 5 establishes the RAC and prescribes the RAC’s functions as providing advice to the CHO on radiation safety matters, developing codes of practice or standards, reviewing applications referred to the RAC and investigating and reporting on any matter relevant to the Act as directed by the Minister, Director-General or CHO. New sections 67-73 provide governance arrangements around the appointment of members to the RAC, conduct at meetings, quorum and reporting of disclosed interests. It is accepted Government practice to have a statutory committee to advise regulatory authorities on radiation safety matters, licensing and registration decisions. Member composition of the RAC is the same as the composition of the ACT Radiation Council and the Bill provides for member transitional

arrangements. Information regarding member appointments to the RAC will be published to the ACT Health Directorate website to promote regulatory transparency.

Existing sections of the Act regarding the disclosure and reporting of member's conflicts of interest, including tabling such interests with the relevant ACT Legislative Assembly standing committee, have been retained. The RAC's function to prepare a report on radiation protection issues as directed by the Minister, Director-General or Chief Health Officer under new section 73 ensures that the ACT can continue to investigate and consider specialist recommendations on radiation protection issues.

#### **Clause 18                      Divulging of information by Council    Section 115**

Clause 18 of the Bill amends the Act regarding the Radiation Register and divulging of protected information by RAC members.

New section 115 provides an offence for the reckless use of protected information, or intentional misuse of protected information to endanger a person's health or safety, or damage to property or environment. The Act requires authorised persons to deal with protection information regarding regulated radiation sources including their location, uses, security and transport arrangements. As regulated radiation sources can cause long-lasting and significant damage to human and environmental health if used, stored or managed inappropriately (including premature death, illness, damaged environment) then the use of related protected information requires suitable protections.

If protected information were used to intentionally cause harm, then s115(2) provides a significant maximum penalty to deter this behaviour, irrespective of whether the intended harm eventuated. In extreme circumstances, the disclosure of protected information could assist parties to undertake terrorist-like activities or espionage-like activities. New section 115 retains the existing offence provision relating to the reckless use of protected information under subsection 115(1).

#### **Clause 19                      Evidentiary certificates**

Clause 19 of the Bill amends section 119 of the Act regarding the production of evidentiary certificates. This clause updates reference to the Radiation Council with the CHO as a consequence of other amendments made by the Bill.

#### **Clause 20                      Approved forms    Section 121**

Clause 20 of the Bill omits section 121 from the Act. This section is omitted to improve readability and clarity around use of approved forms, reflect operational practices and current ACT drafting practices.

#### **Clause 21                      Regulation-making power    Section 122(3)**



Clause 21 of the Bill amends section 122 (3) of the Act to provide that a regulation under the Act may establish offences of up to 20 penalty units.

#### **Clause 22                      New part 11**

Clause 22 of the Bill inserts new part 11 into the Act regarding transitional provisions. New sections 134 and 135 establishes that Radiation Council members are transitioned to members of the RAC should the Bill commence prior to the expiry of a Radiation Council members appointed term. New part 11 also prescribes that the functions of Radiation Council members are transferred to the RAC and CHO respectively on commencement. Any disclosed conflicts and reporting of interests by Radiation Council members are also respectively transferred to the RAC by this part.

Clause 22 also inserts new section 137 regarding transitional regulations. New section 137 provides that a regulation may modify this part or make a provision in relation to the RAC, or a function or requirement under the pre-amendment Act that is not provided for because of the enactment of the Radiation Protection Amendment Act 2022. Section 137 is inserted to ensure the effective implementation of the changes outlined by this Bill and is reasonably limited to the RAC or previously established functions to ensure all proposed changes to primary legislation are considered by the ACT Legislative Assembly.

New section 138 provides that new part 11 sunsets after a period of 12 months. and is restricted to provisions concerning the RAC or previously established functions or requirements of the Act.

#### **Clause 23                      Reviewable decisions. Schedule 1**

Clause 23 of the Bill amends Schedule 1 of the Act concerning reviewable decisions for sections amended or inserted by this Bill.

#### **Clauses 24 - 29              Dictionary**

Clauses 24 – 25 of the Bill updates the Act’s dictionary to include new terms as introduced by this Bill. Clause 29 of the Bill also makes further substitute references to the Radiation Council with the CHO following transfer of the Radiation Council’s functions and responsibilities.

#### **Clause 30                      Exemptions for certain radiation apparatus**

Clause 30 of the Bill inserts new section 9(2) and (3) into the Regulation to exempt unsealed radiation sources from any requirement to be registered. This exemption is consistent with other jurisdiction’s and is considered necessary and appropriate as unsealed sources (such as liquid sources) cannot be practically subject to registration. Dealings with these sources will continue to be subject to regulatory control through licences and related safety duties. This exemption will better reflect current operational practices in the ACT regarding the use of unsealed sources used in medical and research settings. The definition of unsealed sources has been adopted from the ARPANSA Radiation Protection Series C-1 (Radiation Protection

in Planned Exposure Situations) to provide for a nationally consistent interpretation of unsealed radiation sources.

**Schedule 1                      Public Health Act 1997 – consequential amendments**

Schedule 1 of the Bill makes a consequential amendment to the *Public Health Act 1997* regarding the CHO's statutory function to ensure compliance with certain legislation. The *Radiation Protection Act 2006* is inserted to the Public Health Act to better reflect the CHO's statutory functions as inserted by this amendment act.