

# CLAUSE NOTES

## *Radiation Protection Amendment Bill 2012*

<b>Clause 1</b>	<b>Short title</b> Short title.
<b>Clause 2</b>	<b>Commencement</b> The provisions of the Bill will commence on the day on which it receives Royal Assent.
<b>Clause 3</b>	<b>Principle Act</b> The Bill amends the <i>Radiation Protection Act 2005</i> .
<b>Clause 4</b>	<b>Section 4 amended (interpretation)</b> This clause amends the Act's interpretation section as follows: <ul style="list-style-type: none"><li>• The definition of 'dispose of' has been amended to remove the reference to 'transferring custody and responsibility for' and in its place introduce a reference to 'transferring possession'. This clarifies any uncertainty over the meaning of 'responsibility for' and ensures the definition is consistent with the revised meaning of 'possess'.</li><li>• The definition of 'possess' has been amended to ensure it is clear that, for the purposes of the Act, a person is in possession of a radiation source if they are in control of that source – regardless of who has physical custody of the source. The previous definition incorporated the usual and ordinary meaning of 'possess' which included the concept of physical custody. Under the Act, a person in possession of a radiation source is required to prepare a radiation management plan which is essentially a risk assessment and management plan that applies to all persons who will use the source. It is appropriate that this requirement be limited to persons in control of a radiation source (eg a medical practice manager) as distinct from a person with the physical custody of the source (eg a person working at the practice who is licensed to use the source).</li><li>• The definition of 'sell' has also been amended to remove the reference to 'dispose of by hire or lease' to clarify that hiring or leasing a radiation source is considered an activity for which a licence to dispose, and not sell, is required.</li></ul>

<p><b>Clause 5</b></p>	<p><b>Section 10 amended (causing radiation exposure)</b></p> <p>This clause removes subsection 10(2) from the Act. Subsection 10(2) provides that the obligation in subsection 10(1) - requiring persons who possess, use or otherwise deal with a radiation source to adhere to radiation dose limits prescribed in regulations - does not apply where the dose of radiation is received by a person undergoing a diagnostic or therapeutic procedure or by another person involved in the carrying out of a diagnostic or therapeutic procedure. This means that in these circumstances the prescribed occupational and public dose limits could be ignored. This is not the desired outcome from a health and safety perspective. Removing subsection 10(2) from the Act, coupled with the dose limits set at regulations 9 and 10 of the <i>Radiation Protection Regulations 2006</i>, ensures that in all circumstances occupational and public dose limits must be adhered to. Occupational and public dose limits do not include medical exposure, thus the legislation does not create a barrier to the legitimate carrying out of a diagnostic or therapeutic procedure involving the irradiation of a person.</p>
<p><b>Clause 6</b></p>	<p><b>Section 13 amended (dealings with radiation source prohibited without a licence)</b></p> <p>This clause removes subsection 13(2) from the Act. Subsection 13(2) provides an exception to the subsection 13(1) obligation to hold a 'possess' licence. It provides that a person is not taken to be in possession of a radiation source as the result of being administered or injected with radioactive material as part of a diagnostic or therapeutic procedure. It does not, however, provide an exception for other types of licences (for example, acquire, use, dispose). There are no health or safety benefits to be achieved by requiring such a person to be licensed. Therefore, the exception needs to be broadened to ensure that persons undergoing treatment which involves exposure to radiation are not required to obtain a licence under the Act. This will be achieved by removing subsection 13(2) from the Act and creating an appropriate exemption in the <i>Radiation Protection Regulations 2006</i>. The Regulations have already been established as the mechanism by which exemptions to the Act are made.</p>
<p><b>Clause 7</b></p>	<p><b>Section 21 amended (determination of application)</b></p> <p>Before determining an application for an authority (being a licence or certificate), the Director of Public Health may, pursuant to s.21(3)(c), request advice or a report from various bodies (including the Radiation Advisory Council, Commissioner of Police, and government departments).</p>

	<p>In requesting advice or a report, the Director is permitted by subsection 21(4)(a) to release the name of the applicant, director, management, and partners.</p> <p>This clause amends the Act to allow the Director to also release the names of each person specified in the application as likely to be dealing with the radiation source. This is necessary because the Director must be satisfied that each of these persons is a fit and proper person to be dealing with the source. In reaching that view the Director is already permitted to request a report in relation to such a person and this necessitates the release of names.</p>
<p><b>Clause 8</b></p>	<p><b>Section 23 amended (activities authorised by authority)</b></p> <p>This clause introduces a new offence provision into the Act. A person must not publicly represent that an authority (being a licence or certificate) constitutes an endorsement by or on behalf of the Crown of the efficacy and quality of the service. An authority represents only that its holder has satisfied the Director of Public Health that he or she is a fit and proper person to hold the authority and that there is a radiation management plan in place that appropriately sets out how the source will be used and stored in a manner that is safe to persons and to the environment. The authority does not represent an endorsement that the licence holder or the radiation source will be effective in achieving the purpose for which it is purportedly used. That aspect is addressed by other entities (for example, the Royal Australian and New Zealand College of Radiologists' Faculty of Radiation Oncology, which sets quality standards and protocols for the treatment of cancer).</p>
<p><b>Clause 9</b></p>	<p><b>Section 29 amended (amendment of an authority on application by holder)</b></p> <p>This clause amends subsections 29(5) and (6) to ensure it is clear that the processes and criteria for considering and granting applications to amend an authority (being a licence or certificate) are the same as those that apply in relation to applications for an authority in the first instance.</p>
<p><b>Clause 10</b></p>	<p><b>Section 70A inserted (infringement notices)</b></p> <p>This clause inserts standard provisions relating to the issuing of infringement notices which are presently split between section 86 of the Act and Part 12 of the <i>Radiation Protection Regulations 2006</i>.</p>

<p><b>Clause 11</b></p>	<p><b>Section 85 amended (exemptions)</b></p> <p>Section 85(2) of the Act sets out a guiding principle for exempting radiation sources (exemptions are set out in the <i>Radiation Protection Regulations 2006</i>). It provides that an exemption cannot be made if its effect would be to pose more than a negligible threat of harm to the health or safety of persons or the environment. This reflects one of two key principles from the internationally accepted criteria for exemption contained in the <i>Basic Safety Standards</i> issued by the International Atomic Energy Agency for ionising radiation.</p> <p>The second key principle seeks to avoid unnecessary regulatory impacts. This clause 11 introduces the second principle for both ionising and non-ionising radiation, so that even though a radiation source or radiation practice may pose more than a negligible risk of harm, it may still be exempt in the Regulations if legislative control over the source or matter would yield no net benefit in terms of reducing harms to the health or safety of persons or the environment.</p>
<p><b>Clause 12</b></p>	<p><b>Section 86 amended (regulations)</b></p> <p>This clause amends section 86 as a consequence of inserting section 70A which contains standard provisions relating to the issuing of infringement notices. The amendment ensures there is no duplication of the infringement notice provisions.</p>
<p><b>Clause 13</b></p>	<p><b>Repeal of Act</b></p> <p>Standard repeal clause – the Amendment Act will be repealed on the 365<sup>th</sup> day from the day it commences (Royal Assent).</p>