

# Radiation Safety Amendment Bill 2009

## Explanatory Notes

### General Outline

#### Short Title

The short title of the Bill is the Radiation Safety Amendment Bill 2009.

#### Objectives of the Bill

The objective of the Bill is to:

- enhance the security measures for radiation sources under the *Radiation Safety Act 1999* and thereby minimise the risk of these sources being used for malicious purposes; and
- promote greater consistency with the object of the *Radiation Safety Act 1999* to protect the environment from the harmful effects of radiation.

#### Reasons for the Bill

In response to the increasing global threat of terrorism, in December 2002, the Council of Australian Governments (COAG) agreed to a national review of the regulation, reporting and security around the possession, storage, sale, use, handling and transport of hazardous materials. The review was initiated to assist counter-terrorism efforts by limiting opportunities for, and enhancing detection of, the unauthorised use of hazardous materials (including ammonium nitrate; radiological sources; harmful biological materials; and hazardous chemicals).

As part of this process, COAG sponsored a Review of Radiological Materials to identify ways of limiting the misuse of radiological materials (including nuclear materials) that pose a security risk. At the conclusion of this review, a Report on the Regulation and Control of Radiological Material (November 2006) was prepared by a national working group comprising officers of the Department of the Prime Minister and Cabinet,

Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), Australian Safeguards and Non-Proliferation Office (ASNO) and Queensland Health. The Report examined the potential for radiological materials to be misused; provided an overview of the current regulatory environment; and made a number of recommendations about how existing regulatory regimes could be strengthened and systemised to improve security and minimise the risk that terrorists could misuse such materials.

On 13 April 2007, COAG agreed to a National Chemical, Biological, Radiological and Nuclear Security Strategy to provide a framework to strengthen and enhance Australia's existing national counter-terrorism arrangements. At this time COAG also agreed that as recommended by the Review of Radiological Materials, each jurisdiction should take the necessary steps to ensure that its radiation safety legislation gives the required legal basis to adequately regulate the security of radioactive sources, including the making of standards, licence conditions, compliance monitoring and enforcement mechanisms.

The *Radiation Safety Act 1999* (the Act) is the principal piece of legislation in Queensland that regulates the possession, use, acquisition, disposal, relocation and transport of radiation sources. Accordingly, the Bill provides for the Act to be amended to give effect to the following recommendations of the Review of Radiological Materials:

- that the Code of Practice for the Security of Radioactive Sources (the National Security Code) be incorporated in each jurisdiction's regulatory framework governing the use of radiation. The National Security Code was prepared by the Commonwealth's Radiation Health Committee and published by ARPANSA following a national Regulatory Impact Statement process in 2006;
- that the Commonwealth, in consultation with the States and Territories, establish a centralised notification system to ensure that all jurisdictions inform ARPANSA of any radioactive sources that have been stolen, lost or orphaned; and
- that the Commonwealth, in consultation with the States and Territories, establish a national register of security enhanced sources to facilitate the tracking of these sources at an inter-jurisdictional level.

The proposed amendments to the Act will also facilitate Queensland's ability to implement other recommendations of the Review of Radiological Materials, including:

- assisting ARPANSA in securing any orphaned or missing security enhanced sources;
- coordinating efforts with ASNO to continue its outreach and inspection work to ensure that national nuclear materials accounts are complete; and
- developing a memorandum of understanding with ARPANSA and ASNO about security regulation at nuclear facilities to minimise duplication.

The small quantities of nuclear material used in Queensland are regulated under the Act, as these nuclear materials are radioactive materials for the purposes of Queensland's legislation. Once the National Security Code is adopted into the Act, the Commonwealth and the State will be able to work together more effectively to ensure the regulation of these materials can be overseen from both a safety and security perspective.

The most significant change being proposed to the Act concerns the adoption of the National Security Code, which requires a range of physical and procedural security measures to be implemented as well as mandating that persons dealing with high risk radioactive materials must undergo a security background check.

The primary aim of the Code is to decrease the likelihood of the unauthorised access to, or acquisition of, a radioactive source by persons with malicious intent. The Code was developed by a working group of the Radiation Health Committee which included representation from the Commonwealth; the radiation regulatory authorities in New South Wales, Queensland and South Australia; and an expert in the implementation of security measures. It is intended that the National Security Code be included in the next edition of the National Directory for Radiation Protection (NDRP), in accordance with the Australian Health Ministers' Conference (AHMC) decision of 1999 that each jurisdiction adopt the NDRP as the means of achieving uniformity in radiation protection practices between Australian jurisdictions.

The National Security Code was developed on the basis that security outcomes should apply in a graded manner. That is, the stringency of the measures should be proportional to the likelihood of a source, or an aggregation of two or more sources, being acquired and used for a malicious purpose. Using a risk management methodology, which draws on the International Atomic Energy Agency's (IAEA) Categorization of Radioactive Sources Safety Guide, the Code classifies radioactive sources

into five categories and allocates security outcomes commensurate with the risk posed by sources in each category. In practice, the Code only requires additional security measures for sources assessed to be security enhanced sources (i.e. Category 1, 2 or 3 Sources), as the measures under the NDRP for radiation safety and protection purposes are considered adequate to ensure the physical security of other sources.

### **Achievement of the Objectives**

The Bill will give effect to the recommendations of the Review of Radiological Materials by amending the Act to:

- create a new category of radiation source – a security enhanced source - on the basis that these sources constitute an elevated security risk. The methodology for classifying these sources will be prescribed under the *Radiation Safety Regulation 1999*. The regulation will draw on the methodology in Schedule B of the National Security Code whereby a radiation source, or aggregation of sources, is considered to be a security enhanced source if it is assessed as being a Category 1, 2 or 3 Source;
- strengthen the licensing requirements about who may possess, use or transport a radiation source that is a security enhanced source;
- require the preparation of a security plan or transport security plan to document the responsibilities and duties of persons dealing with a security enhanced source as well as the physical and procedural measures to be implemented to safeguard the source when it is being used, transported or held in storage;
- impose obligations on licensees and other persons dealing with a security enhanced source to take reasonable steps to ensure the security of the source, for example, by complying with the approved security plan or transport security plan for the source;
- require licensees and other individuals dealing with a security enhanced source to undergo an identity check, criminal history check or security check for politically motivated violence commensurate with the classification of the source and the type of access a person will have to the source;;
- make it an offence for a person to abandon a radiation source without lawful excuse;

- expand the mandatory reporting requirements to ensure that relevant authorities can be notified if there is a security breach in relation to a security enhanced source (e.g. theft, loss or unauthorised access);
- remove the restriction on the use of information provided to an entity of the State, another State or the Commonwealth to facilitate the establishment of the proposed national database and notification system for radiation sources, including security enhanced sources; and
- update the application and decision-making processes for the granting of Act instruments such as licences and the approval of plans.

The Bill will also amend the Act to strengthen the application of the Act in relation to the protection of the environment (e.g. the application of certain monitoring and enforcement powers). The *Radiation Safety Act 1999* was amended by the *Health Legislation Amendment Act 2006* to ensure that Queensland's radiation safety and protection legislation is consistent with Part A of the NDRP. Part A requires that the object of each jurisdiction's radiation protection legislation is to protect the health and safety of people and the environment from the harmful effects of radiation.

In addition, the Bill will provide members of the Radiation Advisory Council (and its Committees) with protection from liability for an act done, or omission made, honestly and without negligence under the Act. The Council has a number of functions, including advising the chief executive about the merits of an application for review of a decision not to grant a licence or a change to a radiation safety and protection plan.

### **Estimated Cost for Government Implementation**

The State Government will face additional costs as a result of administering and monitoring compliance with the new security requirements being introduced by the Bill. It is estimated that an additional \$0.33 million will be required per year to support these new regulatory functions.

As part of the 2009-2010 budget process, a review of the fees under the Act was conducted. As a result of this review it has been recommended that the fees be increased beyond the usual annual adjustment for movement in the Consumer Price Index. The proposed fee increases were put forward having regard to the costs of administering the Act, including the new security requirements to be introduced under the Act (e.g. the cost of processing a licence application, approving a plan, upgrading procedures and databases to improve the tracking of sources, etc).

The cost of administering the Act, including the new security requirements, will be met through the revenue generated from the proposed fee increases.

The cost of implementing, monitoring and enforcing the National Security Code and the impact of this on government, industry and the community was addressed as part of a national regulatory impact statement process undertaken by ARPANSA in 2006. The Post Consultation Draft of the Regulatory Impact Statement concluded that “while there is a cost of implementing the requirements in the Code, the benefits can only be measured against avoiding the costs that would result from a radiological attack and any such costs would be expected to be quite significant” (page 32).

### **Consistency with Fundamental Legislative Principles**

The following aspects of the Bill raise fundamental legislative principles issues.

#### **Criminal History and Security Checks**

The National Security Code requires certain persons who have primary responsibility for, or unrestricted access to, a security enhanced source to undergo a security background check (which is comprised of an identity check, criminal history check and security check for politically motivated violence). This requirement is a key measure under the Code to prevent persons with malicious intent from being able to acquire radiation sources that are security enhanced sources.

The Bill provides for a new division to be incorporated in part 7 of the Act to provide for the conduct of criminal history and security checks, which will enable consideration of all convictions and charges, regardless of when they occurred. The Bill therefore overrides the protections under the *Criminal Law (Rehabilitation of Offenders) Act 1986*. This aspect of the Bill raises the issue of whether the legislation should abrogate established state law rights and liberties [section 4(3)(g) of the *Legislative Standards Act 1992*].

Similar to other licensing and registration schemes, the Bill will enable the chief executive to request that a criminal history check or security check be conducted for specified persons listed in the new section 103A. In accordance with the National Security Code, such checks will only be required for those persons who have primary responsibility for a security enhanced source (e.g. a possession licensee, transport licensee or the

nominee of a corporation that holds either of these licences) or persons who will have unrestricted access to a security enhanced source (e.g. a use licensee who uses and transports a portable security enhanced source which is designed to be easily moved from place to place).

The capacity of the chief executive to access information about a person's full criminal history will ensure that a more complete assessment can be undertaken. Access to information about a person's 'old' convictions and charges may, for example, indicate a pattern of behaviour that the person poses a potential security risk.

While it may be argued that this aspect of the Bill erodes a person's right of privacy, the proposed legislative scheme does ensure that:

- a criminal history check or security check may not be conducted without the person's knowledge;
- a person must be advised of the outcome of a check and provided with an opportunity to make representations before the information is used to make a decision under the Act (unless the provision of such information would be prejudicial to the interests of national security); and
- a person has a right of review should a decision be made that the person is not a suitable person to hold a licence or other approval under the Act (e.g. it is an unacceptable security risk for the person to have possession of, or unrestricted access to, a security enhanced source).

It is considered that the conduct of a full criminal history check and security check for those persons who have primary responsibility for, or unrestricted access to, a security enhanced source is justified given the potentially serious consequences for the community, the environment and the economy should a security enhanced source be intentionally used for a malicious purpose. The misuse of a source for such a purpose could result in persons experiencing immediate and long-term health problems as a result of radiation exposure; rendering an area or place unusable for extended periods of time due to contamination; and causing wide-spread psychological and social distress due to the uncertainty people may feel given the possible long-term effects of exposure to radiation. The combined effects of these consequences are likely to have a significant economic impact at a local, state and national level, such as the need for long-term health services, the relocation of residential and industrial areas,

decontamination and other clean-up costs, the negative impact on industry and trade.

## **Regulation Making Power**

The Bill includes a number of definitions - *security enhanced source*, *security measure*, *transport security measure* and *relevant offence* - that require a regulation to be made in order to give them effect. The inclusion of these definitions raises the issue of whether the legislation has sufficient regard to the institution of Parliament [section 4(4)(b) of the *Legislative Standards Act 1992*].

The matters to be prescribed under the definitions *security enhanced source*, *security measure* and *transport security measure* will be highly technical in nature. It will, for example, be necessary for a number of calculations to be performed in order to determine whether a radiation source, or aggregation of radiation sources, is a security enhanced source and to then classify the source into one of five categories. Depending on what category a source falls within, a range of security measures will need to be implemented that are commensurate with the risks posed by the source. Category 1 sources are considered to pose the highest risk and will therefore be subject to the most stringent security requirements.

The National Security Code adopts a graded approach whereby the stringency of the security measures to be implemented is proportional to the likelihood of the source, or aggregation of sources, being acquired for a malicious purpose. The regulations will be developed having regard to the methodology for the categorisation of security enhanced sources and the security measures to be implemented for each category detailed in the Code. This is necessary to ensure that requirements imposed in Queensland are consistent with the requirements being imposed by other jurisdictions to reduce the risk of radiation sources being acquired and used for malicious purposes.

As part of the decision-making process for the granting of a possession, use or transport licence for a security enhanced source, the chief executive will be required to consider whether a person has been convicted of, or charged with, a *relevant offence* in Queensland or elsewhere indicating that it is an unacceptable security risk for the person to have a licence for a security enhanced source.

The term *relevant offence* is to be defined to mean an offence associated with an activity involving a drug, chemical, explosive, radiation source or



biological agent (a prescribed activity); or involving violence or threatened violence; or involving the use, carriage, discharge or possession of a firearm; or another offence prescribed under a regulation.

It has been proposed that other offences be able to be prescribed by regulation as work is continuing at a national level to finalise a set of core disqualifying offences which may indicate that a person poses a security risk. Consideration is being given to which offences under Commonwealth, State and Territory legislation may need to support the stated purpose of the National Security Code to prevent unauthorised access to, or unauthorised acquisition of, radiation sources by persons with malicious intent (e.g. offences under the Commonwealth's *Criminal Code Act 1995*, *Crimes Act 1914*, or *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*).

In order to ensure that national consistency can be achieved at the earliest opportunity, it is proposed that any additional offences that may indicate a person poses an unacceptable security risk be prescribed under regulation. Consideration would then be given to incorporating the list of offences in the definition of *relevant offence* under the Act at a future date.

Such regulations will be subject to the requirements of section 49 of the *Statutory Instruments Act 1992*. Section 49 specifies that subordinate legislation must be tabled in the Legislative Assembly within 14 sitting days after it is notified in the gazette, in order for it to come into effect. If for some reason, the Legislative Assembly objects to the substance of a regulation, section 50 of the *Statutory Instruments Act 1992* could be utilised to disallow the gazette notice which notified the making of the regulation. As a consequence of the notice being disallowed, the regulation would cease to have any effect.

### **Protection from Liability**

The Bill provides for the protection from liability under section 211 to be extended to members of the Radiation Advisory Council and the Council's Committees. The amendment raises the issue of whether the legislation has sufficient regard to the rights and liberties of individuals by conferring immunity from proceedings or prosecution without adequate justification [see section 4(3)(h) of the *Legislative Standards Act 1992*].

Section 162 of the Act sets out the functions of the Council, including the provision of advice to the Minister about the operation and application of the Act and the chief executive about the merits of an application for

review of a decision for which an information notice has been given to a person under the Act (e.g. refusal of a licence or a refusal to grant a change to a security plan).

It is not considered appropriate that a member of the Council, or a Committee, be made personally liable as a consequence of that individual carrying out his or her statutory responsibilities in good faith. As occurs for other officials, section 211 will prevent a civil liability from being attached to the individual - in these circumstances the liability attaches to the State. However, immunity will not extend to a person who has been negligent, even though the official may have acted in good faith.

### **Protection of Confidential Information**

The proposed amendment to the duty of confidentiality in section 209 of the Act raises the issue of whether the legislation has sufficient regard to individual rights and liberties [section 4(2) *Legislative Standards Act 1992*]. The amendment removes the current restriction on the use of information provided to an entity of the State, another State or entity within that State, and the Commonwealth or an entity of the Commonwealth.

Section 209 makes it an offence for specified persons to disclose protected information which a person has obtained in the course of, or because of, the person's functions under the Act, unless the disclosure is expressly authorised under this provision. For the purposes of this section, protected information includes personal health information; personal monitoring information; and information that could damage the commercial activities, or adversely affect the intellectual property rights, of the person to whom the protected information relates.

Personal monitoring and commercial information may be disclosed to an entity of the State, another State or entity within that State, or the Commonwealth or an entity of the Commonwealth for a purpose prescribed under a regulation. However, the Act currently specifies that this information must not be given to anyone else and must only be used for the purpose for which it was given. It is proposed that this restriction be modified to enable protected information to be passed on, if the Commonwealth, another State or entity reasonably considers the giving of the information is necessary to protect national security.

This amendment is necessary to give effect to the recommendations of the Review of Radiological Materials that the Commonwealth, in consultation with the States and Territories, establish a centralised database and

notification system to provide for the tracking of radiation sources within Australia (not just within individual jurisdictions) and to enable a coordinated response to be initiated should a security breach arise in relation to a security enhanced source (e.g. unauthorised access leading to the theft of a source). The effectiveness of this system will be undermined if information provided by Queensland cannot be shared with the relevant authorities such as ARPANSA, ASNO, the Queensland Police Service and the Australian Federal Police.

## **Consultation**

In accordance with the Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-setting Bodies (COAG, June 2004), the Review of Radiological Materials and the National Security Code have been the subjects of national consultation processes.

A Regulatory Impact Statement (RIS) process was commenced for the National Security Code in 2006. A Public Consultation Draft of the RIS was released by ARPANSA from February to April 2006 for comment and a Post Consultation Draft of the RIS was made available in August 2006. A copy of each of these documents was provided to the Radiation Advisory Council established under Queensland's Act as well as key stakeholders located in Queensland. The RIS process was conducted to the satisfaction of the Commonwealth Office of Best Practice Regulation.

In addition, a consultation document setting out the draft recommendations of the COAG Review of Hazardous Materials: Report on the Regulation and Control of Radiological Materials was released to industry and stakeholders for targeted consultation and general comment in the latter half of 2006.

Licensees and other stakeholders have also been provided with an opportunity to attend briefing and training sessions on the National Security Code, for example:

- in May and June 2009, stakeholders were invited to attend briefing and training sessions on the proposed security arrangements detailed in the National Security Code;
- persons in possession of Category 1, 2 or 3 security enhanced sources have been informed about the progress of the legislative changes in Queensland and how this will impact on them as part of their annual audits by Queensland Health; and

- the requirements for, and developments about, the security of radiation sources have been, and will continue to be routinely discussed at industry forums.

## Notes on Provisions

### Short title

Clause 1 sets out the short title of the Act - the *Radiation Safety Amendment Act 2009*.

### Commencement

Clause 2 provides for the legislation to commence on a day to be fixed by proclamation.

### Act amended

Clause 3 clarifies that the Bill amends the *Radiation Safety Act 1999*.

### Amendment of s 4 (Main object of Act and its achievement)

Clause 4 amends section 4, which sets out the object of the Act to protect persons and the environment from the harmful effects of particular sources of ionising radiation and harmful non-ionising radiation.

As a consequence of the changes being made to give effect to the requirements of the National Security Code, additional items have been incorporated in subsection 4(2) to describe how the object of the Act is to be achieved. The additional requirements are:

- requiring a person who possesses a security enhanced source to have an approved security plan for the source; and
- requiring a person to have an approved transport security plan for the transport of a security enhanced source.

### **Amendment of pt1, div 4, heading**

Clause 5 amends the heading of part 1, division 4 to provide greater clarity about the matters dealt with under this division, as a consequence of changes being made by Clause 6.

Clause 6 inserts a new guiding principle about the security of radiation sources. Consequently, a reference to ‘security’ is to be inserted in the heading for division 4 – Radiation safety, protection and security principles.

### **Amendment of s 5 (Guiding principles)**

Clause 6 amends section 5, which sets out a number of key radiation safety and protection principles to guide the administration of the Act.

A new principle has been inserted as a consequence of the changes being made to the Act to enhance the security of radiation sources. This new principle is that people should be protected from unnecessary exposure to radiation resulting from a malicious event by ensuring that radiation sources are safely managed and securely protected at all times, including after the end of their useful life.

This new ‘security principle’ is consistent with the stated purpose of the National Security Code, which requires a range of security measures to be implemented by persons responsible for, or dealing with, radiation sources to decrease the likelihood of persons with malicious intent being able to gain access to, or acquire, a source.

### **Amendment of s 6 (Interpretation to promote radiation safety and protection principles)**

Clause 7 amends section 6 to clarify that the interpretation of the Act should be done in a way that will promote the principles listed in section 5.

This amendment provides for the new security principle to be referenced in section 6. That is, when interpreting a provision of the Act, a construction that would promote radiation safety, protection and security principles is to be preferred to a construction that would not promote radiation safety, protection and security principles.

### **Amendment of s 12 (Requirement for possession licence)**

Clause 8 amends section 12, which makes it an offence for a person to possess a radiation source, unless the person is allowed to do so under a possession licence.

This clause specifies that the maximum penalty that may be imposed for a breach of this provision in relation to the possession of a radiation source that is a security enhanced source is 2500 penalty units.

As discussed above, one of the key objectives of the National Security Code is to prevent persons with malicious intent from being able to acquire radiation sources that are security enhanced sources. A possession licensee (or a nominee in the case of a licensee that is a corporation) must oversee implementation of the security measures specified under the Code. Item 2.1.5 of the Code also mandates that as a part of these requirements, the licensee (or the nominee) must undergo a security background check before they are able to take possession of a security enhanced source. This check is to comprise an identity check, a criminal history check and a security check for politically motivated violence.

The Bill provides for these checks to be conducted as part of the application and decision-making processes for a licence under part 7 of the Act. Specifically, Clause 28 provides for additional material to be provided as part of an application for a possession licence; Clause 29 includes new criteria for the approval of a possession licence; and Clause 42 inserts a new division into part 7 that provides for the conduct of criminal history and security checks.

Transitional arrangements have also been incorporated into the Bill to require that those persons, who currently hold a possession licence that enables them to possess a radiation source that is a security enhanced source, must obtain a new licence within the specified transitional period (see Clause 54).

### **Amendment of s 13 (Requirement for use licence)**

Clause 9 amends section 13, which makes it an offence for a person to use a radiation source, unless the person is allowed to do so under a use licence. This category of licence may only be granted to an individual (see section 49 of the Act).

Under the Act, a person *uses* a source when that person makes actual use of the radiation emitted from the source to carry out a radiation practice. In

order to perform any of these practices in a competent and safe manner, a person must have specialised knowledge and skills. Consequently, the legislation only provides for a use licence to be held by an individual (not a corporation) and requires that a use licence include details about the radiation practice a licensee is allowed to carry out using a particular radiation source (see sections 49 and 67 of the Act).

The clause amends section 13 to specify that the maximum penalty for using a radiation source that is a portable security enhanced source without a licence is 2500 penalty units.

*A portable security enhanced source* is to be defined for the purposes of the Act to mean a security enhanced source that is able to be carried by a person from place to place and used at a place to carry out a radiation practice. The definition also clarifies that if a radioactive substance is incorporated into a sealed source apparatus, the substance and apparatus will comprise a portable security enhanced source for the purposes of the legislation.

Items 2.1.7 and 2.1.8 of the National Security Code set out the circumstances under which a person may access a security enhanced source. Under these items, different requirements are imposed depending on whether:

- a person is to have restricted or unrestricted access to a source; and
- the source is portable, fixed or mobile.

For the purposes of the Code:

- a portable source is defined as a source which may be easily carried or moved so that it may be used at different locations to carry out a radiation practice (a portable security enhanced source for the purpose of Queensland's legislation);
- a fixed source is defined as a source located in a device or container that is permanently secured within a facility and intended to be immobile; and
- a mobile source is defined as a source located in a device or container that is capable of being moved in a limited way from place to place (such as within a room or facility).

Under the National Security Code, an individual who has unrestricted access to a portable source is required to undergo a security background check which is comprised of an identity check, a criminal history check

and a security check for politically motivated violence. The Bill therefore provides for an individual using a portable security enhanced source to undergo a security background check as part of the application process for a use licence under part 7 of the Act. Specifically, Clause 28 provides for additional material to be provided as part of an application for a use licence; Clause 30 includes new criteria for the approval of a use licence; and Clause 42 inserts a new division into part 7 that provides for the conduct of criminal history and security checks.

An individual using a fixed or mobile source for its intended purpose will be required to undergo an identity check. Responsibility for ensuring this check is conducted will reside with the individual who has responsibility for overseeing implementation of the security plan or transport security plan approved by the chief executive (e.g. in the case of a security plan, the possession licensee or a nominee of a possession licensee that is a corporation). This requirement, including details about what constitutes an identity check, will be prescribed under regulation as one of the security measures that must be addressed in a security plan or transport security plan.

Individuals who have restricted access to a portable, fixed or mobile source are not required to undergo a check provided they are accompanied, at all times, by an individual who has undergone either a security background check in the case of a portable security enhanced source or an identity check in the case of a fixed or mobile security enhanced source. Responsibility for ensuring compliance with these arrangements will also reside with the individual who has responsibility for overseeing implementation of the security plan or transport security plan approved by the chief executive (e.g. in the case of a security plan, the possession licensee or a nominee of a possession licensee that is a corporation). Requirements about the supervision of persons with access to a security enhanced source will be prescribed under the regulation as one of the security measures that must be addressed in a security plan or transport security plan.

Transitional arrangements have been incorporated into the Bill to require that those persons, who currently hold a use licence that enables them to use a radiation source that is a portable security enhanced source, to obtain a new use licence within the specified transitional period (see Clause 54).



## **Amendment of s 14 (Requirement for transport licence – transport by road)**

Clause 10 amends section 14, which makes it an offence for a person in charge of a vehicle to transport a radioactive substance by road, unless the person is allowed to do so under a transport licence or otherwise under the Act. This category of licence may only be granted to an individual (see section 49 of the Act).

When considering the amendments being made to those provisions of the Act that deal with the transport of radioactive substances, it is important to note that:

- a licence is only required to transport radioactive substances not radiation apparatus (for the purposes of the Act, a radiation source may be either a radioactive substance or a radiation apparatus);
- the legislation distinguishes between transport by road and transport by other means (e.g. rail, air or sea); and
- only an individual may apply for, and be granted, a licence to transport radioactive substances by road.

A radioactive substance emits radiation until such time as it becomes stable (i.e. no longer radioactive). Consequently a radioactive substance is always potentially harmful. A radiation apparatus is only harmful when energised, such as when an x-ray machine is powered by electricity. For this reason, the Act imposes controls over the transport of radioactive substances.

In relation to road transport, the person in charge of a vehicle is required to be licensed due to the higher risks associated with this type of transport. Road transport is by far the most common form of transport and there are higher risks associated with delivery to the final destination point, which is typically made by road. As a consequence, and similar to the requirements for the transport of other dangerous goods by road in Queensland, there is no provision for licensing a company to transport radioactive substances by road. Only an individual may hold such a licence which must clearly state particulars of the radioactive substance the licensee is allowed to transport, how the substance is to be transported and the amount of the substance the licensee is allowed to transport at a time (see sections 49 and 68 of the Act).

Under section 14, the individual in charge of a vehicle is required to hold the transport licence. However, this section does clarify that an individual is not required to hold a licence under this section if the individual is

helping a transport licensee to transport a substance and they are in the presence of the licensee.

The clause amends section 14 to specify that the maximum penalty for transporting a radioactive substance that is a security enhanced source without a licence is 2500 penalty units.

Item 2.1.6 of the National Security Code requires that a person must not transport a security enhanced source unless they have a legitimate reason to do so and the person has undergone a security background check which is comprised of an identity check, a criminal history check and a security check for politically motivated violence. The Bill provides for these checks to be conducted as part of the application process for a licence to transport security enhanced sources by road under part 7 of the Act. Specifically, Clause 28 provides for additional material to be provided as part of an application for a transport licence; Clause 31 includes new criteria for the approval of a transport licence; and Clause 42 inserts a new division into part 7 that provides for the conduct of criminal history and security checks.

Individuals who are exempt from holding a licence under section 14 but are involved in the transport of a security enhanced source (e.g. an assistant to a licensee who will have unrestricted access to the source) may also be required to undergo a security background check. The circumstances under which such a check will be required will be prescribed as one of the transport security measures that must be addressed in an approved transport security plan for the transport of a source. Under new section 34I it is an offence for a security enhanced source to be transported unless a transport security plan has been approved by the chief executive for the transport of the source.

Transitional arrangements have also been incorporated into the Bill to require that those persons, who currently hold a licence that enables them to transport a radioactive substance that is a security enhanced source, obtain a new licence within the specified transitional period (see Clause 54).

### **Amendment of s15 (Requirement for transport licence – transport otherwise than by road)**

Clause 11 amends section 15, which makes it an offence for a person to transport a radioactive substance otherwise than by road (i.e. by means of rail, air or water), unless the person is allowed to do so under a transport

licence. Such licences may be granted to either an individual or a corporation.

The clause amends section 15 to specify that the maximum penalty for the transporting a radioactive substance that is a security enhanced source, other than by road, without a licence is 2500 penalty units.

Item 2.1.6 of the National Security Code requires that a person must not transport a security enhanced source unless they have a legitimate reason to do so and the person has undergone a security background check which is comprised of an identity check, a criminal history check and a security check for politically motivated violence.

The Bill provides for these checks to be conducted as part of the application process for a licence when an application is submitted by an individual under part 7 of the Act. Namely, Clause 28 provides for additional material to be provided as part of an application for a transport licence; Clause 31 includes new criteria for the approval of a transport licence; and Clause 42 inserts a new division into part 7 that provides for the conduct of criminal history and security checks.

As it is not possible for a corporation to undergo a criminal history check or security check, the legislation will require a corporation seeking a licence under section 15 to nominate an individual within their organisation, who will be responsible for overseeing security arrangements. This individual will be required to undergo a security background check as part of the application process for the licence.

In addition, the legislation will require that a security background check be conducted for certain individuals who are involved in the transport of a security enhanced source. This requirement will be prescribed under a regulation as one of the transport security measures under the approved transport security plan for the transport of a security enhanced source. Under new section 34I it is an offence for a security enhanced source to be transported unless a transport security plan has been approved by the chief executive for the transport of the source.

Transitional arrangements have been incorporated into the Bill to require that those persons, who currently hold a licence that enables them to transport a radioactive substance that is a security enhanced source other than by road, obtain a new licence within the specified transitional period (see Clause 54).

## **Amendment of s 23 (Who may acquire a radiation source)**

Clause 12 amends section 23, which makes it an offence for a person to acquire a radiation source unless the person is allowed to possess the source under a possession licence and the person has been granted an approval to acquire the source by the chief executive under part 7 of the Act.

An approval to acquire a radiation source may be granted for:

- the single acquisition of a radiation source; or
- the periodic acquisition of an unsealed radioactive substance over a specified period of time (e.g. a licensee needing a regular supply of a particular type of radioactive substance for a nuclear medicine practice).

Although a person may have been granted a possession licence, the licensee can only obtain a radiation source of the type specified in their licence once the licensee has been granted an approval to acquire the source. The legislation created this two step process to ensure that a possession licensee can not take physical possession of a source unless they have implemented the relevant radiation safety and protection measures provided for under the legislation. These measures may include, for example, ensuring that premises at which the source is to be stored or used meets the relevant radiation safety standards; a radiation safety and protection plan has been approved by the chief executive; or the licensee has access to the services of an appropriately qualified radiation safety officer.

The Bill provides for this two-step process to be extended to security enhanced sources through the amendments being made to the Act by:

- Clause 12 which specifies the maximum penalty that may be imposed for a breach of section 23 in relation to the acquisition of a radiation source that is a security enhanced source is 2500 penalty units;
- Clause 22 which inserts a number of new provisions about the development, approval and implementation of a security plan or transport security plan for a security enhanced source that may be obtained by a possession licensee under their licence; and
- Clause 33 to amend the criteria for an approval to acquire to include consideration of whether a possession licensee has implemented the necessary measures to ensure the security of the security enhanced source they want to acquire.

These amendments give effect to Item 2.1.11 of the National Security Code, which specifies that the transfer of ownership of a source must not occur without the prior written approval of the relevant regulatory authority.

### **Amendment of s 24 (Supply of radiation sources)**

Clause 13 amends section 24, which makes it an offence for a person to supply a radiation source to another person, unless the other person is a possession licensee and that person has been granted an approval to acquire the source by the chief executive under part 7 of the Act.

The restriction imposed by section 24 is to be strengthened in so far as security enhanced sources are concerned. The maximum penalty that may be imposed for a breach of this section in relation to the supply of a radiation source that is a security enhanced source is 2500 penalty units.

This amendment also gives effect to Item 2.1.11 of the National Security Code, which specifies that the ownership of a source must not occur without the prior written approval of the relevant regulatory authority.

### **Amendment of s 25 (Person must not relocate radiation source without approval)**

Clause 14 amends section 25, which makes it an offence for a person to relocate a radiation source outside of Queensland (whether to an inter-state or overseas location) unless the person is the possession licensee for the source and the person has been granted an approval to relocate the source by the chief executive under part 7 of the Act.

The restriction imposed by section 25 is to be strengthened in so far as security enhanced sources are concerned. The maximum penalty that may be imposed for a breach of this provision in relation to the relocation of a security enhanced source is 2500 penalty units.

This amendment also gives effect to Item 2.1.11 of the National Security Code, which specifies that the transfer of ownership of a source must not occur without the prior written approval of the relevant regulatory authority.

### **Amendment of pt 5, heading (Disposal of radioactive material and radiation apparatus)**

Clause 15 amends the heading of part 5 to provide greater clarity about the matters dealt with under this part as a consequence of changes made to the Act by Clause 16.

As described below, Clause 16 inserts a new section 27A to mandate that a person must not abandon a source without lawful excuse. Consequently, the heading to part 5 is to be amended to clarify that this part deals with the disposal of radioactive material and radiation apparatus, as well as the 'abandoning of radiation sources'.

### **Insertion of new s 27A**

Clause 16 inserts new section 27A to give effect to Item 2.3.7 of the National Security Code, which specifies that a person must not abandon a source without lawful excuse.

The new section 27A makes it an offence for a person to abandon a radiation source. The maximum penalty that may be imposed for a breach of this provision is 2500 penalty units.

As the legislation already regulates the disposal of specified radiation sources, the new section 27A clarifies that a person is not considered to have abandoned a radiation source if the person disposes of the radiation source as provided for by the Act.

Item 2.1.12 of the National Security Code specifies that a security enhanced source must not be disposed of without the prior written approval of the relevant regulatory authority. This requirement is dealt with under section 26 of the Act which makes it an offence for a person to dispose of radioactive material unless the concentration or activity of a radionuclide in the material is not more than the maximum concentration or activity prescribed under a regulation; or an approval to dispose of radioactive material has been granted under part 7 of the Act. As the maximum concentration or activity prescribed for disposal are lower than the levels to be prescribed for a security enhanced source, a person wishing to dispose of a security enhanced source will need to obtain the approval of the chief executive. The Act currently imposes a maximum penalty of 2500 penalty units for a contravention of section 26. For the purposes of the Act, 'dispose of radioactive material' means release the material into the environment or release a thing containing the material into the environment.

## **Amendment of pt 6, heading (Other radiation safety and protection provisions)**

Clause 17 amends the heading of part 6 as a consequence of the changes being made to the Act by Clause 22, which provides for two new divisions to be inserted in part 6. As a result of these changes, the heading to Part 6 is to be amended to include ‘security’ – Other radiation safety, protection and security provisions.

Division 1 currently sets out a range of requirements in relation to the development, approval and implementation of radiation safety and protection plans. A radiation safety and protection plan is a written document that details how a possession licensee intends to implement the necessary radiation safety and protection measures to deal with the hazards associated with the carrying out of a radiation practice with the radiation source the licensee is allowed to possess under their licence.

The new Division 1A sets out a range of requirements in relation to the development, approval and implementation of security plans in accordance with the requirements of the National Security Code. Under the Code a person, who has primary responsibility for a security enhanced source, is required to formulate and implement a plan that addresses the physical and procedural security measures applicable to the source.

The new Division 1B sets out requirements in relation to the development, implementation and review of transport security plans in accordance with the recommendations of the National Security Code. Under the Code a person, who has primary responsibility for a security enhanced source, is required to ensure that a plan has been formulated and implemented that addresses the physical and procedural security measures associated with the transport of the source.

## **Amendment of s 29 (Approval of plan)**

Clause 18 amends the heading for section 29 to provide greater clarity about the matters being dealt with under this section, as a consequence of the changes being made to the Act by Clause 22.

The words ‘radiation safety and protection’ are to be inserted in the title of section 29 to clarify that this section deals solely with radiation safety and protection plans. Section 29 provides for the approval and endorsement of a radiation safety and protection plan by the chief executive subject to the chief executive deciding to grant an applicant a possession licence.

### **Amendment of s 30 (Changing plan – application by possession licensee)**

Clause 19 amends the heading for section 30 to provide greater clarity about the matters being dealt with under this section, as a consequence of the changes being made to the Act by Clause 22.

The words ‘radiation safety and protection’ are to be inserted in the title of section 30 to clarify that this section deals solely with radiation safety and protection plans. Section 30 sets out the circumstances under which the chief executive may require a possession licensee to amend their approved radiation safety and protection plan.

### **Amendment of s 31 (Changing Plan – application by possession licensee)**

Clause 20 amends the heading for section 31 to provide greater clarity about the matters being dealt with under this section, as a consequence of the changes being made to the Act by Clause 22.

The words ‘radiation safety and protection’ are to be inserted in the title of section 31 to clarify that this section deals solely with radiation safety and protection plans. Section 31 sets out the circumstances under which a possession licence may apply to, and be granted approval by, the chief executive to change their approved radiation safety and protection plan.

### **Amendment of s 32 (Recording change of plan)**

Clause 21 amends the heading for section 32 to provide greater clarity about the matters being dealt with under this section, as a consequence of the changes being made to the Act by Clause 22.

The words ‘radiation safety and protection’ are to be inserted in the title of section 32 to clarify that this section deals solely with radiation safety and protection plans. Section 32 specifies that if a radiation safety and protection plan that has been amended under section 30 or 31, the amended plan must be endorsed by the chief executive and be listed on the possession licensee’s licence in accordance with the requirements of section 66 of the Act (refer to Clause 38).



## **Insertion of new pt 6, divs 1A and 1B**

Clause 22 inserts a new division 1A (Security plans) and 1B (Transport security plans) in part 6 to give effect to key requirements of the National Security Code.

The new Division 1A (Security plans), comprising sections 34A to 34G, gives effect to the key requirements of the National Security Code including the responsibilities and duties of persons dealing with security enhanced sources (Chapter 2), the physical security measures to be implemented for the use and storage of security enhanced sources (Chapters 3 and 4), the security outcomes to be achieved through the implementation of procedural security measures (Chapter 6), as well as accountability and record keeping requirements (Chapter 7). Item 2.1.3 of the Code specifies that a security plan must be formulated to demonstrate how the requirements of the National Security Code will be satisfied, including the matters listed in Schedule AI of the Code.

Section 34A provides a definition of what constitutes a security plan for the purposes of the Act, and in doing so, specifies those matters which must be addressed in a plan.

*A security plan* is a plan for the security of a security enhanced source a possession licensee is allowed to possess under their licence.

A security plan must, among other matters, set out particulars of the source and the radiation practice for which the licensee is allowed to possess the source; an assessment of all possible security risks relating to the practice and source; persons who will have access to the source under the plan; persons to whom the plan applies; the security measures for the source; how the licensee proposes to monitor and review the implementation and effectiveness of these measures; and the training program for persons to whom the plan applies.

Possession licensees must be able to respond promptly to a change in the threat level (that is, when the likelihood that a perceived perpetrator may seek to acquire a radiation source for the purposes of malicious use changes). Consequently, all security plans will need to detail the measures that will be put in place by a possession licensee for each of the threat levels detailed in the National Security Code. The Code sets out 6 threat levels from negligible to extreme and sets out minimum security requirements in relation to each of these levels. Should there be an increase in the threat level, all possession licensees with security enhanced sources will be equipped to make approved changes to their extant

operational arrangements as soon as advice about a change in the threat level is provided to them.

The matters that must be addressed in a security plan (including requirements about the conduct of identity, criminal history and security checks) have been drawn from Schedule AI of the National Security Code.

In addition, the Code specifies that an individual must not deal with particular security enhanced sources unless they have undergone an identity check or security background check, or are supervised at all times by a person with the relevant clearance. Consequently, a security plan will need to clearly list who may have access to a source, the type of access this person may have, and the type of check the person will be required to undergo in order to gain access to the source.

The Bill will enable a possession licensee to apply to the chief executive to have a criminal history check and security check conducted for a person under part 7 of the Act, if such checks are required under their approved security plan (see Clause 42). However, such applications must be accompanied by the written consent of the person for whom the check is to be conducted.

In some instances these checks will have already been conducted as part of an individual's application to obtain a licence under the Act (e.g. to use a portable security enhanced source or to transport a security enhanced source by road). However, responsibility for ensuring these checks are conducted, before a person has access to a security enhanced source, will reside with the individual who has responsibility for overseeing implementation of the security plan approved by the chief executive (e.g. the possession licensee or a nominee of a possession licensee that is a corporation).

Section 34B provides for a security plan to be approved and endorsed by the chief executive as part of the application process for a possession licence. As detailed in the amended section 51, if an application is submitted for a possession licence for a security enhanced source, the application must also be accompanied by the proposed security plan for the source.

An approved security plan may need to be amended from time to time to provide for improved security measures, to accommodate changes in technology or the business being conducted by a possession licensee, or to respond to a changed security environment following new credible threat information. New sections 34C and 34D therefore set out the process for

amendment of an approved security plan at the initiative of the chief executive or a licensee.

Section 34C enables the chief executive to require a possession licensee to amend their approved security plan if the chief executive considers it is necessary or desirable to make the change, having regard to the requirements for a security plan detailed in the new section 34A. In accordance with the principles of natural justice and due process, should the chief executive act under section 34C, the chief executive must:

- give the possession licensee a written notice which includes details regarding the proposed change, the day the change is to take effect and the licensee's right to make written submissions to the chief executive prior to this date;
- have regard to any written submissions made to the chief executive by the licensee; and
- give a possession licensee an information notice if the chief executive decides that the plan is to be changed.

Section 34D enables a possession licensee to apply to the chief executive to change their approved security plan. When considering such an application the chief executive must have regard to the requirements for a security plan detailed under section 34A and notify the licensee of their decision. If an application is granted the chief executive must issue a notice to the applicant. The change to the plan will take effect from the day stated in the notice and is not dependent on the licensee's plan being amended or a licensee's licence being amended to list the revised plan. However, if an application is refused, the chief executive must immediately give the applicant an information notice.

As detailed in Clause 55 below, if an information notice is issued under section 34C or 34D, the person receiving the notice may apply to have the decision reviewed under part 10 of the Act. An information notice is defined to mean a written notice which outlines a decision made by the chief executive or an inspector; states the reasons for the decision; and provides details regarding the time-frame and means for the review of the decision. Part 10 sets out a two phased review process.

Part 10 is to be amended by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. As of 1 December 2009, the Act will provide for an internal and external review process. An application for the internal review of a decision which is the subject of an

information notice may be made to the chief executive, who is then required to refer the matter to the Radiation Advisory Council for its advice as to the merits of the application for review. If a person is dissatisfied with the review decision made by the chief executive, an application for an external review may be made to the Queensland Civil and Administrative Tribunal against the chief executive's review decision (further information is provided at Clause 55).

Section 34E sets out the process a possession licensee must follow if their approved security plan is to be amended under section 34C at the initiative of the chief executive or under section 34D at the request of the possession licensee. The licensee has 14 days to return the amended plan and their licence so that the chief executive can endorse the plan and list the amended plan on the licensee's licence. It is an offence for a licensee to fail to comply with the requirements of this section (maximum penalty of 50 penalty units).

Section 34F imposes a statutory obligation on a possession licensee for a security enhanced source to ensure that those persons who are mentioned in the licensee's approved security plan: always have available for inspection a copy of those parts of the plan that relate to them; and have undergone the training program mentioned in the plan. A maximum penalty of 2500 penalty units may be imposed for failing to comply with this obligation.

Section 34G makes it an offence for a person to access, or allow another person access to, a security enhanced source unless the approved security plan provides for such access. In addition, the person controlling access to the source must be in a position to refer to those parts of the plan that relate to their or another person's access to the source; and have undergone the training program mentioned in the plan. The maximum penalty for a contravention of this section is 2500 penalty units.

Sections 34F and 34G give effect to the National Security Code, which specifies that a person responsible for, or otherwise dealing with, a security enhanced source must comply with the security plan formulated for a security enhanced source (refer to Items 2.1.9, 2.3.2, and 5.3.3 of the Code).

The new Division 1B (Transport security plans), comprising section 34H to 34R, gives effect to the key requirements of the National Security Code including the transport related responsibilities and duties of persons dealing with security enhanced sources (Chapter 2), the physical security

measures for the transport of security enhanced sources (Chapter 5), and the security outcomes to be achieved through the implementation of procedural security measures (Chapter 6). Item 5.1.1 of the Code specifies that a transport security plan must be formulated to demonstrate how the requirements of the National Security Code, including the matters listed in Schedule A2 of the Code, will be implemented.

For the purposes of the Act, *transport of a security enhanced source* has been defined as including:

- the preparation of the source for transport;
- the loading and unloading the source before, during and at the end of the transport; and
- the temporary storage of the source before, during and at the end of the transport.

Section 34H provides a definition of what constitutes a transport security plan for the purposes of the Act, and in doing so, specifies those matters which must be addressed in a plan.

A *transport security plan* is a plan for the security of a radioactive substance that is a security enhanced source during the transport of the source.

The term *transport security plan holder* is also defined for the purposes of the Act to mean a person who is the holder of a transport security plan that has been approved by the chief executive.

A transport security plan must, among other matters, set out particulars of the source to be transported; particulars about the transport arrangements for the source; an assessment of all possible security risks relating to the transport of the source; persons who will have access to the source under the plan; the security measures for the transport of the source; how the effectiveness of the plan is to be monitored and reviewed; the training program for persons to whom the plan applies; and the period for which the plan applies.

Transport security plans will need to be developed to enable the arrangements for the transport of a security enhanced source to be promptly changed if there is a change in the threat level. Consequently, all transport security plans will need to detail the measures that will be put in place for each of the threat levels detailed in the National Security Code. Should there be an increase in the threat level, the transport arrangements will be able to be varied promptly to another set of approved operational

arrangements as soon as advice about a change in the threat level is provided to persons transporting the sources.

The matters that must be addressed in a transport security plan (including the conduct of identity, criminal history and security checks) have been drawn from Schedule A2 of the National Security Code.

In addition, the Code specifies that an individual must not transport a security enhanced source unless the person has a legitimate reason for doing so and has undergone a security background check. Notwithstanding this restriction, the Code also specifies that an individual must not deal with particular security enhanced sources unless they have undergone an identity check or security background check, or are supervised at all times by a person with the relevant clearance. Consequently, it is intended that a transport security plan will need to clearly list who may have access to a source, the type of access a person may have to the source and the type of check the person will be required to undergo in order to undertake their transport related activities with the source.

The Bill will enable a transport security plan holder to apply to the chief executive to have a criminal history check and security check conducted for a person, if such checks are required under their approved transport security plan (see Clause 42). However, such applications must be accompanied by the written consent of the person for whom the check is to be conducted.

In some instances these checks will have already been conducted as part of an individual's application to obtain a licence (e.g. to transport a security enhanced source by road). However, responsibility for ensuring the necessary checks have been conducted before a person has access to a security enhanced source will reside with the individual who has responsibility for overseeing implementation of the transport security plan approved by the chief executive. This responsibility will, for example, reside with a possession licensee, a transport licensee, or a nominee for a possession or transport licensee that is a corporation.

Section 34I makes it an offence for a security enhanced source to be transported unless a transport security plan has been approved by the chief executive for the transport of the source. A maximum penalty of 2500 penalty units may be imposed for failing to comply with this requirement.

Section 34I also sets out who must have a transport security plan:

- a possession licensee acquiring a security enhanced source that needs to be transported to effect the acquisition;
- a possession licensee relocating a security enhanced source that needs to be transported to effect the relocation;
- a possession licensee whose security enhanced source is being transported between locations for the possession licensee's practice; and
- a transport licensee or another person who is transporting two or more radioactive substances that have become a security enhanced source as a result of their aggregation.

It is important to note that the restrictions imposed by the legislation on the transport of a radioactive substance that is a security enhanced source are given effect through the licensing requirements under sections 14 and 15 (as discussed above) as well as the approval of a transport security plan.

Section 34J sets out the application process for the approval of a transport security plan by the chief executive. The chief executive may only grant the application if satisfied that the plan is adequate for the transport of the security enhanced source to which it relates, having regard to the requirement of section 34H.

Section 34K specifies that before making a decision on an application for the approval of a transport security plan, the chief executive may investigate the applicant. Within 90 days of receiving an application, the chief executive may give an applicant a written notice requiring the applicant to submit additional information or documents. If the information or documents are not supplied within the prescribed period of at least 30 days, it will be taken that the application has been withdrawn.

Section 34L specifies that if chief executive grants an application for the approval of a transport security plan, the chief executive must endorse the plan and return the endorsed plan to the applicant. However, if an application is refused, the chief executive must immediately give the applicant an information notice.

This provision also clarifies that a possession licensee's licence must be amended to identify the approved plan, if a possession licensee is required to have a transport security plan because the security enhanced source in their possession is to be transported between locations for the licensee's radiation practice.

Section 34M deals with the situation where the chief executive fails to make a decision on an application for the approval of a transport security plan. If a decision is not made within 90 days after receiving an application, or within 90 days after a notice is issued under section 34K for further information to support the application, this will be taken as a decision to refuse to grant the application.

As envisaged by Item 5.1.1 of the National Security Code, an approved transport security plan may need to be amended from time to time to provide for improved security measures, to accommodate changes in technology or the business being conducted by a person for the transport of a source, or to respond to a changed security environment following new credible threat information. New sections 34N and 34O set out the process for the amendment an approved transport security plan at the initiative of the chief executive or the transport security plan holder.

Section 34N enables the chief executive to require a transport security plan holder to amend their approved plan if the chief executive considers it is necessary or desirable to make the change, having regard to the requirements for a transport security plan detailed in the new section 34H. In accordance with the principles of natural justice and due process, should the chief executive act under the new section 34N, the chief executive officer must:

- give the transport security plan holder a written notice which includes details regarding the proposed change, the day the change is to take effect and the licensee's right to make written submissions to the chief executive prior to this date;
- have regard to any written submissions made to the chief executive by the transport security plan holder; and
- give a transport security plan holder an information notice if the chief executive decides that the plan is to be changed.

Section 34O enables a transport security plan holder to apply to the chief executive to change their approved plan. When considering such an application the chief executive must have regard to the requirements for a transport security plan detailed under section 34H and is required to notify the holder of the approved plan of their decision. If the proposed change is approved, the change takes effect from the day stated in the notice and is not dependent on the plan being amended by the transport security plan holder.



As detailed in Clause 55 below, if an information notice is issued under section 34L or 34N, the person receiving the notice may apply to have the decision reviewed under Part 10 of the Act. An information notice is defined to mean a written notice which outlines a decision made by the chief executive or an inspector; states the reasons for the decision; and provides details regarding the time-frame and means for the review of the decision. Part 10 sets out a two phased review process.

Part 10 is to be amended by the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*. As of 1 December 2009, the Act will provide for an internal and external review process. An application for the internal review of a decision which is the subject of an information notice may be made to the chief executive, who is then required to refer the matter to the Radiation Advisory Council for its advice as to the merits of the application for review. If a person is dissatisfied with the review decision made by the chief executive, an application for an external review may be made to the Queensland Civil and Administrative Tribunal against the chief executive's review decision (further information is provided at Clause 55).

Section 34P sets out the process the transport security plan holder must follow if their plan is to be amended under section 34N at the initiative of the chief executive or under section 34O at their request. The holder of the plan has 14 days to return the amended plan so that the chief executive can endorse the amended plan. It is an offence for a transport security plan holder to fail to comply with the requirements of this section (maximum penalty of 50 penalty units).

Section 34Q imposes a statutory obligation on a transport security plan holder to ensure that those persons who are mentioned in the approved plan: always have available for inspection a copy of those parts of the plan that relate to them; and have undergone the training program mentioned in the plan. A maximum penalty of 2500 penalty units may be imposed for failing to comply with this obligation.

Section 34R makes it an offence for a person to access, or allow another person access to, a security enhanced source that is the subject of an approved transport security plan unless the plan allows such access. In addition, the person controlling access to the source must be in a position to refer to those parts of the plan that relate to their or another person's access to the source; and have undergone the training program mentioned in the plan. The maximum penalty for a contravention of this section is 2500 penalty units.

Sections 34Q and 34R give effect to the National Security Code, which specifies that a person responsible for, or otherwise dealing with, a security enhanced source must comply with the Code and the transport security plan formulated for a security enhanced source (refer to Items 2.1.9, 2.3.2, and 5.3.3).

### **Amendment of pt 6, div 6, heading**

Clause 23 amends the heading of part 6, division 6 as a consequence of the new section 44A being inserted to set out additional obligations of specified persons in relation to the security of a security enhanced source (see Clause 24).

The heading for division 6 has been amended to ‘Additional obligations of possession licensees and other persons’. Matters to be dealt with under this division will include:

- the statutory obligation imposed on a possession licensee to ensure that the health or safety of persons and the environment are not adversely affected by the carrying out of a radiation practice with a radiation source possessed by the licensee (section 43);
- the statutory obligation imposed on a person carrying out a radiation practice to take reasonable steps to ensure the health or safety of persons and the environment are not adversely affected by the way the person carries out the practice (section 44); and
- the statutory obligation to be imposed on possession licensees and other persons to ensure the security of a security enhanced source (new section 44A)
- requirements relating to a licensee that is a corporation to have a nominated person to oversee security of a security enhanced source, including the implementation of a security plan or transport security plan (new section 44B).

### **Amendment of s 43(Additional obligations of possession licensees)**

Clause 24 amends section 43 to place an additional obligation on a possession licensee to ensure that the environment is not adversely affected by exposure to radiation because of the carrying out of the practice with the source.

The current obligation is limited to ensuring the health or safety of persons. Consequently, this amendment will ensure that the legislation is consistent with the National Directory for Radiation Protection which requires each jurisdiction to protect the health and safety of people, and the environment, from the harmful effects of ionising and non-ionising radiation.

### **Amendment of s 44 (Additional obligation of persons carrying out radiation practices)**

Clause 25 amends section 44 to place an additional obligation on persons carrying out radiation practices to take reasonable steps to ensure that the environment is not adversely affected by exposure to radiation because of the way the person carries out the practice.

The current obligation is limited to ensuring the health or safety of persons. Consequently, this amendment will ensure that the legislation is consistent with the National Directory for Radiation Protection which requires each jurisdiction to protect the health and safety of people, and the environment, from the harmful effects of ionising and non-ionising radiation.

### **Insertion of new s 44A and 44B**

Clause 26 inserts a new section 44A to impose an obligation on persons who possess, use, transport or otherwise deal with a security enhanced source to take reasonable steps to ensure the security of the source. However, as each of these persons will be subject to either an approved security plan or an approved transport security plan, the provision clarifies that a person is taken to have complied with the obligation if the person complies with those parts of a plan that relate to the person.

This section gives effect to the National Security Code, which specifies that a person responsible for, or otherwise dealing with, a security enhanced source must have and/or comply with a security plan or transport security plan for a security enhanced source (refer to Items 2.1.9, 2.3.2, and 5.3.3).

The maximum penalty for a contravention of the obligation under section 44A is 2500 penalty units.

The new section 44B specifies that if a corporation holds a possession licence or a transport licence (otherwise than by road), an individual must be nominated to oversee the security of the security enhanced source in the possession of the licensee or being transported by the licensee (a

‘nominated person’). The maximum penalty which may be imposed for breaching this requirement is 2500 penalty units.

However, if the appointment of a nominated person ends, the licensee will not be in breach of this provision, provided that the licensee:

- notifies the chief executive in writing, within 7 days of the nominated person’s appointment ending; and
- takes the steps that are reasonably necessary for another appointment to be made or take effect.

It is important to note that the obligations imposed on a possession licensee in relation to security plans (new section 34F), transport security plans (new section 34Q) and for the security of a security enhanced source generally (new section 44A) will continue to apply during the period it takes a corporation to appoint a new nominated person.

### **Amendment of s 45 (Notification of dangerous events)**

Clause 27 amends section 45, which requires the relevant authorities to be notified if there is a security breach (e.g. the theft, loss or unauthorised access to a security enhanced source).

Section 45 currently imposes an obligation on a possession licensee to notify the chief executive of the following ‘dangerous events’ involving a radiation source that the licensee is allowed to possess under their licence:

- if the source is, or appears to have been, lost or stolen;
- if there is a radiation incident in relation to the source for which there are no remediation procedures stated in the licensee’s approved radiation safety and protection plan for the practice being carried out with the source at the time; and
- if equipment that uses, measures or controls radiation emitted from the source malfunctions with the result, or likely result, of an unintended emission of the radiation.

In order to ensure this section more closely aligns with the object of the Act, the definition of radiation incident, for the purposes of the legislation, has been amended to include harm to the environment. A *radiation incident* means an incident adversely affecting, or likely to adversely affect, either the health or safety of any person, or the environment, because of the emission of radiation from a radiation source.

Section 45 is also to be amended to give effect to the requirements of Item 7.1 of the National Security Code about the range of matters that constitute a ‘dangerous event’. That is to include an event that involves:

- a radiation source being damaged; or
- a security enhanced source being accessed in a way that is not provided for under an approved security plan or approved transport security plan.

A maximum penalty of 2500 penalty units may be imposed for a breach of section 45 if a dangerous event concerns a security enhanced source and a 100 penalty units for radiation source that is not a security enhanced source.

The matters that must be addressed in a notification have also been expanded. Currently, the notice must only state particulars adequate to identify the source and its location. Under the new requirements, a notice must include information about:

- the particulars adequate to identify the source;
- the location of the source (if this is known by the licensee) or the last known location of the source (the current location of a source may not be known if it was stolen);
- the circumstances surrounding the dangerous event;
- the steps taken, or proposed to be taken, to remedy the consequences of the dangerous event and to prevent the event happening again; and
- if a source is lost or stolen—other information relevant to the recovery of the source.

If a notification concerns a security enhanced source, the chief executive will be required to advise the relevant authorities that the chief executive considers should be made aware of the event. A relevant authority could be the Queensland Police Service, a body that has power under either Commonwealth or State legislation to deal with a radiation incident or a dangerous event, or another body prescribed by regulation. This provision also clarifies that the chief executive may disclose the information contained in the notice to a relevant authority.

## **Replacement of s 51 (Procedure requirements for applications)**

Clause 28 replaces the existing section 51, which sets out the application requirements for an Act instrument and specifies that the chief executive must consider the application and either grant, or refuse to grant, the application.

A number of the existing provisions under section 51 need to be revised as a consequence of the amendments made to the Act to enhance the security of radiation sources. The new requirements under this section include:

- if an application is submitted by an individual – the application must be accompanied by the documents prescribed under a regulation to prove the applicant’s identity;
- if an application for a licence requires a person to be nominated on behalf of a corporation - the application must be accompanied by the documents prescribed under a regulation to prove the nominee’s identity;
- if an application is for a possession licence for a security enhanced source – the application must be accompanied by the proposed radiation safety and protection plan as well as the security plan for the source;
- if an application is submitted by an individual for a possession, use or transport licence for a security enhanced source – the applicant will be required to disclose their criminal history;
- if an application is submitted by a corporation for a possession licence for a security enhanced source – the individual nominated by the corporation to oversee implementation of the applicant’s proposed security arrangements for the source will be required to disclose their criminal history; and
- if an application is submitted by a corporation for a transport licence for the transport of a security enhanced source other than by road – the individual nominated by the corporation to oversee implementation of the applicant’s proposed security arrangements for the transport of the source will be required to disclose their criminal history.

Identity checks are already conducted as part of the application process for a licence submitted by an individual. However, the new application requirements will state more clearly what form of documentation must be submitted as part of a licence application to provide proof of an applicant’s identity or, in the case of a corporation, the proposed nominee’s identity.

As detailed in Schedule E of the National Security Code, an applicant will be required to provide specified documents (such as a birth certificate, passport or Medicare card) and confirmation of employment history, education and personal referees.

A new division 10 has been included in part 7 to provide for the conduct of criminal history and security checks (see Clause 42). The legislation clarifies that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a disclosure of an applicant's or a nominee's criminal history (i.e. in the new section 51 and relevant provisions of division 10).

As discussed previously, this clause helps give effect to those aspects of the National Security Code that set out the circumstances under which a person (or the nominee in the case of a corporation) who is responsible for, transports, or otherwise deals with a security enhanced source may be required to undergo an identity check or a security background check (i.e. an identity check, a criminal history check and a security check for politically motivated violence).

### **Amendment of s 53 (Criteria for applications – possession licences)**

Clause 29 amends section 53, which sets out the criteria which the chief executive may consider when deciding whether an applicant for a possession licence is a suitable person to hold the licence. Currently, matters listed under this section include:

- the radiation source the person wishes to possess;
- the reasons why a person wants to possess a radiation source (e.g. the radiation practice to be carried out with the source and whether this practice derives more good than harm);
- the adequacy of the proposed radiation safety and protection plan for the radiation practice;
- the person's ability to comply with a possession licensee's obligations under the Act;
- whether the applicant has been convicted of an indictable offence or an offence against the Act, the repealed Act or a corresponding law;
- whether the applicant held an Act instrument under the Act, or a similar instrument under the repealed Act or a corresponding law, that was suspended or cancelled; and

- anything else relevant to the health or safety of a person.

Additional criteria have been included as a consequence of the changes being made to the Act to enhance the security of radiation sources and to more closely align provisions with the object of the Act in relation to the protection of the environment. The new criteria include:

- the person's ability to comply with a possession licensee's obligations under the Act (including under new sections 34F, 34Q, 44A and 44B);
- the outcome of a criminal history check or security check conducted under new division 10, if an application relates to a security enhanced source;
- the adequacy of the proposed security plan having regard to section 34A, if an application relates to a security enhanced source; and
- anything else relevant to security of a radiation source or harm to the environment.

In addition, a new subsection (2) has been inserted to clarify that when considering the outcome of a criminal history check or security check, the chief executive must have regard to whether the person has been convicted of, or charged with, a relevant offence and it is an unacceptable security risk for the person to have possession of a security enhanced source. To help give meaning to this subsection, two new terms are to be defined in the Dictionary for the Act – *relevant offence* and *prescribed activity*.

*Relevant offence* is to be defined for the purposes of the Act to mean:

- (a) an offence involving a prescribed activity; or
- (b) an offence involving violence or threatened violence; or
- (c) an offence involving the use, carriage, discharge or possession of a firearm; or
- (d) another offence prescribed under a regulation.

*Prescribed activity* is to be defined for the purposes of the Act to mean an activity that is or is associated with:

- (a) the use, handling or transport of a drug, chemical, explosive, radiation source or biological agent; or
- (b) the storage, collection or manufacture of a drug, chemical, explosive, radiation source or biological agent; or



- (c) the sale, import or export of a drug, chemical, explosive, radiation source or biological agent.

### **Amendment of s 54 (Criteria for applications – use licences)**

Clause 30 amends section 54, which sets out the criteria the chief executive may consider when deciding whether an applicant for a use licence is a suitable person to hold the licence. Currently, matters listed under this section include:

- the qualifications, training, skills, competence, knowledge and experience of the applicant that are relevant to the radiation practice to which the application relates;
- if the applicant is a person registered as a veterinary surgeon or a health practitioner—any conditions attaching to the applicant’s registration, enrolment or accreditation as a veterinary surgeon or health practitioner limiting the applicant’s ability to carry out the practice;
- whether the applicant has been convicted of an indictable offence or an offence against the Act, the repealed Act or a corresponding law;
- whether the applicant held an Act instrument under the Act, or a similar instrument under the repealed Act or a corresponding law, that was suspended or cancelled; and
- anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Additional criteria have been included as a consequence of the changes being made to the Act to enhance the security of radiation sources and to more closely align provisions with the object of the Act in relation to the protection of the environment. The new criteria include:

- the outcome of a criminal history check or security check conducted under new division 10, if an application relates to a portable security enhanced source; and
- anything else relevant to security of a radiation source or harm to the environment.

In addition, a new subsection (2) has been inserted to clarify that when considering the outcome of a criminal history check or security check, the chief executive must have regard to whether the person has been convicted of, or charged with, a relevant offence and it is an unacceptable security

risk for the person to have possession of a security enhanced source. To help give meaning to this subsection, two new terms are to be defined in the Dictionary for the Act – *relevant offence* and *prescribed activity*.

### **Amendment of s 55 (Criteria for applications – transport licences)**

Clause 31 amends section 55, which sets out the criteria the chief executive may consider when deciding whether an applicant for a transport licence is a suitable person to hold the licence. Currently, matters listed under this section include:

- how the radioactive substance, to which the application relates, is to be transported by the applicant;
- the amount of the substance the licensee is to transport at a time;
- the applicant's competency in relation to the handling, packing, transportation, storage and delivery of the substance;
- whether the applicant has been convicted of an indictable offence or an offence against the Act, the repealed Act or a corresponding law;
- whether the applicant held an Act instrument under the Act, or a similar instrument under the repealed Act or a corresponding law, that was suspended or cancelled; and
- anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Additional criteria have been included as a consequence of the changes being made to the Act to enhance the security of radiation sources and to more closely align provisions with the object of the Act in relation to the protection of the environment. The new criteria include:

- the outcome of a criminal history check or security check conducted under new division 10, if an application relates to the transport of a radioactive substance that is a security enhanced source; and
- anything else relevant to security of a radiation source or harm to the environment.

In addition, a new subsection (2) has been inserted to clarify that when considering the outcome of a criminal history check or security check, the chief executive must have regard to whether the person has been convicted of, or charged with, a relevant offence and it is an unacceptable security

risk for the person to have possession of a security enhanced source. To help give meaning to this section, two new terms are to be defined in the Dictionary for the Act – *relevant offence* and *prescribed activity*.

### **Amendment of s 56 (Criteria for applications – accreditation certificates)**

Clause 32 amends section 56, which sets out the criteria the chief executive may consider when deciding whether an applicant for an accreditation certificate is a suitable person to hold the certificate.

An accredited person is responsible for certifying that a radiation source or premises comply with the applicable radiation safety standards made under the Act.

Currently, the matters listed under this section include:

- the qualifications, training, skills, knowledge and experience of the applicant that are relevant to the applicant's competency to assess whether the type of radiation source or premises, to which the application relates, complies with the relevant radiation safety standard;
- whether the applicant has been convicted of an indictable offence or an offence against the Act, the repealed Act or a corresponding law;
- whether the applicant held an Act instrument under the Act, or a similar instrument under the repealed Act or a corresponding law, that was suspended or cancelled; and
- anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

The clause inserts a new criterion for the approval of an accreditation certificate to enable consideration of anything else relevant to harm to the environment, in so far as exposure to radiation is concerned.

### **Amendment of s 57 (Criteria for applications – approvals to acquire)**

Clause 33 amends section 57, which sets out the criteria which the chief executive may consider when deciding whether an applicant for an approval to acquire a radiation source is a suitable person to hold the approval.

As specified under section 49(3)(a) of the Act only a possession licensee is eligible to apply for an approval to acquire. Matters which the chief executive currently has regard to include:

- the particulars of the applicant's possession licence, including the radiation source the applicant is allowed to possess, the radiation practice for which the applicant is allowed to possess the source; the term of the licence; and any conditions of the licence;
- the applicant's reason for wanting to acquire the radiation source to which the application relates;
- whether the application contains particulars adequate to identify the source;
- how the applicant proposes to eventually dispose of, relocate, sell or give away the source;
- whether the applicant held an approval to acquire under the Act, or a similar instrument under the repealed Act or a corresponding law, that was suspended or cancelled; and
- anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Additional criteria have been included as a consequence of the changes being made to the Act to enhance the security of radiation sources and to more closely align provisions with the object of the Act in relation to the protection of the environment. The new criteria include:

- whether the radiation source to which the application relates, when aggregated with radiation sources already in the applicant's possession, will result in the applicant being in possession of a security enhanced source;
- if the application relates to a security enhanced source— the adequacy of the approved security plan for the source, having regard to section 34A; and the adequacy of the approved transport security plan for the source, having regard to section 34H; and
- anything else relevant to security of a radiation source or harm to the environment.

This clause helps give effect to Item 2.1.12 of the National Security Code, which specifies that the written approval of the regulatory authority must be obtained for the disposal of a security enhanced source.

It also gives effect to the recommendation of the Council of Australian Governments that the Commonwealth, in consultation with the States and Territories, establish a national register of security enhanced sources to facilitate the tracking of these sources at an inter-jurisdictional level.

### **Amendment of s 58 (Criteria for applications – approvals to dispose)**

Clause 34 amends section 58, which sets out the criteria which the chief executive may consider when deciding whether an applicant for an approval to dispose of radioactive material is a suitable person to hold the approval.

Section 26 makes it an offence for a person to release radioactive material into the environment or a thing containing the material into the environment (*dispose of radioactive material*) unless:

- the concentration or activity of a radionuclide in the material is not more than the maximum concentration or activity prescribed under a regulation; or
- an approval to dispose of radioactive material has been granted under Part 7 of the Act.

As the concentration and activity of a radionuclide in a security enhanced source will be greater than that prescribed for the disposal of radioactive material, an approval to dispose of a security enhanced source will need to be obtained from the chief executive.

Currently, the criteria for an approval to dispose include:

- the applicant's reason for wanting to dispose of the radioactive material to which the application relates;
- how the applicant proposes to dispose of the material;
- whether the material can be dealt with in another way that is more conducive to ecological health or public amenity or safety;
- whether the disposal would, or is likely to, result in another Act being contravened such as the *Environmental Protection Act 1994*;
- whether the applicant held an approval to dispose under the Act, or a similar instrument under the repealed Act or a corresponding law, that was suspended or cancelled; and

- anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

The amendment will enable the chief executive to also have regard to anything else relevant to security of a radiation source or harm to the environment.

This clause also helps give effect to Item 2.1.12 of the National Security Code, which specifies that the written approval of the regulatory authority must be obtained for the disposal of a security enhanced source.

It also gives effect to the recommendation of Council of Australian Governments that the Commonwealth, in consultation with the States and Territories, establish a national register of security enhanced sources to facilitate the tracking of these sources at an inter-jurisdictional level.

### **Amendment of s 59 (Criteria for applications – approvals to relocate)**

Clause 35 amends section 59, which sets out the criteria the chief executive may consider when deciding whether an applicant for an approval to relocate a radiation source is a suitable person to hold the approval.

As specified under section 49(3)(b) of the Act only a possession licensee is eligible to apply for an approval to relocate.

Currently, the criteria for an approval to relocate include:

- the applicant's reason for wanting to relocate the radiation source to which the application relates;
- the ability of the applicant to comply with any intergovernmental agreement or international treaty about the movement of radiation sources;
- if the purpose of the proposed relocation is the eventual disposal of the source—whether it can be dealt with in another way that is more conducive to ecological health or public amenity or safety;
- whether the applicant held an approval to relocate under the Act, or a similar instrument under a corresponding law, that was suspended or cancelled; and
- anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

The amendment will enable the chief executive to also have regard to anything else relevant to security of a radiation source or harm to the environment.

This clause also helps give effect to Item 2.1.12 of the National Security Code, which specifies that the written approval of the regulatory authority must be obtained for the disposal of a security enhanced source.

It also gives effect to the recommendation of Council of Australian Governments that the Commonwealth, in consultation with the States and Territories, establish a national register of security enhanced sources to facilitate the tracking of these sources at an inter-jurisdictional level.

### **Amendment of s 60 (Criteria for applications – radiation safety officer certificates)**

Clause 36 amends section 60, which sets out the criteria the chief executive may consider when deciding whether an applicant for a radiation safety officer certificate is a suitable person to hold the certificate.

Section 60 is to be amended as a consequence of the changes made to section 5 to include a new security principle. Namely, that people should be protected from unnecessary exposure to radiation resulting from a malicious event by ensuring that radiation sources are safely managed and securely protected at all times, including after the end of their useful life.

It is proposed that the criterion which makes reference to an applicant's knowledge and skills in applying the existing radiation safety and protection principles be amended to include the new principle. This is to be achieved by replacing the term 'radiation safety and protection principles' with the term 'radiation safety, protection and security principles'.

The amendment will enable the chief executive to also have regard to anything else relevant to the protection of the environment, in so far as exposure to radiation is concerned.

### **Amendment of s 61 (Inquiries into applications)**

Clause 37 amends section 61 to expand the matters the chief executive may inquire into before deciding whether to grant an application for a use licence, transport licence, accreditation certificate or radiation safety officer certificate.

The amendment will enable an examination to be undertaken to assess an applicant's knowledge of issues relevant to the:

- security of radiation sources;
- the health or safety of persons in so far as exposure to radiation is concerned; and
- the harm to the environment in so far as exposure to radiation is concerned.

### **Amendment of s 66 (Additional information for possession licences)**

Clause 38 amends section 66 to expand the matters that must be listed on a possession licence, as a consequence of the changes being made to the Act to enhance the security of radiation sources.

A possession licence will need to identify, as may be appropriate:

- the approved radiation safety and protection plan for the radiation practice to be undertaken with the source the possession licensee is allowed to possess under their licence;
- if the licensee is allowed to possess a security enhanced source, the approved security plan for the source; and
- if the licensee is in possession of a security enhanced source that is to be transported between locations for the licensee's radiation practice, the approved transport security plan for the source.

### **Amendment of s 76 (Imposition of conditions by chief executive)**

Clause 39 amends section 76, which sets out the circumstances under which the chief executive may issue an Act instrument subject to those conditions considered necessary or desirable to protect persons from health risks associated with exposure to radiation.

Currently, the conditions may only be imposed if they are necessary or desirable to protect persons from health risks associated with exposure to radiation. The amendment will expand these grounds to include protection of the environment from the harmful effect of radiation and to ensure the security of a radiation source.



### **Amendment of s 88 (Immediate suspension of licence or accreditation certificate pending formal cancellation procedure)**

Clause 40 amends section 88, which sets out the grounds and procedures for the immediate suspension or cancellation of specified Act instruments.

The amendment will enable the immediate suspension of a licence, if a ground exists to cancel the licence (e.g. the person is no longer a suitable person to hold a licence) and it is necessary to immediately suspend the licence until the formal cancellation procedure is completed:

- in the interests of the health or safety of any person who may be exposed to radiation emitted from the radiation source to which the licence relates;
- because the environment may be harmed by exposure to radiation emitted from the radiation source to which the licence relates; and
- because the security of a radiation source to which the licence relates is at risk.

### **Amendment of s 95 (Changing conditions of conditional Act instruments – chief executive action on own initiative)**

Clause 41 amends section 95, which sets out the process which must be followed if the chief executive considers it necessary or desirable to change the conditions attached to a conditional Act instrument, in order to protect persons from the health risks associated with exposure to radiation.

Section 95 is to be amended so that it is consistent with the changes being made to section 76, which provides the authority for the chief executive to impose conditions when granting an Act instrument.

Currently, under both of these sections, conditions may only be imposed if they are necessary or desirable to protect persons from health risks associated with exposure to radiation. The amendment outlined in relation to Clause 39 and 41 will expand these grounds to include protection of the environment from the harmful effect of radiation and to ensure the security of a radiation source.

### **Insertion of new pt 7, div 10**

Clause 42 inserts a new Part 7, Division 10, comprising sections 103A to 103J, to provide for the conduct of criminal history checks and security

checks in relation to those persons wishing to possess, use, transport or otherwise deal with a security enhanced source.

Section 103A lists the persons for whom the chief executive may conduct a criminal history check and security check under the new division 10. Namely, for an individual:

- applying for a licence to possess a security enhanced source;
- applying for a licence to use a portable security enhanced source;
- applying for a licence to transport a security enhanced source by road;
- applying for a licence to transport (otherwise than by road) a security enhanced source;
- who is the nominee of a corporation applying for a licence to possess or transport (otherwise than by road) a security enhanced source;
- who is identified under a possession licensee's security plan as requiring a criminal history and security check in light of the type of access the individual will have to a portable security enhanced source in the possession of a possession licensee; and
- who is identified under a transport security plan as requiring a criminal history and security check in light of the type of access the individual will have to a security enhanced source during its transport.

Section 103B enables the chief executive to ask the Commissioner of the Queensland Police Service or other entity for a written report about the criminal history of a person mentioned in section 103A. The term 'other entity' is to be defined as meaning an entity authorised to conduct a criminal history check or security check under a law of a State or the Commonwealth (see Clause 56).

When making this request the chief executive will be authorised to disclose the person's name (and any other name the person may be using or have used), the person's residential address; and their gender, date of birth and place of birth.

Upon receipt of the written report, the chief executive may request further information about the outcome of the criminal history check (e.g. such information may be sought to help make a determination if anything in a person's history would indicate that they are not a suitable person to have access to a security enhanced source).

The Commissioner or entity must comply with a request made by the chief executive under this section. However, this obligation only applies to information in the possession of, or to which, the commissioner or entity has access.

The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, information under this section.

Section 103C enables the chief executive to ask the Commissioner of the Queensland Police Service or other entity to conduct a security check for a person mentioned in section 103A and advise the chief executive of the outcome of the security check.

Upon receipt of the outcome of the security check, the chief executive may ask for further information about the outcome of the security check (e.g. such information may be sought to help make a determination if anything in a person's history would indicate that they are not a suitable person to have access to a security enhanced source).

The Commissioner or entity must comply with a request made by the chief executive under this section. However, this obligation only applies to information in the possession of, or to which, the commissioner or entity has access.

The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the asking for, or giving of, information under this section.

Section 103D requires the Commissioner of the Queensland Police Service to notify the chief executive if there is a change in the criminal history of a person for whom a criminal history check or security check has been conducted under division 10. The section details the particular information that must be included in such a notice and what action the chief executive may take upon receipt of the notice. The section also provides that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the giving of a notification under this section.

Section 103E requires the chief executive to advise the person about whom the checks have been conducted of the information obtained as a result of a criminal history check or security check being conducted under division 10. The person is to be given 28 days to make representations to the chief executive about this information. However, this requirement does not apply if:

- the person has already been given the opportunity to make representations about the information; or

- a decision has been made that the information should not be given to the person because it would be prejudicial to the interests of national security.

Section 103F requires the chief executive to consider all written representations made by a person who has been notified under section 103E about the outcome of their criminal history check or security check.

Section 103G enables the chief executive to advise a possession licensee or transport security plan holder of the outcome of the checks conducted for a person to enable them to have access to a security enhanced source under an approved security plan or transport security plan. As provided for by section 103A, such a request must have been made in the approved form and be accompanied by the written consent of the person for whom the check(s) is to be conducted.

Section 103H requires a person about whom a criminal history check has been, or is being, conducted under division 10 to immediately disclose the details of any change in their criminal history to the chief executive. The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a disclosure under this section.

Section 103I requires that a disclosure about a change in a person's criminal history under section 103H be made in the approved form and include the specified details about any conviction or charge for an offence.

Section 103J makes it an offence for a person to fail to make a disclosure under section 103H, unless they have a reasonable excuse. The maximum penalty for not disclosing changes in a person's criminal history is 100 penalty units.

### **Amendment of s 117 (General powers after entering places)**

Clause 43 amends section 117, which sets out the powers an inspector may utilise for purposes of monitoring and enforcing compliance with the Act.

The amendments to section 117 will enable an inspector to:

- take an extract from, or copy, a document at a place or take the document to another place to copy it. If a document is taken, an inspector must ensure that the document is copied and returned as soon as practicable;
- take a tape, disc or other thing from a video surveillance device installed at a place to monitor the security of a security enhanced

source to enable an inspector to check compliance with an approved security plan. If a tape, disc or other thing is taken, an inspector must ensure that it is copied and returned as soon as practicable;

- conduct recordings, measurements, tests or analyses to assess the degree of exposure of the environment to radiation emitted from radioactive material or a radiation apparatus;
- conduct recordings, measurements, tests or analyses to assess the levels of risk of harm to the environment;
- if there is a known security risk, conduct recordings, measurements, tests or analyses to assess the level of the risk;
- test a security device or other thing at a place to assess the adequacy of measures to deal with the security of a radiation source at the place;
- inquire into the circumstances and probable causes of a radiation hazard, a security risk or security breach, or a risk of harm to the environment; and
- if there has been a security breach or an increased security risk, require a person not to enter, or remain at or near a place, or direct the actions of a person at or near a place.

An inspector will be required to advise a person it is an offence to not comply with a requirement or direction if there has been a security breach or an increased security risk, unless the person has a reasonable excuse.

### **Amendment of s 119 (Failure to comply with requirement not to enter or remain at a place)**

Clause 44 amends section 119 as a consequence of the changes being made to section 117.

The amendment will make it an offence for a person to fail to comply with a requirement made under the new section 117(3)(ga). Under this provision, if there is, or has been, an increased security risk, or a security breach, concerning a radiation source at the place, an inspector may:

- require a person not to enter, or remain at or near, the place; or
- direct the actions of a person at or near the place.

The maximum penalty for this offence is 50 penalty units.

### **Amendment of s 124 (Stopping vehicle)**

Clause 45 amends section 124 to enable an inspector to stop a vehicle or require a person to take a vehicle to a specified place, if an inspector reasonably suspects or is aware that:

- the vehicle is being used, or has been used, in relation to the commission of an offence against the Act;
- a thing in, or on, a vehicle may provide evidence of the commission of an offence against the Act; or
- anyone's health and safety may be adversely affected by exposure to radiation because of the transport of radioactive material in, or on, a vehicle.

The amendment will expand the circumstances under which this power may be used. Specifically, if the environment may be harmed as a result of the transport of a radioactive substance or the security of a radioactive substance may be compromised as a result of the way it is being transported.

It is an offence to fail to comply with a request, signal or direction made by an inspector under section 124, unless the person has a reasonable excuse. The maximum penalty is 50 penalty units.

### **Amendment of s 148 (Emergency powers)**

Clause 46 amends section 148, which sets out the powers an inspector may utilise, if the inspector is satisfied on reasonable grounds that there is a radiation source at a place and it is necessary to exercise powers under this section in response to specified emergency situations involving the source.

The amendment will enable an inspector to take action under section 148, if it is necessary to recover a radiation source that has been lost or stolen. Currently, action may be taken to:

- avoid or minimise an imminent risk of death of, serious illness of, or serious injury to, persons from radiation emitted from the source; or
- avoid imminent serious environmental harm from the source.

Section 148 enables an inspector to enter a place, without consent or a warrant, and ensure that action is taken to control the situation. However, in exercising or attempting to exercise emergency powers, an inspector must take all reasonable steps to ensure the inspector causes as little

inconvenience to persons at the place, and does as little damage, as is practicable in the circumstances.

It is an offence to fail to comply with a direction made by an inspector under section 148, unless the person has a reasonable excuse. The maximum penalty for this offence is 100 penalty units.

### **Amendment of s 163 (Membership of council)**

Clause 47 amends section 163, to require a person be appointed to the Radiation Advisory Council who has experience in, or knowledge of ways of preventing or minimising harm to the environment from exposure to radiation, as criteria for membership of the Council.

The legislation currently provides for the Council to consist of a total of 8 to 15 members comprising the chief health officer, at least 1 community representative and 6 to 13 persons with experience and knowledge of:

- the carrying out of radiation practices; or
- the transportation of radioactive material; or
- ways of preventing or minimising health risks to any person, in so far as exposure to radiation is concerned.

Other than the chief health officer, members of the Council are appointed by the Minister (the appointed members).

### **Amendment of s 198 (Evidentiary aids)**

Clause 48 amends section 198, which lists those matters that can be the subject of an evidentiary certificate signed by the chief executive as evidence of the matter.

The amendment inserts new paragraphs (d) and (e) in subsection (1) to specify that a certificate may be signed for a stated document that is an approved security plan or approved transport security plan.

As a consequence of this change, clause 48 also provides for the existing paragraphs under subsection (1) to be renumbered.

### **Amendment of s 200 (Recovery of costs of avoiding or minimising adverse health effects)**

Clause 49 amends section 200, which provides for the recovery of costs where a court finds that a defendant caused a situation that resulted, or could have resulted, in harm to persons by committing an offence.

The amendment expands the range of circumstances under which the chief executive may apply for an order to recover costs should a court find that a defendant caused a situation that resulted, or could have resulted, in harm to the environment as a result of an offence being committed against the Act.

### **Amendment of s 209 (Confidentiality of information)**

Clause 50 amends section 209 which makes it an offence for specified persons to disclose information which a person has obtained in the course of, or because of, the person's functions under the Act, unless the disclosure is expressly authorised under this provision.

Information which is protected under this provision includes personal health information; personal monitoring information; and information that could damage the commercial activities, or adversely affect the intellectual property rights, of the person to whom the protected information relates.

Information protected under this clause may only be disclosed:

- if the information is disclosed in the performance of functions under the Act;
- with the written consent of the person to whom the protected information relates;
- to the person to whom the protected information relates;
- if the protected information is otherwise publicly available; or
- if the disclosure of the protected information is authorised or permitted under an Act or is required by law.

Personal monitoring and commercial information can be also be disclosed to an entity of the State; another State or entity within that State; the Commonwealth or an entity of the Commonwealth for a purpose prescribed under a regulation. However, the Act currently specifies that this information must not be given to anyone else and must only be used for the purpose for which it was given. Clause 50 will amend this restriction to



clarify that an entity, another State or the Commonwealth can give information to someone else if the giving of the information is necessary to protect national security.

This amendment is necessary to give effect to the recommendation of the Review of Radiological Materials that the Commonwealth, in consultation with the States and Territories, establish a centralised database and notification system to provide for the tracking of security enhanced sources within Australia (not just within individual jurisdictions) and to enable a coordinated response to be initiated should a security breach arise in relation to a security enhanced source (e.g. the loss or theft of a source).

### **Amendment of s 211 (Protecting officials from liability)**

Clause 51 amends section 211, which specifies that those persons, who are defined as being an official for the purposes of the section, are not civilly liable for an act done, or omission made, honestly and without negligence under the Act. Such liability attaches to the State.

Official is defined for the purposes of this section to mean the Minister, the chief executive, a State radiation analyst, an inspector or a person acting under the direction or authority of an inspector. The Bill provides for this definition to be amended to include members of the Radiation Advisory Council, and members of Committees convened by the Council. This will ensure that these individuals who also have a role in administering the Act are provided with protection from liability for the performance of the statutory functions allocated to these bodies under the Act.

Functions of the Council, as outlined in section 162 of the Act, include:

- examining, and making recommendations to the Minister about, the operation and application of the Act, proposed amendments of the Act, radiation safety standards, issues relating to radiation, research into radiation practices and the transport of radioactive materials in the State;
- advising the chief executive about the merits of an application for review of a decision for which an information notice has been given to a person under the Act (e.g. refusal of a licence, refusal to grant a change to a security plan, etc); and
- overseeing the operation of the Council's Committees.

Committees may be established to assist the Council to effectively and efficiently perform its statutory functions (section 177).

### **Amendment of s 215 (Regulation-making power)**

Clause 52 amends the general regulation making power under section 215 to enable regulations to be made about matters relating to the security of radiation sources to prevent or minimise risks to any person or harm to the environment.

### **Replacement of pt 14, div 3, heading**

Clause 53 amends the heading for part 14, division 3 to clarify that the provisions in division 3 apply to the transitional provisions for Act No 20 of 1999 - the original version of the *Radiation Safety Act 1999*. This amendment is being progressed as a consequence of the changes being made to the Act by Clause 54 to insert a new division in part 14 to set out the transitional provisions for the amendments being made by the Bill.

### **Insertion of new pt 14, div 4**

Clause 54 inserts a new division 4 in part 14 which sets out the repeal, savings and transitional provisions for the Act.

Division 4 is comprised of sections 231 to 235, which set out the transitional arrangements for the Bill in relation to the new requirements that give effect to the National Security Code.

Section 231 defines the terms *commencement* and *transitional period* for the purposes of division 4. *Commencement* is defined to mean the commencement of section 231 and *transitional period* is defined as the period ending 6 months after the commencement of section 231.

Section 232 gives a possession licensee, who is in possession of a security enhanced source at the time section 231 commences, six months within which to have:

- a new possession licence issued by the chief executive; and
- a security plan for their security enhanced source approved and endorsed by the chief executive as part of the application process for their new licence.

When applying for a new licence, existing possession licensees will be required to comply with the new application requirements under section 51 (see Clause 28) and be subject to the new criteria for determining whether an applicant is a suitable person to hold a possession licence (refer to Clause 29).

The most significant changes impacting on possession licensees who currently possess radiation sources that are security enhanced sources will be the requirement that:

- a security plan be submitted for the approval of the chief executive as part of their the application for a licence; and
- they (or their nominee in the case of a corporation) be subject to a criminal history check and security check under the new division 10, which will also require them to provide proof of identity and disclose their criminal history as part of the application process for a licence.

If a possession licensee does not obtain a new licence before the end of the transitional period, their licence will expire.

Section 233 gives a use licensee, who is authorised to use a portable security enhanced source at the time section 232 commences, six months within which to have a new licence issued by the chief executive.

When applying for a new licence, existing licensees will be required to comply with the new application requirements under section 51 (see Clause 28) and will be subject to new criteria for determining whether an applicant is a suitable person to hold a use licence (refer Clause 30).

The most significant change impacting on use licensees currently authorised to use a radiation source that is a portable security enhanced source will be the requirement that they undergo a security check and criminal history check under the new division 10, which will also require them to provide proof of identity and disclose their criminal history as part of the application process for a licence.

If a use licensee does not obtain a new licence before the end of the transitional period, their licence will expire.

Section 234 gives a transport licensee, who is authorised to transport a radioactive substance that is a security enhanced source at the time section 234 commences, six months within which to have a new licence issued by the chief executive.

When applying for a new licence, existing licensees will be required to comply with the new application requirements under section 51 (see Clause 28) and will be subject to new criteria for determining whether an applicant is a suitable person to hold a use licence.

The most significant change impacting on transport licensees currently authorised to transport security enhanced sources will be the requirement

that they (or their nominee in the case of a corporation) undergo a security check and criminal history check under the new division 10, which will require them to provide proof of identity and disclose their criminal history as part of the application process for a licence.

If a transport licensee does not obtain a new licence before the end of the transitional period, their licence will expire.

Section 235 specifies that a transport security plan will not be required should a person transport a security enhanced source during the transitional period of 6 months. However, the provision does clarify that nothing prevents a person from applying for, or the chief executive granting, an approval for a transport security plan should they wish to do so. Should approval be granted, the provisions of the new part 6, division 1B will apply (e.g. enabling a plan to be amended, requiring specified persons to comply with their statutory obligations in relation to the implementation of the plan, etc).

### **Amendment of sch 1 (Decisions to which information notices must be given)**

Clause 55 amends schedule 1 of the Act to expand the list of matters for which an information notice must be given to include:

- Section 34C, changing an approved security plan for a security enhanced source;
- Section 34D, refusing to grant an application to change an approved security plan for a security enhanced source;
- Section 34L, decision to refuse to grant an application for approval of a transport security plan;
- Section 34N, changing an approved transport security plan for the transport of a security enhanced source; and
- Section 34O, refusing to grant an application to change an approved transport security plan for the transport of a security enhanced source.

For the purposes of the Act, an information notice is defined to mean a written notice which outlines a decision made by the chief executive or an inspector; states the reasons for the decision; and provides details regarding the time-frame and means for the review of the decision.

Section 182 of the Act specifies that a person who is given, or is entitled to be given, an information notice for a decision may apply for the decision to be reviewed.

Part 10 sets out the application and decision-making processes for the review of a decision which is the subject of an information notice listed in schedule 1 of the Act. However, it should be noted that this part is to be amended by *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

As of 1 December 2009, the Act will provide for an internal and external review process. In the first instance, an application for the internal review of a decision which is the subject of an information notice will need to be made to the chief executive. Upon receipt of such an application, the chief executive must refer the matter to the Radiation Advisory Council for its advice as to the merits of the application for review. After reviewing the original decision the chief executive must make a further decision (i.e. confirm, amend or substitute a new decision) and give the applicant written notice of the decision (i.e. a review decision). If the review decision is not the decision sought by the person, the written notice issued by the chief executive must be a 'QCAT information notice'. That is, a notice that meets the requirements of section 157 of the *Queensland Civil and Administrative Tribunal Act 2009* by setting out the reasons for the decision; the person's right to have the decision reviewed by the Queensland Civil and Administrative Tribunal; how, and the period within which, the person may apply for the review; and any right the person has to have the operation of the decision stayed under the *Queensland Civil and Administrative Tribunal Act 2009*.

A person dissatisfied with the decision made by the chief executive at the conclusion of an internal review process may then apply for the matter to be reviewed by QCAT. Such an application must be made in accordance with the requirements of the *Queensland Civil and Administrative Tribunal Act 2009*.

### **Amendment of sch 2 (Dictionary)**

Clause 56 amends the dictionary in schedule 2 as a consequence of the changes being made to the Act by the Bill.