

13891 Cat. No, 97 2921 6 ISBN 0644 519630

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY BILL 1998**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Parliamentary Secretary to the Minister for Health and Family Services, the Hon. Trish Worth, MP)

# AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY BILL 1998

## OUTLINE

This Bill proposes to establish a scheme to regulate the operation of nuclear installations and the management of radiation sources, including ionising material and apparatus and non-ionising apparatus, where these activities are undertaken by the Commonwealth, Commonwealth entities and those who deal with such entities for the purposes of the Bill.

The object of the Bill is the protection of the health and safety of people, and the protection of the environment, from the harmful effects of radiation. For this purpose, the Bill:

- (a) establishes an office, to be known as the Chief Executive Officer of the Australian Radiation Protection and Nuclear Safety Agency, for the purposes of performing functions and exercising powers under the Bill;
- (b) establishes a licensing scheme for the regulation of nuclear installations operated by the Commonwealth or Commonwealth entities, from the time at which plans are drawn up to construct an installation through all its stages of operations until it is de-commissioned;
- (c) establishes a licensing scheme for the regulation of ionising sources and certain non-ionising sources where these are dealt with by the Commonwealth, and Commonwealth entities;
- (d) establishes a Radiation Health and Safety Advisory Council, with members to be drawn from organisations such as State and Territory Health agencies, peak industry groups, scientific and technical experts and consumer groups. The Council will have functions including advising the CEO on matters relating to radiation protection and nuclear safety, including the development of uniform standards and codes of practice and the development of uniform regulatory requirements for the regulation of radiation sources throughout Australia.

## FINANCIAL IMPACT STATEMENT

The *Australian Radiation Protection and Nuclear Safety Act 1998* will not have any significant financial impact for the Commonwealth. There will be notional transfers of monies between Commonwealth Departments.

# AUSTRALIAN RADIATION PROTECTION AND NUCLEAR SAFETY BILL 1998

## NOTES ON CLAUSES

### **PART 1 - PRELIMINARY**

#### **Clause 1 - Short title**

This is a formal provision that specifies the short title of the Act as the *Australian Radiation Protection and Nuclear Safety Act 1998*.

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

This clause provides that the Act will commence on the day on which it is Proclaimed or, if the Bill is not Proclaimed within 6 months from the day it receives Royal Assent, it will commence to operate on the day following the end of that period.

#### **Clause 3 - Object of Act**

This clause sets out the purposes of the Act, which is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation.

#### **Clause 4 - Act binds the Crown**

This clause provides that the Act will bind the Crown in right of the Commonwealth and each of the States and Territories, however the Commonwealth may not be prosecuted for the commission by it of any offence against this Act or regulations.

#### **Clause 5 - External Territories**

This clause provides that the Act will have application in every external Territory.

#### **Clause 6 - Extra territorial operation**

This clause provides that the Act will apply outside Australia. This means that persons who are regulated under the Act will continue to be regulated whether or not they are in Australia.

#### **Clause 7 - Act not to prejudice Australia's defence**

This clause provides that the Act will not apply to the operation of the Defence Forces so as to prejudice Australia's defence.

Subclause 7(1) provides that no person will be required or permitted to take any action, or to refrain from taking action, where this could reasonably be expected to, or would, prejudice Australia's defence.

Subclause 7(2) provides that, without qualifying the exemption from the Act in the manner

described in subclause 7(1), the Chief of Defence Force may, after consulting with the Minister administering the Act, declare that specific provisions of the Act or regulations will not apply to specific members, or a class or classes of members, of the Defence Force, or that specific provisions of the Act or regulations will only apply to such members or classes of members subject to such modifications as are detailed in the declaration.

When making such a declaration, subclause 7(3) requires the Chief of the Defence Force to take into account the need to give effect to the object of the Act to the greatest extent possible consistent with maintaining Australia's defence. Subclause 7(4) provides that any declaration made by the Chief of the Defence Force pursuant to this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **Clause 8 - Act not to prejudice national security**

This clause has the same effect as clause 7, except that the provision will have application to ensure there is no prejudice to national security.

Under subclause 8(2), the Director-General of Security may, after consulting with the Minister, declare in writing that specified provisions of the Act or regulations do not apply, or apply subject to such modifications as are set out in the declaration, in relation to:

- (a) premises or a workplace under the control of the Director-General; or
- (b) a person who is employed under section 84 of the *Australian Security Organisation Act 1979*;
- (c) the performance of work by such a person for the purpose of carrying out a function under section 17 of that Act.

The declaration will have effect according to its terms.

Where the Director-General exercises his or her power under subclause 8(2), the Director-General is required, under subclause 8(3), to take into account the need to promote the object of the Act to the greatest extent consistent with the maintenance of Australia's national security .

Subclause 8(4) provides that any declaration made by the Director-General under subclause 8(2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **Clause 9 - Operation of Act**

Subclause 9(1) makes it clear that this Bill is not to exclude the operation of the *Nuclear Non-Proliferation (Safeguards) Act 1987*, to the extent that the Safeguards Act can operate concurrently with this Bill. This means that requirements under both enactments must be complied with to the extent that this is possible, otherwise the provisions of the Bill will prevail.

Subclause 9(2) provides that the application of any provision of this Bill in relation to “nuclear material” and associated items within the meaning of the *Nuclear Non-Proliferation*

*(Safeguards) Act 1987* (the Safeguards Act) may be modified by the regulations. This provision will enable appropriate changes to be made, where necessary, to ensure that those requirements under the Safeguards Act, which give effect to Australia's international obligations in relation to, among other things, nuclear material (eg the Convention on the Physical Protection of Nuclear Material and the Treaty on the Non-Proliferation of Nuclear Weapons), will continue to be met under the Bill.

## **Clause 10 - Offences**

This clause describes how the offences provisions will work.

Subclause 10(1) provides that Chapter 2 of the Criminal Code applies to all offences against this Act. Chapter 2 sets out the general principles of criminal responsibility.

Subclause 10(2) provides that a maximum penalty specified at the end of a section or at the end of a subsection, where a section is so divided, means that a person who contravenes the section or subsection, as the case may be, is guilty of an offence against that particular section or that particular subsection, and if convicted that person may be punished by a penalty up to the maximum penalty specified for that section or subsection.

## **PART 2 - DEFINITIONS**

### **Clause 11 - Definitions**

This clause sets out a number of definitions for words that are used in the Act. These definitions determine the meaning that is to be attributed to certain words whenever they are used in the Act or regulations. Key definitions include:

“controlled apparatus”, which is defined to mean:

- (a) an apparatus that produces ionizing radiation when energised or that would, if assembled or repaired, be capable of producing ionizing radiation when energised;
- (b) an apparatus that produces ionizing radiation because it contains radioactive material;
- (c) an apparatus prescribed by the regulations that produces harmful non-ionizing radiation when energised.

“controlled facilities” means a nuclear installation or a prescribed radiation facility. Both terms “nuclear installation” and “prescribed radiation facility” are defined in clause 11.

“controlled person” means any of the following:

- (a) a Commonwealth entity;
- (b) a Commonwealth contractor
- (c) a person in the capacity of an employee of a Commonwealth contractor;
- (d) a person in a prescribed Commonwealth place.

“ionizing radiation” refers to electromagnetic or particulate radiation capable of producing ions directly or indirectly, but does not include electromagnetic radiation of a wavelength greater than 100 nanometres.

“non-ionising radiation” refers to electromagnetic radiation of a wavelength greater than 100 nanometres.

“radiation” means ionizing radiation or non-ionizing radiation.

### **PART 3 - THE CEO OF ARPANSA**

Clause 12 establishes the statutory office of a Chief Executive Officer, or “CEO”, of “ARPANSA”. “ARPANSA” refers to the Australian Radiation Protection and Nuclear Safety Agency, and is the description given to the part of the Department of State, administered by the Minister responsible for the Act, that will assist the CEO to implement and enforce the Act.

#### **Clause 13 - Functions of the CEO**

This clause sets out the functions of the CEO. Apart from those listed in paragraphs 13(1)(a) to (f) inclusive, the CEO may also assume such other functions as are conferred by:

- this Act, such as issuing facility or source licences to controlled persons under Part 5 of the Act and imposing licensing conditions;
- regulations made under the Act;
- any other law.

Subclause 13(2) requires the CEO to take all reasonable steps to avoid any conflict of interest that may arise between the CEO's regulatory functions and any other functions of the CEO.

Two instances where possible conflicts of interests could arise were identified. One would be where the CEO could exercise a power to impose a requirement upon a licence holder, or persons covered by a licence, that could be perceived to financially advantage the ARPANSA Reserve. For example, a requirement that certain controlled persons wear radiation badges while working on certain premises covered by a licence may have the effect of requiring these individuals or the licence holder to purchase badges from ARPANSA, if ARPANSA is the only organisation that supplies the badges. The other instance of a possible conflict of interest would be where the CEO or his or her staff may be engaged in activities that come within the terms of the Act being administered by the CEO.

In the former instance where a possible conflict of interest may be perceived, this is addressed by the provisions that subject the exercise of the CEO's powers, such as the imposition of conditions on a licence holder or those covered by a licence, to review first by the Minister and then by the Administrative Appeals Tribunal.

In the second instance, information relating to the operations of the CEO is required to be included in the CEO's annual report to the Minister under Clause 47 of the Act. This report is required to be tabled in Parliament. In addition, external audits may be conducted in relation to the CEO's activities.

It is proposed that there will be both a procedural and a structural separation within ARPANSA of the performance of its regulatory and other functions, such as research and services, conducted for and on behalf of the CEO.

#### **Clause 14 - Minister's directions to CEO**

This clause provides that where the Minister is satisfied it is in the public interest to do so, the Minister must give written directions to the CEO in respect of the performance of the CEO's functions or the exercise of the CEO's powers.

Subclause 14(2) requires the CEO to comply with any such direction.

Subclause 14(3) provides that the Minister must cause a copy of any notice given under subclause 14(1) to be tabled in each House of Parliament within 15 sitting days of issuing that notice.

#### **Clause 15 - Delegation by the Minister**

Subclause 15(1) enables the Minister, by instrument in writing, to delegate his or her powers under clauses 7, 8 or 32 to the CEO. Under clauses 7 and 8, the Chief of the Defence Force and the Director-General of Security respectively will be required to consult with the Minister before exercising any of their powers to exempt or qualify the operation of specified provisions of the Act in relation to their operations, in the manner set out under clauses 7 and 8, to ensure that the Act will not prejudice either Australia's defence or national security.

Subclause 15(2) enables the Minister to delegate his or her powers to review certain licensing decisions made by the CEO listed under subclause 28(6) of the Act. The Minister's review powers may be delegated to the Secretary of the Department, the CEO and to a person holding, or performing the duties of a Senior Executive Service office or its equivalent in the Department. A delegate who reviews a decision should not have had any involvement in the making of that decision being reviewed.

Subclause 15(3) enables the Minister to give directions as to the manner in which delegates are to exercise their powers as the Minister's delegates, and the delegates must comply with any such direction whenever they are exercising powers as the Minister's delegates.

#### **Clause 16 - Delegation by CEO**

This clause makes provision for the CEO to delegate, by instrument in writing, any of his/her powers or functions to a person holding, or performing the duties of a Senior Executive Officer, or a Senior Officer or equivalent, in the Department.

Subclause 16(2) provides that when exercising powers or performing functions as a delegate of the CEO, the delegate is required to comply with any general directions of the CEO in respect of the manner in which the power should be exercised.

## **PART 4 - RADIATION HEALTH AND SAFETY ADVISORY COUNCIL**

### **Clause 17 - Radiation Health and Safety Advisory Council**

This clause establishes the Radiation Health and Safety Advisory Council. Members of the Council are to be appointed by the Minister in accordance with any regulations made for the purposes of this subsection.

Subclause 17(3) sets out the functions of the Council. These are giving advice to the CEO on such matters relating to radiation protection and nuclear safety as the Council considers appropriate and giving advice to the CEO on matters referred to the Council by the CEO.

## **PART 5 - REGULATION OF CONTROLLED MATERIAL, CONTROLLED APPARATUS AND CONTROLLED FACILITIES**

This Part establishes the regulatory scheme for the regulation of “controlled material”, “controlled apparatus” and “controlled facilities”

### **DIVISION 1 - Prohibitions**

#### **Clause 18 - Construction, operation etc of nuclear installations or prescribed radiation facilities**

This clause sets out the prohibited activities relating to nuclear installations or prescribed radiation facilities.

Subclause 18(1) provides that, unless a controlled person is either authorised to do this by facility licence, or has otherwise been exempted under the Regulations from the requirement to operate under a licence in relation to that conduct, that person may not:

- prepare a site for a controlled facility. This includes, for example, undertaking earthworks in preparation for the construction of a controlled facility
- construct a controlled facility;
- have control or possession of a controlled facility;
- operate a controlled facility
- de-commission, dispose of or abandon a controlled facility.

The maximum penalty for breaching this provision is 2000 penalty points - that is, \$200,000 for an individual, and \$1 million for a corporation. The level of the penalty is designed to reflect the potential significant risks to public health and safety and damage to the environment if the operation of controlled facilities is not subject to appropriate regulation and controls.

Subclause 18(2) provides that a holder of a facility licence must also comply with the conditions of the licence. The maximum penalty for failing to do this is 2000 penalty points, or such lower amounts as are prescribed in the regulations for the breach of conditions that are of lesser significance as set out in the regulations.



Under subclause 18(3), it will be a requirement under this Act that a person covered by a facility licence must comply with all conditions of a licence that are applicable to that person.

### **Clause 19 - Possession etc of controlled material or controlled apparatus**

This clause sets out the prohibited activities relating to all dealings with of controlled material or controlled apparatus, as defined under clause 11.

Subclause 19(1) prohibits a controlled person from dealing with a controlled material or controlled apparatus unless:

- (a) the dealing is specifically permitted under the terms of a source licence; or
- (b) the dealing is exempted from the requirement to be covered by a licence under the regulations. Any prescribed exemption would also extend to exemptions for dealing with materials and apparatus used within a licensed installation.

“Dealing” is defined in Clause 11 to mean, in relation to a controlled apparatus or controlled material, any of the following - to:

- possess, or have control of, the apparatus or material;
- use or operate the apparatus, or use the material;
- dispose of the apparatus or material.

The maximum penalty for failing to comply with this requirement is 2000 penalty points. Again, the maximum level of the penalty reflects the potential serious risks to public health and safety and to the environment unless radiation sources are managed and dealt with in a manner commensurate with the dangers and risks associated with their use or handling.

Subclause 19(2) provides a maximum penalty of 2000 penalty points for a holder of a source licence who fails to comply with the conditions of a licence, or such lower amount as is prescribed in the regulations for breaches of conditions of a lesser significance set out in the regulations.

It will be a requirement under subclause 19(3) for a person covered by a source licence to comply with all the conditions of that licence that are applicable to that person.

## **DIVISION 2 - Licences**

### **Clause 20 - Issue of facility licence**

This clause relates to the issue of a facility licence.

Under subclause 20(1) the CEO may issue a licence to a controlled person to authorise that person to do some or all of the things referred to in subclause 18(1).

Subclause 20(2) permits any licence issued to the Commonwealth to be issued in the name of a Department of State.

Subclause 20 (3) provides that in deciding whether to issue a licence, the CEO is to take into account the matters prescribed in the regulations.

### **Clause 21 - Issue of source licence**

Clause 21 relates to the issue of a source licence. The CEO may issue such a licence to a controlled person to authorise that person to deal with a controlled apparatus or a controlled material. Any licence issued to the Commonwealth may be issued in the name of a Department of State. In deciding whether or not to issue a licence, the CEO must take into account the matters prescribed in the regulations.

### **Clause 22 - Application of fees**

Clause 22 provides that an application for a licence must:

- (a) be in a form approved by the CEO; and
- (b) be accompanied by such fees as are prescribed by the regulations.

### **Clause 23 - Licence conditions**

Subclause 23(1) provides that a licence is subject to the following kinds of conditions:

- (a) conditions set out under this section;
- (b) conditions prescribed by regulations;
- (c) conditions imposed by the CEO at the time he or she issues a licence;
- (d) conditions imposed by the CEO under subclause 24(2) after the licence is issued.

Subclause 23(2) makes it clear that licence conditions may include conditions that apply specifically to a particular apparatus or material, including apparatus or material that may, after the issue of a licence, come into the possession or control of persons covered by a licence issued under the Act. Thus, by way of an example, conditions may be imposed relating to the handling of a particular apparatus or material under either a source licence or a facility licence. Those conditions “attach” to that particular apparatus or material, so that in the event that particular apparatus or material should be transferred to another location or

premise or should come into the possession or control of another controlled person or licence holder, that controlled person or licence holder must comply with the conditions attaching to that apparatus or material.

Subclause 23(3) imposes a statutory condition on any person authorised by a facility licence to do any of the things set out under subclause 18(1) to require that person to allow the CEO, or a person authorised by the CEO, to enter and inspect the site or facility at reasonable times at any time when the person has possession or control of such a site or facility. A further condition is that such a person must comply with any requirements specified in the regulations in relation to such an inspection.

Subclause 23(4) provides for conditions applying in relation to a source licence. Any person authorised by such a licence to deal with controlled apparatus or controlled material must, at any time when that person has possession or control of such apparatus or material, allow the CEO or a person authorised by the CEO, to inspect the apparatus or material at reasonable times. The person is also required to comply with any requirements specified in the regulations in relation to such an inspection.

#### **Clause 24 - Amendment of licence**

Subclause 24(1) provides that the CEO may amend a licence at any time by giving written notice to the licence holder.

Subclause 24(2) provides that, without limiting the broad power to amend a licence conferred upon the CEO under subclause 24(1), one of the ways the CEO may amend the licence is by imposing additional licence conditions, or removing or varying licence conditions that were imposed by the CEO, or extending or reducing any term of the authority granted by the licence.

Subclause 24(3) provides that where a condition is specific to a particular apparatus or material, the notice the CEO is required to give to the licence holder under subclause 24(1) must be given to the licence holder who, according to the CEO's records, has current possession or control of the material or apparatus at the time the condition is imposed, removed or varied.

#### **Clause 25 - Period of licence**

Clause 25 provides that a licence continues until it is cancelled or surrendered in accordance with the Act.

#### **Clause 26 - Cancellation and suspension of licences**

This clause provides that the CEO may suspend or cancel a licence by notice in writing given to a licence holder if:

- (a) a condition of the licence has been breached, whether by the licence holder or by a person covered by the licence; or
- (b) the CEO believes on reasonable ground that the licence holder, or a person covered

- by the licence, has committed an offence against the Act or the regulations; or
- (c) any annual licence charge payable in respect of a licence remains unpaid after the due date; or
- (d) the licence was improperly obtained.

### **Clause 27 - Surrender of licence**

This clause provides that a holder of a licence may surrender a licence only with the consent of the CEO, so that a licence holder cannot avoid responsibilities under the licence by surrendering it.

### **Clause 28 - Review of licence decisions**

This clause sets out the review rights of certain persons affected by certain licensing decisions.

Subclause 28(1) provides that an “eligible person” in relation to a “licence decision” may apply to the Minister for an internal review of a licence decision. The request for a review must be in writing, and be given to the Minister within 90 days of the licence decision being made.

Subclause 28(3) requires the Minister to consider the original licence decision and confirm, vary or set aside that decision. Under s.27A of the *Administrative Appeals Tribunal Act 1975*, the person must be notified of his, her or its review rights to the AAT.

Subclause 28(4) provides that if the Minister does not give written notice of his or her decision on review within 60 days, then the Minister is taken to have confirmed the original licence decision.

Subclause 28(5) provides a right of appeal to the Administrative Appeals Tribunal under the *Administrative Appeals Act 1975* against the Minister's decision under subclause 28(3) to confirm, vary or set aside the licence decision.

Subclause 28(6) defines what “licence decision” and “eligible person” mean.

A “licence decision” means the decision of the CEO:

- (a) to refuse to grant a licence;
- (b) to impose conditions on a licence;
- (c) to suspend a licence;
- (d) to cancel a licence;
- (e) to amend a licence;
- (f) not to approve the surrender of a licence.

“eligible person”, in relation to a licence decision, means

- (a) in relation to a decision to refuse to grant a licence - the person who applied for the licence; and
- (b) in relation to any other licence decision - the licence holder.

## **DIVISION 3 - Enforcement**

### **Clause 29 - CEO may give directions to controlled persons**

Clause 29 makes provision for the CEO to give directions to controlled persons in certain circumstances.

Subclause 29(1) provides that this clause applies if the CEO believes, on reasonable grounds, that a controlled person is not complying with the Act or Regulations in respect of a thing or **requirement** under the Act or regulations and the CEO believes that it is necessary to exercise powers under this section in order to protect the health and safety of people or to avoid damage to the environment.

Subclause 29(2) provides the CEO with the power to give written directions to a controlled person requiring the controlled person to take such steps in relation to the thing **or activity** as the CEO considers appropriate.

Subclause 29(3) provides that the controlled person must take the steps specified in the notice within the time specified in the notice. Failure to comply with this requirement attracts a maximum penalty of \$3,000 for an individual, or \$15,000 for a corporation.

Subclause 29(4) provides that if the person directed under this section to take certain steps does not comply with the terms of the notice within the specified time frame, the CEO may arrange for those steps to be taken.

Subclause 29(5) provides that if the Commonwealth incurs costs because of arrangements made by the CEO under subclause 29(4), the person is liable to pay the Commonwealth an amount equal to the costs incurred and that amount may be recovered by the Commonwealth in court as a debt due to the Commonwealth.

### **Clause 30 - Review of decisions to give directions**

Subclause 30(1) provides that where the CEO gives a direction to a controlled person under clause 29, that controlled person may apply to the Minister for a review of that direction.

Subclause 30(2) provides that a request for a review to the Minister under this clause must be in writing and given to the Minister within 90 days of the giving of the direction.

Subclause 30(3) requires the Minister to reconsider the decision and confirm, vary or set aside that decision.

Subclause 30(4) provides that if the Minister does not give written notice of his or her decision on review within 60 days of the request for a review, the Minister is taken to have confirmed the decision under subclause 30(3).

Subclause 30(5) provides an avenue of appeal to the Administrative Appeals Tribunal against the Minister's decision under subclause 30(3) to confirm, vary or set aside the decision..

### **Clause 31 - Injunctions**

If person has engaged, or is engaging, or is proposing to engage in any conduct that is or would be an offence against the Act or regulations, subclause 31(1) provides that the Federal Court may grant an injunction, on application by the CEO, to restrain that person from engaging in that conduct.

Likewise if a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do anything and such a refusal or failure is or would be an offence against this Act, then the Federal Court may, on application by the CEO, grant an injunction requiring the person to do the thing.

Subclause 31(3) provides that the Court's powers to grant injunctions under this section may be exercised whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind, and whether or not the person has previously engaged in conduct of that kind.

Subclause 31(4) empowers the court to discharge or vary any injunction granted under this section, and subclause 31(5) enables the Court to grant an interim injunction pending the determination of an application for an injunction by the CEO under subclause 31(1).

Subclause 31(6) makes it clear that the powers of the Court set out under this section are in addition to, and not in derogation of, any of the other powers of the Court.

### **Clause 32 - Forfeiture**

Subclause 32(1) states that if a court convicts a person of an offence against this Act or regulations, or makes an order under section 19B of the Crimes Act 1914 in respect of a person charged with an offence against this Act, then the court may, on application by the Commonwealth, order forfeiture to the Commonwealth of any substance or thing used or otherwise involved in the commission of the offence.

Subclause 32(2) provides that a substance or thing ordered by a court to be forfeited becomes the property of the Commonwealth and may be sold or otherwise dealt with in accordance with the directions of the Minister.

Subclause 32(3) states that until the Minister gives such a direction, the substance or thing must be kept in such custody as the Minister directs. "Thing" is widely defined in clause 11 to refer to something that also includes a substance, and a thing in electronic or magnetic form.

## **PART 6 - ADMINISTRATIVE MATTERS**

### **Division 1 - Appointment, conditions etc of CEO**

#### **Clause 33 - Appointment of CEO**

Subclause 33(1) provides that the CEO is to be appointed by the Governor-General for a term of up to five years. Subclause 33(2) provides that the CEO holds office on a full-time basis.

#### **Clause 34 Remuneration and allowances**

This clause establishes the basis for determining the CEO's remuneration and allowances.

Subclause 34(1) provides that the CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. Where there is no determination of that remuneration by the Tribunal in operation, then the CEO is to be paid the remuneration prescribed by the regulations.

Subclause 34(2) provides that the CEO is to be paid such allowances as are prescribed by the regulations.

Subclause 34(3) provides that this clause has effect subject to the *Remuneration Tribunal Act 1973*.

#### **Clause 35 Outside employment**

Subclause 35(1) provides that the CEO must not engage in any paid employment outside the duties of the office without the Minister's written approval.

#### **Clause 36 - Recreation leave etc.**

Subclause 36(1) provides that, subject to section 87E of the *Public Service Act 1922*, the CEO has such recreation leave entitlements as are determined by the Remuneration Tribunal. Subclause 36(2) enables the Minister to grant the CEO other leave of absence on such terms and conditions as the Minister determines. The terms and conditions may include those relating to remuneration.

#### **Clause 37 - Resignation**

This clause provides that the CEO may resign by giving the Governor-General a signed resignation notice.

#### **Clause 38 - Disclosure of interests**

This clause provides that the CEO must give written notice to the Minister of all pecuniary or other interests that the CEO has or acquires that could conflict with the proper performance of the CEO's functions under the Act and regulations.

#### **Clause 39 - Termination of appointment**

Subclause 39(1) provides the grounds upon which the Governor-General may terminate the appointment of the CEO.

Under subclause 39(2), the Governor-General must terminate the CEO's appointment if the CEO does any of the things listed in paragraphs 39(2)(a) to (g) inclusive. This includes being absent from duty (except on leave of absence) for 14 consecutive days, or for 28 days in any period of 12 months, becoming bankrupt, compounding with his or her creditors, assigning his or her remuneration for the benefit of his or her creditors, failing to disclose interests as required under clause 38, engaging in employment outside the duties of his or her office without the Minister's approval.

Subclause 39(3) provides that if the CEO is either an eligible employee for the purposes of the *Superannuation Act 1976* or a member of the superannuation scheme established by deed under the *Superannuation Act 1990*, the Governor-General may, with the CEO's consent, retire the CEO from office on the ground of physical or mental incapacity where this should apply.

Subclauses 39(4) and (5) set out the circumstances in which the CEO is taken to have been retired from office on the grounds of invalidity under the *Superannuation Act 1976* and the *Superannuation Act 1990*.

#### **Clause 40 - Other terms and conditions of appointment**

This clause provides that in respect of matters not specifically provided for by this Act, the CEO holds office on such terms and conditions (if any) as are determined by the Governor-General in writing.

#### **Clause 41 - Acting appointment**

Subclause 41(1) permits the Minister to appoint a person to act as CEO if there is a vacancy in that office, whether or not an appointment has previously been made to the office, or during any period, or all periods, when the CEO is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Subclause 41(2) provides that anything done by a person purporting to act as CEO under this provision is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.



## **DIVISION 2 - Money**

### **Clause 42 CEO may charge for services**

This clause provides that the CEO may charge for services provided by the CEO in the performance of the CEO's functions.

### **Clause 43 Notional payments by the Commonwealth**

As the Act applies to the Crown in all its capacities including the Crown in right of the Commonwealth, subclause 43(1) has been included to clarify that fees and charges under this Act and regulations, and charges levied under the Licence Charges Act, are notionally payable by the Commonwealth (or parts of the Commonwealth).

Subclause 43(2) provides that the Minister for Finance and Administration may give written directions for the purposes of this clause, including directions relating to the transfer of amounts within, or between, accounts operated by the Commonwealth.

### **Clause 44 - ARPANSA Reserve**

This clause sets up the ARPANSA Reserve, which is a component of the Reserved Money Fund.

Subclause 44(3) sets out the amounts that must be transferred to the Reserve from the Consolidated Revenue Fund. These include monies appropriated by the Parliament for the purposes of the Reserve, amounts equal to amounts received by the Commonwealth under the Licence Charges Act and amounts equal to fees received by the Commonwealth under Clause 22, amounts equal to amounts received by the Commonwealth in connection with the performance of the CEO's functions, amounts recovered by the Commonwealth under subclause 29(5) to the extent that they are referable to costs paid out of the Reserve.

Subclause 44(4) provides that the purposes of the Reserve are to make payments to further the object of the Act, as set out in clause 3, and otherwise in connection with the performance of the CEO's functions under this Act or regulations.

### **Clause 45 - Amounts recoverable as debts**

This clause provides that the following amounts may be recoverable in a court as debts due to the Commonwealth:

- (a) amounts payable to the Commonwealth under the *Licence Charges Act*;
- (b) fees payable to the Commonwealth under clause 22;
- (c) amounts payable to the Commonwealth in connection with the performance of the CEO's functions.

## **DIVISION 3 - Miscellaneous**

## **Clause 46 - Staff assisting the CEO**

This clause provides that staff necessary to assist the CEO are to be persons appointed or employed under the *Public Service Act 1922* and made available by the Secretary of the Department for this purpose.

## **Clause 47 Annual Report**

This clause requires the CEO to prepare and give to the Minister, as soon as practicable after the end of each financial year, an annual report on the operations of the CEO during the year. Subclause 47(2) requires all details of directions given by the Minister under clause 14 during the financial year to be included in the Report. Subclause 47(3) requires the Minister to cause a copy of the Report to be tabled before each House of Parliament within 15 sitting days of the day on which the report was given to the Minister.

## **Clause 48 Quarterly reports**

Under this clause the CEO is also required to provide quarterly reports to the Minister on the operations of the CEO for that quarter. Each quarter means a period of 3 months beginning on 1 January, 1 April, 1 July and 1 October of any year. The Minister must arrange for these reports to be tabled in both Houses of Parliament within 15 sitting days of the day the Minister is given the report.

## **Clause 49 Reports to Parliament**

Subclause 49(1) provides that the CEO may at any time cause a report about matters relating to the CEO's functions to be tabled in either House of Parliament. Subclause 49(2) requires the CEO to give a copy of the report to the Minister.

## **PART 7 - POWERS OF INSPECTION ETC**

Part 7 inserts provisions conferring powers on inspectors to undertake searches and exercise a range of powers to establish whether or not the Act and regulations are being complied with. Many of these provisions deal with how inspectors should exercise their powers to obtain necessary admissible evidence that may be used in proceedings brought under this Part.

## **Clause 50 - Appointment of inspectors**

Subclause 50(1) enables the CEO to appoint, by instrument in writing, appropriate officers to be “inspectors” for the purposes of exercising all the powers under this Part. The persons the CEO may appoint as inspectors are:

- (a) a person who is appointed or employed by the Commonwealth; or
- (b) a person appointed or employed by a State or Territory.

Subclause 50(2) requires a person appointed as an inspector to comply with any directions of the CEO when exercising powers or performing functions in that capacity.

Subclause 50(3) requires the CEO to issue an identity card, in a form prescribed by the regulations, for every person appointed as an inspector. The identity card must have a recent photograph of the inspector.

Subclause 50(4) provides that it is an offence for a person who ceases to be appointed as an inspector to fail to return his or her identity card to the CEO after ceasing to be an inspector. The offence attracts a maximum penalty of \$100.

Subclause 50(5) requires the inspector to carry his or her identity card at all times when exercising powers or performing functions as an inspector.

### **Clause 51 - Powers available to inspectors for monitoring compliance**

Subclause 51(1) confers powers upon an inspector to enter any premises and to exercise any or all of the powers set out under subclause 55(1) for the purposes of establishing whether or not the Act or regulations are being complied with.

Subclause 51(2) provides that an inspector may only enter premises under this clause if he or she has the consent of the occupier of the premises, or where the inspector has obtained a warrant under clause 65 to make that entry.

### **Clause 52 - Inspector must produce identity card on request**

This clause makes it clear that an inspector cannot exercise any of the powers under this Part in relation to premises unless he or she produces his or her identity card upon being requested to do so by the occupier of those premises.

### **Clause 53 - Powers available to inspectors for dealing with hazardous situations**

Subclause 53(1) describes the circumstances in which an inspector may exercise powers under this clause. These are where the inspector has reasonable grounds for suspecting that there may be, on any premises, a hazardous thing that is not in compliance with the requirements of the Act or regulations, or where it is necessary in the interests of public health to exercise the powers under this clause to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

Subclause 53(2) provides that in such circumstances an inspector may, without a warrant or the consent of an occupier, enter premises, search the premises for the hazardous thing, seize it if the inspector finds this on the premises and, if the inspector believes on reasonable grounds that a controlled person has failed to comply with any requirements of the Act or regulations in relation to that hazardous thing, require the controlled person to take such steps the inspector considers necessary.

Subclause 53(3) requires the inspector to exercise his or her powers under subclause 53(2) only to the extent necessary for the purposes of avoiding an imminent risk of death, serious illness, serious injury or serious damage to the environment.

## **Clause 54 - Searches and seizures related to offences**

This clause sets out the powers of an inspector who enters and conducts searches of premises to obtain evidence of a commission of an offence, and the circumstances under which those powers may be exercised.

Subclause 54(1) states that the powers under this clause may be exercised if an inspector has reasonable grounds for suspecting that there may be evidential material on any premises.

Subclause 54(2) provides that an inspector may enter premises either with the consent of the occupier or under a warrant issued under clause 365, to do any of the things described in subclause 54(3) and subclause 55(1), including seizing the evidential material if the inspector finds it on the premises.

Subclause 54(3) provides that if, in the course of searching for a particular thing at premises in accordance with a warrant, an inspector finds something else that he or she believes on reasonable grounds to be evidential material which the inspector also reasonably believes must be seized to prevent its concealment, loss or destruction, or use in the commission or continuation of an offence against this Act or regulations, then the warrant is taken to authorise the inspector to seize that new thing.

## **Clause 55 - General powers of inspectors in relation to premises**

This clause sets out the general powers inspectors may exercise under paragraphs 51(1)(b) and 54(2)(b). These include the power to search premises and things found on premises, the undertaking of inspections, the examination and testing of things on premises, the taking of photographs or other forms of recordings of premises and things, and the inspection and copying of records and any other documentation and other powers.

The penalty for an individual who refuses to comply with an inspector's requirement, being an inspector who entered premises under a warrant issued under clause 65 or 66, to answer questions put to him or her by the inspector, or who fails to produce any book, record or document as required by an inspector, is a maximum of \$3000.

## **Clause 56 - Details of warrant to be given to occupier etc**

This clause provides that if a warrant in relation to premises is being executed, a copy of the warrant must be made available to the occupier of the premises. The inspector responsible for the execution of the warrant must identify himself or herself. In order to prevent forgery or other wrongful use of the warrant copy, subclause 56(3) provides that the copy need not include the signature of the Magistrate who issued the warrant.

## **Clause 57 - Announcement before entry**

This clause provides that before an inspector enters premises under a search warrant he or she

must announce that he or she is authorised to enter and give any person at the premises an opportunity to allow entry to the premises, unless there are reasonable grounds to believe that immediate entry to the premises is required to ensure the safety of a person or the protection of the environment or that the effective execution of the search warrant is not frustrated.

### **Clause 58 - Use of electronic equipment at premises**

This clause provides that an inspector may operate equipment at the premises to see whether the evidential material is accessible if he or she believes that the equipment may be operated without damaging it.

Subclause 58(2) provides that, if evidential material is accessible, the authorised person may seize the equipment or any disk, tape or other associated device, or operate the equipment to obtain a print out and seize documents produced, or copy the records to another storage device and remove it from the premises.

Subclause 58(3) is intended to encourage the seizure of printouts or duplicate discs wherever possible, rather than the original material. It provides that an inspector may seize equipment under subclause 58(2) only if it is not practicable to put the material into documentary form or copy them to a storage device or if possession by the occupier of the equipment could constitute an offence. Where original material is seized, clause 60 requires the authorised person to provide a copy of the thing or information to the occupier unless its possession constitutes an offence.

Subclause 58(4) provides that an inspector may secure the equipment by locking it up or guarding it if he or she believes on reasonable grounds that the evidential material may be accessible by operating the equipment at the premises but expert assistance is needed to operate the equipment and the evidential material may be destroyed or otherwise interfered with if the equipment is not secured in the meantime. This is necessary to ensure that where the equipment is more sophisticated than expected and cannot be accessed or moved, then the opportunity to obtain expert assistance and to preserve evidential material is not lost. Material accessible on a computer can of course be removed with a swift keystroke from an operator. It is possible to preprogram the equipment to erase the evidence in this way.

Subclause 58(5) requires the giving of notice to the occupier in cases where equipment may be secured for a period not exceeding 24 hours.

Subclause 58(6) allows the equipment to be secured for either 24 hours or such lesser period when expert assistance is obtained to operate the equipment for the purposes of this Part.

Subclause 58(7) allows an inspector to apply to a magistrate for an extension of the time needed for securing the equipment if he or she believes on reasonable grounds that the expert assistance will not be available within the 24 hour period. The application must satisfy the criteria in subclause 58(4). The occupier must be given notice under subclause 58(8) and has a right to be heard in relation to the application.

### **Clause 59 - Compensation for damage to electronic equipment**

This clause provides that if damage is caused to equipment as a result of it being operated as mentioned in clause 58 and the damage resulted from insufficient care being exercised either in selecting the person to operate the equipment or by the person operating it, compensation is payable to the owner.

Compensation is payable out of a special Appropriation by the Parliament not from the ARPANSA Reserve. In determining the amount payable, regard is to be had to whether the occupier had provided any warning or guidance to the operation of the equipment. This is to minimise compensation in cases where there has been a deliberate programming of software to destroy or cause damage if not accessed in a particular manner or where the occupier failed to mitigate damage by providing warning or guidance.

#### **Clause 60 - Copies of seized things to be provided**

This clause requires an inspector, on request, to give a copy of a thing or information seized that can be readily copied. This does not apply if no original material was seized under paragraphs 58(2)(b) or (c) or if possession of the thing seized could constitute an offence.

#### **Clause 61 - Occupier entitled to be present during search**

This clause provides that occupiers or their representatives may choose to observe the searching of the premises providing they do not impede the conduct of the search in any way. The right to search does not preclude inspectors from searching 2 or more areas of the premises at the same time.

#### **Clause 62 - Receipts for things seized under warrant**

This clause provides that receipts are to be issued to occupiers for things seized. Under this provision it will be possible for the items to be listed on the same receipt. It is not envisaged that inspectors would be required to identify absolutely every item individually where those items can be adequately identified by a class description.

#### **Clause 63 - Retention of things seized**

This clause prescribes when things seized under this Part of the Act must be returned. Unless a court has ordered otherwise or it is forfeited or forfeitable to the Commonwealth, the seized thing must be returned where the reason for its seizure no longer exists, or where it will not be used as evidence or after 60 days have expired from the day it was seized.

Subclause 63(2) provides that an inspector must take reasonable steps to return the thing to the person he or she seized it from after the 60 days referred to in subclause 63(1), unless proceedings in which the seized thing will be used have been brought against an offender within the 60 day limit and the proceedings have not finished, or an extension of time for the retention of the seized thing has been granted by a magistrate, or returning the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment, or an inspector is otherwise authorised to dispose of it pursuant to some law or court order. Where the seized thing is returned, it may be returned on such terms and conditions as the CEO sees fit.

### **Clause 64 - Magistrate may permit a thing to be retained**

This clause prescribes how an inspector may apply to a magistrate to retain a seized thing or evidence beyond the 60 day retention period permitted under clause 63 of the Act.

Subclause 64(2) provides that if the magistrate is satisfied that it is necessary for an extension of time to be granted to enable an inspector to investigate whether or not an offence has been committed against the Act or to enable the evidence to be secured for the purposes of a prosecution, the magistrate may grant an extension for such period as is specified in an order.

Before making an application under this section, an inspector must take reasonable steps to establish who has an interest in the retention of the seized goods and, if practicable, notify such persons.

### **Clause 65 - Monitoring warrants**

This clause enables a Magistrate to issue a warrant that permits more than one inspector to enter the same premises for the purposes of establishing whether the Act and Regulations have been complied with.

### **Clause 66 - Offence related warrants**

This clause describes how an inspector may apply to a magistrate for a warrant under this clause in relation to premises.

Subclause 66(1) provides that an inspector may apply to a magistrate for a warrant in relation to premises.

Subclause 66(2) enables the Magistrate to issue a warrant if he or she is satisfied, by information given under oath, that there are reasonable grounds for suspecting that there is, or there may be, within the next 72 hours, evidential material in or on the premises in relation to which an application for warrant is being made.

Subclause 66(3) prevents the Magistrate from issuing a warrant under subclause 66(2) unless the inspector or some other person has given to the magistrate, either verbally or by affidavit, such further information (if any) as the magistrate should require concerning the grounds on which the issue of the warrant is being sought.

Subclause 66(4) prescribes what must be included in a warrant. The warrant must include the name of one or more inspectors, it must authorise all those named, with such assistance and by such force as is necessary and reasonable, to enter the premises and exercise the powers set out in subclauses 54(3) and 55(1) and to seize the evidential material. The warrant must also state whether the entry is authorised to be made at any time during the night or day or whether entry is restricted to specified hours of the day or night. The warrant must also specify when the warrant ceases to have effect, being a day not later than a week after the issue of the warrant), and also state the purposes for which the warrant is being issued.

## **Clause 67 - Offence related warrants by telephone**

This clause sets out the circumstances in which a warrant may be obtained over the telephone.

Subclause 67(1) provides that in urgent cases where an inspector considers it necessary he or she may apply to a magistrate for a warrant under clause 66 by telephone in relation to premises.

Subclause 67(2) requires the inspector to prepare an information that must be sworn setting out the grounds on which the warrant is sought that will satisfy a magistrate that there are reasonable grounds for suspecting that there is, or there may be, within the next 72 hours, evidential material in or on the premises.

Subclause 67(3) allows the inspector to apply for a warrant under this clause before the information is sworn, where this is necessary.

Subclause 67(4) sets out the procedures for the magistrate to issue a warrant under this clause.

Subclause 67(5) provides that if the magistrate completes and signs the warrant for the inspector, the magistrate must inform the inspector what the terms of the warrant are, the day on which and the time at which the warrant was signed, the day on which the warrant ceases to have effect (being a day not more than a week after the magistrate completes and signs the warrant), and record on the warrant the reasons for granting the warrant. The inspector must also complete a form or warrant in the same terms as the warrant completed and signed by the magistrate, and must write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

Subclause 67(6) requires the inspector to also send to the magistrate the form of warrant completed by the inspector under this clause, and the information required to be prepared when the inspector applied for the warrant over the telephone which must have been duly sworn. The inspector is required to send this to the magistrate not later than the day after the expiry or the execution of the warrant, whichever is the earlier day.

Subclause 67(7) provides that when the magistrate receives these documents, the magistrate must attach them to the warrant he/she completed and signed under subclause 67(4), and deal with the documents in the same way the magistrate would have dealt with the information if the application for the warrant had been made under clause 66.

Subclause 67(8) provides that a form of warrant completed in accordance with subclause 67(5) is authority for any entry, search, seizure or other exercise of power that the warrant signed by the magistrate authorises.

Subclause 67(9) states that in any proceedings where the court must be satisfied that the exercise of a power was authorised by this clause, and the warrant signed by the magistrate authorising the exercise of that power cannot be produced, the court must assume, unless the



contrary is proved, that the exercise of the power was not authorised by such a warrant.

Subclause 67(10) states that any reference in this Part to a warrant under clause 66 is taken to include a warrant signed by a magistrate under this clause.

### **Clause 68 - Offences relating to warrants**

This clause sets out offences in relation to an application for a warrant.

Subclause 68(1) provides that it is an offence, attracting a maximum penalty of imprisonment for 2 years, if a person makes a statement, when applying for a warrant, that he or she knows to be false or misleading in a material particular.

Subclause 68(2) sets out other actions that attract a maximum penalty of 2 years imprisonment. This includes:

- (a) a person stating in a document purporting to be a form of warrant under clause 67 the name of a magistrate who was not the magistrate that issued the warrant;
- (b) stating, for the purposes of clause 67, on the form of warrant something that, to the person's knowledge, departs in a material particular from the form authorised by the magistrate;
- (c) purporting to execute or present to another person a document purporting to be a form of warrant under clause 67 when the person knows it had not been approved by the magistrate under that clause or where it departs in a material particular from the terms authorised by a magistrate under clause 67; or
- (d) giving to a magistrate a form of warrant under clause 67 that was not the form of warrant the person purported to execute.

### **Clause 69 - Part does not limit power to impose licence conditions**

This clause makes it clear that the powers exercisable under this Division in no way affect the ability of the CEO to impose conditions to allow persons to do things in relation to controlled material or apparatus, or to exercise similar powers in relation to controlled facilities, controlled apparatus and controlled material.

### **Clause 70 - Operation of Nuclear Non-Proliferation (Safeguards) Act 1987**

This clause makes it clear that persons authorised by the CEO to exercise powers under the Bill as inspectors are not excused from complying with sections 23, 25 and 26 of the Nuclear Non-Proliferation (Safeguards) Act 1987.

## **PART 8 - MISCELLANEOUS**

### **Clause 71 - Operation of State and Territory laws**

This clause provides that a State or Territory law, or any provision or provisions of such a law, prescribed in the regulations for the purposes of this clause will not apply to the following:

- (a) an activity of a controlled person in relation to a controlled apparatus or controlled material;
- (b) an activity undertaken by a controlled person in relation to a controlled facility.

### **Clause 72 - Regulations**

This clause empowers the Governor-General to make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subclause 72((2) sets out in detail some of the matters that the Governor-General may prescribe, without limiting the general description of his or her regulation-making powers under subclause 72 (1). These include:

- (a) requiring specified standards to be observed, practices and procedures to be followed and measures to be taken by controlled persons in relation to activities connected with controlled facilities and in relation to dealings with controlled apparatus or controlled material;
- (b) regulating, restricting or prohibiting any act of a controlled person in relation to such activities or dealings;
- (c) requiring records to be kept, providing for the giving of information and the notification of specified occurrences by controlled persons in relation to such activities or dealings;
- (d) providing for the establishment of committees to advise the CEO on any matter relating to radiation or nuclear safety; and
- (e) prescribing fees for any matter covered by the Act or regulations.