BILLS DIGEST NO. 6, 2015–16
11 AUGUST 2015

Australian Radiation Protection and Nuclear Safety Amendment Bill 2015

Dr Alexander St John
Science, Technology, Environment and Resources Section

Contents

The Bills Digest at a glance ................................................. 2
Purpose of the Bill .......................................................... 3
Background ......................................................................... 3
Committee consideration .................................................... 4

Community Affairs Legislation Committee ......................... 4
Senate Scrutiny of Bills Committee .................................. 4
Policy position of non-government parties/independents ....... 4
Position of major interest groups ........................................... 5
Financial implications ........................................................ 5
Statement of Compatibility with Human Rights ................. 5
Key issues and provisions ................................................... 5

Additional information-gathering and enforcement powers ................................................................. 5

Information-gathering powers ............................................. 6
Emergency directions ........................................................ 6
Powers of inspectors .......................................................... 7
Extending application of the Australian Radiation Protection and Nuclear Safety Act 1998 ......................... 8
Licencing of sites requiring remediation ............................ 8
Changes to duration and scope of Commonwealth radiation licences ......................................................... 9

Identified issues not addressed in this Bill ....................... 10
Other provisions ............................................................... 11
Concluding comments ....................................................... 11

Date introduced: 18 June 2015
House: House of Representatives
Portfolio: Health
Commencement: On the 28th day after Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
The Bills Digest at a glance

What does the Bill do?

The Australian Radiation Protection and Nuclear Safety Amendment Bill 2015 makes relatively minor amendments to the Australian Radiation Protection and Nuclear Safety Act 1998 (the ARPANS Act). The Bill makes amendments in four main areas:

• extending the enforcement powers of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) to improve ARPANSA’s ability to ensure regulated entities are complying with the ARPANS Act, and providing ARPANSA with emergency powers
• clarifying the coverage of regulated entities by widening the definition of Commonwealth contractors subject to the ARPANS Act
• making refinements to the system of regulatory licencing of radiological facilities and activities and
• miscellaneous administrative amendments.

Legislative context

The ARPANS Act regulates the use of radiation by the Commonwealth and its entities; the amendments proposed in the Bill make no substantial change to the current regulatory policy. The ARPANS Act is primarily administered by ARPANSA. Activities involving radiation outside of Commonwealth entities or places remain regulated by separate state and territory regulators.

Why has the Government introduced the Bill?

The Government says that it has introduced the Bill to provide greater clarity on the application of the existing legislation and implement recommendations from a number of reviews.1

What are the issues?

Some stakeholders have raised relatively minor concerns about some of the new emergency and enforcement powers which the Bill proposes to provide to ARPANSA.

---

Purpose of the Bill

The Australian Radiation Protection and Nuclear Safety Amendment Bill 2015 (the Bill) makes a number of technical amendments to the Australian Radiation Protection and Nuclear Safety Act 1998 (the ARPANS Act) to refine the existing regulatory regime for the licensing and supervision of radiological activities undertaken by, or on behalf of, the Australian Government.2

The Bill is intended to make substantive amendments in four general areas:

• extending the enforcement powers of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) to improve ARPANSA’s ability to ensure regulated entities are complying with the ARPANS Act, and providing ARPANSA with emergency powers

• clarifying the coverage of regulated entities by widening the definition of Commonwealth contractors subject to the ARPANS Act

• making refinements to the system of regulatory licencing of radiological facilities and activities and

• miscellaneous administrative amendments.3

Background

Australia’s system for the regulation of radiological and nuclear activities is comprised of both Commonwealth and state and territory legislation, administered by ARPANSA and state and territory regulators. In principle, the ARPANS Act regulates only radiation facilities and sources owned or controlled by the Commonwealth, with state and territory regulators responsible for regulation of all other sources and facilities within their jurisdiction.4

Under the ARPANS Act, the provisions relating to the regulation of radiation sources or facilities apply only to controlled persons – defined as Commonwealth entities, Commonwealth contractors, employees of Commonwealth contractors and persons in prescribed Commonwealth places.5 Activities relating to radiation not involving a controlled person therefore fall under the jurisdiction of state and territory regulators.

The use of radiological sources in Australia is relatively limited. Australia does not presently operate a nuclear power or weapons program.6 The use of ionizing radiation in Australia is restricted generally to scientific research at major facilities (such as at the Australian Synchrotron in Victoria and the research reactor at Lucas Heights in New South Wales, both operated by the Australian Nuclear Science and Technology Organisation (ANSTO)), limited academic and industrial uses and nuclear and radiological medicine.7 Commonwealth radiation activities include the use of ionizing radiation sources (such as radioactive isotopes used in nuclear medicine and science) and non-ionizing radiation (such as powerful microwave, radiofrequency and ultraviolet devices).8

Under the ARPANS Act, two types of licences relating to radiological activities are issued. The first are source licences, which permit the possession, operation or other dealings relating to material that can emit ionizing radiation (‘controlled material’), or apparatus that emit certain types of non-ionizing radiation (‘controlled apparatus’).9 Examples of a licenced source could include a piece of cobalt-60, a radioactive material used to irradiate foodstuffs, or an x-ray scanning machine. A facility licence authorises the construction, possession, operation and de-commissioning of a nuclear installation or prescribed radiation facility.10 The vast majority of the Commonwealth radiation source licences are issued to the Department of Defence, mainly for tritium light

9. ARPANS Act, sections 31 and 33, accessed 27 July 2015. ‘Controlled material’ and ‘controlled apparatus’ are defined in section 13.
10. Ibid., sections 30 and 32.
sources that contain radioactive isotopes to provide ‘permanent’, non-powered illumination.\footnote{11} The majority of Commonwealth radiation facility licences are issued to ANSTO.\footnote{12}

The International Atomic Energy Agency (IAEA) conducts international expert review missions to review the regulatory practices of member countries. ARPANSA was reviewed by a team of international experts in 2007, with a follow-up review in 2011. That follow-up report contained a number of recommendations for improving Australia’s regulatory practices for radiological activities, concerning administrative improvements that ARPANSA could make and potential areas for strengthening the \textit{ARPANS Act} (such as moving away from indefinite licencing of sources).\footnote{13}

This Bill implements some of the recommendations made in that review, specifically:

- providing for time-limited source and facility licences\footnote{14} and
- introducing a legal avenue for Commonwealth regulation of legacy radiation sites, which in part responds to a suggestion made by the review that the regulatory framework should deal more explicitly with ‘environmental chronic exposure situations and interventions not linked with accidental situations of controlled facilities.’\footnote{15}

However, there are a number of recommendations made by the review which are not implemented in this Bill. These are discussed after the ‘Key issues and provisions’ section.

In 2014, the Australian National Audit Office (ANAO) audited ARPANSA’s regulatory activities, and found that ARPANSA has been generally effective in performing its duties under the \textit{ARPANS Act} of regulating Commonwealth radiation use. It raised some concerns related to governance — specifically that in some cases, ARPANSA was required to regulate itself as a licence-holder, leading to a potential conflict of interest.\footnote{16} This issue was also mentioned in the IAEA’s review, although the IAEA team considered that an administrative arrangement of having Queensland state regulatory inspectors co-supervise ARPANSA’s monitoring of its own compliance was satisfactory.\footnote{17} Most of the ANAO’s recommendations related to administrative improvements, rather than legislative deficiencies. However, the current Bill does not take steps to implement ANAO’s recommendations, and in particular, the ANAO’s recommendation that provisions be made for the independent review of regulatory decisions relating to ARPANSA’s own licence applications and approvals.\footnote{18}

\textbf{Committee consideration}

\textit{Community Affairs Legislation Committee}

The Bill has been referred to the Community Affairs Legislation Committee for inquiry and report by 17 August 2015. Details of the inquiry are at the \textit{inquiry webpage}.\footnote{19} The Committee had not reported at the time of writing.

\textit{Senate Scrutiny of Bills Committee}

At the time of writing, the Senate Scrutiny of Bills Committee had not considered the Bill.

\textbf{Policy position of non-government parties/independents}

At the time of writing, the Bill had not attracted commentary from non-government parties or independents.
Position of major interest groups

The Bill has attracted limited attention from interest groups. The Community Affairs Legislation Committee inquiry had, at the time of writing, attracted only five submissions. These five submissions were supportive of the Bill, but suggested certain amendments. The Australian Nuclear Association and Engineers Australia suggested that the Bill should be amended to repeal section 10 of the ARPANS Act, which prevents ARPANSA from authorising a nuclear power station, fuel enrichment or fabrication facility or reprocessing facility.

Two principal stakeholders, ANSTO and CSIRO, both provided submissions broadly approving the Bill, but raising concerns about new provisions that allow the Chief Executive Officer (CEO) of ARPANSA to provide directions to licence holders, and new powers to issue improvement notices. CSIRO submitted that as written, a licence-holder would be required to comply with an improvement notice even in the event that the decision to issue the improvement notice was being reviewed. It argued for a mechanism for a stay of the improvement notice similar to that found in the Work Health and Safety Act 2011.

ANSTO also submitted that the new power for the CEO of ARPANSA to issue emergency directions must be carefully reconciled with the internationally recognised principle that facility operators bear the primary responsibility for safety. ANSTO argued that any emergency directions would need to be general in nature rather than specific, to avoid the transference of responsibility from the facility operator to ARPANSA.

Financial implications

The Government considers that the Bill will have no financial impact. The activities of ARPANSA are subject to cost-recovery arrangements, so any changes to its functions would have a financial impact on its stakeholders, rather than the Australian Government. One specific mooted change, the introduction of facility licences for prescribed legacy radiation sites, could have a direct financial impact for ANSTO, which has indicated that it may need to apply for a licence to cover a certain legacy site containing radioactive waste (see later section on licensing of sites requiring remediation). However, the financial impact is currently unascertainable, as licence fees are not currently prescribed in regulation for this new class of facility licence.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible. The Parliamentary Joint Committee on Human Rights considered that the Bill does not require further comment as it ‘promotes human rights, or contains justifiable limitations on human rights’. Interestingly, the Committee chose to issue no comment on the semi-coercive information-gathering powers provided for in this Bill.

Key issues and provisions

Additional information-gathering and enforcement powers

A significant part of the amendments made by the Bill are related to providing ARPANSA with additional compliance and enforcement powers.

22. CSIRO, Submission to the Community Affairs Legislation Committee, Inquiry into the Australian Radiation Protection and Nuclear Safety Amendment Bill 2015, 20 July 2015; see also Work Health and Safety Act 2011 (Cth), section 228, both accessed 29 July 2015.
27. The Statement of Compatibility with Human Rights can be found at page 2 of the Explanatory Memorandum to the Bill.
Information-gathering powers

Item 29 would create a new section 44A in the ARPANS Act, providing for new information-gathering powers for the purpose of monitoring compliance with Commonwealth radiation licences. The provision may be used if the CEO of ARPANSA reasonably believes that a controlled person (Commonwealth entities, Commonwealth contractors and their employees and persons in prescribed Commonwealth places) possesses information or documents that are relevant to determining whether the ARPANS Act, regulations or licence conditions have been complied with. The provision allows the CEO of ARPANSA to require that a controlled person provide information or documents, answer questions or appear before the CEO of ARPANSA to provide information, answers or documents. Proposed subsection 44B creates an offence for failing to comply with the ARPANSA CEO’s directions to provide information, with a maximum penalty of 30 penalty units. This equates to a maximum fine of $5,400 (as of 31 July 2015).29

Under proposed subsections 44A(5) and (6), a controlled person is excused from giving the required information if giving such information would:

• be self-incriminating or expose the individual to a penalty or

• contravene an obligation under an international agreement to which the Commonwealth or any controlled person is a party and the obligation relates specifically to the recipient of the direction to give information (or their employer if they are an employee or officer of a controlled person).30

Comment

Given the potential consequences of non-compliance with regulation or licence conditions (for example, radioactive material being unaccounted for, or proper radiation protection measures not being utilised), the requirement for information to be provided seems reasonable. The Bill excuses individuals, under certain circumstances, from providing information when directed to so, which guards against these powers being used coercively. Even though the Bill provides that self-incriminating information may not be gathered compulsorily, the common law would apply a protection against self-incrimination anyway (as the legislation does not expressly override it).31 Similarly, sections 7 and 8 of the ARPANS Act provide that no action may be taken under the ARPANS Act that would prejudice, or be reasonably expected to prejudice, Australia’s defence or national security, which could possibly excuse a person from providing information in some cases.

However, there might be legitimate cause for the excuse of self-incrimination to be suspended in times of emergency. The Attorney General’s Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers provides that the privilege of immunity from self-incrimination may be overridden by legislation, but that a substantial public benefit is required to justify the attendant loss of civil liberty.32 In the event of a serious emergency at a prescribed radiation or nuclear facility (for example, a potential meltdown or explosion at the ANSTO Lucas Heights research reactor), it might be considered that the public benefit of avoiding a nuclear or radiological accident could represent sufficient policy justification. Such a mechanism for emergency information gathering could be limited by strict use immunity, preventing the prosecution of an individual based on information so gathered. Although section 41 of the ARPANS Act currently provides for the CEO to issue emergency directions (see next section), it is by no means clear that the power to issue directions allows for emergency information-gathering, as the power to issue directions deals with requiring ‘controlled persons to take such steps in relation to [a] thing as the CEO considers appropriate’.

Emergency directions

Section 41 of the ARPANS Act currently permits the CEO of ARPANSA to issue emergency directions to controlled persons if the CEO reasonably believes that a controlled person is not complying with the Act or regulations and the direction is necessary in order to protect the health and safety of people or to avoid damage to the

30. Australian Radiation Protection and Nuclear Safety Amendment Bill 2015, Schedule 1, item 29.
31. See section 9.5 of A guide to framing Commonwealth offences, infringement notices and enforcement powers, Attorney-General’s Department, Canberra, 2011, p. 94, accessed 4 August 2015.
32. Ibid., pp. 95–96.
environment. Item 27 extends these provisions to enable the CEO of ARPANSA to issue directions even where there is no non-compliance with the legislation if there is a risk of death, serious illness, serious injury or serious damage to the environment arising from radiation in connection with a controlled facility, controlled material or apparatus. The Explanatory Memorandum suggests that this is:

... intended to deal with the situation where a controlled person may be complying with the legislation, but there may be, for example, an imminent weather event that means action must be taken immediately...In this circumstance, the CEO of ARPANSA should be able to issue such a direction without needing to first establish that the licence-holder was non-compliant. 33

The Explanatory Memorandum further states that ‘it is not envisaged that the power would be exercised in other than exceptional circumstances’. 34 Note also that details of any directions given by the CEO under section 41 will need to be included in ARPANSA annual and quarterly reports under amendments to the ARPANSA reporting requirements contained in items 30 and 31 of the Bill.

Powers of inspectors

Items 33 and 34 amend section 65 of the ARPANS Act to allow authorised inspectors to exercise emergency entry, search, seize and direction powers in a wider set of circumstances. Currently, inspectors may only exercise such powers where an inspector reasonably believes there is an imminent risk of death, serious injury or serious environmental damage. The Bill proposes to lower the test for the exercise of emergency powers to situations where it is necessary to protect the health and safety of people or avoid damage to the environment — removing the requirement for the risk to be imminent and ‘serious’.

Item 36 provides for a new class of compliance instrument to be available to ARPANSA — improvement notices. Proposed section 80A provides that an inspector may issue an improvement notice in writing if the inspector reasonably believes that the ARPANS Act, regulations, or the conditions of a Commonwealth radiation licence are being contravened. The notice may require a licence-holder to remedy the contravention, prevent a contravention from reoccurring or remedy the cause of a contravention. Licence-holders that are issued with improvement notices must comply with the notice. Proposed section 80B makes compliance with improvement notices a condition of Commonwealth radiation licence.

Non-compliance with the conditions of a licence is an offence under existing sections 30 and 31 of the ARPANS Act. Additionally, non-compliance with conditions of a licence is grounds for suspension or cancellation of the licence under existing section 38 of the Act. Proposed section 80C provides for reconsideration of decisions to issue improvement notices by the CEO of ARPANSA in the first instance. The CEO’s reconsideration decision is, in turn, subject to review by the Administrative Appeals Tribunal. Note also that details of any improvement notices given by inspectors under section 80A will need to be included in the ARPANSA annual and quarterly reports under an amendment to the ARPANSA annual and quarterly reports under amendments to the ARPANSA reporting requirements contained in items 30 and 31 of the Bill.

Comment – Improvement notices are a widely used compliance instrument in safety regimes and their inclusion in the ARPANS Act seems sensible. In this case, it seems that improvement notices effectively provide for an intermediate step, or warning, before ARPANSA moves to more serious enforcement actions, such as licence cancellation or prosecution.

More generally, the Bill makes no effort to harmonise the enforcement provisions of the ARPANS Act with the Regulatory Powers (Standard Provisions) Act 2014. 35 This is not addressed in the Explanatory Memorandum, and it is not clear why the ARPANS Act should continue to sit outside the harmonised enforcement framework. 36 Similarly, none of the reviews of ARPANSA’s operation made a case for expanded enforcement powers, so

33. Explanatory Memorandum, op. cit., p. 11.
34. Ibid.
although the Explanatory Memorandum argues that ARPANSA needs these powers,\textsuperscript{37} the basis for that claim is not clear.

**Extending application of the Australian Radiation Protection and Nuclear Safety Act 1998**

**Items 1–3 of Part 1 of Schedule 1** of the Bill clarify the application of the *ARPANS Act* with respect to contractors taking certain actions related to controlled facilities (nuclear or prescribed radiation facilities) or controlled material or apparatus on behalf of the Commonwealth.\textsuperscript{38} Section 11 of the *ARPANS Act* currently sets out how the Act applies to Commonwealth contractors. **Items 1 and 2** of the Bill amend section 11 to clarify that the *ARPANS Act* applies to contractors dealing with controlled material or apparatus for a Commonwealth entity, but only when that material or apparatus is owned, or controlled by, the Commonwealth. Currently, the *ARPANS Act* could apply to Commonwealth contractors dealing with controlled material or apparatus that was also regulated under state and territory law. The Explanatory Memorandum suggests that the purpose of the amendments is to ensure that:

... the *ARPANS Act* does not inadvertently regulate contractors who should instead be regulated under the relevant state or territory law...\textsuperscript{39}

The Explanatory Memorandum gives the example of a contractor performing work for a Commonwealth entity but using his or her own equipment, and suggests that, in this situation, the contractor ‘should be licensed by the relevant State or Territory authority’.\textsuperscript{40} However, where the Commonwealth contractor is using controlled material or apparatus that is owned or controlled by the relevant Commonwealth entity, the *ARPANS Act* will apply.\textsuperscript{41}

Although the intent of providing a clear regulatory boundary is sensible, it should be noted that the Bill does not contain a saving provision to trigger the application of the *ARPANS Act* if a state or territory law does not apply for any reason.

**Item 3** of the Bill adds a new section **11A** to the *ARPANS Act* which creates a new concept of a ‘permitted person’. A permitted person will be a person who is permitted, under an arrangement with the holder of a Commonwealth nuclear or radiation facility or source licence, to do certain things authorised by that licence, such as dealing with controlled material or apparatus, or constructing, operating or decommissioning a controlled facility. The Act will apply to those persons, even if they are not contractors to the Commonwealth. The Explanatory Memorandum gives the example of a scientist visiting the Australian National University (ANU) using ANU owned equipment, and states that the visiting scientist would be subject to the *ARPANS Act*.\textsuperscript{42}

**Proposed subsection 11A(3)** contains a severability clause in case any constitutional issues should arise in relation to the application of the *ARPANS Act* to permitted persons. This clause proposes that, in such a situation, the application of the *ARPANS Act* would apply to an activity or a dealing for the purposes of a licence holder, or in territories or Commonwealth places.

**Comment**

Despite the reasonable attempts of the Bill to ensure that there is clear delineation of regulatory responsibilities for radiation protection between the Commonwealth and state and territory regimes, the lengths that the Bill goes to in ensuring clear delineation seem overly complex. They invite the question as to whether having nine separate regulators of activity involving radiation in Australia is the most effective and efficient way of regulating


\textsuperscript{38} Under section 13 of the *ARPANS Act*, controlled material is ‘any natural or artificial material, whether in solid or liquid form, or in the form of a gas or vapour, which emits ionizing radiation spontaneously’. Controlled apparatus means apparatus that either produces, or is capable of producing, ionizing radiation when energised, or that produces ionizing radiation because it contains radioactive material, or prescribed apparatus that produces harmful non-ionizing radiation when energised.

\textsuperscript{39} Explanatory Memorandum, Australian Radiation Protection and Nuclear Safety Amendment Bill 2015, op. cit., p. 3.

\textsuperscript{40} Ibid.

\textsuperscript{41} Ibid., p. 4.

\textsuperscript{42} Ibid., p. 4.
these activities.43 The International Atomic Energy Agency, in its Safety Standard, *Regulatory Control of Radiation Sources*, argues:

...enabling legislation should be as straightforward as feasible, consistent with the national situation, so that the need for its subsequent amendment is minimized... it is preferable for a single body to have regulatory responsibilities for radiation safety, especially in States with no nuclear power programme...44

The safety standard concedes that this is not always the case, and directs that where responsibility is divided, regulatory gaps must be avoided, responsibilities clearly specified and liaison between regulatory agencies encouraged.45 However, in a country like Australia, where the use of radiation occurs on a relatively limited scale, it is not clear that a substantial benefit is derived from having nine separate regulatory regimes for largely similar activities (such as the use of radiation in medicine, scientific research and limited industrial applications). Given the risks associated with poor regulation of radiation protection, there might be an argument that a single, well-resourced, uniform national regulatory regime could achieve a superior outcome. Certainly, a single regulatory regime has been the Commonwealth’s position in other areas where safety is of paramount concern, such as aviation (the Civil Aviation Safety Authority) and offshore petroleum activity (the National Offshore Petroleum Safety and Environmental Management Authority).46

**Licencing of sites requiring remediation**

**Item 16** amends subsection 30(1) of the *ARPANS Act* to include the remediation of a prescribed legacy site in the list of activities that must not be performed without a facility licence issued by ARPANSA.

**Item 11** then adds definitions of ‘prescribed legacy site’ and ‘remediate’ to the definitions in section 13 of the *ARPANS Act*. **Item 4** of the Bill extends the definition of a controlled facility in section 13 to also include a ‘prescribed legacy site’.

The Explanatory Memorandum to the Bill argues that there is currently:

... no clear way to license activities associated with the remediation of sites that have been contaminated by radioactivity but where the contamination is unrelated to, or did not arise from, a licensed facility, material or apparatus.47

An example is given of a site used by the former Australian Atomic Energy Commission to bury material that is not covered by any source or facility licence.48 Equally, this provision could be used to regulate remediation of a contaminated lands discovered in the future. For example, if a former CSIRO or Defence site was found to have radioactive contamination, but the contamination did not result from a licenced activity, this provision would therefore unambiguously permit ARPANSA to regulate remediation activities, provided the site was properly prescribed.

**Changes to duration and scope of Commonwealth radiation licences**

As noted in the Explanatory Memorandum, current Commonwealth radiation licences are in force for an indefinite period (unless they are cancelled or suspended).49 **Item 23** of the Bill repeals and replaces section 37 of the *ARPANS Act* to provide that licences may also be issued for a definite period of time. **Item 25** amends section 40 of the *ARPANS Act*, which provides for the review of licence decisions, to ensure that decisions by the CEO to issue a licence for a particular period or not to extend a licence are subject to the same review provisions as other licence decisions.

---

43. Each state and territory has its own regulator of radiation activities, and ARPANSA regulates Commonwealth activities – see ARPANSA, *About regulatory services* and ‘State and territory regulators’, ARPANSA website, accessed 25 July 2015. In fact, given that nuclear actions are a matter of National Environmental Significance under section 21 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), which require the approval of the Minister for the Environment, it might even be considered that there are ten separate regulators.
44. Ibid., p. 5.
45. Ibid., p. 5.
47. Explanatory Memorandum, op. cit., p. 7.
48. Ibid.
**Comment**

The move to introduce time-limited radiation licences seems sensible. The Explanatory Memorandum envisages the use of temporary licences for transient needs – such as where a controlled entity may be trialling new equipment.\(^5^0\) However, the use of time-limited licences more generally could be desirable. A core tenet of radiation safety is that exposure to radiation should be minimised and kept as low as reasonably possible. This is because the dose of radiation a person receives is proportional to the time they are exposed to a source of radiation.\(^5^1\) An extension of this is that radiation exposure should be kept to what is strictly necessary, and a requirement for licences to be renewed could be a useful trigger for a periodic assessment of whether the continued existence of the radiation source is necessary. Therefore, it might be prudent to consider making all Commonwealth radiation licences time-limited.

**Items 17 and 18** amend sections 31 and 32 of the *ARPANS Act* to clarify that a facility licence may cover multiple facilities and sources. This means that Commonwealth radiation licence may essentially combine licences for controlled facilities and sources, which are currently regulated under separate source and facility licences.

**Requests for review of decisions**

**Item 24** of the Bill also amends section 40 of the *ARPANS Act* to reduce the period within which a request for reconsideration of a licence decision must be made to the Minister, reducing it from within 90 days of the licence decision to within 28 days. Similarly, **item 28** amends section 42 to reduce the period of time within which a controlled person may request the Minister to reconsider the CEO’s decision to give an emergency direction under section 41 (as discussed above).\(^5^2\)

As the Explanatory Memorandum notes, these amendments would align the *ARPANS Act* with relevant state and territory legislation, as well as with the review period allowed by the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975*. The Explanatory Memorandum further suggests that this provides ‘greater regulatory certainty’ by ensuring that a decision is final and made within a reasonable period of time.\(^5^3\)

**Identified issues not addressed in this Bill**

The Bill does not take action to address all the recommendations raised in the reviews conducted by the IAEA and the ANAO.

The IAEA specifically recommended that an extensive review of the *ARPANS Act* be conducted and that the Act should explicitly reference and incorporate internationally recognised safety standards:

> In the revision of the *Australian Radiation Protection and Nuclear Safety Act* (*ARPANS Act*) to be undertaken in 2012, the Australian Government should aim at ensuring full compliance of the Legal framework with IAEA Safety Standards. In particular, the revised Act should include explicit provisions and requirements for:

> - the prime responsibility for safety to be placed on the operator;
> - the legal basis for ARPANSA to regulate land transport [of] radioactive material;
> - the legal basis for regulating existing exposure situations, remediation and clearance;
> - decommissioning plan and related financial provisions;
> - assigning ARPANSA a clear role in regulating the security of controlled material, controlled apparatus and controlled facilities and promoting national uniformity;
> - clarifying ARPANSA’s role in the establishment and operation of the national framework for nuclear and radiological emergency preparedness and response;

\(^{50}\) Ibid., p. 9.


\(^{52}\) Although there appears to be a typographical error in **item 28**, which should probably state under the heading paragraph 42(2)(b) ‘repeal the paragraph, substitute’.

\(^{53}\) Explanatory Memorandum, op. cit., p. 10.
little of this recommendation has been incorporated in the Bill. Notably absent are any initiatives to affirm that the primary responsibility for safety is placed on the operator, or any legislative efforts to encourage national uniformity of radiation protection regimes.

The IAEA also recommended that the ARPANS Act be amended to impose a requirement for facility operators to provide a decommissioning plan after shutdown in a timely fashion. This is of particular relevance to ANSTO’s now shut-down HIFAR research reactor at Lucas Heights, which has now been replaced by the OPAL reactor. Although the lack of a suitable national radioactive waste repository is considered a significant barrier to full decommissioning of HIFAR, this would not prevent a suitable legislative amendment being made, contingent upon a suitable repository being available.

Finally, the Bill makes no effort to resolve the conflict highlighted by both the ANAO and IAEA review, of ARPANSA being both a regulator and licence holder. This issue was highlighted in the 2007 IAEA review, its 2011 follow-up review and the 2014 ANAO audit. Although ARPANSA is reportedly attempting to ameliorate this conflict administratively by using peer review of its self-regulation (by engaging Queensland state inspectors to accompany ARPANSA inspectors when inspecting ARPANSA’s compliance with its own licence conditions), further strengthening of this arrangement could be made through amending legislation to require ARPANSA to maintain an effective regulatory supervision arrangement with an independent body or other competent authority.

Other provisions
The Bill makes a small number of other relatively minor, administrative amendments which are satisfactorily dealt with in the Explanatory Memorandum.

Concluding comments
The Bill makes relatively minor amendments to the current framework for regulation of the Commonwealth’s radiation activities and does not represent a policy shift. The Bill provides a number of important technical amendments, but misses an opportunity to implement fully the recommendations of two reviews, which would further strengthen the Commonwealth radiation regulatory framework.

55. Ibid., pp. 26–27.
58. Ibid., p. 18; ANAO, Regulation of Commonwealth radiation and nuclear activities, op. cit.
59. Ibid.