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Minister for Health

Minister for Families and Community Services

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Member for Kurrajong

Mr Peter Cain MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

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Dear Chair *Peter*

Thank you for providing the Scrutiny Report No. 15 of 27 April 2022 and the Standing Committee on Justice and Community Safety's (the Committee) comments on the Radiation Protection Amendment Bill 2022 (the Bill). I thank the Committee for its thorough consideration of the Bill and offer the following comments in relation to the matters that the Committee has raised.

I note the Committee has sought information about new section 33E of the Bill regarding a Chief Health Officer (CHO) determination for radiation safety officer (RSO) qualifications by notifiable instrument rather than this instrument being disallowable. The Committee has also requested information about the effect of section 47 (6) of the *Legislation Act 2001* and any interaction with the requirement to prepare an incorporated document notice for laws or instruments of another jurisdiction. A revised explanatory statement will be tabled in the ACT Legislative Assembly during debate of the Bill to address the Committee's comments. The relevant section of the revised explanatory statement is attached.

I separately draw to the Committee's attention that Scrutiny Report 15 incorrectly referenced the sections of the *Radiation Protection Act 2006* related to incorporated as sections 177 and 178. The correct reference is to sections 117 and 118.

Thank you to the Committee for its report and consideration of the Bill.

Yours sincerely

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Revised Explanatory Statement – extract

Division 3.3B

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

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

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

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

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