

21 February 2019

Mr Steven Mudge
Manager – Legislation & Policy Reform
Environment Protection Authority SA
GPO Box 2607
Adelaide SA 5001

Dear Mr Mudge

SACOME Draft Radiation and Control Bill 2018 Submission

The South Australian Chamber of Mines and Energy (SACOME) welcomes the opportunity to make this submission in relation to the draft *Radiation Protection and Control Bill 2018* (the Bill).

SACOME is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive, oil and gas sectors and associated service providers.

SACOME submits the following comments with regard to the Bill:

1. SACOME understands that the *Radiation Protection and Control Act 1982* (the Act) regulates activities involving radiation sources and provides for the protection of people and the environment from the harmful effects of radiation.
2. The Act has not been substantially revised since 1982.
3. The purpose of the review is to:
 - Update many of the administration provisions.
 - Introduce new offences and penalties related to causing serious radiation harm and radiation harm.
 - Implement national commitments, namely, the “National Directory for Radiation Protection” and the “Code of Practice for Security of Radioactive Sources.”
4. SACOME supports the modernisation of the Act as a general principle.

5. SACOME's submission was predominantly concerned with Sections 50 and 51 of the draft Bill.

Section 50 states:

50 – Causing serious radiation harm

(1) A person who causes serious radiation harm intentionally or recklessly and with the knowledge that harm to the health or safety of a person or harm to the environment will or might result is guilty of an offence.

(4) For the purposes of this section, a person causes serious radiation harm if the person commits an act involving a radiation source that harms or has the potential to harm presently or in the future, the health or safety of a person or the environment, and the harm or potential harm is of a high impact or on a wide scale.

Section 51 states:

51 – Causing radiation harm

(1) A person who causes radiation harm intentionally or recklessly and with the knowledge that harm to the health or safety of a person or harm to the environment will or might result is guilty of an offence.

(4) For the purposes of this section, a person causes radiation harm if the person commits an act involving a radiation source that harms or has the potential to harm presently or in the future, the health or safety of a person or the environment, and the harm or potential harm is of a high impact or on a wide scale.

Despite the General Defence outlined in Section 86 of the Bill, SACOME submits that the introduction of the concept of "radiation harm" as an offence, without a clear definition in the Bill is problematic for the resources sector.

The lack of clarity in the draft Bill with regard to 'causing serious radiation harm' and 'radiation harm' creates legal uncertainty for industry and the potential for operators to inadvertently commit offence under current definitions.

Industry accepts the Linear Non-Threshold (LNT) model as the basis of radiation protection, and therefore accepts that any increase in radiation levels leads to increased impact.

Member companies contend that the Bill needs to provide a definition of radiation harm such that it is clear under what circumstances the offence of radiation harm may occur.

SACOME submits that the Bill would benefit from the EPA and industry working in collaboration to align the definition to existing regulations and codes that provide current dose limitation criteria to be included in the Bill, and that 'causing radiation harm' cannot be interpreted below such a level.

This will provide clarity whether failing to maintain doses to levels that are "as low as reasonably achievable" may be interpreted as causing radiation harm, regardless of the actual radiation risk/exposure.

A clear definition of radiation harm will also assist industry as there are no applicable or "standard" criteria for determining radiation harm to non-human biota.

Member companies are concerned that, without a clear definition of radiation harm, companies may be left to defend their operations in court when/if a complaint is brought.

Further, SACOME submits that small exploration companies that interact with radioactive materials may be required to spend considerable monies on radiation protection that is disproportionate to the risk, and thereby discourage exploration and/or project development.

6. SACOME acknowledges that additional consultation with the resources sector has been undertaken by the EPA following the Australasian Radiation Protection Society Workshop held on 1 February 2019.

This consultation relates to sections 50 and 51 and responds to stakeholder concerns about the operation of those sections per the comments made at point 5. above. Additionally, SACOME met with the EPA to discuss proposed amendments to those sections on 20 February 2019.

SACOME notes the addition of section 50(5) and 51(5) which states that the offences of causing serious radiation harm; and radiation harm '*do not apply in relation to an act done in good faith, in accordance with this Act and without negligence*'.

SACOME notes that these amendments seek to resolve the concerns raised at point 5. above. SACOME provides in-principle support to these amendments, with the caveat that they operate as intended.

Other Matters

7. SACOME member companies have also raised the following additional matters regarding the Bill:
8. Alignment to the National Directory is a measure that will reduce the inconsistencies between Commonwealth and State legislation and is supported by SACOME and its member companies.
9. The consolidation of management licencing and registration requirements is a positive step forward as requiring advice on all licences proved to be a significant red-tape burden which could cause potential delays for radiation users.
10. Member companies have raised concerns around the transport licencing requirements and the concentration levels at which transport licenses are required, as these levels remain unclear in the Bill at this stage.

This creates a degree of uncertainty and should be better defined in the Bill.

11. The Bill contains a clause allowing the provision of a "Bond" for licenced operations. It is unclear, if this is in addition to the Department of Energy and Mining mandated closure provisions. Further, greater clarity regarding what this bond is designed to cover is sought.

SACOME would oppose the provision of further bonds over and above what the resources sector regulatory requirements currently are, as it could result in a further financial burden for operators and act as a barrier to investment.

12. SACOME welcomes the opportunity to make this submission to the draft *Radiation Protection and Control Bill 2018* and has sought to provide considered feedback on issues of relevance to the South Australian resources sector.

SACOME thanks the EPA for its willingness to engage with the resources sector and its efforts to remedy concerns that stakeholders have raised with the Bill as part of the consultation process.

SACOME remains committed to ongoing dialogue with the EPA in progressing the draft Bill.

Yours sincerely



Rebecca Knol
Chief Executive Officer