



New South Wales

# Radiation Control Amendment Act 2010 No 91

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New South Wales

# Radiation Control Amendment Act 2010 No 91

Act No 91, 2010

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An Act to amend the *Radiation Control Act 1990* to make further provision for the regulation and control of radioactive substances and radiation apparatus; and for other purposes. [Assented to 4 November 2010]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Radiation Control Amendment Act 2010*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act except as provided by subsection (2).
- (2) Schedule 1 [1]–[6], [8], [9], [12], [13], [17], [19], [20], [24] and [26] commence on a day or days to be appointed by proclamation.

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## Schedule 1      Amendment of Radiation Control Act 1990 No 13

### [1] Section 3

Omit the section. Insert instead:

#### 3 Objects of Act

- (1) The objects of this Act are as follows:
  - (a) to secure the protection of persons and the environment from exposure to ionising and harmful non-ionising radiation to the maximum extent that is reasonably practicable, taking into account social and economic factors and recognising the need for the use of radiation for beneficial purposes,
  - (b) to protect security enhanced sources from misuse that may result in harm to people or the environment,
  - (c) to promote the radiation protection principles.
- (2) The *radiation protection principles* are as follows:
  - (a) *justification of a practice* by assessing that the benefits of the practice involving exposure to ionising radiation outweigh any detriment,
  - (b) *optimisation of protection* by ensuring that each of the following is kept as low as reasonably achievable taking into account economic and social factors:
    - (i) the magnitude of individual doses of ionising radiation,
    - (ii) the number of people exposed to ionising radiation,
    - (iii) the likelihood of exposure to ionising radiation,
  - (c) *dose and risk limitation* by setting dose limits or imposing other measures so that the health risks to any person exposed to ionising radiation is kept below levels that are generally considered to be unacceptable.
- (3) A person is to take the radiation protection principles into consideration when exercising functions under this Act or under a licence.

**[2] Section 4 Definitions**

Omit the definitions of *licence*, *occupier* and *registered premises* from section 4 (1).

Insert in alphabetical order:

*accreditation* means accreditation granted by the Authority under Part 2.

*deal* with a source, includes, use, sell, give away, dispose of, store, possess, transport, install, maintain or repair a source.

*Department* means the Department of Environment, Climate Change and Water.

*Director-General* means the Director-General of the Department.

*exercise* a function includes perform a duty.

*function* includes a power, authority or duty.

*licence* means a radiation management licence or a radiation user licence.

*person responsible*—see section 6.

*radiation management licence* means a radiation management licence granted by the Authority under Part 2.

*radiation security assessor* means a person who is accredited under section 8 (2).

*radiation user licence* means a radiation user licence granted by the Authority under Part 2.

*regulated material* means any of the following:

- (a) radioactive substances,
- (b) ionising radiation apparatus,
- (c) non-ionising radiation apparatus of a kind prescribed by the regulations,
- (d) sealed source devices.

*relevant legislation* means:

- (a) this Act and the regulations, and
- (b) legislation of any other Australian jurisdiction relating to radiation control or protection, and
- (c) legislation (including legislation that has been repealed or legislation of another jurisdiction) prescribed by the regulations.

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*security enhanced source* means a sealed radioactive source prescribed by the regulations as a security enhanced source.

*security plan* means a plan referred to in section 14.

**[3] Section 4 (2)**

Omit the subsection. Insert instead:

- (2) Notes included in this Act do not form part of this Act.

**[4] Sections 5 and 5A**

Omit section 5. Insert instead:

**5 Fit and proper persons**

- (1) In determining, for the purposes of this Act, whether a person is a fit and proper person to hold a licence or accreditation, the Authority may take into consideration any one or more of the following:
- (a) whether the person (or any director of the person in the case of a body corporate) has contravened relevant legislation, or has held a licence, accreditation or other authority that has been suspended or cancelled under relevant legislation,
  - (b) whether, if the person is a body corporate, a director of the body corporate is or has been the director of another body corporate that has contravened relevant legislation, or has held a licence, accreditation or other authority that has been suspended or cancelled under relevant legislation,
  - (c) the record of compliance with relevant legislation of the person (and each director of the person in the case of a body corporate),
  - (d) whether, in the opinion of the Authority, any dealings of the person with regulated material under a licence will or will not be in the hands of a technically competent person,
  - (e) whether, in the opinion of the Authority, the person (and each director of the person in the case of a body corporate) is of good repute, having regard to character, honesty and integrity,
  - (f) whether the person (or any director of the person in the case of a body corporate), in the previous 10 years, has in this or any other Australian jurisdiction:
    - (i) been convicted of an offence involving fraud, dishonesty or other behaviour that the Authority

- considers would render the person unfit to hold a licence or accreditation, or
- (ii) been subject to a finding of professional misconduct or unsatisfactory professional conduct by a body that regulates, or investigates complaints about, health practitioners,
  - (g) whether the person, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,
  - (h) if the person is an individual, whether he or she is or was a director of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years,
  - (i) if the person is a body corporate, whether the body corporate is the subject of a winding up order or has had a controller or administrator appointed during the previous 3 years,
  - (j) whether the person has demonstrated to the Authority the financial capacity to comply with the person's obligations under the licence or accreditation or the proposed licence or accreditation,
  - (k) whether the person is in partnership with a person whom the Authority does not consider to be a fit and proper person under this section, in connection with:
    - (i) dealings with regulated material authorised (or sought to be authorised) by a licence, or
    - (ii) activities authorised (or sought to be authorised) by an accreditation,
  - (l) any other ground that the Authority considers appropriate.
- (2) In this section:  
*director* of a body corporate includes a person involved in the management of the affairs of the body corporate.

**5A Public bodies may exercise certain functions of Authority**

- (1) The object of this section is to provide for public bodies other than the Authority to exercise certain of the Authority's functions under this Act in certain circumstances instead of the Authority.
- (2) The Director-General of the Department of Industry and Investment may exercise such functions of the Authority as may

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be prescribed by the regulations in respect of radioactive ore subject to such conditions or limitations as are specified in the regulations.

- (3) The Authority cannot exercise a function in respect of radioactive ore if that function is prescribed under subsection (2).
- (4) The regulations may prescribe the circumstances (including conditions and limitations) in which a public body may exercise functions of the Authority under this Act.
- (5) The Authority cannot exercise a function in circumstances if the regulations have prescribed another public body to exercise the function in those circumstances.
- (6) The regulations may not prescribe circumstances in which a public body exercises any such function in respect of activities carried on by that public body.
- (7) The regulations may give effect to a scheme similar to that set out in sections 212C and 212D of the *Protection of the Environment Operations Act 1997*.

**Note.** Those sections set out what is to occur if a public body or an officer of the body exercises functions in relation to a matter for which it is not authorised.

**[5] Parts 2 and 2A**

Omit Part 2. Insert instead:

## **Part 2 Licences and accreditations**

### **6 Radiation management licences**

- (1) For the purposes of this Act each of the following persons is a ***person responsible*** for regulated material:
  - (a) the owner of the regulated material,
  - (b) any person who is storing, selling or giving away the regulated material,
  - (c) any person who has possession of the regulated material, other than:
    - (i) a person who is the holder of a radiation user licence in respect of the regulated material and who has possession of the regulated material only for the purposes of using the regulated material, or
    - (ii) a person who has possession of the regulated material only for the purposes of transporting the regulated material.

- (2) A person responsible for regulated material must hold a radiation management licence in respect of the regulated material and must comply with any conditions to which the licence is subject.  
Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.
- (3) The Minister may, by notice in writing given to a person, exempt the person from the requirement to hold a radiation management licence.
- (4) The exemption may be granted unconditionally or subject to conditions and remains in force for the time specified in the notice or until cancelled by the Minister by giving further notice in writing, whichever occurs first.
- (5) The Minister may seek, and take into consideration, the advice of the Council before making a decision in respect of the granting of an exemption under this section.
- (6) Each person responsible for regulated material must ensure that the regulated material is not sold, leased or given to, or stored, possessed or used by, any other person unless that other person is the holder of an appropriate licence under this Part in respect of the regulated material.  
Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

#### **7 Radiation user licence**

A natural person who uses regulated material must hold a radiation user licence and must comply with any conditions to which the licence is subject.

Maximum penalty: 250 penalty units or imprisonment for 2 years, or both.

#### **8 Accreditation of radiation experts and security assessors**

- (1) A person must not carry out any of the activities prescribed by the regulations as the activities of a consulting radiation expert unless the person holds accreditation as a consulting radiation expert and carries out those activities in compliance with any conditions to which that accreditation is subject.
- (2) A person must not carry out any of the activities prescribed by the regulations as the activities of a radiation security assessor unless the person holds accreditation as a radiation security assessor and

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carries out those activities in compliance with any conditions to which that accreditation is subject.

Maximum penalty: 100 penalty units.

**9 Applications with respect to licences and accreditations**

- (1) A person may apply to the Authority for a licence or accreditation or for a renewal or variation of a licence or accreditation held by the person.
- (2) The application must be in the approved form and be accompanied by the fee prescribed in respect of the licence or accreditation.
- (3) The application must contain any information that the Authority may require.
- (4) The Authority may require the applicant to provide any further information that it considers necessary to determine the application.
- (5) The Authority may, in granting an application in respect of a licence or accreditation, impose such conditions on the licence or accreditation as the Authority sees fit.
- (6) The Authority must (or, in the case of a renewal application, may) refuse to grant an application unless it is satisfied that:
  - (a) the applicant is a fit and proper person to hold the licence or accreditation, and
  - (b) the applicant meets any requirements that may be prescribed by the regulations in respect of the licence or accreditation, and
  - (c) the applicant meets any requirements in respect of the licence or accreditation that may be set out in a document forming part of the National Directory and adopted by the Authority under section 37, and
  - (d) in the case of a radiation user licence, the applicant is a natural person who has appropriate knowledge of the principles and practices of radiation safety and protection applicable to the activities proposed to be carried on by the applicant pursuant to the licence, and
  - (e) in the case of an accreditation, the applicant is a natural person who has the qualifications or expertise necessary to properly carry out the activities to be authorised by the accreditation.

- (7) The Authority may, at its discretion, refuse an application on any other ground.
- (8) The Authority may seek, and take into consideration, the advice of the Council before making a decision in respect of an application under this section.

**10 Variation of licences and accreditations**

- (1) The Authority may vary a licence or accreditation on its own motion or on the application of the holder of the licence or accreditation.
- (2) A variation takes effect when the holder of the licence or accreditation is given notice in writing of the variation, or if a later time is specified in the notice, at that later time.
- (3) A licence may be varied so that it relates to regulated material to which it did not relate before the variation.
- (4) An accreditation may be varied so as to authorise the carrying on of activities which were not authorised before the variation.
- (5) A variation may involve the imposition of a condition on the licence or accreditation or the revocation of any such condition.

**11 Term of licences and accreditations**

A licence or accreditation remains in force (unless it is cancelled or surrendered sooner):

- (a) for the term specified by the Authority in the licence or accreditation, or
- (b) if an application to renew the licence or accreditation is made in accordance with this Part and received by the Authority before, or within 60 days after, the end of that specified term—until the application is determined.

**12 Surrender of licences and accreditation**

- (1) A licence or accreditation may be surrendered only with the written approval of the Authority.
- (2) The application for approval must be in the approved form and must contain any information that the Authority may require.
- (3) The Authority may require the applicant to provide any further information that it considers necessary to determine the application.

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- (4) The Authority may refuse an application for surrender of a licence if it is of the opinion that:
    - (a) there will be an ongoing impact arising from any regulated material to which the licence relates, and
    - (b) it is appropriate to manage that impact through conditions of the licence.
  - (5) A licence or accreditation surrendered under this section ceases to be of any force or effect.

### **13 Cancellation and suspension of licences and accreditations**

- (1) The Authority may, at its discretion, suspend or cancel a licence or accreditation on any ground including if it is satisfied of any one or more of the following:
  - (a) that the grant of the licence or accreditation was made in error or was obtained improperly,
  - (b) that the holder of the licence or accreditation is not a fit and proper person to hold the licence or accreditation,
  - (c) that the holder of the licence or accreditation has contravened a condition of it,
  - (d) that the holder of the licence or accreditation has been convicted of an offence against relevant legislation,
  - (e) that the holder has ceased to hold a qualification which was the basis on which the Authority granted the licence or accreditation,
  - (f) that, in the case of an accreditation, the holder has ceased carrying out the activities to which the accreditation relates.
- (2) A decision of the Authority to suspend or cancel a licence or accreditation has no effect:
  - (a) until the expiration of the period within which a person may appeal against the decision, or
  - (b) if a person appeals against the decision within that period, unless and until the decision is confirmed by the District Court or the appeal is withdrawn.
- (3) A licence or accreditation:
  - (a) cancelled under this section ceases to be of any force or effect, or
  - (b) suspended under this section is of no force or effect for the period of the suspension.

- (4) If a licence or accreditation has been suspended, it can be renewed but remains subject to suspension until the expiration of the period of suspension.
- (5) The holder of a licence or accreditation which is suspended or cancelled must surrender it to the Authority.  
Maximum penalty: 10 penalty units.

**13A Conditions of suspension, cancellation or surrender**

- (1) A licence or accreditation may be suspended or cancelled, or the surrender of a licence or accreditation may be approved, unconditionally or subject to such conditions as the Authority imposes.
- (2) Those conditions may include (but are not limited to) any conditions to which the licence or accreditation was subject immediately before it was suspended, cancelled or surrendered.
- (3) The Authority may, by giving notice in writing to the former holder of a cancelled or surrendered licence or accreditation or the holder of a suspended licence or accreditation, attach new conditions to, or vary or revoke any existing conditions of, the suspension, cancellation or surrender of the licence or accreditation.
- (4) The former holder of a licence that has been cancelled or surrendered, or the holder of a licence that has been suspended, must comply with any conditions to which the cancellation, surrender or suspension is subject.  
Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.
- (5) The former holder of an accreditation that has been cancelled or surrendered, or the holder of an accreditation that has been suspended, must comply with any conditions to which the cancellation, surrender or suspension is subject.  
Maximum penalty: 100 penalty units.

**13B Conditions generally**

- (1) A condition imposed under this Part that specifies a time by which, or period within which, the condition must be complied with continues to have effect until the condition is complied with or revoked even though the time has passed or the period has expired.

- (2) The kinds of condition that may be imposed under this Part include the following:
- (a) conditions that relate to the control or management of regulated material,
  - (b) conditions that relate to the places at which regulated material is kept or used,
  - (c) conditions that relate to the equipment used in conjunction with regulated material,
  - (d) conditions requiring the carrying out of works or programs (such as the securing, storage or disposal of regulated material or remediation, clean-up or improvement works with respect to regulated material),
  - (e) conditions requiring financial assurances to secure or guarantee funding for or towards the carrying out of any such works or programs,
  - (f) conditions that apply requirements set out in a document forming part of the National Directory or a document (as in force for the time being) such as a guideline issued by the Authority, an Australian Standard or a publication of the Australian Radiation Protection and Nuclear Safety Agency,
  - (g) conditions of a kind prescribed by the regulations.

**13C Public register of licences**

- (1) The Authority is to maintain a register of licences issued under this Part.
- (2) The register is to contain the following information in relation to each licence:
- (a) the name of the holder of the licence,
  - (b) the type and number of the licence,
  - (c) the expiry date of the licence,
  - (d) the status of the licence,
  - (e) such other information as may be prescribed by the regulations.
- (3) The register may also contain such information as may be prescribed by the regulations in relation to any licence that is suspended, cancelled or surrendered.

- (4) The Authority is to make the register available to members of the public to inspect free of charge:
  - (a) at its principal office during ordinary office hours, and
  - (b) on its website.
- (5) The Authority may charge a fee for providing a person with a copy of the register or part of the register or for making the register available for inspection at some other place.
- (6) Section 57 of the *Privacy and Personal Information Protection Act 1998* does not apply to the register referred to in this section.

## Part 2A Security of radioactive sources

### 14 Preparation of security plans

- (1) Each person responsible for a security enhanced source must ensure that a plan is made that addresses:
  - (a) the security of the source (a *source security plan*), and
  - (b) if the source is to be transported, the security of the source during transport (a *source transport security plan*).

**Note.** A security enhanced source is a sealed radioactive source prescribed by the regulations. A sealed radioactive source means a radioactive substance sealed in a capsule or closely bound in a solid form. As a radioactive substance is regulated material, each person responsible for that regulated material will be a person responsible for the security enhanced source.

- (2) A security plan must set out how the source is to be protected from unauthorised access, nominate a natural person who is to be responsible for implementing the plan and deal with any other matters that may be prescribed by the regulations.
- (3) The regulations may make provision with respect to the form and content of security plans, the provision of security plans to the Authority and other persons and the keeping of records in respect of security plans.
- (4) A security plan cannot be made or amended unless the plan or amendment has been reviewed by a radiation security assessor who endorses on the plan that the plan, or plan as amended, satisfies the requirements of this section.
- (5) Subsection (4) does not apply to an amendment that only updates the name of the natural person who is to be responsible for implementing the plan or an amendment of a kind prescribed by the regulations.

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- (6) Each person responsible for a security enhanced source must ensure that any security plan in respect of the source:
- (a) is made or amended in accordance with this section, and
  - (b) is provided to the Authority:
    - (i) at such times as the Authority or the regulations may require, and
    - (ii) in the case of a source transport security plan, as soon as reasonably practicable after the plan is made or amended, and
  - (c) is reviewed periodically or at such times and in such manner as may be prescribed by the regulations, and
  - (d) is implemented and complied with.
- (7) A person who has been given a copy of a security plan or part of such a plan in respect of a security enhanced source must comply with the plan or the part in the person's dealings with the source.  
Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units in any other case.

**14A Implementation of security measures**

- (1) Each person responsible for a security enhanced source must ensure that the source is protected by any security protection measure prescribed by the regulations with respect to the source.  
Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units in any other case.
- (2) A person must not interfere with any security protection measure prescribed with respect to a security enhanced source unless the interference:
- (a) occurs during repair or maintenance, but only if the security protection measure complies with this section following the repair or maintenance, or
  - (b) is to a security protection measure that is no longer required under this section, or
  - (c) is by the Authority or an authorised officer or by a person acting in accordance with a direction or notice under this Act, or
  - (d) occurs in circumstances prescribed by the regulations.
- Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units in any other case.

- (3) In this section:  
*interfere* with any security protection measure includes removal of or damage to the measure, altering the measure so that it is less effective or rendering the measure ineffective.

**14B Identification and security checking**

- (1) Each person responsible for a security enhanced source prescribed by the regulations must ensure that the following natural persons have undergone and satisfied an identity check that ascertains the identity and residential address of the person and any other prescribed information in respect of the person:
- (a) a person who deals with the source,
  - (b) a person prescribed by the regulations.
- (2) Each person responsible for a security enhanced source must ensure that the following natural persons have undergone and satisfied a security check in accordance with the regulations:
- (a) a person nominated under this Part as being responsible for implementing a security plan in respect of the source (a *nominated person*),
  - (b) a person who transports the source,
  - (c) if the source is prescribed by the regulations, a person who deals with the source,
  - (d) a person prescribed by the regulations.
- (3) A check is not required under this section in respect of:
- (a) a person if:
    - (i) the person is under the direct supervision of another person at all times when engaged in the activity in respect of which the check would otherwise be required, and
    - (ii) the other person is a natural person who has undergone and satisfied the relevant check, or
  - (b) a person prescribed by the regulations.
- (4) Subsection (3) does not exempt any of the following persons from undergoing and satisfying a security check:
- (a) a nominated person,
  - (b) a person who transports a source,
  - (c) a person prescribed by the regulations.

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- (5) A person must not engage in any activity for which the person is required to undergo a check under this section unless the person has undergone and satisfied that check.
  - (6) The regulations may make provision with respect to a check under this section and any matter related to any such check including requiring additional persons to ensure that such checks are carried out.  
Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units in any other case.

**[6] Sections 18 and 19**

Omit the sections. Insert instead:

**18 Notices to avoid or remedy contraventions**

- (1) An authorised officer may serve a notice under this section on a person if the authorised officer believes on reasonable grounds that the person is, or is likely to become, responsible for:
  - (a) a contravention of this Act, the regulations or the conditions of, a licence or accreditation or, the suspension, cancellation or surrender of a licence or accreditation, or
  - (b) unnecessary exposure to or contamination by radiation.
- (2) The notice is to be in writing and may contain a direction requiring the person on whom it is served to take specified steps, or refrain from doing specified things, to comply with the direction within a specified time.
- (3) The Authority must, as soon as practicable after the authorised officer issues the notice, advise the Council about the notice.
- (4) The person on whom the notice is served must:
  - (a) comply with the notice, and
  - (b) within 30 days or such longer time as may be permitted by the Authority, pay the prescribed fee to the Authority.Maximum penalty: 200 penalty units.
- (5) The Authority may waive payment of the whole or any part of the fee.

- (6) The person may appeal to the District Court against a decision of the Authority under this section and the following provisions apply to and in respect of the appeal:
- (a) the person must comply with the notice unless the Court directs that the notice be stayed, in which case the notice ceases to have effect until:
    - (i) the stay ceases, or
    - (ii) the Court confirms the notice, or
    - (iii) the appeal is withdrawn,
  - (b) the amount payable under subsection (4) (b) is not required to be paid until 30 days after:
    - (i) the Court confirms the notice, or
    - (ii) the appeal is withdrawn,
  - (c) the appeal is to be in accordance with the rules of the District Court,
  - (d) the appeal is to be by way of a new hearing and new evidence can be given on the appeal,
  - (e) the decision of the Court is final and is to be given effect to by the Authority.
- (7) A notice may be varied or revoked and more than one notice may be served under this section on the same person or in respect of the same incident or both.
- (8) A notice that specifies a time by which, or period within which, a direction must be complied with continues to have effect until the direction is complied with or revoked even though the time has passed or the period has expired.
- (9) A notice may be served on a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment or a natural person of this State.

**19 Powers to deal with dangerous situations**

- (1) If the Authority considers that a dangerous or potentially dangerous situation exists involving actual or threatened exposure of any person, animal or thing or the environment to an excessive level of radiation or contamination by regulated

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material, the Authority may, to avoid, remove or alleviate the danger or potential danger:

- (a) direct the person responsible for the danger or potential danger or any person affected by it to take, or refrain from taking, any specified action, or
  - (b) direct that the regulated material giving rise to the danger or potential danger or anything contaminated or affected by it be seized, removed, disposed of, treated or otherwise dealt with, or
  - (c) give any other direction that the Authority considers appropriate, or
  - (d) take any action that the Authority considers necessary to alleviate the danger or potential danger (including any action that a person has been directed to take but has failed to take).
- (2) Directions may be given or action taken under subsection (1) by the Authority or, with the prior approval of the Authority, by an authorised officer, police officer or other person appointed for the purpose by the Authority.
- (3) A direction may be given:
- (a) by a notice published in the Gazette or on the NSW legislation website, or
  - (b) by an instrument in writing served on the person to whom it is directed, or
  - (c) orally in circumstances of imminent danger, so long as, within 24 hours after it is given orally, notice of the direction is also given by instrument in writing served on the person concerned.
- (4) The person must comply with a direction.  
Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.
- (5) A person must not hinder or obstruct any person exercising any function, or complying with any direction, under this section.  
Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

- (6) The person to whom a direction is given must, within 30 days or such longer time as may be permitted by the Authority, pay the prescribed fee to the Authority.  
Maximum penalty: 200 penalty units.
- (7) The Authority may waive payment of the whole or any part of the fee.
- (8) A direction may be varied or revoked and more than one direction may be served under this section on the same person or in respect of the same incident or both.
- (9) A direction that specifies a time by which, or period within which, the direction must be complied with continues to have effect until the direction is complied with or revoked even though the time has passed or the period has expired.
- (10) A direction may be given to a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment or a natural person of this State.
- (11) The exercise of the Authority's functions under this section is subject to the *State Emergency and Rescue Management Act 1989*.

**[7] Section 24 Increased penalty for offence causing serious harm**

Omit section 24 (1). Insert instead:

- (1) This section applies when a person is convicted of an offence against a provision of this Act and it is proved beyond reasonable doubt that the person knew that its commission was likely to cause serious harm to a person, animal or thing or the environment by exposure to radiation.

**[8] Section 24A**

Insert after section 24:

**24A Enforcement of undertakings**

- (1) The Authority may accept a written undertaking given by a person if the Authority reasonably believes that the person has contravened this Act or the regulations.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Authority. The consent of the Authority is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.

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- (3) The Authority may apply to the District Court for an order under subsection (4) if the Authority considers that the person who gave the undertaking has breached any of its terms.
  - (4) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
    - (a) an order directing the person to comply with that term of the undertaking,
    - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
    - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
    - (d) an order suspending or cancelling any licence or accreditation held by the person,
    - (e) an order requiring the person to prevent, control, abate or mitigate any actual or likely harm to the environment or human health caused by the breach,
    - (f) an order requiring the person to make good any actual or likely harm to the environment caused by the breach,
    - (g) any other order the Court considers appropriate.

**[9] Section 25 Proceedings for offences**

Omit "Director-General of the Authority" from section 25 (4).

Insert instead "Director-General".

**[10] Section 25 (5)–(8)**

Omit section 25 (5). Insert instead:

- (5) Proceedings for an offence under this Act may be commenced within 12 months after the date on which:
  - (a) the offence is alleged to have been committed, or
  - (b) evidence of the alleged offence first came to the attention of an authorised officer.
- (6) If subsection (5) (b) is relied on for the purpose of commencing proceedings:
  - (a) the court attendance notice must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain

particulars of the date on which the offence was committed, and

- (b) unless the contrary is established, that specified date is taken to be the date on which evidence first came to the attention of an authorised officer.
- (7) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (8) In this section:  
*evidence of an offence* means evidence of any act or omission constituting the offence.

**[11] Section 25A Penalty notices**

Insert after section 25A (9):

- (10) Within 28 days after the date on which a penalty notice is served, an authorised officer may withdraw the notice if it was served by an authorised officer or a police officer may withdraw the notice if it was served by a police officer.
- (11) An authorised officer or a police officer must withdraw a penalty notice immediately if directed to do so by the Authority.
- (12) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with this section:
  - (a) the amount that was payable under the notice ceases to be payable,
  - (b) any amount that has been paid under the notice is repayable to the person by whom it was paid,
  - (c) further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.

**[12] Section 28 Recovery of costs**

Insert at the end of the section:

- (2) If an authorised officer serves a notice under section 18 or the Authority gives a direction under section 19 to a person, the Authority may, by giving notice in writing, require the person to pay all or any reasonable costs and expenses incurred by the Authority in connection with:
  - (a) monitoring action under the notice or direction, and

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- (b) ensuring that the notice or direction is complied with, and
  - (c) any other associated matters.
- (3) Any such costs and expenses may be recovered by the Authority from the person in a court of competent jurisdiction as a debt.

**[13] Part 3A**

Insert after Part 3:

## **Part 3A Financial assurances**

### **28A Purpose of this Part**

- (1) The purpose of this Part is to provide (by way of conditions of radiation management licences) financial assurances to secure or guarantee funding for or towards the carrying out of works or programs (such as the securing, storage or disposal of regulated material or remediation, clean-up or improvement works with respect to regulated material) required by or under a licence.
- (2) A financial assurance is not to operate as a mere penalty for a contravention of this Act, the regulations or the conditions of a licence.

### **28B Definition of “conditions” of licence**

In this Part, a reference to the *conditions* of a radiation management licence includes a reference to the conditions of the suspension, cancellation or surrender of such a licence.

### **28C Requiring financial assurances**

- (1) The conditions of a radiation management licence may require the holder or former holder of the licence to provide a financial assurance. The Authority may require any such financial assurance to be provided before it issues, suspends or cancels the licence or before it approves of its surrender.
- (2) A financial assurance may be in one or more of the following forms:
  - (a) a bank guarantee,
  - (b) a bond,
  - (c) another form of security that the Authority considers appropriate and specifies in the condition.
- (3) A condition of a licence may provide for the procedures under which the financial assurance may be called on or used.

**28D Restriction on requiring financial assurance**

The Authority cannot impose a condition on a radiation management licence requiring a financial assurance to be provided unless it is satisfied that the condition is justified having regard to:

- (a) the degree of risk of environmental harm or harm to human health associated with the activities under the licence, or
- (b) the works or programs that may be required because of activities under the licence, or
- (c) the environmental or radiation safety or security record of the holder or former holder of the licence or proposed holder of the licence, or
- (d) any other matters prescribed by the regulations.

**28E Amount of financial assurances**

- (1) The amount of a financial assurance is to be as determined by the Authority.
- (2) However, the Authority must not require financial assurances of an amount that exceeds the total cost of carrying out the relevant work or program. That total cost is the amount that, in the Authority's opinion, represents a reasonable estimate of the total likely costs and expenses that may be incurred in carrying out the work or program required by or under this Act for which the financial assurance is required, including the likely costs and expenses of the Authority in directing and supervising the carrying out of the work or program.
- (3) The Authority may require the holder or former holder of a licence who is required to give a financial assurance to provide to the Authority an independent assessment of the cost of the relevant work or program for which the assurance is required.

**28F Guidelines about financial assurances**

The regulations may make provision for or with respect to guidelines to be observed in relation to the content of conditions requiring financial assurances and in relation to the calculation of the amount of financial assurances required.

**28G Carrying out of work or program when licensee fails to do so**

- (1) The Authority may carry out, or direct or supervise the carrying out by another person of, any work or program covered by any financial assurance required by the conditions of a radiation management licence if the holder or former holder of the licence

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fails, in the opinion of the Authority, to carry out that work or program in accordance with the conditions of the licence.

- (2) The Authority may do so by the use of contractors, consultants or otherwise.
- (3) The Authority may enter, or authorise any other person to enter, the premises concerned to carry out the work or program.

**28H Claim on or realising of financial assurance**

- (1) The Authority may recover or fund the reasonable costs or expenses of the Authority or other person in carrying out any such work or program (including the likely costs and expenses of the Authority in directing and supervising the carrying out of the work or program) by making a claim on or realising the financial assurance or part of it.
- (2) Before making the claim on or realising the financial assurance or part of it, the Authority must give to the holder or former holder of the licence a written notice that:
  - (a) states details of the work or program carried out or proposed to be carried out, and
  - (b) states the amount of the financial assurance to be claimed or realised, and
  - (c) invites the person to make representations to the Authority to show why the financial assurance should not be claimed or realised as proposed, and
  - (d) states the period (at least 30 days after the notice is given to the person) within which representations may be made.
- (3) The representations must be made in writing.
- (4) After the end of the period stated in the notice, the Authority must consider any representations properly made by the person.
- (5) If the Authority decides to make a claim on or realise the financial assurance or part of it, the Authority must immediately give written notice to the holder or former holder of the licence of its decision and the reasons for the decision.
- (6) The Authority must return any excess amounts to the holder or former holder of the licence or that person's successors.
- (7) If the amount of financial assurance claimed or realised by the Authority is not sufficient to cover all the costs and expenses concerned, the Authority may recover the excess from the holder or former holder of the licence in a court of competent jurisdiction as a debt.

**28I Lapsing of financial assurance**

The requirement to provide financial assurance lapses and no longer binds the holder or former holder of the licence if the Authority is satisfied that the work or program for which the financial assurance was required has been satisfactorily carried out and the Authority has given the holder or former holder of the licence written notice of the lapsing of the financial assurance.

**28J Liability of Authority, State and others**

- (1) Anything done by or at the direction, or under the supervision, of the Authority under section 28G (1) is taken to have been done by the holder or former holder of the licence.
- (2) The State, the Minister, the Authority, the members of the Board of the Authority, any members of the staff of the Authority and any persons engaged by or otherwise acting with the authority of the Authority (or any of them):
  - (a) are not liable for anything done or omitted to be done in good faith in connection with a condition of a radiation management licence to which this Part applies or in carrying out or giving effect to this Part, and
  - (b) without affecting the generality of paragraph (a), are taken, for the purposes of section 23, not to be concerned in the management of a corporation when doing or omitting to do anything in connection with such a condition or when carrying out or giving effect to this Part.

**28K Financial assurance not to affect other action**

A financial assurance may be called on and used, despite and without affecting:

- (a) any liability of the holder or former holder of the licence to any penalty for an offence for a contravention to which the assurance relates, and
- (b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the assurance relates.

**[14] Part 4**

Omit “**Administration**” from the heading to the Part.

Insert instead “**Radiation Advisory Council**”.

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**[15] Section 29 Radiation Advisory Council**

Omit “16 members” from section 29 (2). Insert instead “17 members”.

**[16] Section 29 (2) (o1)**

Insert after section 29 (2) (o):

(o1) a person with expertise in mine radiation safety, and

**[17] Section 30 Functions of the Council**

Omit “, registrations” from section 30 (2A).

**[18] Section 33 Annual report of Council to Parliament**

Move the section into Part 4 after section 31.

**[19] Section 33A**

Insert before section 34:

**33A Abandoning radioactive substance**

A person must not abandon any radioactive substance without reasonable excuse.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

**[20] Sections 35–36B**

Omit sections 35 and 36. Insert instead:

**35 Service of documents**

- (1) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person:
  - (a) by delivering it personally to the person, or
  - (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with a person apparently of or above the age of 16 years, or
  - (c) by posting it duly stamped and addressed to the person at the place last shown in the records of the Authority as the person’s place of residence or business, or
  - (d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or

- (e) by sending it by facsimile or electronic transmission (including by email) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
  - (f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.
- (2) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

### **36 Evidentiary matters**

- (1) In any proceedings under this Act, the holder or former holder of a radiation management licence is at a particular time or during a particular period (in the absence of evidence to the contrary) taken to be a person responsible for any regulated material to which the licence related at that time or during that period.
- (2) A document signed by the Director-General and certifying any one or more of the following matters is admissible in any proceedings under this Act and (in the absence of evidence to the contrary) is taken to be evidence of the matters so certified:
  - (a) on a specified day, or during a specified period, a licence or accreditation was or was not in force or was or was not subject to a specified condition,
  - (b) on a specified day a licence or accreditation was or was not suspended, cancelled, varied or surrendered or the suspension, cancellation or surrender of a licence or accreditation was or was not subject to specified conditions,
  - (c) on a specified day a specified person was or was not an authorised officer or was or was not the holder of a specified licence or accreditation,
  - (d) on a specified day a specified person was or was not served with a specified notice, or given a specified direction, under this Act or any such direction or notice was or was not varied or revoked,
  - (e) a specified amount is payable by a specified person under this Act to the Authority and that amount has not been paid,
  - (f) a specified cost or expense was incurred by an authorised officer or public body in a specified way.

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- (3) The Authority may not rely on a document referred to in subsection (2) in proceedings unless it has given written notice to each other party in the proceedings of its intention to rely on the document and provided each such party with a copy of the document.

**36A Appeals to District Court**

- (1) A person may, in accordance with the rules of the District Court, appeal to the District Court against a decision of the Authority:
- (a) to refuse to grant the person a licence or accreditation, or
  - (b) to impose conditions on, or vary the conditions of, a licence or accreditation, or
  - (c) to refuse to vary a licence or accreditation, or
  - (d) to suspend or cancel a licence or accreditation, or
  - (e) to refuse to approve the surrender of a licence or accreditation, or
  - (f) to impose a condition on the suspension, cancellation or surrender of a licence or accreditation, or
  - (g) to call on or use any financial assurance.
- (2) The appeal is to be by way of a new hearing and new evidence can be given on the appeal.
- (3) The decision of the District Court on the appeal is final and is to be given effect to by the Authority.

**Note.** Rule 50.3 of the *Uniform Civil Procedure Rules 2005* requires that a summons commencing an appeal must be filed with the District Court within 28 days after the date on which notice of the decision was given, by or on behalf of the Authority, to the person who wishes to appeal.

**36B Provision of false or misleading information**

A person must not provide information that the person knows is false or misleading in a material particular:

- (a) to an authorised officer or the Authority in the exercise of the authorised officer's or Authority's functions under this Act, or
- (b) to a person who is conducting a security check or identity check under Part 2A, for the purposes of that check, or
- (c) in the case of a person who is a responsible person in respect of regulated material, to a person who holds an accreditation, for the purposes of that accredited person

carrying out some activity in respect of the regulated material.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units in any other case.

**[21] Section 38 Consultation and co-operation between Ministers**

Omit section 38 (a). Insert instead:

- (a) the Ministers administering the following Acts on matters relating to safe work practices involving radiation:
  - (i) *Coal Mine Health and Safety Act 2002*,
  - (ii) *Mining Act 1992*,
  - (iii) *Occupational Health and Safety Act 2000*,
  - (iv) *Offshore Minerals Act 1999*,
  - (v) *Petroleum (Onshore) Act 1991*, and

**[22] Section 38 (c)**

Omit “*Public Health Act 1902*”. Insert instead “*Public Health Act 1991*”.

**[23] Section 38A**

Insert after section 38:

**38A Exemptions by Authority in emergencies and other situations**

- (1) The Authority may exempt a person from compliance with all or any specified provision of this Act or the regulations, in the circumstances referred to in subsection (2).
- (2) An exemption may be granted in:
  - (a) an emergency (such as an emergency clean-up following a spill of a radioactive substance), or
  - (b) circumstances where:
    - (i) the Authority is satisfied that it is not practicable to comply with the relevant provision, and
    - (ii) the Authority is satisfied that non-compliance with the provision will not have any significant adverse effect on human health, property or the environment, and
    - (iii) if the exemption is for a period exceeding 60 days, the Authority has sought and taken into consideration the advice of the Council about the proposed exemption.

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- (3) The regulations may prescribe the manner in which a person must apply for an exemption under this section.
  - (4) An exemption:
    - (a) is effected by order made by the Authority and published in the Gazette, and
    - (b) takes effect from the date the order is published or a later date specified in the order, and
    - (c) has effect for the period specified in the order.
  - (5) In the case of an exemption granted in an emergency, the order may take effect when it is made or on a later date specified in the order. The order is to be published in the Gazette as soon as practicable after it is made.
  - (6) An exemption may be unconditional or may be subject to conditions specified in the order.
  - (7) An exemption may be revoked, varied or renewed by a further order made and published in accordance with this section.
  - (8) An exemption may not be granted or renewed so as to have effect for a total period exceeding 5 years. A further exemption granted within 5 years after the expiry of an earlier exemption (being a further exemption that is the same in substance as the earlier exemption) is to be treated as a renewed exemption for the purposes of this subsection.
  - (9) If an exemption is granted, any person may make a written request to the Authority for the reasons for the exemption and the Authority is to provide a written statement of the reasons to the person. The regulations may make provision with respect to any such statement of reasons, including:
    - (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and
    - (b) the matters to be set out in a statement of reasons, and
    - (c) the cases in which a statement of reasons is not required to be provided.

**[24] Section 39A Personal liability**

Insert at the end of section 39A (d):

or

- (e) a natural person exercising functions under section 5A on behalf of a public body,

**[25] Section 39B Review of Act**

Omit “Schedule 1 [36] to the *Radiation Control Amendment Act 2002*” from section 39B (3).

Insert instead “Schedule 1 [25] to the *Radiation Control Amendment Act 2010*”.

**[26] Section 40 Regulations**

Omit “, registration” from section 40 (3) (d).

**[27] Section 40 (3A)**

Insert after section 40 (3):

- (3A) The regulations authorised by this section may also make provision for or with respect to any matter relating to the security of radioactive substances, radiation apparatus and sealed radioactive sources.

**[28] Section 40 (4)**

Omit “100 penalty units”.

Insert instead “400 penalty units in the case of an offence committed by a corporation or 200 penalty units in any other case”.

**[29] Section 43 Repeal of Radioactive Substances Act 1957 No 5 etc**

Omit the section.

**[30] Schedule 1 Provisions relating to members and procedure of Council**

Omit “Part 8 of the *Public Sector Management Act 1988*” from clause 5 (1) (d).

Insert instead “Chapter 5 of the *Public Sector Employment and Management Act 2002*”.

**[31] Schedule 1, clause 7 (1)**

Omit “Part 2 of the *Public Sector Management Act 1988*”.

Insert instead “Chapter 2 of the *Public Sector Employment and Management Act 2002*”.

**[32] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Radiation Control Amendment Act 2010*

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[33] **Schedule 2, Parts 2–4**

Omit the Parts.

[34] **Schedule 2, Part 6**

Insert after Part 5:

**Part 6 Provisions consequent on enactment of  
Radiation Control Amendment Act 2010**

**7 Definition**

In this Part:

*amending Act* means the *Radiation Control Amendment Act 2010*.

**8 Existing licences and registrations**

- (1) On the substitution of Part 2 by the amending Act:
  - (a) each existing licence under section 6 in respect of something to which that section applies (other than a licence to use something) is taken to be a radiation management licence in respect of that thing, and
  - (b) each existing licence under section 6 to use something to which that section applies is taken to be a radiation user licence in respect of that thing, and
  - (c) each person who is the owner of something registered under section 7 is taken to be issued with a radiation management licence in respect of that thing, and
  - (d) each person who is the occupier of premises registered under section 8 in respect of a radioactive substance that is kept or used at those premises, is taken to be issued with a radiation management licence in respect of that substance.
- (2) A licence that is taken to be a radiation management licence or radiation user licence under this clause or a radiation management licence that is taken to be issued under this clause:
  - (a) is subject to the same conditions to which the relevant existing licence or registration was subject, but only to the extent that those conditions are consistent with this Act and the regulations, and
  - (b) remains in force, unless sooner cancelled or surrendered, for the same period that the relevant existing licence or registration would have remained in force, and

- (c) may be dealt with under, and is otherwise subject to, the provisions of this Act and the regulations.
- (3) If, because of the operation of this clause, a person has more than one radiation management licence, the Authority may cancel each of those licences and issue a single radiation management licence (whether with or without variation to the terms of those existing licences) in respect of all the matters to which those licences related.

#### **9 Existing accreditations**

On the substitution of Part 2 by the amending Act each existing accreditation under section 9 is taken to be an accreditation under section 8 (1):

- (a) subject to the same conditions to which the existing accreditation was subject, but only to the extent that those conditions are consistent with this Act and the regulations, and
- (b) remains in force, unless sooner cancelled or surrendered, for the same period that the existing accreditation would have remained in force, and
- (c) may be dealt with under, and is otherwise subject to, the provisions of this Act and the regulations.

#### **10 Pending applications**

On the substitution of Part 2 by the amending Act:

- (a) each pending application for a licence under section 6 in respect of something to which that section applies (other than an application for a licence to use something) is taken to be an application for a radiation management licence in respect of that thing, and
- (b) each pending application for a licence under section 6 to use something to which that section applies is taken to be an application for a radiation user licence in respect of that thing, and
- (c) each pending application for registration of something under section 7 is taken to be an application for a radiation management licence in respect of that thing, and
- (d) each pending application for registration of premises under section 8 in respect of a radioactive substance that is kept or used at those premises, is taken to be an application for a radiation management licence in respect of that substance, and

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- (e) each pending application for accreditation under section 9 is taken to be an application for accreditation under section 8 (1).

**11 Public register of licences**

Section 13C (3), as inserted by the amending Act, extends to a licence or registration that was suspended, cancelled or surrendered before the commencement of that subsection.

**12 Notices and directions**

- (1) A notice served under section 18, or a direction given under section 19, before the substitution of those sections by the amending Act, are, after that substitution, taken to have been served or given in the same terms under those sections as substituted.
- (2) Section 28 (2) does not apply to a notice or direction to which this clause applies.

**13 Penalty notices**

Section 25A (10)–(12), as inserted by the amending Act, do not apply to a penalty notice issued before the commencement of those subsections.

**14 Evidentiary certificates**

Section 36, as substituted by the amending Act, extends to proceedings in respect of matters that occurred before that substitution.

**15 Appeals**

- (1) Section 14, as repealed by the amending Act, continues to apply in respect of decisions made before that repeal.
- (2) Section 18 (5), as repealed by the amending Act, continues to apply in respect of a decision under section 18 made before that repeal.

[Agreement in principle speech made in Legislative Assembly on 20 October 2010

Second reading speech made in Legislative Council on 28 October 2010]

BY AUTHORITY