

RADIATION CONTROL BILL 1990*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to repeal the Radioactive Substances Act 1957 and replace it with an Act which provides for the regulation and control of radioactive substances, radioactive sources and radiation apparatus. The proposed Act does not apply to radioactive ore while it is being mined or treated.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 states the object of the proposed Act, namely, to protect persons and the environment from exposure to ionising radiation and harmful non-ionising radiation.

Clause 4 defines certain expressions used in the proposed Act including "ionising radiation", "non-ionising radiation", "radiation apparatus", "sealed radioactive source" and "unsealed radioactive source".

Clause 5 states that the proposed Act does not apply to a radioactive ore while it is being mined or treated (within the meaning of the Mines Inspection Act 1901).

PART 2 - REGULATORY CONTROL

Clause 6 makes it an offence for a person to use or sell a radioactive substance, ionising radiation apparatus or prescribed non-ionising radiation apparatus unless the person holds a licence to do so. (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.)

* Amended in committee - see table at end of volume.

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The clause also makes it an offence to sell such substances or apparatus except to a person who holds a licence. The above penalties apply.

The Director-General can grant licences on the recommendation of the Radiation Advisory Council (established by clause 28). The Council, in making a recommendation, has to be satisfied that certain specified criteria are met.

Clause 7 makes it an offence for a person to own a sealed radioactive source or prescribed radiation apparatus unless it is registered. (Maximum penalty 1,500 penalty units in the case of a corporation or, in any other case, 250 penalty units or imprisonment for 2 years, or both.)

The clause also makes it an offence for an owner to allow a person who is not licensed to do so to use such a source or apparatus. The above penalties apply.

The Director-General can register such a source or apparatus on the recommendation of the Council.

Clause 8 makes the occupier of premises on which an unsealed radioactive source is kept guilty of an offence unless the premises are registered. (Maximum penalty 1,500 penalty units in the case of a corporation or, in any other case, 250 penalty units or imprisonment for 2 years, or both.)

The clause also makes it an offence for the occupier of such premises to allow a person who is unlicensed to use the unsealed radioactive source. The above penalties apply.

The Director-General can register premises on the recommendation of the Council.

Clause 9 makes it an offence for a person to carry on the activities of a consulting radiation expert unless the person has been accredited by the Director-General. (Maximum penalty 100 penalty units.)

The Director-General can accredit a person as a radiation expert on the recommendation of the Council.

Clause 10 enables conditions of licences, registration or accreditation to be imposed or varied by the Director-General.

Clause 11 provides for the term of a licence, registration or accreditation and the renewal of licences, registrations and accreditations.

Clause 12 enables the Director-General, on application, to transfer any registration under the proposed Act.

Clause 13 enables the Director-General to suspend or cancel a licence, registration or accreditation in specified circumstances.

Clause 14 provides a right of appeal to the District Court against the refusal, variation, suspension or cancellation of a licence, registration or accreditation.

PART 3 - ENFORCEMENT

Clause 15 allows an inspector appointed under clause 31 to enter premises and conduct investigations if it is suspected that the proposed Act or a regulation made

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under it is being contravened or to inspect radioactive substances or radiation apparatus. Residential premises must not be entered except with the permission of the occupier or under the authority of a search warrant.

Clause 16 provides for the issue of search warrants by an authorised justice and applies the Search Warrants Act 1985 to such warrants.

Clause 17 makes it an offence for a person to hinder an inspector or fail to comply with a requirement of an inspector. (Maximum penalty 100 penalty units.)

Clause 18 enables an inspector to serve a notice on a person requiring certain measures to be taken to remedy a contravention of the Act or any unnecessary exposure to or contamination by radiation. A person commits an offence by not complying with the notice. (Maximum penalty 200 penalty units.) An appeal may be made to the District Court.

Clause 19 enables the Director-General to give directions to a person or to order the seizure or disposal of radioactive substances or radiation apparatus if a dangerous or potentially dangerous situation exists.

It is an offence to hinder a person taking action under this clause. (Maximum penalty 1,500 penalty units in the case of a corporation or, in any other case, 250 penalty units or imprisonment for 2 years, or both.)

Clause 20 gives the Minister power to authorise a legally qualified person to make an inquiry (in the nature of a Royal Commission) into any accident or incident involving a radioactive substance or radiation apparatus.

Clause 21 re-enacts section 63AA of the Public Health Act 1902 which is repealed by clause 40. The clause enables the Director-General to undertake the decontamination of premises. The Health Administration Corporation can acquire contaminated premises.

Clause 22 makes an employer liable for a contravention of the proposed Act or the regulations by an employee unless the employer had no knowledge of the contravention or could not have prevented it.

Clause 23 makes directors and persons concerned in the management of a corporation individually liable for a contravention of the proposed Act by the corporation.

Clause 24 provides for proceedings for offences against the proposed Act or the regulations to be taken in a Local Court or the Supreme Court in its summary jurisdiction.

Clause 25 provides for forfeiture and disposal of a radioactive substance or radiation apparatus in a case where an offence has been committed against the proposed Act.

Clause 26 deals with the procedure to be followed if an inspector seizes any substance or thing.

Clause 27 enables the Director-General or a public body to recover expenses incurred in taking action under the proposed Act in respect of a danger or potential danger caused by a person contravening the proposed Act or regulations.

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PART 4 - ADMINISTRATION

Clause 28 constitutes the Radiation Advisory Council which consists of 12 members (having specified qualifications) appointed by the Minister.

Clause 29 specifies the functions of the Council which include advising the Minister on measures to prevent or minimise the dangers arising from radiation.

Clause 30 enables the Council to establish committees.

Clause 31 allows the Director-General to appoint officers of the Department of Health holding appropriate qualifications to be inspectors.

PART 5 - GENERAL

Clause 32 requires the Council to prepare and forward to the Minister an annual report of its work and activities for presentation to Parliament.

Clause 33 states that the proposed Act binds the Crown.

Clause 34 specifies how documents under the proposed Act can be served.

Clause 35 provides for certain certificates of the Director-General to be accepted as evidence.

Clause 36 enables the Director-General to delegate functions under the proposed Act.

Clause 37 requires the Minister, in the administration of the proposed Act, to consult and co-operate with the Ministers administering the Occupational Health and Safety Act 1983, the Mining Act 1973, the Mines Inspection Act 1901 and the State Pollution Control Commission Act 1970.

Clause 38 enables regulations to be made by the Governor-in-Council which make provision for exemptions to be granted.

Clause 39 enables regulations to be made by the Governor-in-Council on a wide range of matters with respect to the control of activities relating to radioactive substances and radiation apparatus.

Clause 40 repeals section 63AA of the Public Health Act 1902 (see clause 21).

Clause 41 consequentially amends the Search Warrants Act 1985 (see clause 16).

Clause 42 repeals the Radioactive Substances Act 1957 and the regulations in force under that Act.

Clause 43 gives effect to the Schedule of savings and transitional provisions (Schedule 2).

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF COUNCIL

Schedule 1 contains provisions relating to the members and procedure of the Council, including provisions dealing with terms of office, vacation of office, general procedure, presiding member and voting.

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SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 2 allows savings and transitional regulations to be made and provides that licences issued and in force under the Radioactive Substances Act 1957 are to be taken to have been issued under the proposed Act.

The expression "penalty unit", used throughout the Bill, has its basis in section 56 of the Interpretation Act 1987. At present, 1 penalty unit is equivalent to \$100.
