

Passed by both Houses



New South Wales

# Radiation Control Amendment Bill 2023

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2023

*Clerk of the Parliaments*



New South Wales

## **Radiation Control Amendment Bill 2023**

Act No      , 2023

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An Act to amend the *Radiation Control Act 1990* to give effect to recommendations arising from the statutory review of the Act; and for related purposes.

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

**1 Name of Act**

This Act is the *Radiation Control Amendment Act 2023*.

**2 Commencement**

This Act commences as follows—

- (a) for Schedule 1[5]–[7]—on the day that is 6 months after the date of assent to this Act,
- (b) for Schedule 1[21]–[24] and [30]–[32]—on a day or days to be appointed by proclamation,
- (c) otherwise—on the date of assent to this Act.

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

**[1] Section 1 Name of Act**

Omit “*Radiation Control*”. Insert instead “*Protection from Harmful Radiation*”.

**[2] Section 3 Objects of Act**

Insert after section 3(1)(c)—

(d) to promote the ecologically sustainable development principles.

**[3] Section 3(4) and (5)**

Insert after section 3(3)—

(4) A person must take the ecologically sustainable development principles into consideration when exercising functions under this Act or a licence.

(5) In this section—

*ecologically sustainable development principles* means the principles and programs described in the *Protection of the Environment Administration Act 1991*, section 6(2).

**[4] Section 4 Definitions**

Insert in alphabetical order in section 4(1)—

*the Act* means the *Protection from Harmful Radiation Act 1990*.

**[5] Section 6 Radiation management licences**

Insert “, consigning for transport, disposing of” after “selling” in section 6(1)(b).

**[6] Section 6(6)**

Insert “, consigned for transport, disposed of” after “possessed”.

**[7] Section 6(7)**

Insert after section 6(6)—

(7) In this section—

*consign* has the same meaning as in the *Dangerous Goods (Road and Rail Transport) Act 2008*.

**[8] Section 13B Conditions generally**

Insert before section 13B(1)—

(1A) A licence or accreditation is subject to the following conditions—

(a) conditions prescribed by this Act or the regulations,

(b) conditions imposed on the licence or accreditation by the Authority.

**[9] Section 13B(1)**

Omit “under this Part” from section 13B(1).

Insert instead “on a licence or accreditation”.

**[10] Section 13B(2)**

Omit “under this Part”. Insert instead “by the Authority”.

**[11] Section 13B(2)(a)**

Insert “, including about the consigning for transport, and disposing of, regulated material” after “regulated material”.

**[12] Section 13C, heading**

Insert “**and accreditations**” after “**licences**”.

**[13] Section 13C(1)**

Insert “and accreditations” after “licences”.

**[14] Section 13C(2)**

Omit “each licence”. Insert instead “each licence and accreditation”.

**[15] Section 13C(2)(a)–(d)**

Insert “or accreditation” after “the licence” wherever occurring.

**[16] Section 13C(3)**

Omit “any licence”. Insert instead “a licence or accreditation”.

**[17] Section 14 Preparation of security plans**

Omit section 14(1)(b). Insert instead—

- (b) if the source will be transported in New South Wales—the security of the source during transport (a *source transport security plan*), whether or not the transportation of the source originates from within New South Wales.

**[18] Section 14(6)(c)**

Insert “by the person responsible for the security enhanced source” after “reviewed”.

**[19] Section 14(6)(c1)**

Insert after section 14(6)(c)—

- (c1) is reviewed and endorsed by a radiation security assessor no later than every 5 years from the date on which the plan was first endorsed under subsection (4), and

**[20] Section 14(6A)**

Insert after section 14(6)—

- (6A) A radiation security assessor must not endorse a security plan under subsection (6)(c1) unless the assessor is satisfied the plan meets the requirements of this section.

**[21] Section 23B Additional orders**

Insert after section 23B(1)(f)—

- (g) if the court is satisfied the Authority has reasonably incurred costs and expenses during the investigation of an offence—order the offender to pay to the Authority an amount—
  - (i) specified in the order, and
  - (ii) representing the costs and expenses incurred.

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

Omit “200 penalty units” from section 25(3). Insert instead “1,000 penalty units”.

**[23] Section 26**

Omit section 26. Insert instead—

**26 Forfeiture and disposal**

- (1) If a person is convicted of an offence against this Act or the regulations, the court may order—
  - (a) forfeiture to the Crown of an article, regulated material or substance in relation to which the offence was committed, and
  - (b) the person pay the Authority the costs incurred by the Authority for disposing of the forfeited matter.
- (2) On application made by or on behalf of the Authority in the prescribed way, the Local Court may order—
  - (a) forfeiture to the Crown of an article, regulated material or substance—
    - (i) seized by an authorised officer under this Act, or
    - (ii) abandoned or unlawfully disposed of, and
  - (b) a person pay the Authority the costs incurred by the Authority for disposing of the forfeited matter if, when the forfeited matter was seized, abandoned or unlawfully disposed of, the person—
    - (i) owned the forfeited matter, or
    - (ii) was giving away, possessing, selling, storing or transporting the forfeited matter, or
    - (iii) was consigning the forfeited matter for transport.
- (3) The making of an order under subsection (1)(a) or (2)(a) operates to forfeit the article, regulated material or substance to the Crown.
- (4) Forfeited matter must be disposed of in the way directed by the Authority.
- (5) The Authority may recover the costs of disposing of forfeited matter as a debt in a court of competent jurisdiction from—
  - (a) the person required, by an order under this section, to pay the costs, or
  - (b) if the person required to pay the costs is a corporation—
    - (i) the corporation, or
    - (ii) a current director of the corporation, or
    - (iii) a former director of the corporation, or
    - (iv) a related body corporate, or
  - (c) if the court has not made an order under this section for the payment of costs—
    - (i) the person from whom the article, regulated material or substance was forfeited under this section, or
    - (ii) if the person from whom the article, regulated material or substance was forfeited under this section is a corporation—a person referred to in paragraph (b)(i)–(iv).
- (6) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.

- (7) An order made by the Local Court under subsection (1) or (2) is enforceable as if it were an order made by the Local Court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (8) In this section—  
**forfeited matter** means an article, regulated material or substance forfeited to the Crown under this section.

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

Insert after section 28(3)—

- (4) The Authority may recover the amount specified in an order under section 23B(1)(g) as a debt in a court of competent jurisdiction from—
- (a) the person required by the order to pay the costs, or
  - (b) if the person required to pay the costs is a corporation—
    - (i) the corporation, or
    - (ii) a current director of the corporation, or
    - (iii) a former director of the corporation, or
    - (iv) a related body corporate.
- (5) An order made by the Land and Environment Court under subsection (4) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (6) An order made by the Local Court under subsection (4) is enforceable as if it were an order made by the Local Court when exercising jurisdiction under the *Civil Procedure Act 2005*.

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

Omit section 29(2). Insert instead—

- (2) The Council must comprise at least 12 members appointed by the CEO of the Authority, including—
- (a) a member of staff of the Authority who will be the Chairperson of the Council, and
  - (b) a person nominated by the Secretary of the Ministry of Health, and
  - (c) persons who collectively have, in the opinion of the CEO of the Authority, experience, expertise, knowledge or qualifications in the following areas—
    - (i) health or medical physics,
    - (ii) nuclear medicine,
    - (iii) radiation oncology,
    - (iv) radiology,
    - (v) one or more of the additional areas of expertise.

**[26] Section 29(4)**

Insert after section 29(3)—

- (4) In this section—  
**additional areas of expertise** means the following areas—
- (a) industrial or scientific use of radiation,
  - (b) mining of radioactive ores or naturally occurring radioactive material,

- (c) work health and safety and the application of, or compliance with, the work health and safety regulatory framework,
- (d) non-ionising radiation,
- (e) environmental science,
- (f) emergency management and emergency services operational capabilities.

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

Omit “is to advise the Minister” from section 30(1).

Insert instead “must advise the Authority”.

**[28] Section 30(1)(e) and (2)**

Omit “Minister” wherever occurring. Insert instead “Authority”.

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

Omit the section.

**[30] Section 33A**

Omit the section. Insert instead—

**33A Abandoning radioactive substance**

- (1) A person must not, without reasonable excuse, abandon a radioactive substance.  
Maximum penalty—
  - (a) for an individual—\$250,000, or
  - (b) otherwise—\$1,000,000.
- (2) A person must not intentionally or negligently abandon a radioactive substance.  
Maximum penalty—
  - (a) for an individual—
    - (i) for an offence committed intentionally—\$1,000,000, or
    - (ii) for an offence committed negligently—\$500,000, or
  - (b) otherwise—
    - (i) for an offence committed intentionally—\$5,000,000, or
    - (ii) for an offence committed negligently—\$2,000,000.
- (3) If the court is satisfied a person charged with an offence under subsection (2) is not guilty of the offence but is satisfied on the evidence the person is guilty of an offence under subsection (1)—
  - (a) the court may find the person guilty of the offence under subsection (1), and
  - (b) the person is liable to punishment under subsection (1).
- (4) The onus of proving a person had a reasonable excuse in proceedings for an offence under subsection (1) lies on the person charged with the offence.

**[31] Sections 33C and 33D**

Insert after section 33B—



**33C Transport of radioactive substances**

A person must not cause a radioactive substance to be transported other than in accordance with—

- (a) the *Code for the Safe Transport of Radioactive Material*, published by the Australian Radiation Protection and Nuclear Safety Agency, as in force from time to time, or
- (b) if the code is replaced by another code—the other code, as in force from time to time.

Maximum penalty—

- (a) for an individual—250 penalty units, or
- (b) otherwise—1,500 penalty units.

**33D Disposal of regulated material**

- (1) A person must not dispose of regulated material other than—
  - (a) with the consent of the Authority, and
  - (b) in accordance with the conditions, if any, imposed by the Authority.

Maximum penalty—

- (a) for an individual—250 penalty units, or
  - (b) otherwise—1,500 penalty units.
- (2) The consent of the Authority may be—
    - (a) given generally or in a particular case, and
    - (b) subject to the conditions the Authority considers appropriate.

**[32] Section 36B Provision of false or misleading information**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for an individual—\$250,000, or
- (b) otherwise—\$1,000,000.

**[33] Section 40 Regulations**

Omit “radioactive substances or radiation apparatus” wherever occurring in section 40(2).  
Insert instead “regulated material”.

**[34] Section 40(3)(d)**

Omit “authority or approval and the terms or conditions to which it is subject”.  
Insert instead “authority, approval, consent or accreditation”.

**[35] Section 40(3)(d1)**

Insert after section 40(3)(d)—

- (d1) the terms or conditions to which a licence, permit, authority, approval, consent or accreditation is subject,

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

Omit “radioactive substances, radiation apparatus and sealed radioactive sources”.  
Insert instead “regulated material”.

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

Omit “Minister” wherever occurring in clauses 2(1) and (4), 4 and 5(1)(c) and (2).  
Insert instead “CEO of the Authority”.

**[38] Schedule 1, clause 5(1)(d)**

Omit the paragraph. Insert instead—

- (d) is removed from office by the CEO of the Authority under subclause (2), or

**[39] Schedule 1, clause 9**

Omit “9 members”. Insert instead “7 members”.

**[40] Schedule 1, clause 12**

Omit the clause.

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

Insert after Part 9—

## **Part 10 Provisions consequent on the enactment of the Radiation Control Amendment Act 2023**

### **24 Definition**

In this part—

*amendment Act* means the *Radiation Control Amendment Act 2023*.

### **25 Increased maximum penalty imposed by Local Court**

- (1) Section 25(3), as amended by the amendment Act, does not apply to proceedings commenced before the commencement of the amendment.
- (2) Section 25(3), as amended by the amendment Act, extends to an offence alleged to have been committed before the commencement of the amendment, but only if proceedings for the alleged offence commence on or after the commencement of the amendment.

### **26 Increased maximum penalty for providing false or misleading information**

Section 36B, as amended by the amendment Act, applies only to offences committed on or after the commencement of the amendment.

### **27 Costs incurred by the Authority**

- (1) Sections 23B, 26 and 28, as amended by the amendment Act, do not apply to proceedings commenced before the commencement of the amendments.
- (2) Sections 23B, 26 and 28, as amended by the amendment Act, apply in relation to an offence committed before the commencement of the amendments, but only if proceedings for the alleged offence commence on or after the commencement of the amendments.

### **28 Review of security plans over 4 years old**

- (1) A person responsible for a security enhanced source subject to a relevant security plan must ensure the relevant security plan is reviewed and endorsed by a radiation security assessor no later than 1 year after the relevant date.

- (2) For section 14(6) and (6A), a relevant security plan reviewed and endorsed in accordance with this clause is taken to be first endorsed under section 14(4) on the date the plan is endorsed under this clause.
- (3) In this clause—  
*relevant date* means the date of commencement of the amendment Act, Schedule 1[19].  
*relevant security plan* means a security plan—
  - (a) in force immediately before the relevant date, and
  - (b) first endorsed by a radiation security assessor under section 14(4) more than 4 years before the relevant date.

## 29 Members of Radiation Advisory Council

- (1) On the commencement date—
  - (a) the former Chairperson's appointment as Chairperson of the former Council ends, and
  - (b) the former Chairperson is taken to be appointed as Chairperson of the Council under section 29, and
  - (c) each appointed member is taken to be appointed as a member of the Council under section 29, and
  - (d) the Council is taken to be constituted in accordance with this Act.
- (2) For Schedule 1, clause 3, the appointment under section 29 is taken to be made—
  - (a) on the same terms and conditions as applied to the person's appointment as former Chairperson or as a member of the former Council, and
  - (b) for the term ending on the same day on which the person's appointment would have ended under the person's appointment as former Chairperson or as a member of the former Council.
- (3) This clause does not affect the power of the CEO of the Authority to determine the allowances payable to the members of the Council from time to time under Schedule 1, clause 4.
- (4) In this clause—  
*appointed member* means a person who, immediately before the commencement date, held an appointment as a member of the former Council.  
*commencement date* means the date of the commencement of the amendment Act, Schedule 1[25].  
*Council* means the Radiation Advisory Council.  
*former Chairperson* means the person who, immediately before the commencement date, held office as Chairperson of the former Council.  
*former Council* means the Council, as constituted immediately before the commencement date.

## 30 References to Radiation Control Act 1990 and Radiation Control Regulation 2013

- (1) On the commencement of the amendment Act, Schedule 1[1], a reference in an Act, instrument or other document to the *Radiation Control Act 1990* is taken to include a reference to the *Protection from Harmful Radiation Act 1990*.

- (2) On the commencement of the amendment Act, Schedule 2.6[1], a reference in an Act, instrument or other document to the *Radiation Control Regulation 2013* is taken to include a reference to the *Protection from Harmful Radiation Regulation 2013*.

## Schedule 2 Amendment of other legislation

### 2.1 Biodiversity Conservation Regulation 2017

#### Clause 14.3 Additional persons to whom functions may be delegated by Minister or Agency Head (section 14.4)

Omit “Chairperson” from clause 14.3(e). Insert instead “CEO”.

### 2.2 Land and Environment Court Act 1979 No 204

#### Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Omit “27 or 27A” from section 20(1)(co). Insert instead “26(5), 27, 27A or 28”.

### 2.3 National Parks and Wildlife Act 1974 No 80

#### Section 21 Delegation

Omit “Chairperson” wherever occurring in section 21(1)(c2) and (2)(b1).

Insert instead “CEO”.

### 2.4 Protection of the Environment Administration Act 1991 No 60

#### Section 3 Definitions

Insert after section 3(1), *environment protection legislation*, paragraph (g)—

(ga) *Plastic Reduction and Circular Economy Act 2021*,

### 2.5 Protection of the Environment Operations Act 1997 No 156

#### [1] Section 91A Clean-up notices may be given to directors and related bodies corporate

Omit section 91A(1)(a). Insert instead—

- (a) a clean-up notice (the *previous clean-up notice*) has been given to a corporation—
  - (i) by the appropriate regulatory authority under section 91(1), or
  - (ii) by the EPA under section 91(2), and

#### [2] Section 105 Recovery of amounts

Insert “or contributed to” after “caused” wherever occurring in section 105(2).

#### [3] Schedule 4

Omit clause 7.

### 2.6 Radiation Control Regulation 2013

#### [1] Clause 1

Omit the clause. Insert instead—

##### 1 Name of regulation

This regulation is the *Protection from Harmful Radiation Regulation 2013*.

**[2] Clause 34**

Omit the clause. Insert instead—

**34 Disposal of radiation apparatus**

A person must not dispose of radiation apparatus unless the apparatus has been rendered permanently inoperable.

Maximum penalty—

- (a) for an individual—200 penalty units, or
- (b) otherwise—400 penalty units.

**[3] Clause 36**

Omit the clause.

**2.7 Amendments consequential on name change of principal Act**

**[1] References to Radiation Control Act 1990**

Omit “*Radiation Control Act 1990*” wherever occurring in the following provisions—

*Dangerous Goods (Road and Rail Transport) Act 2008*, section 5,

*Environmentally Hazardous Chemicals Act 1985*, sections 3(1), definition of **chemical**, paragraph (c), and 5(2) and (3),

*Fair Trading Act 1987*, Schedule 1,

*Land and Environment Court Act 1979*, sections 17(ha), 20(1)(co) and (3)(a) and 21(hf),

*Law Enforcement (Powers and Responsibilities) Act 2002*, Schedule 2,

*Protection of the Environment Administration Act 1991*, sections 3(1), definition of **environment protection legislation**, paragraph (i) and 34A(3)(b)(vi) and (3)(b4)(iv),

*Protection of the Environment Operations Act 1997*, section 186(b2) and Schedule 1, clause 9(1), definition of **general chemicals storage**, paragraph (b),

*Road Transport Act 2013*, section 107(2)(g)(ii),

*Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986*, section 6(2)(a).

Insert instead “*Protection from Harmful Radiation Act 1990*”.

**[2] Protection of the Environment Administration Act 1991 No 60**

Omit Schedule 4, clause 7.

## **2.8 Subordinate Legislation Act 1989 No 146**

### **Schedule 5 Further postponement of repeal of statutory rules**

Omit “*Radiation Control Regulation 2013*” from clause 3(g).

Insert instead “*Protection from Harmful Radiation Regulation 2013*”.