

# Radiation Control Act 1990 No 13

[1990-13]



New South Wales

## Status Information

### Currency of version

Historical version for 4 November 2010 to 31 December 2011 (accessed 26 November 2024 at 3:16)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Radiation Control Amendment Act 2010 No 91](#), Sch 1 [1]–[6] [8] [9] [12] [13] [17] [19] [20] [24] and [26] (amended by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010 No 119](#)) (not commenced)
  - [Public Health Act 2010 No 127](#) (not commenced)
  - [Protection of the Environment Legislation Amendment Act 2011 No 63](#) (not commenced)
  - [Work Health and Safety Legislation Amendment Act 2011 No 67](#) (not commenced — to commence on 1.1.2012 or on such later day as may be appointed by proclamation before 1.1.2012)

### Authorisation

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# Radiation Control Act 1990 No 13



New South Wales

An Act to make provision for the regulation and control of the sale, use, keeping and disposal of radioactive substances and radiation apparatus; to repeal the [Radioactive Substances Act 1957](#); and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the [Radiation Control Act 1990](#).

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Object of Act

The object of this Act is to secure the protection of persons and the environment from exposure to harmful ionising and 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.

### 4 Definitions

(1) In this Act:

**approved** means approved for the time being by the Authority.

**authorised officer** means a person appointed by the Authority under Part 7.2 of the [Protection of the Environment Operations Act 1997](#) as an authorised officer for the purposes of this Act.

**Authority** means the Environment Protection Authority.

**Council** means the Radiation Advisory Council constituted by this Act.

**environment** means components of the earth, including:

(a) land, air and water, and

- (b) any layer of the atmosphere, and
- (c) any organic or inorganic matter and any living organism, and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

**ionising radiation** means electromagnetic or particulate radiation capable of producing ions directly or indirectly in passage through matter, but does not include electromagnetic radiation of a wavelength greater than 100 nanometres.

**licence** means a licence (including a temporary licence) in force under section 6.

**National Directory** means the national guidance documents titled “National Directory for Radiation Protection” approved by the Health Ministers for the States, Territories and Commonwealth from time to time.

**non-ionising radiation** means:

- (a) electromagnetic radiation of a wavelength greater than 100 nanometres, or
- (b) non-varying electric or magnetic fields, or
- (c) sonic, infrasonic or ultrasonic waves that are prescribed as non-ionising radiation for the purposes of this definition.

**occupier**, in relation to premises, means:

- (a) the person in occupation or control of the premises, or
- (b) if the premises have different parts occupied or controlled by different persons, the person in occupation or control of the part concerned.

**owner**, in relation to any apparatus or thing that has been leased or let out on hire, means the lessee or the person who takes it on hire.

**premises** includes:

- (a) a structure, building, aircraft, vehicle or vessel, and
- (b) land or a place (whether enclosed or built on or not), and
- (c) any part of premises.

**radiation apparatus** means a manufactured or assembled article, or any component, part or accessory of such an article, which when in operation contains or acts as part of an electrical circuit, or which acts by electromagnetic amplification employing a resonant space, and emits (or in the absence of effective shielding or

other control would emit) ionising or non-ionising radiation.

**radioactive ore** means an ore or mineral containing more than the concentration of uranium or thorium prescribed for the purposes of this definition.

**radioactive substance** means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour (including any article or compound whether it has or has not been subjected to any artificial treatment or process) which emits ionising radiation spontaneously with a specific activity greater than the prescribed amount and which consists of or contains more than the prescribed activity of any radioactive element whether natural or artificial.

**registered premises** means premises registered under this Act.

**sealed radioactive source** means a radioactive substance sealed in a capsule, or closely bound in a solid form, so as:

- (a) to prevent escape or dispersion of the radioactive substance, and
- (b) to allow the emission of ionising radiation.

**sealed source device** means equipment or a gauge, instrument or device that contains a sealed radioactive source and permits the controlled emission of radiation, but does not include a container used solely for the storage or transport of a sealed radioactive source.

**sell** means sell by wholesale or retail, and includes barter, supply for profit, lease, let out on hire, offer or expose for sale, receive for sale, have in possession for sale, send, forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale.

**use** includes:

- (a) operate, and
- (b) use in the course of manufacture, and
- (c) have in possession for use, and
- (d) handle or manipulate (whether or not by indirect or remote means).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **5 Application of Act to radioactive ore being mined or treated**

This Act does not apply to a radioactive ore while it is being mined in a mine as defined in the *Mine Health and Safety Act 2004* or is the subject of treatment (as so defined).

## **Part 2 Regulatory controls**

### **6 Restrictions on possession, use and sale etc of radioactive substances and certain radiation apparatus**

(1) This section applies to the following:

- (a) all radioactive substances,
- (b) all ionising radiation apparatus,
- (c) non-ionising radiation apparatus prescribed as apparatus to which this section applies.

(2) A person must not possess, use, sell or give away anything to which this section applies unless the person is the holder of a licence under this section and does so in compliance 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) A person must not sell or give away anything to which this section applies except to a person who holds a licence under this section authorising the possession, use or sale of that thing.

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.

(4) The Authority may, on application in the approved form and payment of the prescribed fee, grant a licence.

(5) The Authority is not to grant a licence authorising a person to use anything to which this section applies unless it is satisfied:

- (a) that the applicant is a natural person and is a fit and proper person to hold the licence, and
- (b) that the applicant 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
- (c) that the applicant meets any relevant requirements for licensing for use of the substance or apparatus set out in a document forming part of the National Directory and adopted by the Authority under section 37.



(6) A licence is subject to such conditions as may be imposed by the Authority.

## **7 Responsibilities of owners of sealed source devices and certain radiation apparatus**

(1) This section applies to the following things:

- (a) all sealed source devices,
- (b) radiation apparatus that is prescribed as apparatus to which this section applies.

(2) The owner of anything to which this section applies is guilty of an offence unless it is registered under this section in the owner's name and any conditions to which that registration is subject are complied with.

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 owner of anything registered under this section must not allow a person to use it unless the person is authorised to do so by a licence.

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.

(4) The Authority may, on application in the approved form by or on behalf of the owner of a sealed source device or radiation apparatus and payment of the prescribed fee, register it in the owner's name.

(5) The Authority is not to register a sealed source device or radiation apparatus under this section unless the Authority is satisfied that it complies with:

- (a) any applicable requirements of the regulations, and
- (b) any relevant requirements set out in a document forming part of the National Directory and adopted by the Authority under section 37.

(6) Registration under this section is subject to such conditions as may be imposed by the Authority.

## **8 Responsibilities of occupier of premises on which certain radioactive substances are kept or used**

(1) The occupier of any premises on which a radioactive substance that is not contained in a sealed source device is kept or used is guilty of an offence unless the premises are registered under this section and any conditions to which that registration is subject are complied with.

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.

(2) The occupier of premises registered under this section must not allow a person to use

any radioactive substance that is not contained in a sealed source device and is kept on the premises unless the person is authorised to do so by a licence.

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 Authority may, on application in the approved form by or on behalf of the occupier of premises and payment of the prescribed fee, register the premises in the name of the occupier.
- (4) The Authority is not to register premises under this section unless the Authority is satisfied that the premises comply with:
  - (a) any applicable provisions of the regulations, and
  - (b) any relevant requirements set out in a document forming part of the National Directory and adopted by the Authority under section 37.
- (5) Registration under this section is subject to such conditions as may be imposed by the Authority.
- (6) The Minister may by notice in writing given to the occupier of any premises exempt the premises from the operation of this section and any such exemption remains in force until cancelled by the Minister by notice in writing given to the occupier.

## **9 Accreditation of radiation experts**

- (1) A person must not carry on any of the activities prescribed as the activities of a consulting radiation expert unless the person is accredited by the Authority as a radiation expert and does so in compliance with any conditions to which that accreditation is subject.

Maximum penalty: 100 penalty units.

- (2) The Authority may, on application in the approved form and payment of the prescribed fee, accredit a person as a consulting radiation expert.
- (3) The Authority is not to accredit a person unless satisfied:
  - (a) that the person has the expertise necessary to properly carry out the activities authorised by the accreditation, and
  - (b) that the person meets the requirements for accreditation as a consulting radiation expert set out in a document forming part of the National Directory and adopted by the Authority under section 37.
- (4) An accreditation under this section is subject to such conditions as may be imposed by the Authority.

### **9A Authority may seek advice from Council**

The Authority may seek, and take into consideration, the advice of the Council before making any of the following decisions:

- (a) a decision under section 6 about an application for a licence,
- (b) a decision under section 7 about an application to register a sealed source device or radiation apparatus in the owner's name,
- (c) a decision under section 8 about an application to register premises in the occupier's name,
- (d) a decision under section 8 about exempting premises from the operation of that section,
- (e) a decision under section 9 about an application to accredit a person as a consulting radiation expert,
- (f) a decision under section 10A about an application to vary a licence or accreditation.

### **10 Conditions of licences etc**

- (1) A condition of a licence, registration or accreditation may be imposed by the Authority by notice in writing given to the holder of the licence, registration or accreditation.
- (2) The Authority may, by notice in writing to the holder of a licence, registration or accreditation, vary or revoke a condition of it or impose a further condition.

### **10A Variation of licences and accreditations**

- (1) The Authority may, by notice in writing to the holder of a licence or an accreditation, vary the licence or accreditation in accordance with this section.
- (2) A variation may be made only on application in the approved form, and on payment of the prescribed fee, by the holder of the licence or accreditation concerned.
- (3) A licence may be varied so as to authorise the possession, use or sale of a substance or apparatus to which section 6 applies, being a substance or apparatus that the licensee is not authorised, at the time of the application, to possess, use or sell.
- (4) An accreditation may be varied so as to authorise the holder of the accreditation to carry on a specified activity prescribed for the purposes of section 9, being an activity that the holder is not authorised, at the time of the application, to carry on.
- (5) The Authority is not to:
  - (a) vary a licence to use a substance or apparatus to which section 6 applies—unless the Authority is satisfied:

- (i) that the licensee has appropriate knowledge of the principles and practices of radiation safety and protection applicable to the activities proposed to be carried on by the licensee in pursuance of the licence as so varied, and
  - (ii) that the licensee meets the requirements referred to in section 6 (5) (a) and (c), or
- (b) vary an accreditation—unless the Authority is satisfied:
  - (i) that the holder of the accreditation has the expertise necessary to properly carry on the activities to be authorised by the accreditation as so varied, and
  - (ii) that the holder of the accreditation meets the requirements for accreditation as a consulting radiation expert set out in a document forming part of the National Directory and adopted by the Authority under section 37.
- (6) A notice under this section is to impose such conditions (if any) in connection with the variation concerned as the Authority may determine.
- (7) Despite subsection (2), the Authority may, at the request of the holder of a licence or accreditation, vary the licence or accreditation so as to revoke an authorisation conferred by the licence or accreditation and revoke any condition imposed in connection with the authorisation so revoked.
- (8) This section does not affect the operation of section 10.

### **11 Term and renewal of licences, registrations and accreditations**

- (1) A licence or registration (including any renewed or varied licence or registration) remains in force for such term as the Authority specifies in the licence or registration, unless it is cancelled or surrendered sooner.
- (2) An accreditation (including any renewed or varied accreditation) remains in force for the term specified by the Authority in the accreditation, unless it is cancelled or surrendered sooner.
- (3) (Repealed)
- (4) On application made in the approved manner and payment of the prescribed fee, the Authority is to renew a licence or registration or accreditation for a period of not less than 12 months.

### **12 Transfer of registration**

The Authority may, on application in the approved form by or on behalf of any person in whose name any thing or premises are registered and payment of the prescribed fee, transfer the registration into the name of another person.

### **13 Surrender, suspension and cancellation of licences etc**

- (1) The holder of a licence, registration or accreditation can surrender it.
- (2) The Authority can suspend or cancel a licence, registration or accreditation if satisfied:
  - (a) that the grant of the licence, registration or accreditation was obtained improperly, or
  - (b) that the holder of the licence, registration or accreditation has contravened a condition of it, or
  - (c) that the holder of the licence, registration or accreditation has been convicted of an offence against this Act or the regulations, or
  - (d) that, in the case of a licence or accreditation, the holder has ceased to hold a qualification on the basis of which the Authority granted the licence or accreditation, or
  - (e) that, in the case of an accreditation, the holder has ceased working as a consulting radiation expert.
- (3) A decision of the Authority to suspend or cancel a licence, registration 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.
- (4) A licence, registration or accreditation:
  - (a) surrendered or 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.
- (5) If a licence or registration has been suspended, it can be renewed but remains subject to suspension until the expiration of the period of suspension.
- (6) The holder of a licence, registration or accreditation which is suspended or cancelled must surrender it to the Authority.

Maximum penalty: 10 penalty units.

### **14 Appeals**

- (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, registration or accreditation, or
  - (b) to impose conditions on, or vary the conditions of, a licence, registration or accreditation, or
  - (c) to refuse to vary a licence or accreditation, or
  - (d) to suspend or cancel a licence, registration or accreditation.
- (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.

### **Part 3 Enforcement**

#### **15 Application of Chapter 7 of *Protection of the Environment Operations Act 1997***

Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* extends to the exercise of powers in connection with this Act and the regulations.

**Note—**

Section 186 of the *Protection of the Environment Operations Act 1997* provides that Chapter 7 of that Act extends to the exercise of certain powers in connection with certain other legislation, including this Act. Chapter 7 of the *Protection of the Environment Operations Act 1997* deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question and to identify persons and powers with respect to certain things such as vehicles.

#### **16 Powers of entry**

- (1) Without limiting section 15, an authorised officer may, at any time, enter premises if the authorised officer reasonably suspects that any radioactive substance or radiation apparatus is kept or used on the premises.
- (2) Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* applies to the exercise of functions by an authorised officer under this section in the same way as it applies to the exercise of other powers to enter premises under that Chapter.

#### **17 (Repealed)**

#### **18 Notices to take action**

- (1) An authorised officer may serve a notice under this section on a person if the authorised officer believes on reasonable grounds that:
- (a) any requirement under this Act, the regulations or the conditions of a licence or registration is not being complied with and the person is responsible for complying with it, or

(b) the person is responsible for any unnecessary exposure to or contamination by radiation.

(2) The notice:

(a) is to be in writing, and

(b) may contain a direction requiring the person on whom it is served to take specified steps to comply with the direction within a specified time, and

(c) is to contain a statement to the effect that the person on whom the notice is served is entitled, within 7 days after receiving the notice or within such further time as the Authority may allow, to make a submission to the Authority as to why the person should not comply with the direction concerned.

(3) The Authority must, as soon as practicable after the authorised officer issues the notice, advise the Council about the notice.

(4) If the person on whom the notice is served fails to make a submission to the Authority within the period allowed or does so but the Authority confirms the notice (with or without variation), the person must comply with the notice.

Maximum penalty: 200 penalty units.

(5) The person may appeal to the District Court against a decision of the Authority under this section and the following provisions apply to the appeal:

(a) there is no requirement to comply with the notice pending determination of the appeal, unless the appeal is withdrawn,

(b) the appeal is to be in accordance with the rules of the District Court,

(c) the appeal is to be by way of a new hearing and new evidence can be given on the appeal,

(d) the decision of the Court is final and is to be given effect to by the Authority.

## **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 of any person or premises by a radioactive substance, 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 radioactive substance or radiation apparatus 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, member of the Police Force or other person appointed for the purpose by the Authority.
- (3) A direction may be given:
- (a) by notice published in the Gazette, or
  - (b) by 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) A person must not:
- (a) contravene a direction given under this section, or
  - (b) 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.

- (5) The exercise of the Authority's functions under this section is subject to the [State Emergency and Rescue Management Act 1989](#).

## **20 Special inquiries**

- (1) The Minister may authorise an Australian lawyer of at least 7 years' standing to conduct an inquiry into any accident or incident involving a radioactive substance or radiation apparatus.
- (2) The person who is directed to conduct such an inquiry is, for that purpose, to have the same powers, authorities, protections and immunities conferred by the [Royal Commissions Act 1923](#) on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part 2 of that Act.
- (3) The [Royal Commissions Act 1923](#) (Division 2 of Part 2 excepted) applies to any witness summoned by or appearing before the person conducting an inquiry under



this section in the same way as it applies to any witness summoned by or appearing before a commission.

## **21 Decontamination and acquisition of premises**

- (1) The Authority may cause to be undertaken, or facilitate the undertaking of, the decontamination, or the removal and disposal, of premises contaminated by radioactivity.
- (2) For the purposes of subsection (1), the Authority or the Health Administration Corporation constituted under the *Health Administration Act 1982* is authorised to acquire premises contaminated by radioactivity.
- (3) This section does not prevent the acquisition, by the Crown or by any authority of the State, of any premises contaminated by radioactivity.
- (4) For the purposes of this section, premises are to be regarded as contaminated by radioactivity if the premises or a part of the premises have a level of radioactivity of or above the level prescribed for the purposes of this section.

## **22 Offence by employee—liability of employer**

- (1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).
- (2) It is a defence in proceedings against an employer for such a contravention if it is established:
  - (a) that the employer had no knowledge of the contravention, and
  - (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

## **23 Offences by corporations**

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or

convicted under that provision.

- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

#### **24 Increased penalty for offence causing serious harm**

- (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.
- (2) When this section applies, the maximum penalty that may be imposed in respect of the offence concerned is increased to 10,000 penalty units in the case of a corporation or 1,500 penalty units or imprisonment for 2 years, or both, in any other case.

#### **25 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations are to be disposed of summarily before:
  - (a) the Local Court, or
  - (b) the Supreme Court in its summary jurisdiction.
- (2) Proceedings may be taken and prosecuted only by a person acting with the authority of the Authority and may not be taken in the Supreme Court except with the consent of the Minister.
- (3) The maximum pecuniary penalty that may be imposed by the Local Court in proceedings for an offence under this Act or the regulations is 100 penalty units.
- (4) In proceedings for an offence, an authority or consent to prosecute purporting to have been signed by the Director-General of the Authority or the Minister is evidence of that authority or consent without proof of the signature of the Authority or the Minister.
- (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.

## 25A Penalty notices

- (1) An authorised officer or police officer may serve a penalty notice on a person if it appears to the authorised officer or police officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) The regulations may authorise a penalty notice also to be served by leaving the notice on a vehicle or at other premises in respect of which the offence was committed.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed \$1,500 or the maximum amount of penalty that could be imposed for the offence by a court, whichever is the lesser.

- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (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.

## **26 Forfeiture**

- (1) When a person is convicted of an offence against this Act or the regulations, the court may order forfeiture to the Crown of any radioactive substance or radiation apparatus in respect of which the offence was committed if the court finds it to be the property of the person so convicted.
- (2) On application made by or on behalf of the Authority in the prescribed manner, the Local Court may order forfeiture to the Crown of any substance or article seized by an authorised officer under this Act.
- (3) The making of an order under this section operates to forfeit the property concerned to the Crown.
- (4) Forfeited property is to be disposed of as the Minister directs.

## **27 Retention and disposal of seized property**

- (1) A substance or thing seized by an authorised officer under this Act may be retained for 6 months (or a longer period approved under subsection (3)) but then must be returned to the person from whom it was seized unless:
  - (a) it has been forfeited to the Crown under section 26, or
  - (b) the Authority gives notice in the prescribed manner before that period expires to the effect that application will be made under section 26 on a specified day for forfeiture to the Crown of the substance or thing.

- (2) Unless the substance or thing is forfeited to the Crown as a result of the making of that application, the Authority is to return it to the person from whom it was seized or to the person who appears to the Authority to be entitled to possession of it.
- (3) The Local Court or the Supreme Court may on the application of the Authority approve the retention of a seized substance or thing for a specified period longer than 6 months.

## **28 Recovery of costs**

If costs or expenses are incurred by the Authority or a public body in taking action or causing action to be taken under this Act in respect of a danger or potential danger resulting from an act or omission by any person in contravention of this Act or the regulations, the Authority or public body may recover those costs or expenses from that person in a court of competent jurisdiction as a debt.

## **Part 4 Radiation Advisory Council**

### **29 Radiation Advisory Council**

- (1) There is constituted by this Act a Radiation Advisory Council.
- (2) The Council is to consist of 17 members appointed by the Minister, being:
  - (a) the Director-General or a member of staff of the Authority, who is to be the Chairperson of the Council, and
  - (b) a medical practitioner who is a specialist in radiology, and
  - (c) a radiographer with expertise in the field of human diagnostic radiography, and
  - (d) a person with expertise in the industrial uses of radiation, and
  - (e) a person with expertise in health physics, and
  - (f) a medical practitioner who specialises in nuclear medicine, and
  - (g) a person with expertise in non-ionising radiation, and
  - (h) a person with expertise in occupational health and safety, and
  - (i) a person who is an Australian lawyer of at least 7 years' standing, and
  - (j) a person who represents community interests, and
  - (k) an officer of the Department of Health, and
  - (l) radiation oncologist, and
  - (m) a medical physicist, and

- (n) an officer of the WorkCover Authority, and
- (o) a person with expertise in naturally occurring radioactivity, and
- (o1) a person with expertise in mine radiation safety, and
- (p) a person chosen by the Minister for such reasons as the Minister thinks fit.

(3) Schedule 1 has effect with respect to the members and procedure of the Council.

### **30 Functions of the Council**

(1) The Council is to advise the Minister on:

- (a) proposed amendments to this Act and the making, amendment or repeal of regulations under this Act, and
- (b) the administration of this Act and the regulations, and
- (c) measures to prevent or minimise the dangers arising from radiation, and
- (d) the granting of exemptions authorised by the regulations for periods exceeding 60 days, and
- (e) such other matters relating to radiation safety as the Minister considers appropriate.

(2) Any such advice may be given either at the request of the Minister or without any such request.

(2A) The Council may at any time, and must on the request of the Authority, provide advice to the Authority about licences, registrations and accreditations under Part 2.

(2B) The advice provided to the Authority may be general or specific as the circumstances require.

(3) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.

### **31 Committees of Council**

(1) The Council may establish committees to assist it in connection with the exercise of its functions.

(2) The members of a committee need not be members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

### **32 (Repealed)**

### **33 Annual report of Council to Parliament**

- (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Council is to prepare and forward to the Minister a report of its work and activities for the 12 months ending on 30 June in that year.
- (2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.
- (3) If a House of Parliament is not sitting when the Minister seeks to table the report, the Minister may present copies of the report to the Clerk of the House concerned.
- (4) The report:
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a report published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

## **Part 5 General**

### **34 Act binds Crown**

This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **35 Service of documents**

- (1) A document required or permitted by this Act or the regulations to be served on a person, whether the expression "serve", "give" or "send" or any other expression is used, may be served:
  - (a) on a natural person by delivering it to the person personally or by leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document, or

(b) on a corporation by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the corporation.

(2) Nothing in this section:

(a) affects the operation of any other law of the State or elsewhere that authorises the service of a document in any other way, or

(b) affects the power of a court to authorise service of a document in any other way.

### **36 Certificate evidence**

A certificate issued by the Authority to the effect that a specified person was or was not the holder of a specified licence, registration or accreditation at a specified time is, in any proceedings, evidence of the matters certified.

### **37 Adoption of documents forming part of National Directory**

(1) The Authority may, by notice published in the Gazette, adopt a document (including for example a standard, guidance note or code of practice) forming part of the National Directory and may, in the same way, revoke or vary such an adoption.

(2) The Authority is to cause a document adopted under this section to be available for public inspection free of charge at the Authority's offices during normal office hours.

### **38 Consultation and co-operation between Ministers**

The Minister, in the administration of this Act, is to consult and co-operate with:

(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

(b) the Minister administering the *Mine Health and Safety Act 2004* on matters relating to radiation protection in mines, and

(c) the Minister administering the *Public Health Act 1991* on matters relating to protection of public health from radiation.

### **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.
- (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.

### **39 Exemptions**

- (1) The regulations may make provision for exemptions (whether or not subject to conditions) from compliance with all or specified provisions of this Act and the regulations, including provision:
- (a) authorising the Minister to grant such an exemption, and
  - (b) specifying circumstances in which an exemption granted under any law of another State, a Territory or the Commonwealth is to be considered to be an exemption granted under the regulations.
- (2) The Minister may grant an exemption authorised by the regulations for such period as is determined by the Minister.
- (3) Before granting an exemption authorised by the regulations for a period exceeding 60 days, the Minister must seek, and take into consideration, the advice of the Council about the proposed exemption.

### **39A Personal liability**

A matter or thing done or omitted by:

- (a) the Council or a member of the Council, or
- (b) a member of a committee of the Council, or
- (c) an authorised officer, or
- (d) a person acting under the direction of the Council,

does not subject a member, authorised officer or person so acting personally to any action, liability, claim or demand if the matter or thing was done or omitted in good faith for the purposes of executing this Act.

### **39B Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act

remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The Minister must seek, and take into consideration, the advice of the Council when undertaking the review.
- (3) The review is to be undertaken as soon as practicable after the period of 10 years from the date of commencement of Schedule 1 [25] to the *Radiation Control Amendment Act 2010*.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 10 years.

#### **40 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), the Governor may make regulations for or with respect to regulating activities concerned with radioactive substances or radiation apparatus, including the following activities:
  - (a) activities of producing, manufacturing, supplying, keeping, conveying, using or otherwise dealing with radioactive substances or radiation apparatus,
  - (b) activities concerning any aspect of waste management, including waste disposal, treatment, storage, recycling and minimisation.
- (3) The regulations authorised by this section include regulations that make provision for or with respect to:
  - (a) requiring specified standards to be observed, practices and procedures to be followed and measures to be taken in relation to activities referred to in subsection (2),
  - (b) recommending practices and procedures that may be followed, and measures that may be taken, to further the achievement of the standards referred to in paragraph (a),
  - (c) regulating, restricting or prohibiting any act or thing that is involved in or related to an activity referred to in subsection (2),
  - (d) the granting, issuing or giving of a licence, permit, registration, authority or approval and the terms or conditions to which it is subject,
  - (e) the giving of directions for the purposes of the regulations,
  - (f) the protection of the health and safety, and the training, examination and

certification, of persons who engage or seek to engage in activities referred to in subsection (2),

- (g) the medical examination of persons exposed or believed to have been exposed to radiation in the course of activities referred to in subsection (2),
- (h) requiring the keeping of records, furnishing of information, and notification of accidents or other matters or events by persons carrying on activities referred to in subsection (2),
- (i) the monitoring of levels of radiation exposure of persons engaged in activities referred to in subsection (2) and the monitoring of the health of such persons during and after such activities,
- (j) the protection of persons and the environment against the harmful effects of radiation resulting from activities referred to in subsection (2),
- (k) the monitoring of levels of radiation in the environment, and
- (l) requiring the payment of fees and charges for services provided by the Authority under this Act.

(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.

(4) A regulation may create an offence punishable by a penalty not exceeding 400 penalty units in the case of an offence committed by a corporation or 200 penalty units in any other case.

(5) The regulations may provide for the waiver of the whole or such part of the fees as the Authority may in a particular case think proper.

(6) The regulations may adopt any document (including for example a standard, guidance note or code of practice) as in force from time to time.

#### **41-43 (Repealed)**

#### **44 Savings and transitional provisions**

Schedule 2 has effect.

### **Schedule 1 Provisions relating to members and procedure of Council**

(Section 29)

#### **1 Definition**

In this Schedule:

**member** means a member of the Council.

## **2 Deputies of members**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (3) The deputy of the member who is Chairperson of the Council does not (because of this clause) have the functions of Chairperson.
- (4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

## **3 Terms of office**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **4 Allowances**

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

## **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Chapter 5 of the [Public Sector Employment and Management Act 2002](#), or
  - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (i) ceases to hold the relevant qualifications (if any).

(2) The Minister may remove a member from office at any time.

## **6 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

## **8 General procedure**

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

## **9 Quorum**

The quorum for a meeting of the Council is 9 members.

## **10 Presiding member**

- (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.
- (2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

## **12 First meeting**

The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

# **Schedule 2 Savings and transitional provisions**

(Section 44)

## **Part 1 Preliminary**

### **1 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

*Environment Protection Legislation Amendment Act 2002* (but only to the extent that it amends this Act)

*Radiation Control Amendment Act 2002*

*Radiation Control Amendment Act 2010*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Parts 2-4

### 2-5 (Repealed)

## Part 5 Provisions consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2004](#)

### 6 Construction of references to “sealed radioactive source”

- (1) A reference to a sealed radioactive source in any licence, accreditation or registration (and in any related document, such as a variation, suspension, surrender or cancellation), being a licence, accreditation, registration or other document that is issued by the Authority for the purposes of this Act and that was in force immediately before the repeal and re-enactment of the definition of **sealed radioactive source** in section 4 by the [Statute Law \(Miscellaneous Provisions\) Act 2004](#) is taken to be a reference to a sealed source device.
- (2) Subclause (1) applies in respect of any application made to the Authority in the same way as it applies in respect of a document issued by the Authority.

## 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
- (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.