

# Radiation Control Act 1990 No 13

[1990-13]



New South Wales

## Status Information

### Currency of version

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### 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 [5] (to the extent that it inserts sec 14B (2) and (4)) (not commenced)
  - [Work Health and Safety \(Mines\) Act 2013 No 54](#) (amended by [Work Health and Safety \(Mines\) Amendment Act 2014 No 71](#)) (not commenced — to commence on 1.2.2015)
  - [Protection of the Environment Legislation Amendment Act 2014 No 65](#) (not commenced — to commence on 1.1.2015)

### Authorisation

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## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Objects of Act .....	5
4 Definitions .....	6
5 Fit and proper persons .....	9
5A Certain persons and public bodies may exercise certain functions of Authority .....	10
<b>Part 2 Licences and accreditations</b> .....	11
6 Radiation management licences .....	11
7 Radiation user licence .....	12
8 Accreditation of radiation experts and security assessors .....	12
9 Applications with respect to licences and accreditations .....	13
10 Variation of licences and accreditations .....	13
11 Term of licences and accreditations .....	14
12 Surrender of licences and accreditation .....	14
13 Cancellation and suspension of licences and accreditations .....	14
13A Conditions of suspension, cancellation or surrender .....	15
13B Conditions generally .....	16
13C Public register of licences .....	16
<b>Part 2A Security of radioactive sources</b> .....	17

14 Preparation of security plans .....	17
14A Implementation of security measures .....	18
14B Identification and security checking .....	19
<b>Part 3 Enforcement</b> .....	<b>20</b>
15 Application of Chapter 7 of Protection of the Environment Operations Act 1997 .....	20
16 Powers of entry .....	20
17 (Repealed) .....	20
18 Notices to avoid or remedy contraventions .....	20
19 Powers to deal with dangerous situations .....	21
20 Special inquiries .....	23
21 Decontamination and acquisition of premises .....	23
22 Offence by employee—liability of employer .....	24
23 Offences by corporations .....	24
24 Increased penalty for offence causing serious harm .....	24
24A Enforcement of undertakings .....	24
25 Proceedings for offences .....	25
25A Penalty notices .....	26
26 Forfeiture .....	27
27 Retention and disposal of seized property .....	28
28 Recovery of costs .....	28
<b>Part 3A Financial assurances</b> .....	<b>29</b>
28A Purpose of this Part .....	29
28B Definition of “conditions” of licence .....	29
28C Requiring financial assurances .....	29
28D Restriction on requiring financial assurance .....	29
28E Amount of financial assurances .....	30
28F Guidelines about financial assurances .....	30
28G Carrying out of work or program when licensee fails to do so .....	30
28H Claim on or realising of financial assurance .....	30
28I Lapsing of financial assurance .....	31
28J Liability of Authority, State and others .....	31
28K Financial assurance not to affect other action .....	32

<b>Part 4 Radiation Advisory Council</b> .....	32
29 Radiation Advisory Council .....	32
30 Functions of the Council .....	33
31 Committees of Council .....	33
32 (Repealed) .....	34
33 Annual report of Council to Parliament .....	34
<b>Part 5 General</b> .....	34
33A Abandoning radioactive substance .....	34
34 Act binds Crown .....	34
35 Service of documents .....	35
36 Evidentiary matters .....	35
36A Appeals to District Court .....	36
36B Provision of false or misleading information .....	37
37 Adoption of documents forming part of National Directory .....	37
38 Consultation and co-operation between Ministers .....	37
38A Exemptions by Authority in emergencies and other situations .....	38
39 Exemptions .....	39
39A Personal liability .....	39
39B Review of Act .....	40
40 Regulations .....	40
41-43 (Repealed) .....	41
44 Savings and transitional provisions .....	41
<b>Schedule 1 Provisions relating to members and procedure of Council</b> .....	42
<b>Schedule 2 Savings and transitional provisions</b> .....	44

# 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 Objects of Act

(1) The objects of this Act are as follows:

- (a) to secure the protection of persons and the environment from exposure to ionising and harmful non-ionising radiation to the maximum extent that is reasonably practicable, taking into account social and economic factors and recognising the need for the use of radiation for beneficial purposes,
- (b) to protect security enhanced sources from misuse that may result in harm to people or the environment,
- (c) to promote the radiation protection principles.

(2) The **radiation protection principles** are as follows:

- (a) **justification of a practice** by assessing that the benefits of the practice involving exposure to ionising radiation outweigh any detriment,
- (b) **optimisation of protection** by ensuring that each of the following is kept as low as reasonably achievable taking into account economic and social factors:
  - (i) the magnitude of individual doses of ionising radiation,
  - (ii) the number of people exposed to ionising radiation,

(iii) the likelihood of exposure to ionising radiation,

(c) **dose and risk limitation** by setting dose limits or imposing other measures so that the health risks to any person exposed to ionising radiation is kept below levels that are generally considered to be unacceptable.

(3) A person is to take the radiation protection principles into consideration when exercising functions under this Act or under a licence.

#### 4 Definitions

(1) In this Act:

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

**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.

**Chairperson of the Authority** means the Chairperson of the Authority appointed under Division 3 of Part 5 of the [Protection of the Environment Administration Act 1991](#).

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

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

**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).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**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 radiation management licence or a radiation user licence.

**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.

**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.

**person responsible**—see section 6.

**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.

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

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

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

**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.

**regulated material** means any of the following:

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

**relevant legislation** means:

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

**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.

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

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

**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) Notes included in this Act do not form part of this Act.

## **5 Fit and proper persons**

- (1) In determining, for the purposes of this Act, whether a person is a fit and proper person to hold a licence or accreditation, the Authority may take into consideration any one or more of the following:
- (a) whether the person (or any director of the person in the case of a body corporate) has contravened relevant legislation, or has held a licence, accreditation or other authority that has been suspended or cancelled under relevant legislation,
  - (b) whether, if the person is a body corporate, a director of the body corporate is or has been the director of another body corporate that has contravened relevant legislation, or has held a licence, accreditation or other authority that has been suspended or cancelled under relevant legislation,
  - (c) the record of compliance with relevant legislation of the person (and each director of the person in the case of a body corporate),
  - (d) whether, in the opinion of the Authority, any dealings of the person with regulated material under a licence will or will not be in the hands of a technically competent person,
  - (e) whether, in the opinion of the Authority, the person (and each director of the person in the case of a body corporate) is of good repute, having regard to character, honesty and integrity,
  - (f) whether the person (or any director of the person in the case of a body corporate), in the previous 10 years, has in this or any other Australian jurisdiction:
    - (i) been convicted of an offence involving fraud, dishonesty or other behaviour that the Authority considers would render the person unfit to hold a licence or accreditation, or
    - (ii) been subject to a finding of professional misconduct or unsatisfactory professional conduct by a body that regulates, or investigates complaints about, health practitioners,
  - (g) whether the person, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent

debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,

- (h) if the person is an individual, whether he or she is or was a director of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years,
- (i) if the person is a body corporate, whether the body corporate is the subject of a winding up order or has had a controller or administrator appointed during the previous 3 years,
- (j) whether the person has demonstrated to the Authority the financial capacity to comply with the person's obligations under the licence or accreditation or the proposed licence or accreditation,
- (k) whether the person is in partnership with a person whom the Authority does not consider to be a fit and proper person under this section, in connection with:
  - (i) dealings with regulated material authorised (or sought to be authorised) by a licence, or
  - (ii) activities authorised (or sought to be authorised) by an accreditation,
- (l) any other ground that the Authority considers appropriate.

(2) In this section:

**director** of a body corporate includes a person involved in the management of the affairs of the body corporate.

#### **5A Certain persons and public bodies may exercise certain functions of Authority**

- (1) The object of this section is to provide for certain persons and public bodies other than the Authority to exercise certain of the Authority's functions under this Act in certain circumstances instead of the Authority.
- (2) The Secretary of the Department of Trade and Investment, Regional Infrastructure and Services may exercise such functions of the Authority and of the Chairperson of the Authority as may be prescribed by the regulations in respect of radioactive ore subject to such conditions or limitations as are specified in the regulations.
- (2A) The Secretary of that Department may delegate the exercise of a function in respect of radioactive ore that has been prescribed by the regulations made under subsection (2) to any of the following persons:
  - (a) a member of staff of the Department of Trade and Investment, Regional Infrastructure and Services,
  - (b) a member of staff of an agency of another State or a Territory that administers

radiation control legislation,

(c) a person of a class prescribed by the regulations.

(2B) A person to whom the exercise of a function is delegated under subsection (2) must exercise the function in accordance with any conditions or limitations specified in the regulations made under that subsection.

**Note—**

The instrument of delegation may also limit the delegation. See section 49 of the [Interpretation Act 1987](#).

- (3) Neither the Authority nor the Chairperson of the Authority can exercise a function in respect of radioactive ore if that function is prescribed under subsection (2).
- (4) The regulations may prescribe the circumstances (including conditions and limitations) in which a public body may exercise functions of the Authority under this Act.
- (5) The Authority cannot exercise a function in circumstances if the regulations have prescribed another public body to exercise the function in those circumstances.
- (6) The regulations may not prescribe circumstances in which a public body exercises any such function in respect of activities carried on by that public body.
- (7) The regulations may give effect to a scheme similar to that set out in sections 212C and 212D of the [Protection of the Environment Operations Act 1997](#), in respect of any persons or any public body exercising functions under this section.

**Note—**

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

## Part 2 Licences and accreditations

### 6 Radiation management licences

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

transporting the regulated material.

- (2) A person responsible for regulated material must hold a radiation management licence in respect of the regulated material and must comply with any conditions to which the licence is subject.

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

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

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

## **7 Radiation user licence**

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

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

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

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

Maximum penalty: 100 penalty units.

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

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

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

- (1) The Authority may vary a licence or accreditation on its own motion or on the application of the holder of the licence or accreditation.
- (2) A variation takes effect when the holder of the licence or accreditation is given notice in writing of the variation, or if a later time is specified in the notice, at that later time.

- (3) A licence may be varied so that it relates to regulated material to which it did not relate before the variation.
- (4) An accreditation may be varied so as to authorise the carrying on of activities which were not authorised before the variation.
- (5) A variation may involve the imposition of a condition on the licence or accreditation or the revocation of any such condition.

#### **11 Term of licences and accreditations**

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

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

#### **12 Surrender of licences and accreditation**

- (1) A licence or accreditation may be surrendered only with the written approval of the Authority.
- (2) The application for approval must be in the approved form and must contain any information that the Authority may require.
- (3) The Authority may require the applicant to provide any further information that it considers necessary to determine the application.
- (4) The Authority may refuse an application for surrender of a licence if it is of the opinion that:
  - (a) there will be an ongoing impact arising from any regulated material to which the licence relates, and
  - (b) it is appropriate to manage that impact through conditions of the licence.
- (5) A licence or accreditation surrendered under this section ceases to be of any force or effect.

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

- (1) The Authority may, at its discretion, suspend or cancel a licence or accreditation on any ground including if it is satisfied of any one or more of the following:
  - (a) that the grant of the licence or accreditation was made in error or was obtained improperly,
  - (b) that the holder of the licence or accreditation is not a fit and proper person to hold

the licence or accreditation,

(c) that the holder of the licence or accreditation has contravened a condition of it,

(d) that the holder of the licence or accreditation has been convicted of an offence against relevant legislation,

(e) that the holder has ceased to hold a qualification which was the basis on which the Authority granted the licence or accreditation,

(f) that, in the case of an accreditation, the holder has ceased carrying out the activities to which the accreditation relates.

(2) A decision of the Authority to suspend or cancel a licence or accreditation has no effect:

(a) until the expiration of the period within which a person may appeal against the decision, or

(b) if a person appeals against the decision within that period, unless and until the decision is confirmed by the District Court or the appeal is withdrawn.

(3) A licence or accreditation:

(a) cancelled under this section ceases to be of any force or effect, or

(b) suspended under this section is of no force or effect for the period of the suspension.

(4) If a licence or accreditation has been suspended, it can be renewed but remains subject to suspension until the expiration of the period of suspension.

(5) The holder of a licence or accreditation which is suspended or cancelled must surrender it to the Authority.

Maximum penalty: 10 penalty units.

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

(1) A licence or accreditation may be suspended or cancelled, or the surrender of a licence or accreditation may be approved, unconditionally or subject to such conditions as the Authority imposes.

(2) Those conditions may include (but are not limited to) any conditions to which the licence or accreditation was subject immediately before it was suspended, cancelled or surrendered.

(3) The Authority may, by giving notice in writing to the former holder of a cancelled or surrendered licence or accreditation or the holder of a suspended licence or

accreditation, attach new conditions to, or vary or revoke any existing conditions of, the suspension, cancellation or surrender of the licence or accreditation.

- (4) The former holder of a licence that has been cancelled or surrendered, or the holder of a licence that has been suspended, must comply with any conditions to which the cancellation, surrender or suspension is subject.

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

- (5) The former holder of an accreditation that has been cancelled or surrendered, or the holder of an accreditation that has been suspended, must comply with any conditions to which the cancellation, surrender or suspension is subject.

Maximum penalty: 100 penalty units.

### **13B Conditions generally**

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

### **13C Public register of licences**

- (1) The Authority is to maintain a register of licences issued under this Part.



- (2) The register is to contain the following information in relation to each licence:
  - (a) the name of the holder of the licence,
  - (b) the type and number of the licence,
  - (c) the expiry date of the licence,
  - (d) the status of the licence,
  - (e) such other information as may be prescribed by the regulations.
- (3) The register may also contain such information as may be prescribed by the regulations in relation to any licence that is suspended, cancelled or surrendered.
- (4) The Authority is to make the register available to members of the public to inspect free of charge:
  - (a) at its principal office during ordinary office hours, and
  - (b) on its website.
- (5) The Authority may charge a fee for providing a person with a copy of the register or part of the register or for making the register available for inspection at some other place.
- (6) Section 57 of the [Privacy and Personal Information Protection Act 1998](#) does not apply to the register referred to in this section.

## Part 2A Security of radioactive sources

### 14 Preparation of security plans

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

#### Note—

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

- (2) A security plan must set out how the source is to be protected from unauthorised access, nominate a natural person who is to be responsible for implementing the plan and deal with any other matters that may be prescribed by the regulations.

- (3) The regulations may make provision with respect to the form and content of security plans, the provision of security plans to the Authority and other persons and the keeping of records in respect of security plans.
- (4) A security plan cannot be made or amended unless the plan or amendment has been reviewed by a radiation security assessor who endorses on the plan that the plan, or plan as amended, satisfies the requirements of this section.
- (5) Subsection (4) does not apply to an amendment that only updates the name of the natural person who is to be responsible for implementing the plan or an amendment of a kind prescribed by the regulations.
- (6) Each person responsible for a security enhanced source must ensure that any security plan in respect of the source:
  - (a) is made or amended in accordance with this section, and
  - (b) is provided to the Authority:
    - (i) at such times as the Authority or the regulations may require, and
    - (ii) in the case of a source transport security plan, as soon as reasonably practicable after the plan is made or amended, and
  - (c) is reviewed periodically or at such times and in such manner as may be prescribed by the regulations, and
  - (d) is implemented and complied with.
- (7) A person who has been given a copy of a security plan or part of such a plan in respect of a security enhanced source must comply with the plan or the part in the person's dealings with the source.

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

#### **14A Implementation of security measures**

- (1) Each person responsible for a security enhanced source must ensure that the source is protected by any security protection measure prescribed by the regulations with respect to the source.

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

- (2) A person must not interfere with any security protection measure prescribed with respect to a security enhanced source unless the interference:

- (a) occurs during repair or maintenance, but only if the security protection measure

complies with this section following the repair or maintenance, or

- (b) is to a security protection measure that is no longer required under this section, or
- (c) is by the Authority or an authorised officer or by a person acting in accordance with a direction or notice under this Act, or
- (d) occurs in circumstances prescribed by the regulations.

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

(3) In this section:

***interfere*** with any security protection measure includes removal of or damage to the measure, altering the measure so that it is less effective or rendering the measure ineffective.

#### **14B Identification and security checking**

- (1) Each person responsible for a security enhanced source prescribed by the regulations must ensure that the following natural persons have undergone and satisfied an identity check that ascertains the identity and residential address of the person and any other prescribed information in respect of the person:
  - (a) a person who deals with the source,
  - (b) a person prescribed by the regulations.
- (3) A check is not required under this section in respect of:
  - (a) a person if:
    - (i) the person is under the direct supervision of another person at all times when engaged in the activity in respect of which the check would otherwise be required, and
    - (ii) the other person is a natural person who has undergone and satisfied the relevant check, or
  - (b) a person prescribed by the regulations.
- (5) A person must not engage in any activity for which the person is required to undergo a check under this section unless the person has undergone and satisfied that check.
- (6) The regulations may make provision with respect to a check under this section and any matter related to any such check including requiring additional persons to ensure that such checks are carried out.

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

any other case.

## **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 avoid or remedy contraventions**

- (1) The Authority, or person authorised by the Authority, may serve a notice under this section on a person if the Authority, or person authorised by the Authority, believes on reasonable grounds that the person is, or is likely to become, responsible for:
  - (a) a contravention of this Act, the regulations or the conditions of, a licence or accreditation or, the suspension, cancellation or surrender of a licence or accreditation, or
  - (b) unnecessary exposure to or contamination by radiation.
- (2) The notice is to be in writing and may contain a direction requiring the person on whom it is served to take specified steps, or refrain from doing specified things, to comply with the direction within a specified time.
- (3) The Authority must, as soon as practicable after the service of the notice, advise the Council about the notice.
- (4) The person on whom the notice is served must:

- (a) comply with the notice, and
- (b) within 30 days or such longer time as may be permitted by the Authority, pay the prescribed fee to the Authority.

Maximum penalty: 200 penalty units.

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

## **19 Powers to deal with dangerous situations**

- (1) If the Authority considers that a dangerous or potentially dangerous situation exists

involving actual or threatened exposure of any person, animal or thing or the environment to an excessive level of radiation or contamination by regulated material, the Authority may, to avoid, remove or alleviate the danger or potential danger:

- (a) direct the person responsible for the danger or potential danger or any person affected by it to take, or refrain from taking, any specified action, or
  - (b) direct that the regulated material giving rise to the danger or potential danger or anything contaminated or affected by it be seized, removed, disposed of, treated or otherwise dealt with, or
  - (c) give any other direction that the Authority considers appropriate, or
  - (d) take any action that the Authority considers necessary to alleviate the danger or potential danger (including any action that a person has been directed to take but has failed to take).
- (2) Directions may be given or action taken under subsection (1) by the Authority or, with the prior approval of the Authority, by an authorised officer, police officer or other person appointed for the purpose by the Authority.
- (3) A direction may be given:
- (a) by a notice published in the Gazette or on the NSW legislation website, or
  - (b) by an instrument in writing served on the person to whom it is directed, or
  - (c) orally in circumstances of imminent danger, so long as, within 24 hours after it is given orally, notice of the direction is also given by instrument in writing served on the person concerned.
- (4) The person must comply with a direction.
- Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.
- (5) A person must not hinder or obstruct any person exercising any function, or complying with any direction, under this section.
- Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.
- (6) The person to whom a direction is given must, within 30 days or such longer time as may be permitted by the Authority, pay the prescribed fee to the Authority.
- Maximum penalty: 200 penalty units.
- (7) The Authority may waive payment of the whole or any part of the fee.
- (8) A direction may be varied or revoked and more than one direction may be served

under this section on the same person or in respect of the same incident or both.

- (9) A direction that specifies a time by which, or period within which, the direction must be complied with continues to have effect until the direction is complied with or revoked even though the time has passed or the period has expired.
- (10) A direction may be given to a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment or a natural person of this State.
- (11) The exercise of the Authority's functions under this section is subject to the *State Emergency and Rescue Management Act 1989*.

## **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.

### **24A Enforcement of undertakings**

- (1) The Authority may accept a written undertaking given by a person if the Authority reasonably believes that the person has contravened this Act or the regulations.



- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Authority. The consent of the Authority is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (3) The Authority may apply to the District Court for an order under subsection (4) if the Authority considers that the person who gave the undertaking has breached any of its terms.
- (4) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
  - (d) an order suspending or cancelling any licence or accreditation held by the person,
  - (e) an order requiring the person to prevent, control, abate or mitigate any actual or likely harm to the environment or human health caused by the breach,
  - (f) an order requiring the person to make good any actual or likely harm to the environment caused by the breach,
  - (g) any other order the Court considers appropriate.

## **25 Proceedings for offences**

- (1) Proceedings for an offence against 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 against 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 Chairperson 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 against this Act or the regulations 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**

- (1) 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.
- (2) If a notice under section 18 is served on a person, or a direction under section 19 is given to a person, the Authority may, by giving notice in writing, require the person to pay all or any reasonable costs and expenses incurred by the Authority in connection with:
- (a) monitoring action under the notice or direction, and
  - (b) ensuring that the notice or direction is complied with, and
  - (c) any other associated matters.
- (2A) The Authority may give such a notice even if it did not issue the relevant notice under section 18 or the relevant direction under section 19.
- (3) Any such costs and expenses may be recovered by the Authority from the person in a court of competent jurisdiction as a debt.

## **Part 3A Financial assurances**

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

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

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

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

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

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

### **28D Restriction on requiring financial assurance**

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

- (a) the degree of risk of environmental harm or harm to human health associated with the activities under the licence, or
- (b) the works or programs that may be required because of activities under the licence, or

- (c) the environmental or radiation safety or security record of the holder or former holder of the licence or proposed holder of the licence, or
- (d) any other matters prescribed by the regulations.

**28E Amount of financial assurances**

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

**28F Guidelines about financial assurances**

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

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

- (1) The Authority may carry out, or direct or supervise the carrying out by another person of, any work or program covered by any financial assurance required by the conditions of a radiation management licence if the holder or former holder of the licence fails, in the opinion of the Authority, to carry out that work or program in accordance with the conditions of the licence.
- (2) The Authority may do so by the use of contractors, consultants or otherwise.
- (3) The Authority may enter, or authorise any other person to enter, the premises concerned to carry out the work or program.

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

- (1) The Authority may recover or fund the reasonable costs or expenses of the Authority or other person in carrying out any such work or program (including the likely costs and expenses of the Authority in directing and supervising the carrying out of the work or program) by making a claim on or realising the financial assurance or part of it.
- (2) Before making the claim on or realising the financial assurance or part of it, the

Authority must give to the holder or former holder of the licence a written notice that:

- (a) states details of the work or program carried out or proposed to be carried out, and
- (b) states the amount of the financial assurance to be claimed or realised, and
- (c) invites the person to make representations to the Authority to show why the financial assurance should not be claimed or realised as proposed, and
- (d) states the period (at least 30 days after the notice is given to the person) within which representations may be made.

- (3) The representations must be made in writing.
- (4) After the end of the period stated in the notice, the Authority must consider any representations properly made by the person.
- (5) If the Authority decides to make a claim on or realise the financial assurance or part of it, the Authority must immediately give written notice to the holder or former holder of the licence of its decision and the reasons for the decision.
- (6) The Authority must return any excess amounts to the holder or former holder of the licence or that person's successors.
- (7) If the amount of financial assurance claimed or realised by the Authority is not sufficient to cover all the costs and expenses concerned, the Authority may recover the excess from the holder or former holder of the licence in a court of competent jurisdiction as a debt.

### **28I Lapsing of financial assurance**

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

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

- (1) Anything done by or at the direction, or under the supervision, of the Authority under section 28G (1) is taken to have been done by the holder or former holder of the licence.
- (2) The State, the Minister, the Authority, the members of the Board of the Authority, any members of the staff of the Authority and any persons engaged by or otherwise acting with the authority of the Authority (or any of them):
  - (a) are not liable for anything done or omitted to be done in good faith in connection

with a condition of a radiation management licence to which this Part applies or in carrying out or giving effect to this Part, and

- (b) without affecting the generality of paragraph (a), are taken, for the purposes of section 23, not to be concerned in the management of a corporation when doing or omitting to do anything in connection with such a condition or when carrying out or giving effect to this Part.

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

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

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

### **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 Chairperson of the Authority 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 work 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) a person nominated by the Secretary of the Ministry 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 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**

### **33A Abandoning radioactive substance**

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

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

### **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) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person:
  - (a) by delivering it personally to the person, or
  - (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with a person apparently of or above the age of 16 years, or
  - (c) by posting it duly stamped and addressed to the person at the place last shown in the records of the Authority as the person's place of residence or business, or
  - (d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or
  - (e) by sending it by facsimile or electronic transmission (including by email) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
  - (f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.
- (2) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

### **36 Evidentiary matters**

- (1) In any proceedings under this Act, the holder or former holder of a radiation management licence is at a particular time or during a particular period (in the absence of evidence to the contrary) taken to be a person responsible for any regulated material to which the licence related at that time or during that period.
- (2) A document signed by the Chairperson of the Authority and certifying any one or more of the following matters is admissible in any proceedings under this Act and (in the absence of evidence to the contrary) is taken to be evidence of the matters so certified:
  - (a) on a specified day, or during a specified period, a licence or accreditation was or was not in force or was or was not subject to a specified condition,
  - (b) on a specified day a licence or accreditation was or was not suspended, cancelled, varied or surrendered or the suspension, cancellation or surrender of a licence or accreditation was or was not subject to specified conditions,

- (c) on a specified day a specified person was or was not an authorised officer or was or was not the holder of a specified licence or accreditation,
  - (d) on a specified day a specified person was or was not served with a specified notice, or given a specified direction, under this Act or any such direction or notice was or was not varied or revoked,
  - (e) a specified amount is payable by a specified person under this Act to the Authority and that amount has not been paid,
  - (f) a specified cost or expense was incurred by an authorised officer or public body in a specified way.
- (3) The Authority may not rely on a document referred to in subsection (2) in proceedings unless it has given written notice to each other party in the proceedings of its intention to rely on the document and provided each such party with a copy of the document.

### **36A Appeals to District Court**

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

#### **Note—**

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

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

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

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

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

### **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) *Work Health and Safety Act 2011*,
  - (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 2010* 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, or
- (e) a natural person exercising functions under section 5A,

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, 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.

## **Part 7 Provision consequent on enactment of [Statute Law](#)**

## **(Miscellaneous Provisions) Act 2013**

### **16 Ministry of Health member of Radiation Advisory Council**

The member of the Radiation Advisory Council who was appointed under section 29 (2) (k), as in force immediately before its substitution by the *Statute Law (Miscellaneous Provisions) Act 2013*, is taken to have been appointed on the same terms under that paragraph as substituted.