

Radiation Control Amendment Act 2010 No 91

[2010-91]



New South Wales

Status Information

Currency of version

Current version for 2 July 2013 to date (accessed 6 May 2024 at 7:56)

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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File last modified 2 July 2013

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Radiation Control Amendment Act 2010 No 91



New South Wales

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

1 Name of Act

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

2 Commencement

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

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

[1]-[4] (Repealed)

[5] Parts 2 and 2A

Omit Part 2. Insert instead:

Part 2 Licences and accreditations

6 Radiation management licences

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

only for the purposes of using the regulated material, or

- (ii) a person who has possession of the regulated material only for the purposes of transporting the regulated material.

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

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

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

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

7 Radiation user licence

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

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

8 Accreditation of radiation experts and security assessors

- (1) A person must not carry out any of the activities prescribed by the regulations as the activities of a consulting radiation expert unless the person holds accreditation as a consulting radiation expert and carries out those activities in compliance with any conditions to which that accreditation is subject.
- (2) A person must not carry out any of the activities prescribed by the regulations as the activities of a radiation security assessor unless the person holds accreditation as a radiation security assessor and 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.
- (2) Each person responsible for a security enhanced source must ensure that the following natural persons have undergone and satisfied a security check in accordance with the regulations:
 - (a) a person nominated under this Part as being responsible for implementing a security plan in respect of the source (a **nominated person**),
 - (b) a person who transports the source,
 - (c) if the source is prescribed by the regulations, a person who deals with the source,
 - (d) a person prescribed by the regulations.
- (3) A check is not required under this section in respect of:
 - (a) a person if:
 - (i) the person is under the direct supervision of another person at all times when engaged in the activity in respect of which the check would otherwise be required, and
 - (ii) the other person is a natural person who has undergone and satisfied the relevant check, or
 - (b) a person prescribed by the regulations.
- (4) Subsection (3) does not exempt any of the following persons from undergoing and satisfying a security check:
 - (a) a nominated person,
 - (b) a person who transports a source,
 - (c) a person prescribed by the regulations.
- (5) A person must not engage in any activity for which the person is required to undergo a check under this section unless the person has undergone and satisfied that check.
- (6) The regulations may make provision with respect to a check under this section and any matter related to any such check including requiring additional persons to ensure that such checks are carried out.

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

[6]-[34] (Repealed)