



Western Australia

## **Radiation Safety Act 1975**

Compare between:

[18 Oct 2010, 03-d0-01] and [05 Nov 2010, 03-e0-01]



Western Australia

## **Radiation Safety Act 1975**

**An Act to regulate the keeping and use of radioactive substances, irradiating apparatus and certain electronic products, and for matters incidental thereto.**

## Part I — Preliminary

**1. Short title**

This Act may be cited as the *Radiation Safety Act 1975* <sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation <sup>1</sup>.

[3. Deleted by No. 10 of 1998 s. 76.]

**4. Terms used**

In this Act unless the context otherwise requires —

***authorised officer*** means a person who is appointed in writing by the Executive Director;

***Council*** means the Radiological Council established pursuant to section 13;

***electronic product*** means a manufactured or assembled article, or any component, part or accessory of a manufactured or assembled article, which when in operation contains or acts as part of an electrical circuit, or which acts by electro-magnetic amplification employing a resonant space, and emits (or in the absence of effective shielding or other control would emit) —

- (a) ionising or non-ionising, electro-magnetic, or particulate radiation; or
- (b) any sonic, infrasonic or ultrasonic wave,

save that the provisions of this Act shall not apply thereto except in so far as is prescribed;

***Executive Director*** means the Executive Director, Public Health and Scientific Support Services of the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

***irradiating apparatus*** means any apparatus capable of producing ionising radiation of any prescribed type, or capable of accelerating atomic particles under any prescribed conditions;

***medical radiation technologist*** has the meaning given to that term in section 3 of the *Medical Radiation Technologists Act 2006*;

***owner***, used in relation to any substance, apparatus, product, article or premises, means the person to whom it belongs or the hirer, lessee, borrower, bailee, or mortgagee in possession, thereof, and includes any attorney, agent, manager, foreman, supervisor or other person in charge or having control or management thereof, or any person acting or representing himself to be acting for an owner; and the concept of possession shall be construed accordingly;

***purchaser*** includes any person, other than a carrying agent, acting on behalf of a purchaser;

***radioactive substance*** means any substances, whether natural or artificial, and whether in the form of a solid, a liquid, a gas, or a vapour, or any compound or mixture, including any article that has been manufactured or subjected to any artificial treatment or process, which consists of or contains more than the maximum prescribed concentration of any radioactive element, whether natural or artificial;

***sell***, without limiting the scope of the primary meaning, includes —

- (a) placing on the market for sale;
- (b) bargaining, barter, exchange, loaning or giving;
- (c) supply and use under a contract for work and materials;
- (d) dealing in, or agreeing, causing, permitting or attempting to sell or allowing to be sold;
- (e) offering, exposing, receiving, supplying or possessing for the purposes of sale;
- (f) sending or delivering for sale or on sale with or without consideration;

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(g) supply or disposal under hire purchase, credit sale or otherwise upon terms; and

(h) wholesale, bulk, and retail trading,

and the concepts of sale and purchase shall be construed accordingly;

**seller** includes any person acting or representing himself to be acting for a seller; and

**the repealed Acts** means the Acts repealed by this Act pursuant to section 5.

*[Section 4 amended by No. 63 of 1981 s. 4; No. 28 of 1984 s. 96 and 97; No. 21 of 2006 Sch. 3 cl. 5(2)-(4).]*

*[5. Deleted by No. 21 of 2006 Sch. 3 cl. 5(5).]*

**6. Application of this Act, and exemptions**

- (1) This Act applies to and in relation to —
  - (a) radioactive substances;
  - (b) irradiating apparatus; and
  - (c) electronic products which are prescribed by regulation as being subject to the provisions of this Act,unless an exemption is granted.
- (2) No exemption shall be granted unless the Council is satisfied that it is in the general interest of the public so to do, and that no danger to the life or health of any person will be thereby occasioned.
- (3) An exemption may be granted either in general terms by regulation, or in any particular case by the Council in writing, and may be made subject to the exercise of a discretionary authority.
- (4) An exemption may be limited to the provisions therein specified, or as to fees or other moneys that would otherwise be payable.

**7. Crown bound**

- (1) The possession, storage, use, handling or disposal of, or other dealing with, any radioactive substance, irradiating apparatus or electronic product by the Executive Director or an officer authorised by him in the performance of his duties under this or any other Act is not unlawful.
- (2) Except as provided in subsection (1), this Act binds the Crown.  
*[Section 7 amended by No. 63 of 1981 s. 4; No. 28 of 1984 s. 97.]*

**8. Prohibition**

- (1) Where the danger arising, or likely to arise, is exceptionally grave, or where there is a need to evaluate a potential danger, to establish special procedures or require special precautions, the Governor, on the recommendation of the Council, may make regulations to prohibit the possession, sale, or use of any radioactive substance, irradiating apparatus or electronic product, whether registered under this Act or not, either —
  - (a) absolutely; or
  - (b) except upon and subject to such conditions, restrictions or limitations and for such purpose as the Governor considers desirable in the public interest.
- (2) Regulations made under this section may provide that the penalty that may be imposed in relation to a contravention may be such amount as appears to the court to be just having regard to all the circumstances and the need to ensure that the public interest shall prevail.

**9. Civil remedies**

No proceedings taken under this Act against any person in any way interferes with or lessens any right or remedy by civil process of any party aggrieved by circumstances that constitute an offence against this Act.

## **Part II — Administrative provisions**

### **10. Duty of Minister and administrative arrangements**

- (1) The Minister is charged with the duty of protecting the public health and safety against the dangers of radiation, but is required at all times to have regard to the expressed views of the Radiological Council.
- (2) Subject to the general direction of the Minister, the function of the Council is to administer this Act and in particular —
  - (a) to implement the scheme of licensing and the scheme of registration created by or under this Act;
  - (b) to conduct inquiries into alleged contraventions, and to suspend or cancel licences and registrations;
  - (c) to advise the Minister, and to make recommendations, with respect to the technical aspects of radiation safety requirements and as to the methods to be used for the purpose of preventing or minimising the dangers arising from radioactive substances, irradiating apparatus and electronic products, including the preparation of regulations; and
  - (d) to investigate and prosecute offences against this Act.
- (3) For the purposes of this Act, the Council has all such powers, rights and privileges as may be reasonably necessary to enable it to carry out its functions.
- (4) The cost of the administration of this Act shall be paid out of the moneys to be from time to time appropriated by Parliament for the purpose.

### **11. Further functions of the Council**

- (1) The Council shall carry out the duties entrusted to it under this Act and, in so far as such matters are not inconsistent with this Act, the Council shall also perform such further or other functions as may be prescribed, and shall carry out such other



duties as may be required of it under or in furtherance of the provisions of this Act and in respect of which any general or specific direction is given by the Minister.

- (2) The Council shall encourage and may promote or conduct studies, investigation and research into the problems associated with radiation and, whenever requested by the Minister, the Council shall furnish to the Minister such information as is available to the Council in relation to any matter.
- (3) The Council shall, on matters relevant to the purposes of this Act, confer and collaborate with the departments of the Public Service and other bodies, instrumentalities and agencies of the Commonwealth, and the States and territories of the Commonwealth.
- (4) For the purposes of this Act the Council may, with the consent of the Minister to whom the administration of the Act relating to a department of the Public Service of the State or an instrumentality or agency of the Crown is committed, make use of the services of any officer of that department, instrumentality or agency.
- (5) Subject to the approval of the Minister, a person may be appointed by the Council to act as the Secretary of the Council through whom communications by or to the Council may be made.

## **12. Reviews**

- (1) For the purposes of this Act, a person who is aggrieved by —
  - (a) the refusal of an application for a licence or for registration, either generally or in relation to any particular kind or class;
  - (b) the revocation or suspension of a licence or exemption of which he is the holder or a registration effected in his name;

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- (c) the imposition of one or more conditions, restrictions, or limitations in relation to any such licence, exemption or registration; or
- (d) any order or direction given pursuant to this Act,

may apply to the State Administrative Tribunal for a review of the decision.

*[(2) deleted]*

*[Section 12 amended by No. 55 of 2004 s. 994.]*

**13. Radiological Council**

- (1) For the purposes of this Act there shall be a body to be known as the Radiological Council.
- (2) The Council consists of —
  - (a) a medical practitioner appointed by the Governor on the recommendation of the Executive Director, or other person nominated to preside in accordance with the provisions of subsection (3); and
  - (b) not less than 6 nor more than 8 other members appointed by the Governor, of whom —
    - (i) one shall be a medical practitioner who is a specialist in radiology or radiotherapy;
    - (ii) one shall be a medical practitioner who is a physician specialising in nuclear medicine;
    - (iii) one shall be a person who possesses relevant qualifications or experience as a physicist;
    - (iv) one shall be a person who possesses relevant qualifications or experience as a radiation engineer or electronic engineer;
    - (v) one shall be representative of the interests of tertiary educational institutions;
    - (vi) 2 may be nominated by the Minister with the advice of the other members of the Council as

being persons having special knowledge of the  
problems of radiation hazards; and

- (vii) one shall be a medical radiation technologist.
- (3) The medical practitioner appointed under subsection (2)(a) on the recommendation of the Executive Director shall be the chairman of the Council and shall preside at any meeting at which he is present, but the Governor on the recommendation of the Executive Director may nominate a person who is a medical practitioner to act as deputy chairman and in the absence or incapacity of the chairman of the Council the person so appointed shall be entitled to attend and shall preside at any meeting and shall have and may exercise all the powers of the chairman of the Council during the period in which he acts in that office.
- (4) Where the chairman of the Council and the deputy chairman are both absent from a meeting of the Council, the Council members present shall appoint one of their number present to preside at the meeting.
- (5) A member shall be paid such remuneration and allowances as the Governor determines.

*[Section 13 amended by No. 63 of 1981 s. 4; No. 28 of 1984 s. 97; No. 21 of 2006 Sch. 3 cl. 5(6).]*

#### **14. Tenure of office**

- (1) Any member of the Council may resign his office by a written notice given under his hand to, and accepted by, the Minister, and a Council member who resigns from office shall be eligible for reappointment.
- (2) Subject to subsection (1), a member shall hold office for such period, not exceeding 3 years, as is specified in the instrument under which he is appointed, but is eligible, unless otherwise disqualified, for reappointment.

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- (3) Acceptance of or acting in the office of member of the Council by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.
- (4) If a member of the Council —
- (a) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*; or
  - (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (c) is convicted of an indictable offence; or
  - (d) has his appointment terminated by the Governor for inability, inefficiency or misbehaviour,

his office becomes vacant and he is not eligible for reappointment.

*[Section 14 amended by No. 24 of 1990 s. 123; No. 32 of 1994 s. 3(1); No. 18 of 2009 s. 73.]*

**15. Deputies and casual vacancies**

- (1) The Governor may, in respect of each member of the Council other than the chairman of the Council, appoint a person having the requisite qualifications, experience or special knowledge to be the deputy of that member and a person so appointed has, in the event of the absence or incapacity of that member, all the powers of that member during the period in which he acts in the office of that member.

- (2) Where —
- (a) both a member and the deputy of that member are absent or temporarily incapable of fulfilling the duties of a member; or
  - (b) the office of a member is vacant and is not filled in accordance with this Act,

the Minister may appoint a person to act in the place of that member during that absence or incapacity, or until the vacancy is filled, as the case requires, and any person so appointed has, while his appointment subsists, all the powers, functions and duties of a member.

- (3) Any reference in this Act to a member shall be construed as including a reference to —
- (a) a deputy acting in the office of that member; and
  - (b) a person appointed by the Minister to act in the place of a member during any absence, temporary incapacity or casual vacancy.

## **16. Proceedings**

- (1) Subject to this Act, and to any direction which may be given by the Minister, the proceedings of the Council may be regulated in such manner as the members think fit.
- (2) A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as correct by the member presiding at that or the next succeeding meeting.
- (3) All acts done at any meeting shall, notwithstanding it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to act as a member, be as valid as if that defect had not existed.
- (4) Subject to the requirement that a quorum be present at any meeting, the performance or exercise of any function, power,

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right, authority, duty or obligation shall not be affected by reason only of there being a vacancy in the office of a member.

- (5) At a meeting of the Council, a majority of the Council members for the time being holding office constitutes a quorum.
- (6) A question arising at a meeting of the Council shall be decided by a majority of the votes of the Council members present and voting, but in the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his deliberative vote.
- (7) The Executive Director shall convene the first meeting of the Council as soon as practicable after the coming into operation of this Act, and thereafter the Council shall hold meetings at such times and places as the Council determines.
- (8) The Minister or any 3 or more Council members may at any time require the Executive Director to convene a meeting of the Council.
- (9) In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order, or as to the determination of an interest, the decision of the member presiding is final.
- (10) A member who has a direct or indirect pecuniary interest in any matter that is before the meeting for consideration shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the members present at the meeting and such disclosure shall be recorded in the record of the meeting.

*[Section 16 amended by No. 28 of 1984 s. 97.]*

**17. Co-option and consultants**

- (1) The Council may co-opt any person having relevant specialised knowledge or experience, but a person so co-opted is not entitled to a vote.

- (2) The Council has power, subject to the approval of the Minister and on such terms and conditions as the Minister may determine, to invite or engage any body or person to act in an advisory capacity to the Council in relation to any or all aspects of the functions of the Council.

**18. Delegation**

- (1) The Council may, with the approval of the Minister, delegate to any Council member, committee of the Council, or any officer of the Council or other person, any of its powers and duties, other than this power of delegation and its powers in relation to licences and registrations.
- (2) The Council may delegate its power to grant or renew licences or registrations to the person for the time being holding or acting in the office of chairman of the Council.
- (3) The Council may at any time revoke a delegation given under this section, and a delegation so given does not prevent the exercise or discharge by the Council of any of its functions.

**19. Committees**

- (1) The Council may, from time to time, appoint a committee or committees to investigate and advise the Council on any aspect of its functions or to carry out such of the functions of the Council, other than its functions in relation to licences or registrations, as the Council may with the approval of the Minister delegate to that committee.
- (2) The delegation by the Council to a committee of any power or duty of the Council does not relieve the Council of the responsibility for the decisions of that committee.
- (3) A committee may consist of such persons as the Council determines, whether members of the Council or persons who are not such members, but so that in every case not less than one member of the Council shall be a member of the committee.

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- (4) A person appointed a member of a committee of the Council shall be paid such remuneration and allowances as the Governor determines.
- (5) Each committee appointed by the Council shall report to the Council on its activities at such times as the Council directs.

**20. Restriction on remuneration**

The remuneration and allowances to be paid —

- (a) to a Council member; or
- (b) to a person appointed a member of a committee of the Council,

who is a person to whom Part 3 of the *Public Sector Management Act 1994*, applies, shall not be determined except with the prior approval, in writing, of the Minister for Public Sector Management.

*[Section 20 amended by No. 32 of 1994 s. 3(1) and 4.]*

**21. Transfer of property**

- (1) Forthwith upon the coming into operation of this Act —
  - (a) all the assets and liabilities of the Radiological Advisory Council established under the *Radioactive Substances Act 1954*<sup>2</sup>; and
  - (b) all remedies, powers, authorities, rights, title, interest and obligation in or with respect to those assets and liabilities,

shall, by virtue of this section and without any transfer or assignment whatever, pass to and become vested in or imposed upon the Council and be divested and discharged from the Radiological Advisory Council.

- (2) Any right of action or other remedy or power accrued to or against and any power or authority vested in or exercisable by and any agreement, undertaking or other instrument or



obligation made, given or entered into, by or with the Radiological Advisory Council may be prosecuted and enforced by or against the Council as if the right of action, remedy or power had originally been vested in or exercisable by, or the agreement, undertaking or other instrument or obligation had been made, given or entered into by, to or with the Council in lieu of the Radiological Advisory Council.

**22. Annual report of Council etc.**

Before 31 March in each year the Council shall make a written report to the Minister as to the operations of the Council under this Act up to the last preceding 31 December and the operation of this Act generally up to that day.

**23. Disputes with governmental bodies**

Any question, difference or dispute arising or about to arise between the Council and any department of the Public Service of the State, or any instrumentality of the government of the State, with respect to the exercise of any rights, powers or authority or the discharge of any duty by either or both of them may be finally and conclusively determined by the Governor.

*[Section 23: Correction to reprint in Gazette 28 Oct 2003 p. 4527.]*

**24. Actions, claims and demands**

- (1) A person who is or has been a member of the Council or of a committee of the Council, and any officer who acts in the name of the Council with the authority of the Council, is not personally liable in civil proceedings, and the Council and the Crown in right of the State is not liable, for any matter or thing done or omitted in good faith in the exercise of any power or function conferred by or exercisable under this Act.

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- (2) Where a person who would otherwise be liable reasonably but mistakenly believed —
- (a) that it was necessary for the purpose of preventing or minimising a possible source of danger to the life or health of a person; and
  - (b) that he was authorised under this Act to do or cause or authorise to be done any matter or thing,

then any person thereby sustaining damage or loss shall not be entitled to recover any greater amount than he would have been entitled to if the authorisation had been such as it was believed to be.

- (3) It shall not be a defence to any action, claim or demand however arising that any condition, warranty or obligation was breached or was not fulfilled by reason of any inspection, examination, test, or calibration made or other thing done under the authority of this Act.

*[Section 24: Correction to reprint in Gazette 28 Oct 2003 p. 4527.]*

**24A. Disclosure of information to the Medical Radiation Technologists Board of Western Australia**

- (1) The Council shall furnish to the Board as defined in section 3 of the *Medical Radiation Technologists Act 2006* written advice if —
- (a) a licence held by a medical radiation technologist under the *Radiation Safety Act 1975* is revoked, surrendered, not renewed or its operation is suspended;
  - (b) a condition, restriction or limitation in relation to such a licence is imposed or varied; or
  - (c) proceedings are commenced against a medical radiation technologist for an offence under section 52.
- (2) The advice referred to in subsection (1) must be given no later than 30 days after the revocation, surrender, refusal to renew,

suspension, imposition, variation or commencement of proceedings.

*[Section 24A inserted by No. 21 of 2006 Sch. 3 cl. 5(7).]*

## **Part III — Licensing and registration**

### **25. Matters requiring a licence**

- (1) Unless he does so under, and in accordance with any conditions, restrictions or limitations imposed in relation to, a licence under this Act of which he is the holder or by virtue of which he is acting under the direction and supervision of the holder, and which authorises him so to do, a person who operates or uses, or manufactures, stores, transports, sells, possesses, installs, services, maintains, repairs, or otherwise deals with any radioactive substance, irradiating apparatus or electronic product where no exemption granted pursuant to this Act applies, commits an offence.
- (2) Regulations made under this Act may specify the degree of direction and supervision which shall be required in relation to any licence or circumstances therein set out.
- (3) A person who —
  - (a) being required to furnish direction or supervision to a prescribed degree, fails so to do; or
  - (b) being required to act under the direction and supervision of the holder of a licence, acts when that direction or supervision is not furnished or is not furnished to the prescribed degree,commits an offence.

### **26. Licensing of persons**

- (1) The licences which may be granted under this Act shall be of the following kinds —
  - (a) licences authorising persons to operate or use radioactive substances, irradiating apparatus or electronic products, for one or more of the following purposes —
    - (i) dental diagnosis;

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- (ii) medical diagnosis by radiography;
  - (iii) medical diagnosis by fluoroscopy;
  - (iv) medical diagnosis by the use of radioactive substances;
  - (v) medical therapy;
  - (vi) chiropractic diagnosis by radiography;
  - (vii) veterinary diagnosis by radiography;
  - (viii) veterinary therapy;
  - (ix) industrial;
  - (x) radioactive luminous devices;
  - (xi) research; and
  - (xii) other purposes approved by the Council;
- and
- (b) licences authorising persons to manufacture, store, transport, sell, possess, install, service, maintain, repair, or otherwise deal with radioactive substances, irradiating apparatus or electronic products.
- (2) Notwithstanding the provisions of subsection (1), it shall not be necessary for a medical, dental, or veterinary practitioner to hold a licence under this Act for the purpose of requesting the holder of a licence to undertake any diagnosis or therapy.
  - (2a) Notwithstanding the provisions of subsection (1), it shall not be necessary for a person registered under the *Health Practitioner Regulation National Law (Western Australia)* whose name is entered on the Register of Nurses kept under that Law as being qualified to practise as a nurse practitioner acting in accordance with the relevant provision, if any, of a code or guidelines approved under section 39 of that Act to hold a licence under this Act for the purpose of requesting the holder of a licence to undertake any diagnosis or therapy.
  - (3) A licence shall be in the prescribed form, but may relate to one matter or several matters.

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*[Section 26 amended by No. 9 of 2003 s. 52; No. 50 of 2006 Sch. 3 cl. 19; No. 35 of 2010 s. 146.]*

**27. Use of radioactive substances or radiation on persons**

- (1) A person who —
- (a) administers, or purports to authorise the administration of, any radioactive substance, or any radiation whether ionising or non-ionising, or any sonic, infrasonic, or ultrasonic wave, emitted by or produced from a radioactive substance, irradiating apparatus or electronic produce, to any other person; or
  - (b) uses for the purpose of diagnosis or therapy any radioactive substance, irradiating apparatus or electronic product on any other person,

commits an offence unless the provisions of subsection (2) apply.

- (2) It shall be a defence for any person who would otherwise be liable under subsection (1) to prove that at the material time —
- (a) the person was —
    - (i) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the chiropractic profession; or
    - (ii) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the dental profession whose name is entered on the Dentists Division of the Register of Dental Practitioners kept under that Law; or
    - (iii) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession; or
    - (iv) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the physiotherapy profession,

and engaged in his or her professional practice, and was the holder of a relevant licence under this Act authorising him or her so to do; or

- (b) if the person is not practising in an area of medical radiation technology as defined in section 3 of the *Medical Radiation Technologists Act 2006*, he was lawfully acting under the direction and supervision of a person to whom paragraph (a) applies;
  - (ba) he was —
    - (i) a medical radiation technologist engaged in professional practice;
    - (ii) the holder of a relevant licence under this Act authorising him so to do; and
    - (iii) acting in accordance with a written request referred to in section 26(2) or (2a);
  - (bb) he was —
    - (i) a medical radiation technologist whose registration was subject to a condition that his practice in an area of medical radiation technology be subject to direction and supervision by a person to whom paragraph (a) or (ba) applies (a **supervisor**); and
    - (ii) lawfully acting under the direction and supervision of a supervisor;
- or
- (c) he was the holder of an exemption granted under this Act.

*[Section 27 amended by No. 21 of 2006 Sch. 3 cl. 5(8); No. 35 of 2010 s. 147(1).]*

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**28. Registration**

- (1) Subject to subsection (3) and unless he is the holder of an exemption, this section shall be complied with by any person who is —
- (a) the owner of any premises, or any part of any premises —
    - (i) in which any radioactive substance is manufactured, used or stored;
    - (ii) in which any irradiating apparatus or electronic product is used or operated; or
    - (iii) which is likely to be affected by the passage of waste from, or otherwise by the use of, any radioactive substance, irradiating apparatus or electronic produce;
  - (b) the owner of any irradiating apparatus; or
  - (c) the owner of any electronic product.
- (2) A person who is required to comply with subsection (1) shall —
- (a) on the coming into operation of this Act, within such period as is prescribed; or
  - (b) on or after the expiry of that prescribed period, within 14 days of becoming the owner of the premises, apparatus or product,
- apply, or cause an application to be made on his behalf, to the Council for registration of those premises or that apparatus or product under this Act or for the grant of an exemption from registration.
- (3) Where the provisions of this section apply to 2 or more persons in relation to any premises, apparatus or product it is sufficient compliance with subsection (2) if the application is made by any one of those persons on behalf of the owners generally.
- (4) Where no exemption granted pursuant to this Act applies, a person who is for the purposes of this Act the owner of any



premises, apparatus or product required to be registered under this Act and who —

- (a) fails to cause an application to be made for registration; or
- (b) contravenes or does not comply with any condition, restriction or limitation imposed by the Council in relation to the registration; or
- (c) operates or uses, stores, possesses, sells, or otherwise deals with those premises or that apparatus or product after registration in respect thereto has been refused, revoked or suspended by the Council or has expired,

commits an offence.

- (5) It shall be a defence for any person who would otherwise be liable under subsection (4) to prove that at the material time he was acting under and in accordance with the directions of the Council.
- (6) A certificate in the prescribed form evidencing the registration of any premises, apparatus, or product shall be furnished to the applicant by the Council.

## **29. Sales and purchases**

- (1) A person who sells any radioactive substance, or any irradiating apparatus or electronic product the registration of which is required under this Act, commits an offence unless —
  - (a) he required the purchaser to produce evidence that he is the holder of a licence or exemption granted under this Act in relation thereto; and
  - (b) he notifies the Council in writing forthwith specifying the name and address given by the purchaser and particulars of the relevant licence or exemption.
- (2) A person who purchases from any other person outside the State any radioactive substance, or any irradiating apparatus or

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electronic product which is intended for use in the State and the registration of which is required under this Act, shall —

- (a) forthwith notify the Council in writing; and
- (b) make application to the Council for the registration of that apparatus or product, or for the grant of an exemption from registration.

**30. Registration of defective premises, apparatus or products prohibited**

Registration under this Act shall not be effected by the Council unless the Council is satisfied that —

- (a) the premises have been constructed and equipped with the essential services installed and finished to a standard acceptable to the Council; and
- (b) the irradiating apparatus or electronic product is so manufactured, constructed, shielded and installed that it may be used without injury to the health of any person.

**31. Review of potentially dangerous articles**

The Council shall keep under continuous review the range of manufactured or assembled articles which could be prescribed as electronic products to which this Act applies or otherwise made subject to the provisions of this Act, and where the public interest so requires shall prepare regulations for the purpose of preventing or minimising the dangers arising and advise the Minister accordingly.

**32. Refusal of licence, exemption or registration**

- (1) The Council shall refuse to grant or renew a licence or exemption, or to effect or renew a registration, if —
  - (a) the Council is satisfied that the proposed licensee or person to be exempted, or the person in whose name the registration is to be effected, is not a fit and proper person having regard to the objects of this Act;

- (b) the Council is not satisfied that any radioactive substance, irradiating apparatus or electronic product is, or will be, used without any person other than a person undergoing treatment or diagnosis receiving any dose of radiation in excess of the prescribed level; or
  - (c) the Council is not satisfied that the premises to which the application relates, and any premises affected by the proposed use of the premises to which the application relates, are adequately safeguarded.
- (2) The Council may refuse to grant or renew a licence or exemption, or to effect or renew a registration, if —
- (a) the Council is not satisfied that a requirement as to safety is or will be met, whether the aspect of safety in question is immediate or relates to the long term or cumulative potential effects of radiation;
  - (b) the Council is not satisfied that the radioactive substance, irradiating apparatus or electronic product —
    - (i) is likely to produce a positive net benefit, having regard to the potential hazard, of a nature such as to justify its use; or
    - (ii) performs a function which can be fulfilled only by a radioactive method, or so fulfilled that the radioactive method has clear advantages over any other practical method;
  - (c) the Council is not satisfied as to the justification for the use of the specific radionuclide, or as to the use of the radioactive material in the form, quantity, or quality proposed; or
  - (d) the Council is for any other reason of the opinion that such a refusal is in the public interest.
- (3) In determining whether or not there are grounds on which an application for the grant or renewal of a licence or exemption, or to effect or renew a registration, ought to be refused the Council shall act entirely at discretion but may have regard to the

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recommendations, guidelines, or practices of the bodies known as the International Commission on Radiological Protection, the United Nations Organisation for Economic Co-operation and Development, the Radiation Health Committee of the National Health Committee of the National Health and Medical Research Committee, and such other bodies possessing relevant expertise as the Council may think appropriate.

*[Section 32 amended by No. 20 of 1979 s. 2.]*

**33. Licences and registration**

- (1) Subject to this Act, the Council, upon being satisfied that the provisions of this Act relating to —
- (a) the application;
  - (b) the payment of the fees or other moneys due;
  - (c) the qualifications, competence and experience of the persons concerned in the manufacture, sale, installation, servicing, possession, storage, use, prescription, handling, and transportation of the radioactive substance, irradiating apparatus or electronic product concerned, as the case may require; and
  - (d) the nature, specifications, construction, installation, shielding, manner of operation or use, or other prescribed requirements relating to the radioactive substance, irradiating apparatus or electronic product concerned, or the premises thereby affected,

have been complied with, and that there are no grounds upon which the application ought to be refused, shall cause a licence or exemption to be granted or registration to be effected and shall notify the applicant accordingly.

- (2) Where an application for registration is made on behalf of 2 or more persons, notification to the applicant shall be sufficient for the purposes of subsection (1).

**34. Disposal permits**

- (1) Where any radioactive substance, irradiating apparatus or electronic product is no longer required by a person —
- (a) because of the refusal of a licence or registration or otherwise by reason of the operation of this Act; or
  - (b) because it has ceased to be useful or is waste; or
  - (c) for any other reason,

that radioactive substance, irradiating apparatus or electronic product may be disposed of under the authority of a disposal permit granted by the Council.

- (2) A disposal permit authorises the holder to deal with the substance, apparatus or product therein specified in a manner satisfactory to the Council in accordance with the provisions of, and within the period specified in, that permit and a person acting in accordance with that authorisation is deemed not to be acting unlawfully.

**35. Temporary permits**

- (1) On written application being made by any person the chairman of the Council may grant to the person named in the application a temporary permit which may be made subject to the like conditions, restrictions or limitations and shall have the same effect as a licence granted or registration effected for the period specified in that permit, being a period not exceeding 3 months, unless sooner revoked, suspended or surrendered.
- (2) Where the chairman of the Council exercises his powers under this section he shall notify the Council as soon as is reasonably practicable in the circumstances, and the Council has the like

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powers in relation to such a permit as the Council has in relation to a licence granted or registration effected by the Council.

**36.        Conditions, restrictions and limitations on, and revocation or suspension of, licences, exemptions, and registrations**

- (1) A licence or exemption granted or registration effected under this Act shall be subject to such conditions, restrictions or limitations as the Council may impose, and in particular (but without prejudice to the generality of this subsection) may be subject —
- (a) to any condition, restriction or limitation prescribed as being of general application or applicable to specified circumstances or things; and
  - (b) to conditions, restrictions or limitations relating to —
    - (i) the kind or nature of radioactive substance to which it applies;
    - (ii) the particular irradiating apparatus or electronic product, or the type of apparatus or product, to which it applies;
    - (iii) the use to which that substance, apparatus or product may be put;
    - (iv) the place or circumstances at or in which it is to have effect;
    - (v) the persons who are thereby authorised to use or otherwise deal with the substance, apparatus, or product to which it relates; and
    - (vi) the use of the premises to which it applies, and any access, plumbing or other matters relating thereto,imposed in relation to any particular licence, exemption or registration.
- (2) A condition, restriction or limitation may be varied from time to time.

- (3) A person who contravenes or fails to comply with any condition, restriction or limitation imposed by the instrument granting an exemption or in relation to a licence or registration commits an offence.
- (4) Where a person is convicted of contravening or failing to comply with any condition, restriction or limitation imposed thereon the Council may revoke the licence, exemption or registration.
- (5) Where the Council is satisfied that it is necessary in the public interest in consequence of a change of circumstance (which may include a change in the information available as to the characteristic of the thing to which the licence or registration relates or as to its safety) the Council may revoke a licence, exemption or registration.
- (6) Where the Council is satisfied that the public interest so requires the Council may suspend the operation of a licence, exemption or registration for a period of not more than 6 months.
- (7) Where the Council —
  - (a) refuses an application for, or the renewal of, a licence, exemption or registration;
  - (b) revokes a licence, exemption or registration;
  - (c) suspends the operation of a licence, exemption or registration; or
  - (d) imposes any condition, restriction or limitation in relation to a particular licence, exemption or registration,

the Council shall forthwith notify the applicant, the licensee or person exempted, or the person in whose name the registration was effected and the notification shall be accompanied by a statement in writing of the grounds upon which the decision of the Council was made.

*[Section 36: Correction to Reprint in Gazette 28 Oct 2003 p. 4527.]*

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**37. Duration of licences, exemptions and registrations**

- (1) A licence, exemption or registration shall, unless it is sooner revoked or the operation of it is suspended by the Council, remain in force for the period specified therein which, subject to section 5(4), shall be a period of not less than one year nor more than 3 years.
- (2) Where a licence, exemption or registration that would otherwise be due to expire is the subject of an application for renewal made to the Council, it shall continue to take effect until such time as it is renewed or the Council, by notice in writing, refuses the application.
- (3) An application for the renewal of a licence, exemption or registration shall be made in the prescribed form.

**38. Change of circumstances**

Where —

- (a) a licensee proposes to use or otherwise deal with any radioactive substance, irradiating apparatus, electronic product, or premises in a manner at variance with that described in the information furnished by him to the Council; or
- (b) the information furnished to the Council in relation to any radioactive substance, irradiating apparatus, electronic product, or premises will cease to be correct or will be misleading or incomplete in a material particular,

the licensee or person exempted or the person in whose name the registration is effected shall give prior notice in writing to the Council who may thereupon amend the licence, exemption or registration or treat the matter as a new application and shall notify that person accordingly.



**39. Power to obtain information**

- (1) The Council may, in writing, at any time require any applicant, licensee, person exempted or person in whose name a registration is effected to furnish the Council, within such reasonable time as the Council may specify, with additional or other information, statements, matters or things concerning any radioactive substance, irradiating apparatus, electronic product, or premises.
- (2) Without limiting the provisions of subsection (1), the Council may require an applicant to furnish experimental or other proof of claims made in relation to the application, but the Council is not bound to accept as proof of any claim any information, matter or thing furnished.
- (3) Where —
  - (a) the applicant has consented in writing; or
  - (b) the result of the experiment or enquiry indicates that a claim made is not justified, and the Minister so directs,the reasonable cost of any experiment or enquiry made by or on behalf of the Council in relation to any application is a debt due to the Council from the applicant.

**40. Surrender of documents**

- (1) Where the licence, exemption or temporary permit granted to any person, or a registration effected in the name of any person, is revoked or suspended he shall, on demand, forthwith surrender that licence, document of exemption or temporary permit, and any certificate relating to the registration, to the Council.

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- (2) A revocation or suspension is effectual notwithstanding the failure of any person to comply with the provisions of subsection (1).

**41. Registers**

The Council shall cause to be kept a register or registers in the prescribed form showing in respect of —

- (a) persons exempted from the provisions of this Act;
- (b) persons licensed pursuant to this Act;
- (c) radioactive substances, irradiating apparatus and electronic products registered pursuant to this Act; and
- (d) premises registered pursuant to this Act,

the information required to be furnished by or under this Act.

**41A. Restriction on authorisation of storage, transportation or disposal of nuclear waste**

- (1) In this section —

**authorisation** means a licence, registration, exemption, disposal permit or temporary permit under this Act;

**nuclear waste** has the meaning given to it by section 3 of the *Nuclear Waste Storage and Transportation (Prohibition) Act 1999*.

- (2) Despite anything in this Part, an authorisation relating to nuclear waste is not to be granted or effected unless both Houses of Parliament by resolution consent to the authorisation being granted or effected, and then only on such terms and conditions as are specified in the resolution.

*[Section 41A inserted by No. 54 of 1999 s. 10(2); amended by No. 2 of 2004 s. 14(2).]*

## **Part IV — Enforcement**

### **42. Power of entry and inspection**

- (1) An authorised officer may, at any reasonable hour, —
  - (a) enter, inspect and search any premises;
  - (b) stop, board, inspect and search any vehicle, vessel or aircraft;
  - (c) inspect, examine, test, or calibrate any thing which he has reasonable grounds for believing to be, or to be used in connection with, a radioactive substance, irradiating apparatus or electronic product;
  - (d) take without payment such things or samples of any substance as he may consider to be necessary or expedient for examination and testing for the purposes of this Act;
  - (e) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are being complied with; and
  - (f) examine any records which are required to be kept under this Act.
  
- (2) No power of entry conferred by this section shall be exercisable in respect of any premises except —
  - (a) with consent given by or on behalf of the occupier of the premises; or
  - (b) under the authority of a warrant granted under this Act; or
  - (c) where entry is required in a case of emergency when the person requiring entry has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry to the premises is necessary to verify the existence of those circumstances or to ascertain their cause or to effect a remedy.

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- (3) Whenever required to do so by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act, an authorised officer shall produce to that person his written authority from the Executive Director.
- (4) Production of a written authority from the Executive Director in the prescribed form is conclusive proof in any court of the appointment of the authorised officer to whom that document relates and of his authority to exercise the powers conferred upon him under this Act.
- (5) In the exercise of his powers under this Act an authorised officer shall conform so far as is practicable to such reasonable requirements of the person owning or using the premises in question as are necessary to prevent the working of the business or the conduct of operations on the premises being obstructed, and before carrying out any test on any premises shall consult with such persons as appear to him to be appropriate in order to secure that the carrying out of the test does not create any danger, but has the power to require that the working of the business or the conduct of the operations shall cease where in his opinion that is necessary to obviate danger.
- (6) Any power of entry conferred by this Act shall, if exercised under the authority of a warrant or in a case of emergency, include power to enter by force if need be.
- (7) Where any thing is taken for examination or testing, and such examination or testing does not result in the destruction of the thing taken or indicate that it is hazardous to health, it shall be returned thereafter as soon as is practicable.

*[Section 42 amended by No. 63 of 1981 s. 4; No. 28 of 1984 s. 97.]*

**43. Warrants**

- (1) Where it is shown to the satisfaction of a justice —
  - (a) that admission to the premises in question has been refused following a request by an authorised officer for

entry thereto, or that the premises are unoccupied, or that a request for admission to the premises would defeat the object of the entry; or

- (b) that it is reasonably necessary for the due administration of this Act, or for the purpose of preventing or minimising a possible source of danger to the life or health of any person, that entry to the premises in question be made by an authorised officer,

the justice may, by warrant under this hand, authorise that officer and any other person named in the warrant, or any police officer, to enter upon the premises.

- (2) A warrant under this section continues in force until the purpose for which it is granted has been satisfied.

#### **44. Inspection procedure**

- (1) Any power of entry, or of carrying out tests or inspections, or of obtaining or taking away things or samples, conferred on an authorised officer under this Act may be exercised by him either alone or together with any person he may require as a professional or expert adviser or interpreter or whose assistance he considers necessary in the performance of his duties under this Act.
- (2) A question, enquiry or requisition that is put or made on behalf of an authorised officer by a person acting as interpreter shall be deemed to have been put or made by the authorised officer, and the response thereto made to the interpreter shall be deemed to have been made to the authorised officer.
- (3) In relation to any thing which an authorised officer has reasonable grounds for believing to be a radioactive substance, irradiating apparatus or electronic product, an authorised officer may make, or direct the owner to make or cause to be made, any examination or test that he considers necessary in the interests of safety, and may give directions to facilitate the carrying out of any such examination or test.

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- (4) In relation to any premises which an authorised officer has reasonable grounds for believing to be likely to be affected by the manufacture, storage or use of any radioactive substance, irradiating apparatus or electronic product, on those premises or elsewhere, an authorised officer may make any examination or test that he considers necessary in the interests of safety, and may give directions to facilitate the carrying out of any such examination or test.
- (5) In relation to any premises which are registered under this Act or in relation to which any application for registration is made an authorised officer may direct the owner to make or cause to be made any examination or test that the officer considers necessary in the interests of safety.

**45. Owner to assist authorised officer**

- (1) The owner of any premises in relation to which an authorised officer has exercised or is about to exercise any of his powers under this Act shall furnish the means necessary for, and shall comply with any directions as to the making of, any entry, inspection, examination, test, or enquiry required by an authorised officer and shall furnish such further or other assistance as the authorised officer may require for the exercise of his powers under this Act.
- (2) A person who fails to comply with the provisions of subsection (1), or who obstructs a person acting as professional or expert adviser or other assistant to, or interpreter for, an authorised officer, shall be deemed to have obstructed the authorised officer in the execution of his duties and is liable to be punished accordingly.

**46. Power to give directions**

- (1) Where an authorised officer is of the opinion that any radioactive substance, any irradiating apparatus or any electronic product, or any part of or fitting or attachment to any such substance, apparatus or product, is defective or dangerous or in the interests of safety requires to be repaired, modified or

renewed, or that any other thing may affect the safety or health of any person if the substance, apparatus, or product is permitted to continue to be used in the manner or condition it then is, he may direct the owner by notice in writing served on the person in charge of, or having control or management of, that substance, apparatus or product, —

- (a) to stop using that substance or using or operating that apparatus or product;
  - (b) to stop using or operating that apparatus or product until the repair, modifications or renewals specified in the notice have been effected; or
  - (c) to stop using that substance or using or operating that apparatus or product otherwise than in accordance with the limitations, restrictions or conditions specified in the notice.
- (2) A direction may be given by an authorised officer in the manner provided in subsection (1) to the owner of any premises which are in the opinion of the officer unsatisfactory for use in connection with any radioactive substance, irradiating apparatus or electronic product.
- (3) A direction given under this section may be expressed to take effect immediately or from a date to be specified in the notice.
- (4) A person to whom a notice containing directions is given under this section shall take all reasonable steps to bring the substantive requirements of those directions to the knowledge of all persons likely to be affected.
- (5) A person who contravenes or fails to comply with any requirement of, or prohibition imposed by, any direction given under this section commits an offence.

**47. Power to vary directions etc.**

Where an authorised officer has given any direction or notice or made any request under this Act, he or any other authorised

officer may, at any time, withdraw or revoke or from time to time vary that direction, notice or request or take such further action with respect thereto as may be necessary to give effect thereto.

**48. Offences as to inspections etc.**

- (1) A person shall not —
- (a) assault, resist or impede, delay or in any way obstruct an authorised officer in the exercise of his powers or in the discharge of his duties under this Act or fail to comply in any respect with the lawful written request, requirement, direction or order of an authorised officer;
  - (b) fail, without lawful excuse, to answer any question put to him in pursuance of this Act by an authorised officer or a person acting as professional or expert adviser to, or interpreter for, an authorised officer, or otherwise to furnish information lawfully required under this Act;
  - (c) furnish false or misleading information, or directly or indirectly prevent any person from appearing before or being questioned by an authorised officer, or otherwise furnishing information;
  - (d) fail to produce any register, record, notice or other document which by or under this Act he is required to produce, or fail to allow an authorised officer, upon his producing the same, to make copies or take extracts from it or any part thereof or of any entries therein;
  - (e) fail to allow any authorised officer to inspect, examine, test, calibrate or take any thing or sample of any thing which the authorised officer has reasonable grounds for believing to be a radioactive substance, irradiating apparatus, or electronic product;
  - (f) fail to permit any inspection or examination of any premises lawfully required under this Act; or



- (g) when required by or under this Act to furnish assistance to any person, fail without lawful excuse to furnish that assistance.
- (2) Any statement made pursuant to any requirement made under this Act shall not, if the person making the statement objected at the time of making it to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against the person for any offence not being the offence of contravening the provisions of this section.

**49. Secrecy**

A person who discloses any information that has been furnished to him or obtained by him under this Act, or in connection with the execution of this Act, commits an offence unless the disclosure is made —

- (a) with the consent of the person carrying on or operating the business to which that information relates;
- (aa) under section 24A; or
- (b) for the purpose of giving effect to the objects of this Act and in the performance of a duty under this Act.

Penalty: A fine not exceeding \$2 000, or imprisonment for 12 months, or both such fine and imprisonment.

*[Section 49 amended by No. 21 of 2006 Sch. 3 cl. 5(9).]*

**50. Availability of records**

- (1) Inspection documents and other records held by the Council may be made available for inspection, without charge, by the owner of the substance, apparatus, product or premises to which those records relate or any person authorised in writing by the owner, subject to subsection (2), but shall not be open to inspection by any other person not exercising functions under this Act.

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- (2) The records referred to in subsection (1) shall not be made available for inspection by any person and no copies thereof shall be taken —
- (a) where they relate to an accident involving any radioactive substance, irradiating apparatus or electronic product; or
  - (b) where they contain or refer to design information submitted by a person other than the owner,
- unless the Minister, in the public interest, otherwise directs.
- (3) Where a person is permitted by this section to inspect any records he may, on payment of the prescribed fee and subject to any conditions that may be required of him, be permitted to take a copy of those records.

**51. Offences to be dealt with by magistrate**

A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

*[Section 51 inserted by No. 59 of 2004 s. 141.]*

**52. Offences**

- (1) A person who contravenes any provision of this Act or does not do that which, by or under this Act, he is required or directed to do, commits an offence against this Act.
- (2) A person who, when required to do so under this Act, fails to furnish within a reasonable time thereafter any information which the Council or an authorised officer has asked for in relation to any matter, or furnishes false or misleading information, commits an offence.
- (3) Where an offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do any thing within a particular period, that offence shall, for the purposes of this section, be deemed to continue so long as the thing so required

or directed to be done by him remains undone, notwithstanding that the particular period has elapsed.

- (4) A person who commits an offence against this Act for which no penalty is provided elsewhere than in this subsection is liable to a fine of \$1 000, and, if the offence is a continuing one, to a further fine of \$50 for every day on which the offence has continued.

**53. Forfeiture**

- (1) In addition to any other penalty the Court before which a person is convicted may order that any radioactive substance, irradiating apparatus or electronic product to which the offence relates shall be forfeited to Her Majesty.
- (2) Any substance, apparatus or product ordered to be forfeited to Her Majesty shall be seized and thereafter dealt with as the Attorney General, after consultation with the Council, shall direct and, pending his direction, shall be detained in such custody as the Court directs.
- (3) Where any substance, apparatus or product is liable to be ordered to be forfeited to Her Majesty —
- (a) the court may, before making an order for forfeiture, require notice to be given to, and hear, any persons claiming any financial or other interest therein; and
  - (b) upon making an order for forfeiture the court may recommend to the Attorney General that the whole, or a specified portion, of the proceeds of any sale of the substance, apparatus or product forfeited should be paid to a person specified by the court.

**54. Power to seize and detain**

- (1) An authorised officer may seize and detain any radioactive substance, irradiating apparatus or electronic product which or any part of which he has reasonable grounds for believing constitutes a danger to the life or health of any person.

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- (2) Any thing seized under the provisions of subsection (1) may be removed and may thereafter be held for a period of 6 months or until the final determination of any proceedings under this Act relating thereto and instituted within that period, whichever is the later.
- (3) Any person aggrieved by the seizure or detention of any thing under the provisions of this section may within 6 months of the seizure apply to the State Administrative Tribunal for a review of the decision, and thereupon that thing may be dealt with as a substance, apparatus or product liable to be ordered to be forfeited to Her Majesty.
- (4) Where any thing is detained under the provisions of this section for a period of 6 months following the date of the seizure, and without any proceedings or application for review in respect of it having been instituted within that period, it is without further or other authority forfeit to Her Majesty.

*[Section 54 amended by No. 55 of 2004 s. 995.]*

**55. Emergency action**

- (1) Where the Executive Director is satisfied that an emergency situation exists whereby the life or health of any person may be endangered by any radioactive substance, irradiating apparatus or electronic product, he may issue an order requiring —
  - (a) where the source of the danger is the subject of a licence, the licensee; and
  - (b) in any other case, the person appearing to him to have apparent charge of the source of the danger,

to take such action as the Executive Director thinks necessary to meet the emergency, or if the circumstances in his opinion so require, the Executive Director may take such action or cause such action to be taken as he thinks necessary to meet the emergency.

- (2) No action lies or shall be brought in respect of any thing done or omitted to be done by or at the order of the Executive Director under this section.
- (3) Where the Executive Director exercises his powers under this section he shall notify the Council thereafter as soon as is practicable.

*[Section 55 amended by No. 63 of 1981 s. 4; No. 28 of 1984 s. 97.]*

**56. Liability for the acts of others etc.**

- (1) For the purposes of this Act any person on whose behalf the sale of any thing is made is deemed to be the person who sells, and, subject to subsection (3), every agent or employee making the sale is liable to the same penalties as the person on whose behalf he makes the sale.
- (2) A person who employs, causes, procures, or knowingly permits or suffers or connives with another person to contravene any provision of this Act commits an offence punishable as in the provision contravened.
- (3) Where proceedings are taken against a person for or in respect of a contravention of any provision of this Act it is no defence for that person to prove that he was the agent or employee of any other person or was acting in pursuance of an order or direction given by such other person unless he satisfies the court that he had acted without knowledge, and could not reasonably be expected to have known, that any provision of this Act had been contravened or had not been complied with.
- (4) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director or member of the governing authority of the body corporate, or the manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in connivance of, or to be attributable to any neglect on

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the part of, any director or member of the governing authority of the body corporate, or the manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in that capacity, he as well as the body corporate shall be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

- (5) It shall be a defence for any person who would otherwise be liable under this section to prove that he had taken all reasonable means to enforce the provisions of this Act and that the contravention or non-compliance occurred without his consent or connivance and that he exercised all due diligence to prevent it.

**57. Facilitation of proof**

- (1) Any proceedings, whether civil or penal, may be taken in the name of the Council by any officer of the Council authorised in that behalf by the Council, and no proof shall be required of the appointment of that officer as an officer of the Council or of his authority to take the proceedings in the name of the Council but the averment on the process that the officer is so authorised shall be deemed to be conclusive proof of the fact.
- (2) In any prosecution for an offence against this Act —
- (a) it is not necessary to prove the appointment of the Secretary of the Council, or his authority to do any act, to issue any order, to give any direction or notice, or to make any request on behalf of the Council, but nothing in this paragraph prevents the right of the accused in any such prosecution to prove the extent of that authority;
  - (b) a signature purporting to be that of the Minister, the chairman of the Council the Secretary of the Council or an authorised officer shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved;
  - (c) a statement signed by the Secretary of the Council that a licence or other document of the description mentioned

in the statement has or has not been issued by the Council under this Act to a person, or as to the date of issue of and the particulars contained in any document so issued by the Council, is evidence of the matter specified in the statement; and

- (d) the allegation or averment in any prosecution notice —
  - (i) that this Act applies in relation to any substance, apparatus, product, premises or thing; or
  - (ii) that any substance, apparatus, product or thing was dealt with in a manner which constitutes a sale as defined in this Act,

is sufficient *prima facie* evidence of that fact until the contrary is proved.

(2A) Where by any provision of this Act a person who is an owner, occupier, employer, or person in charge of any thing to which this Act applies, is required to give any notice to any other person the burden of proof that the provision has been complied with is on the person required to give the notice.

- (3) It is sufficient in any prosecution notice for an offence against this Act —
  - (a) where the accused is a natural person, to name the accused by the name by which he is usually known; and
  - (b) where the accused is a body corporate or a firm, to name the accused by the name by which that body corporate or firm and any member thereof is usually known,

and the onus of proof is on the person, body corporate or firm so named to prove that he or it, as the case may be, is not the accused.

- (4) In all courts and before all persons authorised to receive evidence a notification in the *Gazette* of a determination of the Council in relation to any matter, or otherwise as to the exercise of the powers of the Council conferred under this Act, or as to

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any order made or exemption granted under this Act, is evidence of the facts therein stated.

*[Section 57 amended by No. 84 of 2004 s. 79 and 82; No. 8 of 2009 s. 107.]*



## **Part V — Regulations**

### **58. General power**

- (1) The Governor may make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Act, and may make all such other regulations as may in his opinion be necessary or expedient for giving effect to the provisions of, and for the full execution and due administration of, this Act.
- (2) Any regulations made under this Act may —
  - (a) be of general or limited application;
  - (b) prescribe fees to be paid in relation to the grant or renewal of any licence or registration, the charges that shall be payable in relation to other matters under this Act, the persons liable, and the method of recovery of amounts not duly paid;
  - (c) impose upon any person or class of person a discretionary authority;
  - (d) prescribe penalties, not exceeding a fine of \$1 000, or if the offence is a continuing offence not exceeding a daily penalty of \$50, in respect of any contravention of the regulations;
  - (e) adopt, either wholly or in part and either specifically or by reference, any of the standards, rules, codes or specifications of the bodies known as Standards Australia, the British Standards Institution, the National Health and Medical Research Council, the International Atomic Energy Agency, or other like body specified in the regulations; and
  - (f) provide that where by reason of unavailability of materials or other reason that the chairman of the Council considers valid any requirement adopted by the regulations cannot be conformed to, the chairman of the Council may approve such use of materials or other

matters as he considers to be consistent with the maintenance of safety.

*[Section 58 amended by No. 74 of 2003 s. 99.]*

**59. Specific powers**

Without limiting the general power of the Governor to make regulations, the Council shall make recommendations and regulations may be made by the Governor in respect to the following matters —

- (a) the exemption of persons or things from the provisions of this Act;
- (b) the application of the provisions of this Act in relation to electronic products;
- (c) the method of assessment of fees and charges, and the grant, issue, renewal, variation, transfer, suspension or revocation of licences, permits and registrations;
- (d) the conditions, restrictions or limitations that may be imposed under this Act;
- (e) the method of making applications, the forms to be used and the records to be kept for the purposes of this Act, and the manner of, and time for, their submission, including a requirement that information supplied be verified by statutory declaration;
- (f) regulating the provision and the contents of plans, specifications, computations or other data required and the manner in which it is presented;
- (g) regulating any acts, matters or things in relation to the design, manufacture, construction, installation, shielding, identification, operation, alteration, repair or use of any premises or thing to which this Act applies;
- (h) the definition of terms for the purposes of this Act including the use of chemical, physical, medical, engineering or technical expressions;

- (i) controlling the sale, purchase, and use of specified radioactive substances, irradiating apparatus, and electronic products, in relation to specified purposes or generally, including the qualifications and experience required of persons engaged therewith;
  - (j) investigations, enquiries as to safety, the taking of samples, methods of storage and transportation, the efficacy of controls;
  - (k) the use of premises or places, the health of persons employed, the storage or disposal of radioactive substances or waste, the maximum discharge limits which shall not be exceeded, and the protection of the environment;
  - (l) the concentrations of radioactive chemical elements that shall, or shall not, be lawful in specified circumstances;
  - (m) the maximum permissible levels of exposure to radiation of persons in specified circumstances;
  - (n) requiring the compulsory medical examination of persons exposed or likely to be exposed to the risk of disease due to radiation;
  - (o) the establishment and operation of nuclear reactors and nuclear fuel processing plants, and the use of nuclear explosions;
  - (p) requiring notification of accidents or occurrences of potential danger, and of defects in, or damage to, apparatus, products, or premises;
  - (q) establishing procedures, standards, specifications and other requirements in the interests of safety; and
  - (r) any other purpose necessary for safeguarding the public or any person, or otherwise in the public interest, in relation to the matters referred to in this Act.
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**s. 59**

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## Notes

- <sup>1</sup> This is a compilation of the *Radiation Safety Act 1975* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Radiation Safety Act 1975</i>	44 of 1975	18 Sep 1975	7 May 1976 (see s. 2 and <i>Gazette</i> 7 May 1976 p. 1381)
<i>Radiation Safety Act Amendment Act 1979</i>	20 of 1979	30 Aug 1979	30 Aug 1979
<i>Acts Amendment (Statutory Designations) and Validation Act 1981</i> s. 4	63 of 1981	13 Oct 1981	13 Oct 1981
<i>Health Legislation Amendment Act 1984</i> Pt. XXII	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Guardianship and Administration Act 1990</i> s. 123	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(1) and 4	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Nuclear Waste Storage (Prohibition) Act 1999</i> s. 10(2)	54 of 1999	7 Dec 1999	7 Dec 1999 (see s. 2)
<b>Reprint of the <i>Radiation Safety Act 1975</i> as at 25 Feb 2000</b> (includes amendments listed above) (correction in <i>Gazette</i> 28 Oct 2003 p. 4527)			
<i>Nurses Amendment Act 2003</i> Pt. 3 Div. 6	9 of 2003	9 Apr 2003	9 Apr 2003 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 99	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

**Radiation Safety Act 1975**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Nuclear Waste Storage (Prohibition) Amendment Act 2004 s. 14</i>	2 of 2004	1 Apr 2004	1 Apr 2004 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141<sup>3</sup></i>	59 of 2004 (as amended by No. 2 of 2008 s. 77(13))	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 110<sup>4</sup></i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 79 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129) (correction in <i>Gazette</i> 7 Jan 2005 p. 53)
<b>Reprint 2: The Radiation Safety Act 1975 as at 4 Nov 2005</b> (includes amendments listed above)			
<i>Medical Radiation Technologists Act 2006 Sch. 3 cl. 5</i>	21 of 2006	9 Jun 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 26 Jun 2007 p. 3013)
<i>Nurses and Midwives Act 2006 Sch. 3 cl. 19</i>	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 107</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009 s. 73</i>	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<b>Reprint 3: The Radiation Safety Act 1975 as at 6 Nov 2009</b> (includes amendments listed above)			
<i>Health Practitioner Regulation National Law (WA) Act 2010 142, 146 and 147(1)</i>	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included

in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> s. 143-145, 147(2)-(4), 148 and 149 <sup>5</sup>	35 of 2010	30 Aug 2010	To be proclaimed (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89 <sup>6</sup>	39 of 2010	1 Oct 2010	<del>To be proclaimed</del> <a href="#">1 Dec 2010</a> (see s. 2(b)) and <a href="#">Gazette 5 Nov 2010 p. 5563</a>

<sup>2</sup> Repealed by section 5 of this Act.

<sup>3</sup> The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 44 was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

<sup>4</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>5</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Act 2010* s. 143-145, 147(2)-(4), 148 and 149 had not come into operation. They read as follows:

#### 143. Section 4 amended

- (1) In section 4 delete the definition of *medical radiation technologist*.
- (2) In section 4 insert in alphabetical order:

**Board** means the Medical Radiation Practice Board of Australia established under the *Health Practitioner Regulation National Law (Western Australia)* section 31;

**medical radiation practitioner** means a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical radiation practice profession;

**medical radiation technology** means —

- (a) medical imaging technology; or
- (b) nuclear medicine technology; or
- (c) radiation therapy;

**144. Section 13 amended**

Delete section 13(2)(b)(vii) and insert:

- (vii) one shall be a medical radiation practitioner.

**145. Section 24A amended**

- (1) In section 24A(1) delete “as defined in section 3 of the *Medical Radiation Technologists Act 2006*”.
- (2) In section 24A(1)(a) delete “medical radiation technologist” and insert:

medical radiation practitioner

Note: The heading to amended section 24A is to read:  
**Disclosure of information to the Medical Radiation Practice Board of Australia**

**147. Section 27 amended**

- (2) In section 27(2)(b) delete “medical radiation technology as defined in section 3 of the *Medical Radiation Technologists Act 2006*,” and insert:

medical radiation technology,

- (3) In section 27(2)(ba)(i) delete “medical radiation technologist” and insert:

medical radiation practitioner

- (4) In section 27(2)(bb)(i) delete “medical radiation technologist” and insert:

medical radiation practitioner

**148. Section 37A inserted**

After section 36 insert:



**37A. Conflict or inconsistency between conditions imposed under Health Practitioner Regulation National Law (Western Australia) and this Act**

- (1) If there is any conflict or inconsistency between a condition —
  - (a) imposed on a medical radiation practitioner under the *Health Practitioner Regulation National Law (Western Australia)*; and
  - (b) imposed on a licence held by the medical radiation practitioner under this Act,then —
  - (c) the condition imposed on the licence prevails (whether that condition was imposed before or after the condition imposed under the *Health Practitioner Regulation National Law (Western Australia)*); and
  - (d) the condition imposed under the *Health Practitioner Regulation National Law (Western Australia)* is of no effect to the extent of the conflict or inconsistency.
- (2) For the purposes of subsection (1), a conflict or inconsistency does not exist merely because the condition imposed under the *Health Practitioner Regulation National Law (Western Australia)* imposes more stringent measures or a higher duty or standard in respect of a particular matter or aspect of practice.

**149. Section 40A inserted**

After section 39 insert:

**40A. Notifications to Radiological Council**

- (1) The Board is to give the Radiological Council written advice of the following matters —
  - (a) the cancellation of the registration of a medical radiation practitioner and the removal of that person's name from the register under the *Health Practitioner Regulation National Law (Western Australia)*;
  - (b) the taking of immediate action in relation to a medical radiation practitioner under the *Health Practitioner Regulation National Law (Western Australia)* Part 8 Division 7, together with a copy of the notice given to the practitioner;

- (c) the suspension or revocation of the suspension from the practice of medical radiation technology under the *Health Practitioner Regulation National Law (Western Australia)* of a medical radiation practitioner, whether generally or in relation to any specified area, circumstances or service;
  - (d) the imposition, variation or revocation of any condition on registration or the practice of medical radiation technology under the *Health Practitioner Regulation National Law (Western Australia)* of a medical radiation practitioner;
  - (e) the referral of a matter relating to a medical radiation practitioner to the responsible tribunal under the *Health Practitioner Regulation National Law (Western Australia)*.
- (2) The advice is to be given no later than 14 days after the occurrence of the matter referred to in that subsection.

<sup>6</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

**89. Various references to “Minister for Public Sector Management” amended**

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

**Table**

<i>Radiation Safety Act 1975</i>	s. 20
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