



Australian Capital Territory

Radiation Protection Act 2006

A2006-33

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Australian Capital Territory

Radiation Protection Act 2006

A2006-33

An Act to provide for the protection of the health and safety of people, and for the protection of property and the environment, from the harmful effects of radiation, and for related purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2005-74

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Radiation Protection Act 2006*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.
- (3) However, if this Act has not commenced before 1 July 2007, it automatically commences on that day.

3 Object of Act

The object of this Act is to protect the health and safety of people, and to protect property and the environment, from the harmful effects of radiation.

4 Radiation protection principle

- (1) The *radiation protection principle* means the principle that people, property and the environment should be protected from unnecessary exposure to radiation through the processes of justification, limitation and optimisation for which—

- (a) **justification** involves assessing whether the benefits of a radiation practice, or the use of a radiation source, outweigh the detriment caused by the practice or source; and
- (b) **limitation** involves setting radiation dose limits, or imposing other measures, so that the health risk to anyone, or the risk of damage to property or the environment, from being exposed to radiation is below unacceptable levels; and
- (c) **optimisation**—
- (i) in relation to the conduct of a radiation practice, or the use of a radiation source, that may expose a person, property or the environment to radiation involves keeping—
- (A) the magnitude of individual doses of, or the number of people who may be exposed to, ionising radiation; or
- (B) if the magnitude of individual doses, or the number of people who may be exposed, is uncertain—the likelihood of exposures of ionising radiation happening;
- as low as reasonably achievable taking into account economic, social and environmental factors; and
- (ii) optimising, to a level of cost effectiveness, the conduct of a radiation practice, or the use of a radiation source, that may expose a person, property or the environment to non-ionising radiation.
- (2) The council, and anyone else with functions under this Act, must have regard to the radiation protection principle in exercising a function under this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104)

5 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*radiation source*—see section 9 (1).' means that the term 'radiation source' is defined in that subsection.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

6 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

7 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Important terms

8 **Meaning of *radiation* and *ionising* and *non-ionising* radiation**

- (1) For this Act, *radiation* is a phenomena caused naturally, or created artificially, that is—
 - (a) an electromagnetic waveform, quanta or both; and
 - (b) propagated through space or through a material medium.
- (2) Radiation is *ionising* if it is—
 - (a) capable of producing ions directly or indirectly; and
 - (b) either—
 - (i) particulate radiation; or
 - (ii) electromagnetic radiation of a wavelength of 100 nanometres or less.
- (3) Radiation is *non-ionising* if it is electromagnetic radiation of a wavelength greater than 100 nanometres.

9 **Meaning of *radiation source* etc**

- (1) A thing is a *radiation source* if it emits or may emit radiation.
- (2) A radiation source can be a radiation apparatus, a radiation facility or radioactive material.
- (3) A *radiation apparatus* is—
 - (a) apparatus that—
 - (i) produces radiation when energised; or
 - (ii) if assembled or repaired, would be capable of producing radiation when energised; or

(b) a thing prescribed by regulation to be a radiation apparatus.

- (4) A **radiation facility** is a facility prescribed by regulation to be a radiation facility.
- (5) **Radioactive material** is material that spontaneously emits ionising radiation as a consequence of nuclear transformations.

10 Meaning of *prohibited radiation source* and *regulated radiation source*

- (1) A radiation source is a **prohibited radiation source** if it is prescribed by regulation to be a prohibited radiation source.
- (2) A radiation source is a **regulated radiation source** if it is—
- (a) a radiation source (other than a prohibited radiation source) that emits or is capable of emitting ionising radiation above the level prescribed by regulation; or
- (b) a radiation source prescribed by regulation that emits or is capable of emitting non-ionising radiation.

11 Meaning of *deal* with radiation source

- (1) A person **deals** with a radiation source if the person—
- (a) manufactures the radiation source; or
- (b) possesses the radiation source; or
- (c) supplies the radiation source to someone else; or
- (d) uses the radiation source; or
- (e) disposes of the radiation source; or
- (f) for radioactive material—stores, packs or transports the material.

Note **Dispose** of and **use** are defined in the dictionary.

- (2) For subsection (1) (b), a person does not possess a radiation source only because, as part of a diagnostic or therapeutic procedure—
- (a) the person, or an animal kept by the person, has been injected with radioactive material; or
 - (b) radioactive material has been administered to or implanted in the person or animal in any other way.

Part 3 Radiation safety

Division 3.1 Safety duties

12 General duty to ensure no harm

A person who deals with a regulated radiation source must take all reasonable steps to ensure that no harm results to the health or safety of people or to property or the environment from radiation emitted from the radiation source.

Note 1 A failure to comply with this section may be an offence (see s 53).

Note 2 For the meaning of *deal* with a radiation source, see s 11.

13 Radiation exposure

- (1) This section applies to a person who deals with a regulated radiation source.
- (2) The person must take all reasonable steps to ensure that, if anyone (including the person) receives a dose of radiation, the dose must not result in that person receiving doses of radiation during a period that, when added together, are higher than the dose limit for the period.
- (3) This section does not apply to a dose received by a person from the carrying out of a diagnostic or therapeutic procedure involving the irradiation of the person at the request of a doctor.

Note 1 A failure to comply with this section may be an offence (see s 53).

Note 2 For the meaning of *deal* with a radiation source, see s 11.

14 Diagnostic or therapeutic procedures

A person who uses a regulated radiation source to carry out a diagnostic or therapeutic procedure involving the irradiation of a person (the *treated person*) at the request of a doctor must ensure that the treated person does not receive a dose of radiation from the procedure that is not in accordance with the request.

Note A failure to comply with this section may be an offence (see s 53).

15 Incorporated documents, approved codes of practice etc may be considered

In deciding whether a person has complied with a safety duty, an incorporated document, or approved code of practice, applying to the duty may be considered.

Note 1 For the meaning of *safety duty*, see s 52.

Note 2 For the meaning of *incorporated document* and *approved code of practice*, see the dictionary.

Division 3.2 Licensing

16 Application for licence

- (1) A person may apply to the council for a licence to deal with a regulated radiation source.

Note 1 If a form is approved under s 121 for an application, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

- (2) The council may, in writing, require the applicant to give the council additional information or documents that the council reasonably needs to decide the application.

Examples of information or documents

- 1 information about the proposed dealings under the licence
- 2 an assessment of the potential hazards from the radiation source
- 3 the qualifications of people proposed to be dealing with the radiation source

- 4 proposed procedures for handling, use or storage of the radiation source
- 5 a proposed safety plan for dealings under the licence

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the applicant does not comply with a requirement under subsection (2), the council may refuse to consider the application.

17 Decision about licence application

- (1) On an application by a person for a licence, the council must—
 - (a) issue the licence; or
 - (b) refuse to issue the licence.
- (2) In deciding whether to issue the licence, the council must consider—
 - (a) whether the applicant can satisfy any relevant competency requirements set out in the national directory, schedule 6; and
 - (b) whether the applicant can comply with any relevant conditions set out in the national directory, schedule 7; and
 - (c) whether the applicant can satisfy any relevant security requirements under the national directory, schedule 8; and
 - (d) any criteria prescribed by regulation.
- (3) Subsection (2) does not limit the matters that the council may consider.
- (4) The council must refuse to issue the licence if the council is satisfied it is not in the public interest to issue the licence.
- (5) In considering the public interest, the council must consider the risk of a dose limit being exceeded.

Note **Dose limit** is defined in the dictionary.

- (6) Subsection (5) does not limit the matters the council may consider in considering the public interest.

18 Form of licence

A licence must—

- (a) be in writing; and
- (b) state the full name and address of the person to whom the licence is issued; and
- (c) identify or describe—
 - (i) each regulated radiation source to which the licence applies (a *relevant source*); and
 - (ii) each kind of dealing authorised by the licence in relation to each relevant source; and
- (d) state the period for which the licence is given; and
- (e) include any conditions on the licence.

19 Licence conditions

A licence is subject to any conditions—

- (a) prescribed by regulation; or
- (b) imposed on the licence by the council.

Examples of conditions that may be imposed on a licence

- 1 that an approved code of practice or standard must be complied with
- 2 that a national incident reporting framework must be complied with
- 3 that particular requirements about inspection and reporting must be complied with
- 4 that particular security procedures must be complied with

Note 1 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Note 2 The council may amend a licence (including by imposing a condition on, or amending an existing condition of, the licence) at any time (see s 22).

20 Term of licence

A licence is issued for the period of up to 3 years stated in the licence.

21 Licensee to notify change of name or address

- (1) If a licensee changes his or her name or address, the licensee must, as soon as practicable but no later than 14 days after the day the change happens, tell the council, in writing, about the change.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

22 Amendment of licence by council on its own initiative

- (1) The council may, at any time and on its own initiative, amend a licence (including by imposing a condition on, or amending an existing condition of, the licence).

Example of amendment

to change a dealing with a radiation source authorised under the licence

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, the council may amend a licence only if—
- (a) the council has given the licensee written notice of the proposed amendment; and
- (b) the notice states that written comments on the proposal may be made to the council before the end of a stated period of at least 14 days after the day the notice is given to the person; and

(c) the council has considered any comments made before the end of the stated period.

- (3) Subsection (2) does not apply if the licensee applied for, or agreed in writing to, the amendment.

23 Amendment of licence on application

- (1) A licensee may apply to the council to amend the licensee's licence (including by removing or amending a condition of the licence).

Example of amendment

to change a dealing with a radiation source authorised under the licence

Note 1 If a form is approved under s 121 for an application, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The council may, in writing, require the applicant to give the council additional information or documents that the council reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement under subsection (2), the council may refuse to consider the application.
- (4) In deciding whether to amend the licence, the council may consider anything the council may consider under section 17 in relation to an application for a licence.
- (5) On an application by a person to amend a licence, the council must—
- (a) amend the licence in the way applied for; or
 - (b) refuse to amend the licence.

Note For the return of the licence to the council, see s 40.

24 Automatic cancellation of licence

- (1) This section applies if—
 - (a) a licence is in force in relation to a radiation source that is a regulated radiation source; and
 - (b) the radiation source becomes a prohibited radiation source.
- (2) The licence is automatically cancelled.

Division 3.3 Registration of radiation sources

25 Application for registration of radiation source

- (1) The owner of a regulated radiation source may apply to the council to register the radiation source.

Note 1 If a form is approved under s 121 for an application, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

- (2) The council may, in writing, require the applicant to give the council additional information or documents that the council reasonably needs to decide the application.

Examples of information or documents

- 1 information about where the radiation source is to be kept
- 2 an assessment of the potential hazards from the radiation source
- 3 proposed procedures for handling, use or storage of the radiation source

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the applicant does not comply with a requirement under subsection (2), the council may refuse to consider the application.

26 Decision about radiation source registration application

- (1) On an application by a person for registration of a regulated radiation source, the council must—
 - (a) register the radiation source; or
 - (b) refuse to register the radiation source.
- (2) In deciding whether to register the regulated radiation source, the council must consider—
 - (a) whether the applicant can satisfy any relevant requirement set out in the national directory, schedule 9; and
Note Sch 9 is about uses of certain sealed sources and premises.
 - (b) any criteria prescribed by regulation.
- (3) Subsection (2) does not limit the matters that the council may consider.
- (4) The council must refuse to register the regulated radiation source if the council is satisfied it is not in the public interest to register it.
- (5) In considering the public interest, the council must consider the risk of a dose limit being exceeded.
Note **Dose limit** is defined in the dictionary.
- (6) Subsection (5) does not limit the matters the council may consider in considering the public interest.

27 Form of registration

- (1) A registration of a regulated radiation source must—
 - (a) be in writing; and
 - (b) state the full name and address of the person to whom the registration is granted; and
 - (c) identify or describe the radiation source registered; and

- (d) state each place where the radiation source may be kept; and
 - (e) state the period of the registration; and
 - (f) include any conditions on the registration.
- (2) The person mentioned in subsection (1) (b) is the *registered owner* of the registered radiation source.

28 Registration conditions

Registration of a regulated radiation source is subject to any conditions—

- (a) prescribed by regulation; or
- (b) imposed on the registration by the council.

Examples of conditions that may be imposed on a registration

- 1 that an approved code of practice or standard must be complied with
- 2 that a national incident reporting framework must be complied with
- 3 that particular procedures about inspection and reporting must be complied with
- 4 that particular security procedures must be complied with
- 5 that the council must be told if the radiation source is transported

Note 1 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Note 2 The council may amend a registration (including by imposing a condition on, or amending an existing condition of, the registration) at any time (see s 31).

29 Term of registration

A regulated radiation source may be registered for a period of up to 3 years stated in the registration.

30 Registered owner to notify change of name or address

- (1) If the registered owner of a regulated radiation source changes his or her name or address, the registered owner must, as soon as practicable but no later than 14 days after the day the change happens, tell the council, in writing, about the change.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

31 Amendment of registration by council on its own initiative

- (1) The council may, at any time and on its own initiative, amend the registration of a regulated radiation source (including by imposing a condition on, or amending an existing condition of, the registration).

Example of amendment

to change a requirement about where the radiation source is kept

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, the council may amend the registration of the radiation source only if—
- (a) the council has given the registered owner of the radiation source written notice of the proposed amendment; and
 - (b) the notice states that written comments on the proposal may be made to the council before the end of a stated period of at least 14 days after the day the notice is given to the person; and
 - (c) the council has considered any comments made before the end of the stated period.
- (3) Subsection (2) does not apply if the registered owner applied for, or agreed in writing to, the amendment.

32 Amendment of registration on application

- (1) The registered owner of a regulated radiation source may apply to the council to amend the registration (including by removing or amending a condition of the registration).

Example of amendment

to change a requirement about where the radiation source is kept

Note 1 If a form is approved under s 121 for an application, the form must be used.

Note 2 A fee may be determined under s 120 for this provision.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The council may, in writing, require the applicant to give the council additional information or documents that the council reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement under subsection (2), the council may refuse to consider the application.
- (4) In deciding whether to amend the registration, the council may consider anything the council may consider under section 26 in relation to an application for registration of a regulated radiation source.
- (5) On an application by a person to amend a radiation source registration, the council must—
 - (a) amend the registration in the way applied for; or
 - (b) refuse to amend the registration.

33 Automatic cancellation of registration

- (1) This section applies if—
 - (a) a registration is in force in relation to a radiation source that is a regulated radiation source; and
 - (b) the radiation source becomes a prohibited radiation source.
- (2) The registration of the radiation source is automatically cancelled.

Division 3.4 Disciplinary action

34 Grounds for disciplinary action

- (1) Each of the following is a *ground* for disciplinary action against a licensee:
 - (a) the licensee gave information to the council in relation to the application for, or an application for amendment of, the licensee's licence that was false or misleading in a material particular;
 - (b) the licensee has contravened, or is contravening, this Act, whether or not the licensee has been convicted or found guilty of an offence for the contravention;
 - (c) the licensee has contravened, or is contravening, a territory law (other than this Act) or a law of the Commonwealth, a State or another Territory, whether or not the licensee has been convicted or found guilty of an offence for the contravention.
- (2) Each of the following is a *ground* for disciplinary action against a registered owner of a regulated radiation source:
 - (a) the registered owner gave information to the council in relation to the application for, or an application for amendment of, the registration of the radiation source that was false or misleading in a material particular;

- (b) the registered owner has contravened, or is contravening, this Act, whether or not the registered owner has been convicted or found guilty of an offence for the contravention;
- (c) the registered owner has contravened, or is contravening, a territory law (other than this Act) or a law of the Commonwealth, a State or another Territory, whether or not the registered owner has been convicted or found guilty of an offence for the contravention.

35 Disciplinary action

- (1) Each of the following is *disciplinary action* when taken against a person who is a licensee:
 - (a) reprimanding the person;
 - (b) requiring the person to complete a stated course of training to the satisfaction of the council or another stated person;
 - (c) amending the licence, including by imposing a condition on the licence or amending an existing condition of the licence;
 - (d) suspending the licence, or a particular authorised dealing under the licence—
 - (i) for a stated period; or
 - (ii) until the person completes a stated course of training to the satisfaction of the council or someone else; or
 - (iii) until a stated event happens;
 - (e) cancelling the licence;
 - (f) cancelling the licence and disqualifying the person from applying for a licence, or a particular kind of licence in relation to a radiation source—
 - (i) for a stated period; or

- (ii) until the person completes a stated course of training to the satisfaction of the council or someone else; or
 - (iii) until a stated event happens.
- (2) Each of the following is ***disciplinary action*** when taken against a person who is the registered owner of a radiation source:
 - (a) reprimanding the person;
 - (b) requiring the person to complete a stated course of training to the satisfaction of the council or another stated person;
 - (c) amending the registration, including by imposing a condition on the registration or amending an existing condition of the registration;
 - (d) suspending the registration—
 - (i) for a stated period; or
 - (ii) until the person completes a stated course of training to the satisfaction of the council or someone else; or
 - (iii) until a stated event happens;
 - (e) cancelling the registration;
 - (f) cancelling the registration and disqualifying the person from applying for a registration, or registration of a particular kind of radiation source—
 - (i) for a stated period; or
 - (ii) until the person completes a stated course of training to the satisfaction of the council or someone else; or
 - (iii) until a stated event happens.

36 Taking disciplinary action

- (1) If the council proposes to take disciplinary action in relation to a person, the council must give the person a written notice (a *disciplinary notice*) that—
 - (a) states the proposed action (including any proposed disqualification period, suspension period or amendment of a licence); and
 - (b) states the grounds for the proposed action; and
 - (c) tells the person that the person may, not later than 14 days after the day the person receives the notice, give a written response to the council about the notice.
- (2) In deciding whether to take disciplinary action, the council must consider any response given to the council by the person in accordance with the notice.
- (3) The council may take the proposed disciplinary action in relation to the person if satisfied that—
 - (a) a ground for taking disciplinary action has been established in relation to a person; and
 - (b) if the ground is a ground mentioned in section 34 (1) (c) or (2) (c)—it is in the public interest for the proposed disciplinary action to be taken in relation to the person.
- (4) The council must give the person written notice of the council's decision.
- (5) Disciplinary action under this section takes effect 14 days after the day when the notice of the decision is given to the person or, if the notice states a later date of effect, that date.

Note For the return of the licence to the council, see s 40.

37 Immediate suspension of licence or registration

- (1) This section applies if the council has given, or is considering whether to give, a disciplinary notice to a licensee or registered owner of a regulated radiation source on a ground on which disciplinary action may be taken against the licensee or registered owner (the *relevant disciplinary ground*).
- (2) The council may give the licensee or registered owner a written notice (an *immediate suspension notice*) suspending the licence, a particular authorised dealing under the licence or the registration on the relevant disciplinary ground.

Note *Authorised dealing* is defined in the dictionary.

- (3) However, the council may give the licensee or registered owner an immediate suspension notice on the relevant disciplinary ground only if—
 - (a) the council has taken into account the circumstances leading to the decision to give or consider giving the disciplinary notice; and
 - (b) the council believes, on reasonable grounds, that it is in the public interest that the licence, authorised dealing or registration be suspended before a decision is made whether or not to take disciplinary action against the licensee under section 36 on the relevant disciplinary ground.
- (4) If an immediate suspension notice is given to the licensee or registered owner, the suspension takes effect when the notice is given to the licensee or registered owner.

Note For the return of the licence to the council, see s 40.

- (5) If the licensee or registered owner is given an immediate suspension notice but has not been given a disciplinary notice on the relevant disciplinary ground, the council must, as soon as possible, give a disciplinary notice to the licensee or registered owner or tell the licensee or registered owner in writing that a disciplinary notice will not be given to the licensee or registered owner in relation to that ground.
- (6) The immediate suspension notice ends when the earliest of the following happens:
 - (a) if the licence or registration is cancelled or suspended under section 36, or a particular authorised dealing is suspended under that section on the relevant disciplinary ground—the cancellation or suspension takes effect;
 - (b) if a condition is imposed on the licence or registration, or an existing condition of the licence or registration is amended, under section 36 on the relevant disciplinary ground—the condition or amended condition takes effect;
 - (c) the person is given written notice under section 36 (4) of the decision in relation to the relevant disciplinary ground;
 - (d) the period of 8 weeks after the suspension under the notice takes effect ends.

38 Effect of suspension of licence or dealing

- (1) If a licence is suspended, the licence does not authorise the licensee to carry on any activity under the licence during the suspension.
- (2) If an authorised dealing under a licence is suspended, the licence—
 - (a) does not authorise the licensee to carry out that dealing under the licence during the suspension; and
 - (b) is taken to be amended under this part to the extent necessary to give effect to the suspension.

39 Effect on licensee of suspension of registration

If the registration of a regulated radiation source is suspended, a person who holds a licence to deal with the radiation source is taken not to hold a licence to deal with the radiation source in any way (other than possessing the radiation source) during the suspension.

40 Return of amended, suspended or cancelled licences

- (1) A licensee commits an offence if—
- (a) the licensee's licence is—
 - (i) amended under section 22 (Amendment of licence by council on its own initiative); or
 - (ii) amended under section 23 (Amendment of licence on application); or
 - (iii) amended, suspended or cancelled under this division; and
 - (b) the licensee fails to return the licence to the council as soon as practicable (but not later than 7 days) after the day the licensee is told about the council's action.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

41 Action by council in relation to amended, suspended or cancelled licence

- (1) If a licence that is amended under this part is returned to the council, the council must—
- (a) amend the licence and return it to the licensee; or
 - (b) give the licensee a replacement licence that includes the amendment.

Note A licence is taken to be amended if an authorised dealing under the licence is suspended (see s 38 (2)).

- (2) If a licence is suspended under this part and the suspension ends before the end of the term of the licence, the council must return the licence to the licensee.

Division 3.5 Abandoning a radiation source

42 Prohibition on abandoning radiation source

A person must not abandon a regulated radiation source.

Maximum penalty: 1 000 penalty units, 3 years imprisonment or both.

43 Procedure if radiation source abandoned

- (1) If the council believes, on reasonable grounds, that a regulated radiation source has been abandoned, the council—
- (a) may direct an authorised person to take possession of the radiation source; or
 - (b) may ask someone else to take possession and dispose of the radiation source.
- (2) If an authorised person takes possession of a regulated radiation source under subsection (1) (a), the authorised person may do all or any of the following:
- (a) keep possession of the radiation source until legal proceedings against a person in relation to the abandonment are finally dealt with;
 - (b) destroy the radiation source;
 - (c) otherwise make the radiation source harmless;
 - (d) dispose of the radiation source.

- (3) If a person is asked under subsection (1) (b) to take possession and dispose of a regulated radiation source, the person—
- (a) may, but is not required to, take possession of the radiation source and, if the person does so, must dispose of it in a way approved by the council; and
 - (b) is taken to hold a licence in relation to the radiation source that authorises the person to dispose of it and to possess, store and transport it for that purpose.

44 Person abandoning radiation source liable for recovery costs

A person who abandons a regulated radiation source is liable for the reasonable costs incurred by the Territory or anyone else in taking action under section 43.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

Division 3.6 Disposal of prohibited radiation source

45 Disposal etc of prohibited radiation source

- (1) The council may—
- (a) direct an authorised person to take possession of a prohibited radiation source; or
 - (b) may ask someone else to take possession and dispose of a prohibited radiation source.

- (2) If an authorised person takes possession of a prohibited radiation source under subsection (1) (a) the authorised person may do all or any of the following:
- (a) keep possession of the radiation source until legal proceedings against a person in relation to possessing the radiation source are finally dealt with;
 - (b) destroy the radiation source;
 - (c) otherwise make the radiation source harmless;
 - (d) dispose of the radiation source.
- (3) If a person is asked under subsection (1) (b) to take possession and dispose of a prohibited radiation source, the person—
- (a) may, but is not required to, take possession of the radiation source and if the person does so, must dispose of it in a way approved by the council; and
 - (b) may possess, store and transport the radiation source for that purpose.

46 Person in possession of prohibited radiation source liable for disposal costs

A person from whom possession of a prohibited radiation source is taken by an authorised officer or anyone else under section 45 (Disposal etc of prohibited radiation source) is liable for the reasonable costs incurred by the Territory or anyone else in disposing of the prohibited radiation source.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

Division 3.7 Emergency powers

47 Emergency orders

- (1) The Minister may, in writing, make an order (an *emergency order*) if the Minister believes, on reasonable grounds, that the order is necessary to prevent or minimise a risk arising from a radiation incident.

Note The power to make an instrument includes the power to amend or repeal the instrument (see Legislation Act, s 46).

- (2) An emergency order may authorise the chief executive to do all or any of the following:
- (a) require a person to enter, not to enter or to leave a place;
 - (b) subject to subsection (3), authorise the detention of a person;
 - (c) require a person to undergo a decontamination procedure;
 - (d) require the owner or occupier of a place to decontaminate the place;
 - (e) require the disposal or destruction of a radiation source or anything that has been affected or contaminated by radiation and state how the disposal or destruction must be done;
 - (f) make any other requirement necessary to protect the health or safety of people or to prevent damage to property or the environment.
- (3) An order may only authorise the detention of a person—
- (a) for reasonable testing to decide whether, because of the radiation incident, the person has been contaminated and poses a serious risk to the health or safety of anyone else or of the safety of anyone else's property or the environment; and

(b) if the person is contaminated and poses a serious risk to the health or safety of anyone else or of the safety of anyone else's property or the environment—to prevent the person contaminating anyone else, anyone else's property or the environment.

- (4) A person commits an offence if the person fails to take all reasonable steps to comply with a requirement made of the person under subsection (2).

Maximum penalty: 50 penalty units.

- (5) In this section:

radiation incident means an incident or event that results, or may result, in a risk of serious harm to the health or safety of people, or substantial damage to property or the environment, from the emission of radiation from a radiation source.

48 Compensation—emergency orders

- (1) A person who suffers loss because of an act or omission of the chief executive under section 47 (Emergency orders) is entitled to be paid reasonable compensation by the Territory for the loss.
- (2) Compensation is not payable to a person for a loss to the extent—
- (a) of any amount recovered or recoverable by the person under a policy of insurance; or
 - (b) that the conduct of the person contributed to the loss.
- (3) Compensation is not payable to a person for a loss if the loss would have arisen despite the act or omission.
- (4) The person may apply, in writing, to the Minister for compensation.
- Note* If a form is approved under s 121 for an application, the form must be used.
- (5) The application must state particulars of the loss, the amount claimed and the basis for the amount claimed.

49 Minister's decision on claim for compensation

- (1) This section applies if a person applies to the Minister under section 48 for compensation.
- (2) If the Minister is satisfied that the person is entitled to compensation, the Minister must give the person a written notice setting out—
 - (a) an offer to pay the person the amount of compensation to which the Minister considers the claimant is entitled; and
 - (b) an explanation of how the amount was worked out.
- (3) If the Minister is not satisfied that the person is entitled to compensation, the Minister must give the person a written notice telling the person that the Minister is not satisfied that the person is entitled to compensation.
- (4) If, at the end of 28 days after the day the application is made to the Minister, the Minister has not given the person a notice under subsection (2) or (3), the Minister is taken to have decided the person is not entitled to be paid compensation.

50 Acceptance or rejection of offer of compensation

- (1) A person to whom an offer has been made under section 49 (2) (a) may, in writing—
 - (a) accept the offer; or
 - (b) reject the offer.
- (2) If the person accepts the offer, the Territory must pay the amount to the person.

51 Recovery of compensation in court

If the Territory and the person to whom compensation is payable under section 48 (Compensation—emergency orders) do not agree on the amount of compensation, the person may, by proceeding in a court of competent jurisdiction, recover from the Territory the reasonable compensation that the court decides.

Part 4 Offences

Note The *Environment Protection Act 1997*, div 15.1, creates offences in relation to polluting the environment. Under that Act, *pollutant* includes radioactivity, light or other electromagnetic radiation.

52 **Meaning of safety duty**

In this Act:

safety duty means a duty under any of the following provisions:

- section 12 (General duty to ensure no harm)
- section 13 (Radiation exposure)
- section 14 (Diagnostic or therapeutic procedures).

53 **Failure to comply with safety duty—general offence**

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty.

Maximum penalty: 100 penalty units.

- (2) Absolute liability applies to subsection (1) (a).
- (3) Strict liability applies to subsection (1) (b).

54 **Failure to comply with safety duty—exposing people to substantial risk of death or serious harm**

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty; and
 - (c) the failure exposes anyone to a substantial risk of death or serious harm; and

- (d) the person either—
 - (i) was reckless about whether the failure would expose anyone to a substantial risk of death or serious harm; or
 - (ii) was negligent about whether the failure would expose anyone to a substantial risk of death or serious harm.

Maximum penalty: 1 500 penalty units, 5 years imprisonment or both.

(2) Absolute liability applies to subsection (1) (a).

(3) Strict liability applies to subsection (1) (b).

55 Failure to comply with safety duty—causing death or serious harm to people

- (1) A person commits an offence if—
 - (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty; and
 - (c) the failure causes the death of or serious harm to anyone; and;
 - (d) the person either—
 - (i) was reckless about whether the failure would cause the death of or serious harm to anyone; or
 - (ii) was negligent about whether the failure would cause the death of or serious harm to anyone.

Maximum penalty: 2 000 penalty units, 7 years imprisonment or both.

(2) Absolute liability applies to subsection (1) (a).

(3) Strict liability applies to subsection (1) (b).

56 Failure to comply with safety duty—exposing property or environment to substantial risk of substantial damage

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty; and
 - (c) the failure exposes property or the environment to a substantial risk of substantial damage; and
 - (d) the person either—
 - (i) was reckless about whether the failure would expose property or the environment to a substantial risk of substantial damage; or
 - (ii) was negligent about whether the failure would expose property or the environment to a substantial risk of substantial damage.

Maximum penalty: 1 000 penalty units, 3 years imprisonment or both.

- (2) Absolute liability applies to subsection (1) (a).
- (3) Strict liability applies to subsection (1) (b).

57 Alternative verdicts for failure to comply with safety duties

- (1) This section applies if, in a prosecution for an offence for a failure to comply with a safety duty, the trier of fact—
- (a) is not satisfied beyond reasonable doubt that the defendant is guilty of the offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence.

Part 4 Offences

Section 57

(2) The trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to the finding of guilt.

(3) In this section:

alternative offence, for an offence mentioned in table 57, column 2, means an offence mentioned in column 3 for the offence.

Table 57 **Alternative verdicts**

column 1 item	column 2 prosecuted offence	column 3 alternative offence
1	section 53 (which is about failing to comply with a safety duty)	section 58 (Failure to comply with condition of licence) section 61 (Failure to comply with condition of registration of radiation source)
2	section 54 (which is about exposing a person to a substantial risk of death or serious harm)	section 53 (which is about failing to comply with a safety duty) section 58 (Failure to comply with condition of licence) section 61 (Failure to comply with condition of registration of radiation source)

column 1 item	column 2 prosecuted offence	column 3 alternative offence
3	section 55 (which is about causing death or serious harm to a person)	<p>section 53 (which is about failing to comply with a safety duty)</p> <p>section 54 (which is about exposing a person to a substantial risk of death or serious harm)</p> <p>section 58 (Failure to comply with condition of licence)</p> <p>section 61 (Failure to comply with condition of registration of radiation source)</p>
4	section 56 (which is about exposing property or the environment to substantial risk of substantial damage)	<p>section 53 (which is about failing to comply with a safety duty)</p> <p>section 58 (Failure to comply with condition of licence)</p> <p>section 61 (Failure to comply with condition of registration of radiation source)</p>

58 Failure to comply with condition of licence

- (1) A licensee commits an offence if—
- (a) the licensee's licence is subject to a condition; and
 - (b) the licensee fails to comply with a requirement of the condition.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

59 Dealing with regulated radiation source without licence

- (1) A person commits an offence if—
- (a) the person intentionally deals with a regulated radiation source; and
 - (b) the dealing by the person is not authorised under a licence in relation to the radiation source; and
 - (c) the person knows that the dealing by the person is not authorised under a licence in relation to the radiation source.

Maximum penalty: 1 000 penalty units, 2 years imprisonment or both.

- (2) A person commits an offence if—
- (a) the person deals with a regulated radiation source; and
 - (b) the dealing by the person is not authorised under a licence in relation to the radiation source; and
 - (c) the person, in dealing with the radiation source is negligent about whether—
 - (i) the radiation source is a regulated radiation source; or
 - (ii) the dealing by the person is not authorised under a licence in relation to the radiation source.

Maximum penalty: 500 penalty units, 1 year imprisonment or both.

- (3) A person commits an offence if—
- (a) the person deals with a regulated radiation source; and
 - (b) the dealing by the person is not authorised under a licence in relation to the radiation source.

Maximum penalty: 50 penalty units.

- (4) Strict liability applies to subsection (3) (b).

- (5) Subsection (6) applies if—
- (a) in a prosecution for an offence against subsection (1), the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence against subsections (2) or (3) (the *alternative offence*); or
 - (b) in a prosecution for an offence against subsection (1), the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence against subsection (3) (also the *alternative offence*).
- (6) The trier of fact may find the defendant guilty of the alternative offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.

60 Owing unregistered radiation source

- (1) A person commits an offence if—
- (a) the person owns a regulated radiation source; and
 - (b) the person fails to apply to register the radiation source not later than 7 days after the day the person acquires ownership.
- Maximum penalty: 50 penalty units.
- (2) A person does not commit an offence against subsection (1) if—
- (a) the person manufactures the radiation source; and
 - (b) the person is authorised under a licence to manufacture the radiation source; and
 - (c) the person owns the radiation source for a period of not longer than 90 days after the day the manufacture of the radiation source is completed.
- (3) An offence against this section is a strict liability offence.

61 Failure to comply with condition of registration of radiation source

- (1) A registered owner of a regulated radiation source commits an offence if—
- (a) the registration of the radiation source is subject to a condition; and
 - (b) the registered owner fails to comply with a requirement of the condition.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

62 Dealings with prohibited radiation source

- (1) A person commits an offence if the person intentionally deals with a prohibited radiation source.

Maximum penalty: 2000 penalty units, 7 years imprisonment or both.

- (2) This section does not apply to any action in accordance with section 45 (Disposal etc of prohibited radiation source).

63 Failure to notify council of dangerous event

- (1) A person commits an offence if—
- (a) the person possesses a radiation source; and
 - (b) a dangerous event happens in relation to the radiation source; and
 - (c) the person knows the dangerous event happened; and
 - (d) the person fails to tell the council immediately about the dangerous event.

Maximum penalty: 200 penalty units.

- (2) A person commits an offence if—
- (a) the person possesses a radiation source; and
 - (b) a dangerous event happens in relation to the radiation source; and
 - (c) the person fails to give the council the information it reasonably requires about the dangerous event.

Maximum penalty: 50 penalty units.

Examples for par (c)

- 1 the location of the dangerous event
- 2 the radiation source involved in the dangerous event

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In this section:

dangerous event means an event prescribed by regulation to be a dangerous event.

64 Criminal liability of corporation officers

- (1) This section applies to the following provisions:
- (a) section 42 (Prohibition on abandoning radiation source);
 - (b) a provision of this part.
- (2) An officer of a corporation commits an offence if—
- (a) the corporation contravenes a provision to which this section applies; and
 - (b) the contravention is an offence against this Act (the ***relevant offence***); and
 - (c) the officer was reckless about whether the contravention would happen; and

- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (3) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (4) In deciding whether the officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
 - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
 - (i) that the corporation arranged regular professional assessments of the corporation's compliance with the contravened provision;
 - (ii) that the corporation implemented any appropriate recommendation arising from such an assessment;
 - (iii) that the corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (5) Subsection (4) does not limit the matters to which the court may have regard.
- (6) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

(7) In this section:

officer, of a corporation, means—

- (a) a director or secretary of the corporation; or
- (b) a person—
 - (i) who makes, or takes part in making, decisions that affect all, or a substantial part, of the business of the corporation; or
 - (ii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper exercise of functions attaching to the person's professional capacity or business relationship with the directors or the corporation); or
 - (iii) a receiver, or receiver and manager, of the corporation's property; or
- (c) an administrator of the corporation; or
- (d) an administrator of a deed of company arrangement executed by the corporation; or
- (e) a liquidator of the corporation; or
- (f) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

Part 5 Administration

Division 5.1 Radiation council

65 Establishment of radiation council

- (1) The Radiation Council (the *council*) is established.
- (2) The council—
 - (a) is a corporation; and
 - (b) may sue and be sued in its corporate name; and
 - (c) may have a seal.
- (3) The council represents the Territory when exercising its functions, unless this Act or another territory law otherwise provides.

66 Council functions

The council has the following functions:

- (a) issuing licences;
- (b) registering regulated radiation sources;
- (c) advising the Minister on radiation protection issues;
- (d) exercising any other function given to it under this Act or another territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

67 Delegation of certain council functions

The council may delegate its functions to a member of the council or a public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Division 5.2 Council members

68 Council members

- (1) The Minister may appoint the council members.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The council members must include—

- (a) a member of the public; and
- (b) 1 member who is a doctor registered under the *Health Professionals Act 2004* in the specialist area of radiology; and
- (c) 1 member with expert knowledge of the physical properties or biological effects of radiation; and
- (d) a person who, in the Minister's opinion, has qualifications or experience relevant to assisting the council carry out its functions.

69 Term of council member appointments

A council member must not be appointed for longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

70 Chair and deputy chair of council

- (1) The Minister may appoint a council member to be the chair of the council and another member to be the deputy chair of the council.
- (2) The Minister must try to ensure that the council always has a chair and a deputy chair.

71 Ending appointment of council member

The Minister may end a council member's appointment—

- (a) if a member contravenes a territory law; or
- (b) for misbehaviour; or
- (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
- (d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
- (e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
- (f) if the member exercises the member's functions other than in accordance with section 74 (Honesty, care and diligence of council members); or
- (g) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or
- (h) if the member contravenes section 77 (Disclosure of interests by council members); or
- (i) if the member is absent from 3 consecutive meetings of the council, otherwise than on approved leave; or

- (j) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

Note The appointment of a member also ends if the member resigns (see Legislation Act, s 210).

Division 5.3 Functions of council members

72 Chair's functions

The chair of the council has the following functions:

- (a) managing the affairs of the council;
- (b) ensuring the Minister is kept informed about the operations of the council.

73 Deputy chair's functions

If the chair of the council is absent or cannot for any reason exercise the functions of the chair, the deputy chair of the council must exercise the functions of the chair.

Note The Legislation Act, s 209 deals with acting appointments.

74 Honesty, care and diligence of council members

In exercising the functions of a council member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

75 Conflicts of interest by council members

A council member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions.

76 Agenda to require disclosure of interest item

The agenda for each meeting of the council must include an item requiring any material interest in an issue to be considered at the meeting to be disclosed to the meeting.

77 Disclosure of interests by council members

- (1) If a council member has a material interest in an issue being considered, or about to be considered, by the council, the member must disclose the nature of the interest at a council meeting as soon as practicable after the relevant facts come to the member's knowledge.

Note **Material interest** is defined in s (4). The definition of **indirect interest** in s (4) applies to the definition of **material interest**.

- (2) The disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the member must not—
- (a) be present when the council considers the issue; or
 - (b) take part in a decision of the council on the issue.

Example

Glenn, Joe and Bronwyn are members of the council. They have an interest in an issue being considered at a council meeting and they disclose the interest as soon as they become aware of it. Glenn's and Joe's interests are minor but Bronwyn has a direct financial interest in the issue.

The council considers the disclosures and decides that because of the nature of the interests:

- Glenn may be present when the council considers the issue but not take part in the decision
- Joe may be present for the consideration and take part in the decision.

The council does not make a decision allowing Bronwyn to be present or take part in the council's decision. Accordingly, since Bronwyn has a material interest she cannot be present for the consideration of the issue or take part in the decision.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Any other council member who also has a material interest in the issue must not be present when the council is considering its decision under subsection (2).

(4) In this section:

associate, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;

- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a council member has a **material interest** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the council's consideration of the issue.

78 Reporting of disclosed interests to Minister

- (1) Within 3 months after the day a material interest is disclosed under section 77 (1), the chair of the council must report to the Minister in writing about—
 - (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the council under section 77 (2).
- (2) The chair must also give the Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 31 days after the day the Minister receives the statement.
- (4) In this section:
relevant committee means—
 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or

- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

79 Protection of council members from liability

- (1) A council member is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under a territory law; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.
- (2) Any liability that would, apart from this section, attach to a council member attaches instead to the council.

Division 5.4 Council proceedings

80 Time and place of council meetings

- (1) Meetings of the council are to be held when and where it decides.
- (2) However, the council must meet at least once every 3 months.
- (3) The chair—
 - (a) may at any time call a meeting of the council; and
 - (b) must call a meeting if asked by the Minister or at least 2 members.
- (4) The chair must give the other members reasonable notice of the time and place of a meeting called by the chair.

81 Presiding member at council meetings

- (1) The chair presides at all meetings at which the chair is present.
- (2) If the chair is absent, the deputy chair presides.
- (3) If the chair and the deputy chair are absent, the member chosen by the members present presides.

82 Quorum at council meetings

Business may be carried on at a meeting of the council only if at least $\frac{1}{2}$ the number of members appointed are present.

83 Voting at council meetings

At a meeting of the council a question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

84 Conduct of council meetings etc

- (1) The council may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a council member taking part to hear what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A council member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.

- (4) A resolution is a valid resolution of the council, even if it is not passed at a meeting of the council, if all members agree to the proposed resolution in writing or by electronic communication.

Example of electronic communication

email

- (5) The council must keep minutes of its meetings.

85 Reports to Minister on radiation protection issues

If the Minister asks the council, in writing, to advise the Minister on a radiation protection issue, the council must investigate the issue and give the Minister a report on it, including a recommendation if appropriate, within the period stated in the request.

Division 5.5 Radiation register

86 Radiation register

The council must keep a register of the following:

- (a) licences issued under section 17;
- (b) radiation sources registered under section 26;
- (c) disciplinary action taken under section 36;
- (d) immediate suspension of licences and registrations under section 37;
- (e) anything else prescribed by regulation.

87 Correction of register

The council may correct a mistake, error or omission in the radiation register.

Part 6 Enforcement

Division 6.1 General

88 Definitions—pt 6

In this part:

connected—a thing is *connected* with an offence if—

- (c) the offence has been committed in relation to it; or
- (d) it will provide evidence of the commission of the offence; or
- (e) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

Division 6.2 Authorised people

89 Appointment of authorised people

The chief executive may appoint a public servant to be an authorised person for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

90 Identity cards

- (1) The chief executive must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an authorised person; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

Division 6.3 Powers of authorised people

91 Power to enter premises

- (1) For this Act, an authorised person may—
 - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any time, enter premises with the occupier's consent; or
 - (c) enter premises in accordance with a search warrant; or

- (d) at any time, enter premises if the authorised person believes, on reasonable grounds, that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.
- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) In this section:
at any reasonable time includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

92 Production of identity card

An authorised person must not remain at premises entered under this part if the authorised person does not produce his or her identity card when asked by the occupier.

93 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 91 (1) (b), an authorised person must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and

- (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

94 General powers on entry to premises

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
 - (a) inspect or examine;
 - (b) take measurements or conduct tests;

- (c) take samples;
- (d) take photographs, films, or audio, video or other recordings;
- (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

95 Power to seize things

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
 - (a) the authorised person is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—
 - (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.

- (4) Also, an authorised person who enters premises under this part (whether with the consent of a person in charge of the premises, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (5) The powers of an authorised person under subsections (3) and (4) are additional to any powers of the authorised person under subsections (1) or (2) or any other territory law.
- (6) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
 - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (8) An offence against this section is a strict liability offence.

Division 6.4 Search warrants

96 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.

- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
 - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.

97 Warrants—application made other than in person

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.

- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
 - (a) the magistrate must—
 - (i) tell the authorised person the terms of the warrant; and
 - (ii) tell the authorised person the date and time the warrant was issued; and
 - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.

- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

98 Search warrants—announcement before entry

- (1) An authorised person must, before anyone enters premises under a search warrant—
- (a) announce that the authorised person is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the authorised person or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

99 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

100 Occupier entitled to be present during search etc

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Division 6.5 Return and forfeiture of things seized

101 Receipt for things seized

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 95 (Power to seize things).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;

- (c) the authorised person's name, and how to contact the authorised person;
- (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

102 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
- (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

103 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

104 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—
- (a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day of the seizure and—
 - (i) a prosecution for an offence relating to the thing is not started within the 1-year period; or
 - (ii) a prosecution for an offence relating to the thing is started within the 1-year period but the court does not find the offence proved; or

- (b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
 - (i) a prosecution for an offence relating to the thing is not started within the 1-year period; or
 - (ii) a prosecution for an offence relating to the thing is started within the 1-year period but the court does not find the offence proved; or
 - (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
 - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 that liability is disputed; or
 - (ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved; or
 - (d) before the thing is forfeited to the Territory under section 105 (Forfeiture of seized things), the chief executive—
 - (i) becomes satisfied that there has been no offence against this Act with which the thing was connected; or
 - (ii) decides not to prosecute or serve an infringement notice for the offence.
- (2) However, this section does not apply—
- (a) to a thing seized under section 95 (4) (which is about the seizure of things that pose a risk to the health or safety of people or of damage to property or the environment); or

- (b) to a thing if the chief executive believes, on reasonable grounds, that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
- (c) to a thing if possession of it by its owner would be an offence.

105 Forfeiture of seized things

- (1) This section applies if—
 - (a) anything seized under this part has not been destroyed or otherwise disposed of under section 106 (Power to destroy unsafe things) or returned under section 104 (Return of things seized); and
 - (b) an application for disallowance of the seizure under section 107 (Application for order disallowing seizure)—
 - (i) has not been made within 10 days after the day of the seizure; or
 - (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
 - (a) it is forfeited to the Territory; and
 - (b) it may be sold, destroyed or otherwise disposed of as the chief executive directs.

106 Power to destroy unsafe things

- (1) This section applies to anything inspected or seized under this part by an authorised person if the authorised person is satisfied, on reasonable grounds, that the thing poses a risk to the health or safety of people or of damage to property or the environment.

- (2) The authorised person may direct a person in charge of the premises where the thing is to destroy or otherwise dispose of the thing.
- (3) The direction may state 1 or more of the following:
 - (a) how the thing must be destroyed or otherwise disposed of;
 - (b) how the thing must be kept until it is destroyed or otherwise disposed of;
 - (c) the period within which the thing must be destroyed or otherwise disposed of.
- (4) A person in charge of the premises where the thing is commits an offence if the person contravenes a direction given to the person under subsection (2).

Maximum penalty: 100 penalty units.
- (5) Alternatively, if the thing has been seized under this part, the authorised person may destroy or otherwise dispose of the thing.
- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (5) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
 - (a) the person who owned the thing;
 - (b) each person in control of the premises where the thing was.
- (7) An offence against this section is a strict liability offence.

107 Application for order disallowing seizure

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the chief executive.

- (3) The chief executive is entitled to appear as respondent at the hearing of the application.

108 Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this chapter applies to the Magistrates Court under section 107 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if the court is satisfied that—
- (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
 - (b) the thing is not connected with an offence against this Act; and
 - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
- (a) an order directing the chief executive to return the thing to the applicant or to someone else who appears to be entitled to it;
 - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
 - (c) an order about the payment of costs in relation to the application.

Division 6.6 Miscellaneous

109 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

110 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Part 7 Review of decisions

111 Reviewable decisions

Each of the following decisions of the council is a *reviewable decision*:

- (a) refusing to issue a licence under section 17 (1) (b);
- (b) imposing a condition on a licence under section 19 (b);
- (c) amending a licence under section 22 (1);
- (d) refusing to amend a licence under section 23 (5) (b);
- (e) refusing to register a regulated radiation source under section 26 (1) (b);
- (f) imposing a condition on registration of a regulated radiation source under section 28 (b);
- (g) amending the registration of a regulated radiation source under section 31 (1);
- (h) refusing to amend the registration of a regulated radiation source under section 32 (5) (b);
- (i) taking disciplinary action under section 36.

112 Review of decisions

Application may be made to the AAT for review of a reviewable decision.

113 Notice of reviewable decisions

- (1) If the council makes a reviewable decision, it must give a written notice of the decision to each person affected by the decision.
- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Part 8 Miscellaneous

114 Minister may exempt people, radiation sources etc

- (1) The Minister may exempt a person, a radiation source or a dealing with a radiation source from this Act if the Minister is satisfied that the person's conduct, the radiation source or the dealing does not pose a significant risk to the health or safety of people or of damage to property or the environment.

Note 1 A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

Note 2 A regulation may also provide for exemptions (see s 123).

- (2) An exemption may be conditional.
- (3) An exemption under subsection (1) has no effect to the extent that it is inconsistent with a regulation.
- (4) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) In deciding whether to exempt a person, radiation source or a dealing with a radiation source, the Minister must take into account any criteria prescribed by regulation.

115 Divulging of information by council

- (1) In this section:

court includes any entity with power to require the production of documents or the answering of questions.

divulge includes communicate.

health insurance commission means the Health Insurance Commission established under the *Health Insurance Commission Act 1973* (Cwlth), section 4.

person to whom this section applies means anyone who is, or has been—

- (a) a council member; or
- (b) acting under the direction or authority of the council ; or
- (c) providing advice, expertise or assistance to the council.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies (the ***relevant person***) because of the exercise of a function under this Act by the relevant person or someone else.

- (2) A person to whom this section applies commits an offence if—
 - (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about the other person; or
 - (b) the person—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about the other person; or
 - (B) doing the thing would result in the information being divulged.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) This section does not apply if the record is made, or the information is divulged—
- (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging of protected information about a person—
- (a) to the person; or
 - (b) with the consent of the person; or
 - (c) to a health profession board under the *Health Professionals Act 2004*; or
 - (d) to the health insurance commission; or
 - (e) to the environment protection authority; or
 - (f) to the OH&S commissioner; or
 - (g) to an entity that, under a law of another jurisdiction, has the corresponding functions of the council under this Act or an entity mentioned in paragraphs (c) to (f); or
 - (h) to any other entity under a law of another jurisdiction that has functions relating to radiation safety.
- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

116 Codes of practice

- (1) The Minister may approve codes of practice or standards for this Act.
- (2) An approved code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (3) A code of practice is a disallowable instrument.

Note A disallowable instrument must be notified and presented to the Legislative Assembly, under the Legislation Act.

117 Notification of certain incorporated documents

- (1) This section applies to—
 - (a) an incorporated document; or
 - (b) an amendment of, or replacement of, an incorporated document.

Example of replacement document

a new edition of the incorporated document

Note 1 For the meaning of *incorporated document*, see the dictionary.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The chief executive may prepare a written notice (an *incorporated document notice*) for the incorporated document, amendment or replacement that contains the following information:
 - (a) for an incorporated document—details of the document, including its title, author and date of publication;

- (b) for a replacement of an incorporated document—details of the replacement, including its title, author and date of publication;
 - (c) for an amendment of an incorporated document—the date of publication of the amendment (or of the document as amended) and a brief summary of the effect of the amendment;
 - (d) for an incorporated document or any amendment or replacement—
 - (i) a date of effect (no earlier than the day after the day of notification of the notice); and
 - (ii) details of how access to inspect the document, amendment or replacement may be obtained under section 118 (Inspection of incorporated documents); and
 - (iii) details of how copies may be obtained, including an indication of whether there is a cost involved.
- (3) An incorporated document notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (4) An incorporated document, and any amendment or replacement of an incorporated document, has no effect under this Act unless—
- (a) an incorporated document notice is notified in relation to the document, amendment or replacement; or
 - (b) the document, amendment or replacement is notified under the Legislation Act.
- (5) The Legislation Act, section 47 (7) does not apply in relation to incorporated documents.
- (6) In this section:
- amendment***, of an incorporated document, includes an amendment of a replacement of the incorporated document.

replacement, of an incorporated document, means—

- (a) a document that replaces the incorporated document; or
- (b) a document (an *initial replacement*) that replaces a document mentioned in paragraph (a); or
- (c) a document (a *further replacement*) that replaces an initial replacement or any further replacement.

118 Inspection of incorporated documents

- (1) This section applies to an incorporated document, or an amendment or replacement of an incorporated document.

Note For the meaning of *incorporated document*, see the dictionary.

- (2) The chief executive must ensure that the document, amendment or replacement is made available for inspection free of charge to the public on business days at reasonable times at the office of the commission or an administrative unit administered by the chief executive.
- (3) In this section:

amendment, of an incorporated document—see section 117 (6).

119 Evidentiary certificates

In a prosecution for an offence against this Act, a certificate signed by the Minister or the chair of the council that includes any of the following statements is evidence of the matter stated:

- (a) a statement that, at a stated time or during a stated period, a stated person was, or was not, the holder of a stated licence;
- (b) a statement that, at a stated time or during a stated period, a stated source or apparatus was, or was not, registered;
- (c) a statement that a stated direction, notice, order, requirement, decision, licence or registration was given, made, granted or issued under this Act;

- (d) a statement of the name or physical or chemical form of a radiation material;
- (e) a statement of the activity of a radioactive material;
- (f) a statement of the quantity of an effective dose or equivalent dose of radiation;
- (g) a statement of the quantity of an absorbed dose of radiation.

120 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

121 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

122 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may apply, adopt or incorporate an instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (3) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

123 Regulations may exempt people, radiation sources etc

- (1) A regulation may exempt a person, a radiation source or a dealing with a radiation source from this Act.

Note A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

- (2) An exemption may be conditional.

124 Regulations may impose conditions to licensing and registration regimes

A regulation may impose conditions, including restrictions, on radiation licenses and the registration of regulated radiation sources to protect the public or the public interest.

125 Review of Act

- (1) The Minister must review the operation of this Act and present a report of the review to the Legislative Assembly as soon as practicable after 1 July 2016.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) This section expires on 1 July 2017.

Part 9 Consequential amendments and repeals

126 Legislation amended—sch 1

This Act amends the following legislation:

- *Clinical Waste Act 1990*
- *Dangerous Substances Act 2004*.

127 Legislation repealed

- (1) The *Radiation Act 1983* A1983-58 is repealed.
- (2) The *Radiation Regulation 2002* SL2002-1 is repealed.
- (3) The following instruments are repealed:
 - *Radiation (Council) Appointment 2005 (No 1)* NI2005-126
 - *Radiation (Council) Appointment 2005 (No 2)* DI2005-202
 - *Radiation Council Appointments 2003 (No 1)* NI2003-282
 - *Radiation Council Appointments 2003 (No 1)* DI2003-184
 - *Radiation (Council Decision) Notice 2006 (No 1)* NI2006-38
 - *Radiation (Council Decisions) Notice 2001* NI2001-175
 - *Radiation (Council Decisions) Notice 2001* NI2001-139
 - *Radiation (Council Decisions) Notice 2001* NI2001-154
 - *Radiation (Council Decisions) Notice 2005 (No 1)* NI2005-83
 - *Radiation (Council Decisions) Notice 2005 (No 2)* NI2005-189
 - *Radiation (Council Decisions) Notice 2005 (No 3)* NI2005-244
 - *Radiation (Council Decisions) Notice 2005 (No 4)* NI2005-272
 - *Radiation (Council Decisions) Notice 2005 (No 5)* NI2005-336
 - *Radiation (Council Decisions) Notice 2005 (No 6)* NI2005-413
 - *Radiation (Council Decisions) Notice 2005 (No 7)* NI2005-471
 - *Radiation (Fees) Determination 2005 (No 2)* DI2005-208
 - *Radiation (Particulars of Decisions) Notice 2001* NI2001-194

- *Radiation (Prescribed Qualifications) Declaration 2005*
NI2005-123
- *Radiation (Radiation Council Decisions) Notice 2004 (No 1)*
NI2004-41
- *Radiation (Radiation Council Decisions) Notice 2004 (No 2)*
NI2004-79
- *Radiation (Radiation Council Decisions) Notice 2004 (No 3)*
NI2004-135
- *Radiation (Radiation Council Decisions) Notice 2004 (No 4)*
NI2004-209
- *Radiation (Radiation Council Decisions) Notice 2004 (No 5)*
NI2004-285
- *Radiation (Radiation Council Decisions) Notice 2004 (No 6)*
NI2004-387
- *Radiation (Radiation Council Decisions) Notice 2004 (No 7)*
NI2004-423
- *Radiation (Radiation Council Decisions) Notice 2004 (No 8)*
NI2004-471
- *Radiation Act – Radiation Council – Notification of Particulars
of Decisions (No 4) NI2002-90*
- *Radiation Act – Radiation Council – Notification of Particulars
of Decisions 2002 (No 6) NI2002-170*
- *Radiation Act – Radiation Council – Notification of particulars
of decisions 2002 (No 7) NI2002-273*
- *Radiation Act – Radiation Council – Notification of particulars
of decisions 2002 (No 8) NI2002-274*
- *Radiation Act – Radiation Council – Notification of Particulars
of Decisions 2002 (No 9) NI2002-303*
- *Radiation Act – Radiation Council – Notification of Particulars
of Decisions 2002 (No 11) NI2003-16*
- *Radiation Council – Notification of particulars of Decisions
2001 NI2001-34*

- *Radiation Council – Notification of Particulars of Decisions 2001 NI2001-55*
- *Radiation Council – Notification of particulars of Decisions 2001 NI2001-72*
- *Radiation Council Notification of Particulars of Decisions 2002 NI2002-28*
- *Radiation Council – Notification of Particulars of Decisions 2002 (No 5) NI2002-117*
- *Radiation Council – Notification of Particulars of Decisions 2002 (No 10) NI2002-349*
- *Radiation Council Notification of Particulars of Decisions 2003 (No 1) NI2003-297*
- *Radiation Council Notification of Particulars of Decisions 2003 (No 2) NI2003-298*
- *Radiation Council Notification of Particulars of Decisions 2003 (No 3) NI2003-306*
- *Radiation Council Notification of Particulars of Decisions 2003 (No 4) NI2003-379*
- *Radiation Council Notification of Particulars of Decisions 2003 (No 5) NI2003-440*
- *Radiation Council Notification of Particulars of Decisions 2003 (No 6) NI2003-516*
- *Radiation Notification of Decisions NI1996-30*
- *Radiation Notification of Decisions NI1996-31*
- *Radiation Notification of Decisions NI1996-53*
- *Radiation Notification of Decisions NI1997-6*
- *Radiation Notification of Decisions NI1997-70*
- *Radiation Notification of Decisions NI1997-165*
- *Radiation Notification of Decisions NI1997-193*
- *Radiation Notification of Decisions NI1997-220*
- *Radiation Notification of Decisions NI1997-275*
- *Radiation Notification of Decisions NI1998-13*

- *Radiation Notification of Decisions NI1998-52*
- *Radiation Notification of Decisions NI1998-71*
- *Radiation Notification of Decisions NI1998-150*
- *Radiation Notification of Decisions NI1998-182*
- *Radiation Notification of Decisions NI1998-223*
- *Radiation Notification of Decisions NI1998-270*
- *Radiation Notification of Decisions NI1998-286*
- *Radiation Notification of Decisions NI1998-320*
- *Radiation Notification of Decisions NI1999-5*
- *Radiation Notification of Decisions NI1999-30*
- *Radiation Notification of Decisions NI1999-62*
- *Radiation Notification of Decisions NI1999-86*
- *Radiation Notification of Decisions NI1999-120*
- *Radiation Notification of Decisions NI1999-143*
- *Radiation Notification of Decisions NI1999-163*
- *Radiation Notification of Decisions NI1999-167*
- *Radiation Notification of Decisions NI1999-175*
- *Radiation Notification of Decisions NI1999-253*
- *Radiation Notification of Decisions NI2000-26*
- *Radiation Notification of Decisions NI2000-64*
- *Radiation Notification of Decisions NI2000-109*
- *Radiation Notification of Decisions NI2000-148*
- *Radiation Notification of Decisions NI2000-172*
- *Radiation Notification of Decisions NI2000-213*
- *Radiation Notification of Decisions NI2000-252*
- *Radiation Notification of Decisions NI2000-290*
- *Radiation Notification of Decisions NI2000-313*
- *Radiation Section 73 Notification of Decisions NI2001-229*
- *Radiation Section 73 – Notification of Decisions NI2001-262*
- *Radiation Section 73 – Notification of Decisions NI2001-324*

Part 10 Transitional

128 Definitions—pt 10

In this part:

commencement day means the day this Act commences.

repealed Act means the *Radiation Act 1983*.

129 Existing licences

- (1) A licence under the repealed Act is taken to be a licence under this Act.
- (2) To remove any doubt, the conditions of a licence mentioned in subsection (1) include the conditions included in a licence under this Act.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

130 Registration of radiation sources etc

- (1) A irradiating apparatus that was, immediately before commencement day, registered under the repealed Act is taken to be registered as a radiation source under division 3.3 (Registration of radiation sources).
- (2) To remove any doubt, the conditions of registration of an apparatus mentioned in subsection (1) include the conditions for registration of an radiation source under this Act.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

131 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

132 Expiry—pt 10

This part expires 2 years after the commencement day.

Schedule 1 Consequential amendments

(see s 126)

Part 1.1 Clinical Waste Act 1990

[1.1] Section 6

substitute

6 Radioactive material

This Act does not apply to radioactive material within the meaning of the *Radiation Protection Act 2006*.

Part 1.2 Dangerous Substances Act 2004

[1.2] Section 7 (1) (e)

substitute

(e) radioactive material under the *Radiation Protection Act 2006*;

Dictionary

(see s 5)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- AAT
- ACT
- chief executive (see s 163)
- doctor
- environment protection authority
- exercise
- function
- OH&S commissioner
- public servant
- territory law
- the Territory
- under.

analysis, of a radiation source or anything else, includes examining or testing the thing.

approved code of practice means a code of practice approved under section 116.

at premises includes in or on the premises.

authorised dealing, for a licence, means a dealing with a radiation source that is authorised under the licence.

authorised person means a person who is appointed as an authorised person under section 89.

cause death or serious harm to a person means substantially contribute directly or indirectly to the death or harm.

connected, for part 6 (Enforcement)—see section 88.

council means the Radiation Council established under section 65.

deals with a radiation source—see section 11.

disciplinary action—see section 35.

disciplinary notice—see section 36.

dispose, of a radiation source, includes—

- (a) bury the radiation source; and
- (b) for a radiation source that is a liquid or gas—release the radiation source; and
- (c) for a radiation facility—decommission the facility.

dose limit means a dose limit prescribed by regulation.

emergency order—see section 47.

environment includes the built and natural environment.

examine includes inspect, weigh, count, test and measure.

ground, for disciplinary action—see section 34.

immediate suspension notice—see section 37 (2).

incorporated document means—

- (a) the national directory; or
- (b) an instrument (or a provision of an instrument) applied, adopted or incorporated by a statutory instrument under this Act.

Note A statutory instrument includes a subordinate law or a disallowable instrument (see Legislation Act, s 13).

incorporated document notice—see section 117 (2).

ionising radiation—see section 8 (2).

licence means a licence issued under section 17 (1).

licensee means a person issued with a licence under section 17.

manufacture a radiation source or anything else includes—

- (a) make, remake, alter, break-up, process, recondition or treat the thing; and
- (b) change the thing in a way that affects its properties or performance.

national directory means the national directory for radiation protection published by the Australian Radiation Protection and Nuclear Safety Agency as in force from time to time.

non-ionising radiation—see section 8 (3).

occupier, of premises, for part 6 (Enforcement)—see section 88.

offence, for part 6 (Enforcement)—see section 88.

premises includes land or a structure or vehicle and any part of an area of land or a structure or vehicle.

prohibited radiation source—see section 10.

radiation—see section 8 (1).

radiation apparatus—see section 9 (3).

radiation facility—see section 9 (4).

radiation source—see section 9 (1).

radioactive material—see section 9 (5).

registered owner, of a regulated radiation source—see section 27 (2).

regulated radiation source—see section 10.

reviewable decisions—see section 111.

safety duty—see section 52.

serious harm, to a person—see the Criminal Code, dictionary.

use a radiation source includes—

- (a) use radiation emitted from the radiation source; and
- (b) if the radiation source is radioactive material—administer to, or inject or implant the material into, a person, animal, plant or thing; and
- (c) cause the radiation source to emit radiation.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 March 2006.

2 Notification

Notified under the Legislation Act on 31 August 2006.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Radiation Protection Bill 2006, which was passed by the Legislative Assembly on 17 August 2006.

Clerk of the Legislative Assembly

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