

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

RADIATION PROTECTION REGULATION 2007

EXPLANATORY STATEMENT

**Circulated by the authority of
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OUTLINE

The *Radiation Protection Act 2006* (the Act) was passed by the ACT Legislative Assembly on 17 August 2006, and was notified on the Legislation Register on 31 August 2006. The Act will repeal and replace the *Radiation Act 1983* upon commencement, which will occur on 1 July 2007 by virtue of the operation of section 2(3) of the Act.

The Act establishes a system to regulate the use of ionising radiation in the Territory, and makes provision for the future regulation of non-ionising radiation. The approach taken in the Act is based on the National Directory for Radiation Protection (the National Directory) published by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). The Directory was developed by the National Radiation Health Committee (the Committee), which was established under the auspices of ARPANSA with representatives from the States and Territories. The establishment of the Committee was in response to the recommendations of a national competition policy review of the radiation protection legislation across Australian jurisdictions. The Directory is a statement of a nationally agreed approach to regulating the use of radiation in Australia.

To support the Act, Regulation for radiation protection has been prepared that assigns meanings and provides further detail on certain provisions within the Act. The majority of sections within the Regulation have been constructed to provide further detail or assign meaning by referencing the National Directory. Referencing the National Directory in this regard is aimed at ensuring the ACT Radiation Protection legislation is consistent with corresponding laws in other States and the Northern Territory.

DETAILS

A detailed explanation of each clause of the Regulation follows.

SECTION 1 Name of regulation

The first section of the Regulation specifies that the name of the regulation is the Radiation Protection Regulation 2007. The Regulation is subordinate law to the *Radiation Protection Act 2006*.

Section 2 Commencement

This section establishes that the Regulation commences on the day that the Act, Part 3 (Radiation Safety) commences. Pursuant to section 2(3) of the Act, the Act will commence on 1 July 2007 and by virtue of this section, so too will the Regulation.

Section 3 Dictionary

This provision alerts the reader that the dictionary at the end of the Regulation forms part of the Regulation. Generally a definition of a word or phrase that appears in the dictionary applies throughout the Regulation. However, this is not the case if the dictionary definition limits the meaning to a specific section or part, or if a different meaning is specifically provided for within a section. Sections 155 and 156(1) of the *Legislation Act 2001* provide additional instruction on the application of dictionaries and definitions within legislation.

Section 4 Notes

Section 4 informs the reader that notes appearing in the Regulation are explanatory only, and do not form part of the Regulation. Section 127 of the *Legislation Act 2001* provides additional instruction on material that does not form part of Acts or legislative instruments, such as notes.

Section 5 Prohibited radiation sources – Act, s 10(1)

Pursuant to section 10(1) of the Act a radiation source is a prohibited radiation source if it is prescribed by this Regulation to be a prohibited radiation source.

This section directs that a radiation source included in Schedule 1 in the Regulation is a prohibited radiation source for the purposes of section 10(1) of the Act.

Section 6 Radiation facility – Act, s 9(4)

A facility is a radiation facility for the purposes of section 9(4) of the Act if it is prescribed by this Regulation to be a radiation facility. Under this provision a facility identified as a radiation facility in the National Directory is a radiation facility for the purposes of the Act. The types of facilities treated as radiation facilities by the ACT Radiation Protection legislation should be consistent with that in other States and the Northern Territory as a result of referencing the National Directory.

Section 7 Regulated radiation source – Act, s 10(2)

What constitutes a regulated radiation source is the subject of section 10(2) of the Act. Through section 10(2)(a), a radiation source that emits or is capable of emitting ionising radiation above a level prescribed in this Regulation is a regulated radiation source. Section 7 of the Regulation instructs that a radiation source is a regulated radiation source if it emits, or is capable of emitting, ionising radiation above the exemption levels contained in the National Directory.

The National Directory contains an extensive list of radionuclide, with corresponding exempt activity concentrations and exempt activity levels.

Pursuant to section 10(2)(b) of the Act, radiation sources that emit or are capable of emitting non-ionising radiation are also regulated if they are prescribed in this Regulation. However, at present no radiation sources for the purposes of section 10(2)(b) have been prescribed. By implication, if a radiation source is not prohibited under section 10(1) of the Act, or regulated under section 10(2), the radiation source is legal and is unregulated.

Section 8 Criteria for exemption of radiation source – Act, s 114(5)

Section 114 of the Act gives the Minister the power to exempt a person, a radiation source or a form of dealing with a radiation source by disallowable instrument. Subsection 5 of that provision directs that in making a decision on whether to grant an exemption the Minister must take into account criteria prescribed by this Regulation.

The National Directory provides for a range of exemptions for radiation sources, which have been agreed to at the national level. This section prescribes that for the purposes of section 114 of the Act, the criteria that the Minister must take into account in deciding to make an exemption of a radiation source are the criteria for exemption of that radiation source within the National Directory. Referencing the National Directory in this regard should ensure that a radiation source that is exempt within the ACT should also be exempt in other Australian jurisdictions.

The section provides instruction on the criteria for exemption of radiation sources only, and no criteria are presently prescribed for exempting persons or forms of dealing with radiation sources.

Section 9 Exemptions for certain radiation apparatus – Act, s 123

Whilst the Minister may by disallowable instrument exempt a person, a radiation source or a form of dealing with a radiation source, so too can this Regulation under section 123 of the Act. The ability of the Minister to make exemptions under section 114 ensures that urgent exemptions can be made in a timely fashion, as well as enabling temporary exemptions to be made where appropriate. It also enables specific rather than generic exemptions to be more readily made. However, if a permanent exemption is to be made, particularly if that exemption is to apply to all of a class of persons or radiation sources, it is best to form part of the Radiation Protection legislation.

A radiation source that is a radiation apparatus exempt under the National Directory is, by virtue of this section, an exempt radiation source. A radiation apparatus that is not exempt under the National Directory is not exempt under this section. As with other provisions, the aim of referencing of the National Directory is to ensure national consistency, and thereby ensuring a radiation apparatus exempt in a jurisdiction will be exempt in another. Conversely, it should also mean that an apparatus not exempted in the ACT will not be exempted elsewhere.

Section 10 Dangerous event – Act, s 63(3)

Preventing, minimising and responding to dangerous events are key objectives of the Radiation Protection legislation. Accordingly, section 63 of the Act makes it an offence for which significant penalties are attached for failing to notify the Radiation Council of a dangerous event. In this section the requirement to report a dangerous event, as well as the offences within the section, depend upon what constitutes a dangerous event. Section 63(3) of the Act directs that an event prescribed in this Regulation is a dangerous event.

For both national consistency and for clarity of use a *radiation incident* under the National Directory is, by virtue of this provision, a dangerous event for the purposes of the Act. Captured within the meaning of a Radiation incident under the National Directory are a range of events and circumstances, such as damage to a sealed source unit apparatus, unauthorised discharge of a radioactive material into the environment, and radiation doses that exceed annual dose limits.

Under the National Directory incidents of this nature must be reported to the ARPANSA. Through this section and section 63 of the Act, such incidents must also be reported to the ACT Radiation Council. This ensures the ACT regulatory authority for Radiation is informed of the dangerous event, and also enables the ACT Radiation Council to confirm that ARPANSA has also been notified.

Section 11 Prescribed matters for register – Act, s 86(e)

The Radiation Council is established under section 65 of the Act, and much of Part 5 of the Act is devoted to the Council's constitution, powers and functions. Within this Part is section 86 which requires the Council to keep a radiation register of such things as licences issued, radiation sources registered and disciplinary action taken by the Council. Pursuant to section 86(e) of the Act, anything else prescribed by this Regulation must also be kept on the radiation register.

Under section 11(a) of this Regulation a decision by the Radiation Council to refuse to issue a licence must also be kept on the register. Through this section and the operation of section 86 of the Act, decisions to issue a licence or not to issue a licence are both to form part of the register. The operation of section 11(d) of this Regulation has a similar effect for registration of radiation sources. The Act already requires decisions to register a radiation source to be kept, whereas section 11(d) of this Regulation requires refusals to register a radiation source to also be kept.

Through section 11(b) and (c) respectively, amendments to licences are also to be kept, whether the amendment is on the Council's own initiative or by application by a licence holder. Similarly, paragraphs (e) and (f) of section 11 of the Act require amendments to the registration of a regulated radiation source to be kept, be it on the Council's own initiative or by application.

Section 12 Radiation dose limits – Act, dict, def *dose limit*

The definition of dose limit contained in the Dictionary of the Act states that a *dose limit* means a dose limit prescribed by Regulation. This section directs that a dose limit, for the purposes of the Act, is a dose limit under the National Directory.

Schedule 1 Prohibited radiation sources

Pursuant to section 10(1) of the Act a radiation source is a prohibited radiation source if it is prescribed by this Regulation to be a prohibited radiation source.

Section 5 of this Regulation directs that a radiation source included in Schedule 1 is a prohibited radiation source for the purposes of section 10(1) of the Act. Listed in this Schedule are such radiation sources as shoe-fitting x-ray units and direct fluoroscopy x-ray equipment.

Dictionary

The dictionary contains definitions of terms used in the Regulation.