

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

RADIATION PROTECTION AMENDMENT REGULATION 2007 (No 1)

SL2007-21

EXPLANATORY STATEMENT

**Circulated by the authority of
Katy Gallagher MLA
Minister for Health**

RADIATION PROTECTION AMENDMENT REGULATION 2007 (No 1)

EXPLANATORY STATEMENT

OUTLINE

The *Radiation Protection Act 2006* commenced on 1 July 2007. Supporting the *Radiation Protection Act 2006* is the Radiation Protection Regulation 2007 (the Regulation) which commenced on 7 July 2007. The Radiation Protection legislation 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 Radiation Protection legislation 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.

Upon commencement the *Radiation Protection Act 2006* repealed and replaced the *Radiation Act 1983*, its subordinate laws and supporting instruments. Licences and registrations in place under the *Radiation Act 1983* were specifically preserved by the transitional provisions in Part 10 of the *Radiation Protection Act 2006*. However, appointments to the Radiation Council, which is the decision-maker for licences and registrations, were not preserved and no new appointments were in place when the *Radiation Protection Act 2006* commenced.

The absence of a Radiation Council could have thwarted the functional operation of the *Radiation Protection Act 2006*, and generated significant uncertainty for those regulated by the Act. This Regulation has been prepared to temporarily reinstate the Radiation Council as it was constituted immediately prior to the commencement of the *Radiation Protection Act 2006*, thereby avoiding the serious problems that could have arisen.

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 Amendment Regulation 2007 (No 1). The Regulation amends the Radiation Protection Regulation 2007, which is subordinate law to the *Radiation Protection Act 2006*.

Section 2 Commencement

Under this section, this Regulation will commence on the day after the date upon which this Regulation is notified on the ACT Legislation Register.

Section 3 Legislation amended

This provision alerts the reader that this Regulation amends the Radiation Protection Regulation 2007. Accordingly, upon commencement this Regulation will alter the Radiation Protection Regulation 2007 in accordance with the provisions that this Regulation contains, and will then be immediately repealed. Consequentially, on the date that this Regulation commences a new republication of the Radiation Protection Regulation 2007 will operate that contains the alterations made by this Regulation.

Section 4 New part 5

Section 4 of this Regulation will insert into the Radiation Protection Regulation 2007 a new Part 5 that contains one provision; section 20.

Under section 131(2) of the *Radiation Protection Act 2006*, a Regulation may modify Part 10 of the *Radiation Protection Act 2006* to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in the transitional provisions of Part 10 of the Act.

The *Radiation Protection Act 2006* as notified contained no transitional provisions that preserved Radiation Council appointments made under the *Radiation Act 1983*. Furthermore, when the *Radiation Protection Act 2006* commenced no new Radiation Council appointments had been made. Consequentially, upon commencement the *Radiation Protection Act 2006* was without a Radiation Council to exercise a number of key functions, including the issuing of licences and registrations.

In making this Regulation the Executive determined that appointments to the Radiation Council under the *Radiation Act 1983* should have continued under the *Radiation Protection Act 2006*. As such, the Executive is of the opinion that the Radiation Council was not appropriately or adequately dealt with in the transitional provisions of Part 10 of the *Radiation Protection Act 2006*.

The effect of section 20 is that Chapter 10 of the Act, containing transitional provisions, is modified by the insertion into the *Radiation Protection Act 2006* of a section 130A. Section 130A provides that the members of the Radiation Council, established under the repealed *Radiation Act 1983* immediately before the *Radiation Protection Act 2006* commenced, are taken to be appointed as members of the Council under the *Radiation Protection Act 2006*.

Accordingly, former radiation council members are taken to be appointed under section 68 of the *Radiation Protection Act 2006* until 1 January 2008. Furthermore, the chairperson and deputy chairperson of the former radiation council are also taken to be appointed as chair and deputy chair under section 70 of the *Radiation Protection Act 2006*. Again, the appointments are until 1 January 2008.

Just as the appointments under section 130A operate until 1 January 2008 so too does section 130A itself. This reflects the transitional nature of the section. The process of making new appointments to the Radiation Council involves seeking nominations, Cabinet agreement of the proposed appointments, consultation with the Standing Committee on Health and Disability, and finally notification of appointment instruments. The continuation of the former radiation council until 1 January 2008 will provide sufficient time for fresh appointments to be made following this process.

The appointments taken to be made under Section 130A are to apply as if the appointments commenced on the commencement day of the *Radiation Protection Act 2006*. In this regard the transitional provisions being inserted by this Regulation have retrospective effect. Pursuant to section 76 of the *Legislation Act 2001* a provision can commence retrospectively if it is non-prejudicial. A provision is prejudicial if it operates to the disadvantage of a person by adversely affecting their rights or by imposing liabilities on a person. The transitional provisions inserted have no adverse affect on any person's rights. Furthermore, the transitional provisions do not impose any liabilities. The *Radiation Protection Act 2006* requires licences and registration of regulated radiation sources. The Radiation Council is the decision-maker for licences and registrations, but this does not impose any liabilities on persons. Rather, the transitional provisions inserted by this Regulation will enable new licences and registrations to be issued, and for existing licences and registrations to be renewed.