

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Radiation Control Act 1990* with respect to the following:

- (a) the objects of the Act,
- (b) licences and accreditations,
- (c) the security of certain radioactive material,
- (d) the giving of notices and directions to deal with contraventions of the Act and dangerous situations,
- (e) offences under the Act,
- (f) the enforcement of undertakings,
- (g) the recovery of costs and the giving of financial assurances,
- (h) the Radiation Advisory Council,
- (i) the method of serving documents, evidentiary matters and appeals,
- (j) the granting of exemptions from provisions of the Act,
- (k) the power to make regulations and a number of minor matters.

Explanatory note page 2

Radiation Control Amendment Bill 2010

Explanatory note

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act except for a number of specified provisions that are to commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Radiation Control Act

1990 No 13

Schedule 1 [1] provides that the objects of the *Radiation Control Act 1990* (the *Principal Act*) include protecting security enhanced sources from misuse that may result in harm to people or the environment and promoting of the radiation protection principles.

Schedule 1 [2] omits some redundant definitions and inserts a number of new definitions for the purposes of the Principal Act. **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [3] clarifies the status of notes in the Principal Act.

Schedule 1 [4] inserts proposed sections 5 and 5A. Proposed section 5 sets out the matters that the Environment Protection Authority (the *Authority*) may take into consideration in determining whether a person is a fit and proper person to hold a licence or accreditation under the Principal Act. Proposed section 5A provides for certain of the functions of the Authority under the Principal Act to be exercised, in certain circumstances, by other public bodies instead of the Authority. In the case of radioactive ore those functions will be exercised by the Director-General of the Department of Industry and Investment. **Schedule 1 [24]** provides that a natural person who exercises functions under proposed section 5A on behalf of a public body is not personally liable for any thing the person does or omits to do in exercising those functions.

Schedule 1 [5] omits existing Part 2 (Regulatory controls) of the Principal Act and inserts proposed Parts 2 and 2A. Proposed Part 2 introduces 2 new classes of licence (a radiation management licence and a radiation user licence) and 2 classes of accreditation (accreditation as a consulting radiation expert and accreditation as a radiation security assessor).

The new licences relate to regulated material (which means radioactive substances, ionising radiation apparatus, non-ionising radiation apparatus of a kind prescribed by the regulations and sealed source devices). A person who owns, stores, sells, gives

away or has possession of regulated material (other than a person who has possession of the regulated material only for the purposes of transporting or using the material and in the case of a user, holds a radiation user licence in respect of the material) is a person responsible for the regulated material. Each person responsible for regulated material must hold a radiation management licence in respect of the material unless the Minister for Climate Change and the Environment grants an exemption

Explanatory note page 3

Radiation Control Amendment Bill 2010

Explanatory note

(maximum penalty \$165,000 in the case of a corporation or \$27,500 or imprisonment for 2 years, or both, in any other case). Each person responsible for regulated material must also ensure that the regulated material is not sold, leased or given to, or stored, possessed or used by, any other person unless that other person is the holder of an appropriate licence (maximum penalty \$165,000 in the case of a corporation or \$27,500 or imprisonment for 2 years, or both, in any other case). A person who uses regulated material is required to hold a radiation user licence (maximum penalty \$27,500 or imprisonment for 2 years, or both). A radiation user licence can only be issued to a natural person.

A person is not permitted to carry on any of the activities prescribed as the activities of a consulting radiation expert or a radiation security assessor unless the person holds the relevant accreditation (maximum penalty \$11,000). An accreditation can only be granted to a natural person.

A person may apply to the Authority for a licence or accreditation or for a renewal or variation of a licence or accreditation held by the person. The Authority must (or may in the case of a renewal) refuse an application if the person is not a fit and proper person, the person fails to meet any requirements that are prescribed by the regulations or are set out in the National Directory, or in the case of a radiation user licence, the person does not have appropriate knowledge of radiation safety, or in the case of an accreditation, the person does not have sufficient expertise. The Authority may vary a licence or accreditation on its own motion or on the application of the holder of the licence or accreditation.

A licence or accreditation remains in force for the term specified by the Authority in the licence or accreditation. However, if an application to renew the licence is received by the Authority before, or within 60 days after, the end of that specified term, the licence or accreditation remains in force until the application is determined.

A licence or accreditation may be surrendered only with the written approval of the Authority. The Authority may, at its discretion, suspend or cancel a licence or accreditation. A decision to suspend or cancel a licence or accreditation does not take effect until the holder of the licence or accreditation has had an opportunity to appeal the decision to the District Court. A licence or accreditation may be suspended or cancelled, or the surrender of a licence or accreditation may be approved, unconditionally or subject to conditions. The former holder of a licence or accreditation that has been cancelled or surrendered, or the holder of a licence or accreditation that has been suspended, must comply with such conditions (maximum penalty in respect of a licence is \$165,000 in the case of a corporation or \$27,500 or imprisonment for 2 years, or both, in any other case and the maximum penalty in respect of an accreditation is \$11,000).

Conditions of licences and accreditations and conditions of a surrender, cancellation or suspension have continuing effect even if any such condition specifies a time by which, or period within which, the condition must be complied with.

Explanatory note page 4

Radiation Control Amendment Bill 2010

Explanatory note

The Authority is required to maintain a public register of information about licences

and is to make the register available to members of the public to inspect free of charge at its principal office during ordinary office hours and on its website. Proposed Part 2A provides for the security of security enhanced sources (being sealed radioactive sources prescribed by the regulations). Each person responsible for a security enhanced source (which means each person who is responsible for the regulated material contained in the source) must ensure that a source security plan is made that addresses the security of the source and if the source is to be transported, a source transport security plan is made that addresses the security of the source during transport. Each person responsible is also required to ensure that a security plan is supplied to the Authority as required, is reviewed periodically and is implemented and complied with. A security plan must set out how the source is to be protected from unauthorised access, nominate a natural person who is to be responsible for implementing the plan and deal with any other matters that may be prescribed by the regulations. A security plan cannot be made or amended unless a radiation security assessor has reviewed and endorsed the plan. A person who has been given a copy of a security plan or part of such a plan in respect of a security enhanced source must comply with the plan or the part in the person's dealings with the source. It is an offence if a person fails to comply with the above requirements in relation to a security plan (maximum penalty \$165,000 in the case of a corporation or \$27,500 in any other case).

Each responsible person for a security enhanced source must also ensure that the source is protected by any security protection measures that may be prescribed with respect to the source. A person must not interfere with any such measure unless the interference occurs during repair or maintenance, is to a measure that is no longer required, is by the Authority or an authorised officer or by a person acting in accordance with a direction or notice given under the Principal Act or occurs in circumstances prescribed by the regulations. It is an offence if a person fails to comply with the above requirements in relation to a security measure (maximum penalty \$165,000 in the case of a corporation or \$27,500 in any other case).

Each person responsible for a security enhanced source prescribed by the regulations must also ensure that natural persons who deal with the source and natural persons prescribed by the regulations have undergone and satisfied an identity check. Each person responsible for a security enhanced source must ensure that certain natural persons have undergone and satisfied a security check including a person nominated as being responsible for implementing a security plan in respect of the source, a person who transports the source, any person prescribed by the regulations and if the source is prescribed by the regulations, a person who deals with the source. Certain persons are exempt from the requirement for an identification or security check if under the direct supervision of another person at all times when engaged in the activity in respect of which the check would otherwise be required. A person must not engage in any activity for which the person is required to undergo a check unless the person has undergone and satisfied that check. It is an offence if a person fails to

Explanatory note page 5

Radiation Control Amendment Bill 2010

Explanatory note

comply with the above requirements in relation to a check (maximum penalty \$165,000 in the case of a corporation or \$27,500 in any other case).

Schedule 1 [6] substitutes sections 18 and 19 of the Principal Act. Proposed section 18 permits an authorised officer to serve a notice on a person if the officer believes on reasonable grounds that the person is, or is likely to become, responsible for unnecessary exposure to, or contamination by, radiation or for a contravention of the Principal Act, the regulations or a condition of a licence or accreditation (including a condition of a suspension, cancellation or surrender of a licence or accreditation). A person on whom a notice is served must comply with the notice and

pay the prescribed fee (maximum penalty \$22,000). A person may appeal to the District Court against a decision of the Authority under the proposed section. Proposed section 19 provides for the Authority to give directions if the Authority considers that a dangerous or potentially dangerous situation exists involving actual or threatened exposure of any person, animal or thing or the environment to an excessive level of radiation or contamination by regulated material. A person to whom a direction is given must comply with the direction (maximum penalty \$165,000 in the case of a corporation or \$27,500 or imprisonment for 2 years, or both, in any other case) and pay the prescribed fee (maximum penalty \$22,000). **Schedule 1 [12]** permits the Authority to require a person, who has been served with a notice under proposed section 18 or given a direction under proposed section 19, to pay all reasonable costs incurred by the Authority in monitoring action under the notice or direction, ensuring compliance with the notice or direction and other associated matters.

Schedule 1 [7] provides for a higher penalty for any offence against the Principal Act if it is proved beyond reasonable doubt that the person convicted of the offence knew that its commission was likely to cause serious harm to a person, animal or thing or the environment by exposure to radiation. In such a case the maximum penalty is \$1,100,000 in the case of a corporation or \$165,000 or imprisonment for 2 years, or both, in any other case.

Schedule 1 [8] permits the Authority to accept a written undertaking from a person whom the Authority reasonably believes to have committed an offence under the Principal Act. If the person breaches the undertaking, the Authority can apply to the District Court for certain orders including an order that orders the person to pay an amount to the State or an order suspending or cancelling any licence or accreditation held by the person.

Schedule 1 [10] permits proceedings for an offence under the Principal Act to be commenced within 12 months after evidence of the alleged offence first comes to the attention of an authorised officer in addition to being commenced within 12 months after the date on which the offence is alleged to have been committed.

Schedule 1 [11] provides for a penalty notice to be withdrawn within 28 days after it is served. In such a case any amount paid under the notice is to be paid back and further proceedings may be commenced as if the penalty notice had never been served.

Explanatory note page 6

Radiation Control Amendment Bill 2010

Explanatory note

Schedule 1 [13] provides for the Authority to impose conditions on a radiation management licence (or conditions on the suspension, cancellation or surrender of such a licence) to provide financial assurances to guarantee funding for works and programs required under the licence. The amount of financial assurance cannot be more than the cost of carrying out the work or program. If the holder or former holder of a licence fails to carry out the work or program, the Authority may carry it out or direct another person to carry it out and claim the cost of carrying it out from the assurance.

Schedule 1 [15] and [16] add an additional member to the Radiation Advisory Council. The additional member is to be a person with expertise in mine radiation safety. **Schedule 1 [14]** renames Part 4 of the Principal Act to reflect that the provisions in the Part deal with the Council and **Schedule 1 [18]** ensures all provisions dealing with the Council are in that Part.

Schedule 1 [19] creates an offence (maximum penalty \$165,000 in the case of a corporation or \$27,500 or imprisonment for 2 years, or both, in any other case) if a person abandons any radioactive substance without reasonable excuse.

Schedule 1 [20] omits sections 35 and 36 of the Principal Act and inserts proposed

sections 35–36B. Proposed section 35 provides for the issuing, giving or service of notices or other documents under the Principal Act. Proposed section 36 provides for a number of evidentiary matters including that the holder of a radiation management licence is taken to be a person responsible for the regulated material to which the licence relates. It also allows the Director-General of the Department of Environment, Climate Change and Water to give a certificate certifying certain matters. Proposed section 36A provides for appeals to the District Court against certain decisions of the Authority. Proposed section 36B creates an offence (maximum penalty \$165,000 in the case of a corporation or \$27,500 in any other case) if a person provides false or misleading information in certain circumstances.

Schedule 1 [23] provides that the Authority may exempt a person from compliance with all or any specified provision of the Principal Act in an emergency or in circumstances where it is not practicable to comply and the Authority is satisfied that non-compliance will not have any significant adverse effect on human health, property or the environment.

Schedule 1 [25] provides for a review of the Principal Act to be undertaken as soon as practicable after the period of 10 years after the commencement of the proposed amendment.

Schedule 1 [27] authorises the making of regulations for or with respect to any matter relating to the security of radioactive substances, radiation apparatus and sealed radioactive sources.

Schedule 1 [28] increases the maximum penalty that may be imposed for an offence in the regulations to \$44,000 in the case of an offence committed by a corporation and \$22,000 in any other case.

Explanatory note page 7

Radiation Control Amendment Bill 2010

Explanatory note

Schedule 1 [32] permits the regulations to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [34] inserts a number of savings and transitional provisions in Schedule 2 to the Principal Act consequential on the amendments made by the proposed Act.

Schedule 1 [17] and [26] are consequential on the substitution of Part 2 of the Principal Act.

Schedule 1 [21], [22], [30] and [31] update cross references.

Schedule 1 [29] and [33] omit redundant provisions.