



New South Wales

Radiation Control Amendment Bill 2023

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* (the **principal Act**) to give effect to the recommendations for amendment arising from the statutory review of the principal Act, tabled in Parliament in December 2021. This is achieved as follows—

- (a) by amending the objects of the principal Act to include the promotion of the ecologically sustainable development principles (**recommendation 1**),
- (b) by requiring a person who disposes of regulated material, or consigns regulated material for transport, to be licensed under the principal Act (**recommendation 2**),
- (c) by moving certain offences from the *Radiation Control Regulation 2013* to the principal Act and increasing the maximum penalties for the offences (**recommendations 3 and 4**),
- (d) by requiring a person responsible for a security enhanced source to have a source transport security plan when transporting the source, even if the transportation of the source originated from outside New South Wales (**recommendation 5**),
- (e) by requiring security plans to be reviewed and endorsed by a radiation security assessor every 5 years (**recommendation 6**),
- (f) by enabling a court to order certain persons pay, and for the Environment Protection Authority (the **Authority**) to recover, the costs incurred by the Authority for investigating offences and for the disposal of articles, regulated material and substances forfeited to the Crown (**recommendation 7**),

- (g) by increasing the maximum pecuniary penalty that may be imposed by the Local Court in proceedings for an offence against the principal Act or the regulations from 200 penalty units to 1,000 penalty units (*recommendation 8*),
- (h) by increasing maximum penalties for certain offences relating to providing false or misleading information and abandoning radioactive substances to align with similar offences under the *Protection of the Environment Operations Act 1997* (*recommendations 9 and 10*),
- (i) by updating provisions relating to the governance and membership of the Radiation Advisory Council (*recommendation 11*).

The Bill also makes other minor and consequential amendments to the principal Act and other environmental legislation, including amendments of a savings and transitional nature or of a law revision nature.

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.

Schedule 1 Amendment of Radiation Control Act 1990 No 13

Schedule 1[1] changes the name of the principal Act to the *Protection from Harmful Radiation Act 1990*. **Schedule 1[4]** makes a consequential amendment.

Schedule 1[2] gives effect to recommendation 1 of the review. The proposed amendment makes it an object of the principal Act to promote the ecologically sustainable development principles, being the principles and programs described in the *Protection of the Environment Administration Act 1991*, section 6(2). **Schedule 1[3]** requires a person to take the principles into consideration when exercising functions under the principal Act or under a licence.

Schedule 1[5]–[7] give effect to recommendation 2 of the review. The proposed amendments require a person who disposes of regulated material, or consigns regulated material for transport, to have a radiation management licence under the principal Act. **Schedule 1[10]** makes a consequential amendment.

Schedule 1[8]–[10] clarify that a licence or accreditation is subject to the conditions imposed by the regulations made under the principal Act, as well as conditions imposed by the Authority under the principal Act.

Schedule 1[13] and [14] require accreditations to be listed on the register to ensure a person's accreditation status is easily determined. **Schedule 1[12], [15] and [16]** make consequential amendments.

Schedule 1[17] gives effect to recommendation 5 of the review. The proposed amendment makes it clear that a person responsible for a security enhanced source must have a source transport security plan when transporting the source in New South Wales, even if the transportation of the source originated from outside New South Wales.

Schedule 1[18]–[20] give effect to recommendation 6 of the review. The proposed amendments require security plans be reviewed and endorsed by an accredited radiation security assessor every 5 years.

Schedule 1[21], [23] and [24] give effect to recommendation 7 of the review. **Schedule 1[21]** provides that a court may order certain persons to pay the Authority an amount representing the costs reasonably incurred by the Authority during an investigation of an offence. **Schedule 1[24]** enables the Authority to recover the amount in a court of competent jurisdiction. **Schedule 1[23]** provides that a court may order certain persons to pay the Authority the costs incurred by the Authority for the disposal of articles, regulated material and substances forfeited to the Crown, and enables the Authority to recover the costs in a court of competent jurisdiction.

Schedule 1[22] gives effect to recommendation 8 of the review. The proposed amendment increases the maximum pecuniary penalty that may be imposed by the Local Court in proceedings for an offence against the principal Act or the regulations from 200 penalty units to 1,000 penalty units.

Schedule 1[25]–[29] give effect to recommendation 11 of the review. **Schedule 1[25] and [26]** provide that the Radiation Advisory Council is to consist of at least 12 members, rather than 17, appointed by the CEO of the Authority, rather than the Minister, including—

- (a) a member of staff of the Authority, and
- (b) a person nominated by the Secretary of the Ministry of Health, and
- (c) persons who collectively have, in the CEO of the Authority’s opinion, relevant knowledge or experience in certain relevant areas.

Schedule 1[27] and [28] provide that the Council’s function is to provide certain advice to the Authority rather than the Minister. **Schedule 1[29]** repeals the Council’s annual reporting requirement. **Schedule 1[37]–[40]** make consequential amendments.

Schedule 1[30] and [32] give effect to recommendation 10 of the review. **Schedule 1[30]** amends the offence in the principal Act, section 33A relating to abandoning radioactive substances to include an offence for wilful or negligent abandonment and increase the maximum pecuniary penalty for the offence to align with the *Protection of the Environment Operations Act 1997*, sections 115 and 143. **Schedule [32]** increases the maximum pecuniary penalty for the offence of providing false or misleading information in the principal Act, section 36B to align with the *Protection of the Environment Operations Act 1997*, section 211(2).

Schedule 1[31] gives effect to recommendations 3 and 4 of the review. The proposed amendment moves offences from the *Radiation Control Regulation 2013* relating to the transportation and disposal of regulated material to the principal Act. The penalties for the proposed offences are increased to align with the pecuniary penalties set out in the principal Act, sections 6 and 7.

Schedule 1[33] and [36] provide that the regulations may make provision for or with respect to regulating activities concerned with regulated material, including a matter relating to the security of regulated material.

Schedule 1[34] and [35] provide that the regulations may make provision for the granting of accreditation and the giving of consent by the Authority, and the terms or conditions to which an accreditation or a consent is subject.

Schedule 1[41] inserts provisions of a savings or transitional nature.

Schedule 2 Amendment of other legislation

Schedules 2.1 and 2.3 amend the *Biodiversity Conservation Regulation 2017* and the *National Parks and Wildlife Act 1974* to change references to the Chairperson of the Authority to the CEO of the Authority following changes made to the structure of the Authority in the *Environment Legislation Amendment Act 2022*.

Schedule 2.2 amends the *Land and Environment Court Act 1979* to provide that the Land and Environment Court may hear proceedings to recover the costs of disposing of an article, regulated material or a substance forfeited to the Crown under the principal Act, the costs and expenses incurred during the investigation of an offence under the principal Act and the costs and expenses incurred by the EPA in carrying out certain actions.

Schedule 2.4 amends the *Protection of the Environment Administration Act 1991* to include the *Plastic Reduction and Circular Economy Act 2021* in the definition of environment protection legislation.

Schedule 2.5 amends the *Protection of the Environment Operations Act 1997* to provide that a supplementary clean-up notice may be issued by the appropriate regulatory authority or the Authority if the Authority issued the initial clean-up notice, and that the cost of complying with a

compliance cost notice issued for clean-up costs may be recovered from a person who contributed to, not just caused, the pollution.

Schedule 2.6 amends the *Radiation Control Regulation 2013* to change the name of the regulation to the *Protection from Harmful Radiation Regulation 2013* and to omit offences relating to the transportation and disposal of regulated material that have been moved to the principal Act.

Schedules 2.7 and 2.8 amend other legislation consequent on changing the name of the principal Act and the regulations made under the principal Act. **Schedule 2.7[2]** removes a spent provision.