



New South Wales

# Radiation Control Amendment Bill 2002

## 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*:

- (a) to change the object of the Act to state clearly that the Act applies to both ionising and non-ionising radiation and to provide consistency with the objects provisions of radiation safety legislation applying in other States, and
- (b) to enable documents forming part of the *National Directory for Radiation Protection* to be adopted and given statutory effect in New South Wales, as a way to progress national uniformity in radiation protection legislation, and
- (c) to amend provisions in relation to the Radiation Advisory Council, in particular by increasing its membership and changing its functions to include providing advice to the Environment Protection Authority, and
- (d) to remove the requirement that the Environment Protection Authority may grant licences, registrations and accreditations only on, and in accordance with, recommendations of the Council, and

- (e) to replace the definition of *environment* to achieve consistency with the *Protection of the Environment Operations Act 1997*, and
- (f) to provide for the Act to be reviewed as soon as practicable after 10 years from the commencement of Schedule 1 [36] to this Bill.

## 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Radiation Control Act 1990* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Radiation Control Regulation 1993* set out in Schedule 2.

## Schedule 1 Amendment of Radiation Control Act 1990

**Schedule 1 [1]** replaces the object of the principal Act in section 3 to clarify that the Act applies to both ionising and non-ionising radiation and provide consistency with similar legislation in other States.

**Schedule 1 [2]** replaces the definition of *environment* in the section 4 (1) of the principal Act to achieve consistency with the more contemporary definition in the *Protection of the Environment Operations Act 1997*.

**Schedule 1 [4], [5], [8], [12] and [25]** amend provisions of the principal Act to omit references to temporary licences. The Environmental Protection Authority (the *Authority*) is no longer to have the authority under section 6 of the principal Act to grant temporary licences.

**Schedule 1 [5], [6], [7], [9]–[11], [13]–[17], [19] and [21]** amend provisions of the principal Act providing for the granting of licences, registration of radioactive sources and certain apparatus and premises, and accreditation of persons. Currently the principal Act provides that the Authority may grant a licence, registration or accreditation only on the recommendation of the Radiation Advisory Council. The amendments remove those requirements. **Schedule 1 [32] and [33]** amend section 30 to make consequential amendments to the functions of the Council and **Schedule 1 [35]** makes a consequential amendment to section 39 which provides for exemptions from the operation of the principal Act.

**Schedule 1 [20]** inserts proposed section 9A into the principal Act. Proposed section 9A provides that the Environment Protection Authority may seek, and take into consideration, the Radiation Advisory Council's advice before making a decision under sections 6–9 or 10A about the granting of a licence, registration or accreditation, or the variation of a licence or accreditation.

**Schedule 1 [22]** inserts proposed section 10A into the principal Act. Proposed section 10A provides for the variation of licences and accreditations by the Authority. A licence or an accreditation may be varied only on the application of the holder of the licence or accreditation and only if the Authority is satisfied of certain matters relating to the knowledge or expertise of the holder of the licence or accreditation.

**Schedule 1 [23] and [24]** amend section 11 of the principal Act, which deals with the terms of licences, registrations and accreditations, to insert references to varied licences and accreditations.

**Schedule 1 [26]** amends section 14 of the principal Act to create a right of appeal to the District Court for a person refused a variation of a licence or accreditation.

**Schedule 1 [27]** replaces references to the Council in section 18 with references to the Authority. As a result of the amendments, the Authority and not the Council hears submissions on notices.

**Schedule 1 [28]** amends section 18 of the principal Act to provide that as soon as practicable after an authorised officer issues a notice to a person in respect of non-compliance with the Act or a licence or registration, or in respect of unnecessary exposure to or contamination by radiation, the Authority must advise the Council about the notice.

**Schedule 1 [29]** amends section 29 of the principal Act to increase the membership of the Radiation Advisory Council from 14 to 16 members. **Schedule 1 [31]** amends the principal Act to provide that the 2 additional members are to consist of an officer of the WorkCover Authority and a person with expertise in naturally occurring radioactivity. **Schedule 1 [30]** updates a reference to the membership of the Council by replacing the requirement for a member of the Council to be a radiotherapist with a requirement for one of the members of the Council to be a radiation oncologist. **Schedule 1 [39]** makes a consequential amendment to clause 9 of Schedule 1 to increase the number of members required to form a quorum at a meeting of the Council. **Schedule 1 [38]** updates the terminology used in clause 5 of Schedule 1.

**Schedule 1 [34]** inserts proposed section 37 into the principal Act. Proposed section 37 provides for the adoption by the Environment Protection Authority of documents forming part of the *National Directory for Radiation Protection*.

**Schedule 1 [3]** inserts a definition of *National Directory* into section 4 (1) of the principal Act. **Schedule 1 [6]** amends section 6 (5) of the principal Act to provide that the Environment Protection Authority may grant a licence to use certain substances or apparatus to a person only if the person meets the requirements set out in any relevant document forming part of the National Directory and adopted by the Authority under section 37. **Schedule 1 [18]** amends section 9 (3) of the principal Act to provide that the Authority may accredit a person only if the person has the expertise necessary to properly carry out the activities authorised by the accreditation and meets the requirements for accreditation as a consulting radiation expert set out in a document forming part of the National Directory and adopted by the Authority under section 37.

**Schedule 1 [36]** inserts proposed section 39B into the principal Act. Proposed section 39B provides that the Minister is to review the Act 10 years after its commencement and table a report on the outcome of the review in Parliament.

**Schedule 1 [37]** amends the general regulation-making power in section 40 of the principal Act to allow for the regulations:

- (a) to provide for the waiver of fees, and
- (b) to adopt documents, including codes of practice and guidance documents, as in force from time to time.

**Schedule 1 [40]** amends clause 1 of Schedule 2 to the principal Act to allow for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 1 [41]** inserts proposed Part 3 into Schedule 2 to the principal Act. Proposed Part 3 contains transitional arrangements for applications made under Part 2 of the principal Act and not decided before the commencement of the proposed item.

## **Schedule 2   Amendment of Radiation Control Regulation 1993**

**Schedule 2 [1]–[4]** amend certain provisions of the Regulation to make changes consequential on the amendment of the Act by this Bill.

**Schedule 2 [5]** inserts proposed clause 12A. The proposed clause provides that the Environmental Protection Authority may, if it considers it proper, waive the fee for variation of a licence or an accreditation. The fee may be waived wholly or in part.



New South Wales

# Radiation Control Amendment Bill 2002

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New South Wales

# Radiation Control Amendment Bill 2002

No. , 2002

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## **A Bill for**

An Act to amend the *Radiation Control Act 1990* with respect to the objects of the Act, the functions of the Radiation Advisory Council and the Environment Protection Authority and the adoption of documents forming part of the *National Directory for Radiation Protection*; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Radiation Control Amendment Act 2002</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Radiation Control Act 1990 No 13</b>	7
The <i>Radiation Control Act 1990</i> is amended as set out in Schedule 1.	8
<b>4 Amendment of Radiation Control Regulation 1993</b>	9
The <i>Radiation Control Regulation 1993</i> is amended as set out in Schedule 2.	10 11

<b>Schedule 1</b>	<b>Amendment of Radiation Control Act 1990</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 3</b>	3
	Omit the section. Insert instead:	4
	<b>3 Object of Act</b>	5
	The object of this Act is to secure the protection of persons and the environment from exposure to harmful ionising and non-ionising radiation to the maximum extent that is reasonably practicable, taking into account social and economic factors and recognising the need for the use of radiation for beneficial purposes.	6 7 8 9 10 11
<b>[2]</b>	<b>Section 4 Definitions</b>	12
	Omit the definition of <i>environment</i> from section 4 (1). Insert instead:	13
	<i>environment</i> means components of the earth, including:	14
	(a) land, air and water, and	15
	(b) any layer of the atmosphere, and	16
	(c) any organic or inorganic matter and any living organism, and	17 18
	(d) human-made or modified structures and areas,	19
	and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).	20 21
<b>[3]</b>	<b>Section 4 (1)</b>	22
	Insert in alphabetical order:	23
	<i>National Directory</i> means the national guidance documents titled “National Directory for Radiation Protection” approved by the Health Ministers for the States, Territories and Commonwealth from time to time.	24 25 26 27



<b>[4] Section 6 Restrictions on possession, use and sale etc of radioactive substances and certain radiation apparatus</b>	1 2
Omit “or temporary licence” from section 6 (2), (3) and (6) wherever occurring.	3 4
<b>[5] Section 6 (4)</b>	5
Omit “ or a temporary licence but only if the Council recommends that the licence or temporary licence be granted”.	6 7
<b>[6] Section 6 (5)</b>	8
Omit the subsection. Insert instead:	9
(5) The Authority is not to grant a licence authorising a person to use anything to which this section applies unless it is satisfied:	10 11
(a) that the applicant is a natural person and is a fit and proper person to hold the licence, and	12 13
(b) that the applicant has appropriate knowledge of the principles and practices of radiation safety and protection applicable to the activities proposed to be carried on by the applicant pursuant to the licence, and	14 15 16 17
(c) that the applicant meets any relevant requirements for licensing for use of the substance or apparatus set out in a document forming part of the National Directory and adopted by the Authority under section 37.	18 19 20 21
<b>[7] Section 6 (6)</b>	22
Omit “on the recommendation of the Council”.	23
<b>[8] Section 7 Responsibilities of owners of sealed radioactive sources and certain radiation apparatus</b>	24 25
Omit “or a temporary licence” from section 7 (3).	26
<b>[9] Section 7 (4)</b>	27
Omit “, but only if the Council recommends that the Authority do so”.	28

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<b>[10] Section 7 (5)</b>	1
Omit the subsection. Insert instead:	2
(5) The Authority is not to register a sealed radioactive source or radiation apparatus under this section unless the Authority is satisfied that it complies with:	3
(a) any applicable requirements of the regulations, and	4
(b) any relevant requirements set out in a document forming part of the National Directory and adopted by the Authority under section 37.	5
<b>[11] Section 7 (6)</b>	6
Omit “on the recommendation of the Council”.	7
<b>[12] Section 8 Responsibilities of occupier of premises on which unsealed radioactive source is kept or used</b>	8
Omit “or temporary licence” from section 8 (2).	9
<b>[13] Section 8 (3)</b>	10
Omit “, but only if the Council recommends that the Authority do so”.	11
<b>[14] Section 8 (4)</b>	12
Omit the subsection. Insert instead:	13
(4) The Authority is not to register premises under this section unless the Authority is satisfied that the premises comply with:	14
(a) any applicable provisions of the regulations, and	15
(b) any relevant requirements set out in a document forming part of the National Directory and adopted by the Authority under section 37.	16
<b>[15] Section 8 (5)</b>	17
Omit “on the recommendation of the Council”.	18
<b>[16] Section 8 (6)</b>	19
Omit “, if the Council so recommends,”.	20

<b>[17] Section 9 Accreditation of radiation experts</b>	1
Omit “but only if the Council recommends that the person be accredited” from section 9 (2).	2 3
<b>[18] Section 9 (3)</b>	4
Omit the subsection. Insert instead:	5
(3) The Authority is not to accredit a person unless satisfied:	6
(a) that the person has the expertise necessary to properly carry out the activities authorised by the accreditation, and	7 8 9
(b) that the person meets the requirements for accreditation as a consulting radiation expert set out in a document forming part of the National Directory and adopted by the Authority under section 37.	10 11 12 13
<b>[19] Section 9 (4)</b>	14
Omit “on the recommendation of the Council”.	15
<b>[20] Section 9A</b>	16
Insert after section 9:	17
<b>9A Authority may seek advice from Council</b>	18
The Authority may seek, and take into consideration, the advice of the Council before making any of the following decisions:	19 20
(a) a decision under section 6 about an application for a licence,	21 22
(b) a decision under section 7 about an application to register a sealed radioactive source or radiation apparatus in the owner’s name,	23 24 25
(c) a decision under section 8 about an application to register premises in the occupier’s name,	26 27
(d) a decision under section 8 about exempting premises from the operation of that section,	28 29
(e) a decision under section 9 about an application to accredit a person as a consulting radiation expert,	30 31

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(f)	a decision under section 10A about an application to vary a licence or accreditation.	1 2
<b>[21]</b>	<b>Section 10 Conditions of licences etc</b>	3
	Omit “, but only on the recommendation of the Council” from section 10 (2).	4 5
<b>[22]</b>	<b>Section 10A</b>	6
	Insert after section 10:	7
	<b>10A Variation of licences and accreditations</b>	8
(1)	The Authority may, by notice in writing to the holder of a licence or an accreditation, vary the licence or accreditation in accordance with this section.	9 10 11
(2)	A variation may be made only on application in the approved form, and on payment of the prescribed fee, by the holder of the licence or accreditation concerned.	12 13 14
(3)	A licence may be varied so as to authorise the possession, use or sale of a substance or apparatus to which section 6 applies, being a substance or apparatus that the licensee is not authorised, at the time of the application, to possess, use or sell.	15 16 17 18
(4)	An accreditation may be varied so as to authorise the holder of the accreditation to carry on a specified activity prescribed for the purposes of section 9, being an activity that the holder is not authorised, at the time of the application, to carry on.	19 20 21 22
(5)	The Authority is not to:	23
(a)	vary a licence to use a substance or apparatus to which section 6 applies—unless the Authority is satisfied:	24 25
(i)	that the licensee has appropriate knowledge of the principles and practices of radiation safety and protection applicable to the activities proposed to be carried on by the licensee in pursuance of the licence as so varied, and	26 27 28 29 30
(ii)	that the licensee meets the requirements referred to in section 6 (5) (a) and (c), or	31 32

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(b)	vary an accreditation—unless the Authority is satisfied:	1
(i)	that the holder of the accreditation has the expertise necessary to properly carry on the activities to be authorised by the accreditation as so varied, and	2 3 4 5
(ii)	that the holder of the accreditation meets the requirements for accreditation as a consulting radiation expert set out in a document forming part of the National Directory and adopted by the Authority under section 37.	6 7 8 9 10
(6)	A notice under this section is to impose such conditions (if any) in connection with the variation concerned as the Authority may determine.	11 12 13
(7)	Despite subsection (2), the Authority may, at the request of the holder of a licence or accreditation, vary the licence or accreditation so as to revoke an authorisation conferred by the licence or accreditation and revoke any condition imposed in connection with the authorisation so revoked.	14 15 16 17 18
(8)	This section does not affect the operation of section 10.	19
<b>[23]</b>	<b>Section 11 Term and renewal of licences, registrations and accreditations</b>	20 21
	Insert “or varied” after “renewed” in section 11 (1).	22
<b>[24]</b>	<b>Section 11 (2)</b>	23
	Insert “or varied” after “renewed”.	24
<b>[25]</b>	<b>Section 11 (4)</b>	25
	Omit “(other than a temporary licence)”.	26
<b>[26]</b>	<b>Section 14 Appeals</b>	27
	Omit section 14 (1) (c). Insert instead:	28
(c)	to refuse to vary a licence or accreditation, or	29
(d)	to suspend or cancel a licence, registration or accreditation.	30 31

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<b>[27] Section 18 Notices to take action</b>	1
Omit “the Council” from section 18 (2) (c), (4) and (5) wherever occurring.	2
Insert instead “the Authority”.	3
<b>[28] Section 18 (3)</b>	4
Omit the subsection. Insert instead:	5
(3) The Authority must, as soon as practicable after the authorised officer issues the notice, advise the Council about the notice.	6 7
<b>[29] Section 29 Radiation Advisory Council</b>	8
Omit “14” from section 29 (2). Insert instead “16”.	9
<b>[30] Section 29 (2)</b>	10
Omit section 29 (2) (l). Insert instead:	11
(l) radiation oncologist, and	12
<b>[31] Section 29 (2) (n), (o) and (p)</b>	13
Omit section 29 (2) (n). Insert instead:	14
(n) an officer of the WorkCover Authority, and	15
(o) a person with expertise in naturally occurring radioactivity, and	16 17
(p) a person chosen by the Minister for such reasons as the Minister thinks fit.	18 19
<b>[32] Section 30 Functions of the Council</b>	20
Omit section 30 (1) (d). Insert instead:	21
(d) the granting of exemptions authorised by the regulations for periods exceeding 60 days, and	22 23

<b>[33] Section 30 (2A) and (2B)</b>	1
Insert after section 30 (2):	2
(2A) The Council may at any time, and must on the request of the Authority, provide advice to the Authority about licences, registrations and accreditations under Part 2.	3 4 5
(2B) The advice provided to the Authority may be general or specific as the circumstances require.	6 7
<b>[34] Section 37</b>	8
Insert after section 36:	9
<b>37 Adoption of documents forming part of National Directory</b>	10
(1) The Authority may, by notice published in the Gazette, adopt a document (including for example a standard, guidance note or code of practice) forming part of the National Directory and may, in the same way, revoke or vary such an adoption.	11 12 13 14
(2) The Authority is to cause a document adopted under this section to be available for public inspection free of charge at the Authority's offices during normal office hours.	15 16 17
<b>[35] Section 39 Exemptions</b>	18
Omit section 39 (2). Insert instead:	19
(2) The Minister may grant an exemption authorised by the regulations for such period as is determined by the Minister.	20 21
(3) Before granting an exemption authorised by the regulations for a period exceeding 60 days, the Minister must seek, and take into consideration, the advice of the Council about the proposed exemption.	22 23 24 25
<b>[36] Section 39B</b>	26
Insert after section 39A:	27
<b>39B Review of Act</b>	28
(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	29 30 31

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(2) The Minister must seek, and take into consideration, the advice of the Council when undertaking the review.	1 2
(3) The review is to be undertaken as soon as practicable after the period of 10 years from the date of commencement of Schedule 1 [36] to the <i>Radiation Control Amendment Act 2002</i> .	3 4 5
(4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 10 years.	6 7 8
<b>[37] Section 40 Regulations</b>	9
Insert after section 40 (4):	10
(5) The regulations may provide for the waiver of the whole or such part of the fees as the Authority may in a particular case think proper.	11 12 13
(6) The regulations may adopt any document (including for example a standard, guidance note or code of practice) as in force from time to time.	14 15 16
<b>[38] Schedule 1 Provisions relating to members and procedure of Council</b>	17
Omit clause 5 (1) (g). Insert instead:	18
(g) becomes a mentally incapacitated person, or	19
<b>[39] Schedule 1, Clause 9</b>	20
Omit “8”. Insert instead “9”.	21
<b>[40] Schedule 2 Savings and transitional provisions</b>	22
Insert “ <i>Radiation Control Amendment Act 2002</i> ” at the end of clause 1 (1).	23



<b>[41] Schedule 2, Part 4</b>	1
Insert after Part 3:	2
<b>Part 3 Provisions consequent on the enactment of Radiation Control Amendment Act 2002</b>	3 4
<b>5 Applications for licences, registration and accreditation</b>	5
An application under Part 2 for a licence, registration or accreditation made, and not decided, before the commencement of Schedule 1 [41] to the <i>Radiation Control Amendment         Act 2002</i> is to be dealt with as if it had been made after the commencement of that item.	6 7 8 9 10

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<b>Schedule 2</b>	<b>Amendment of Radiation Control Regulation 1993</b>	1
		2
	(Section 4)	3
<b>[1]</b>	<b>Clause 6 Safe dose limits to be taken into account by Authority</b>	4
	Omit “recommendation under the Act, the Council”.	5
	Insert instead “a decision under the Act, the Authority”.	6
<b>[2]</b>	<b>Clause 12 Fees</b>	7
	Omit “(other than a temporary licence)” from the Table to the clause.	8
<b>[3]</b>	<b>Clause 12</b>	9
	Omit the matter relating to “Temporary licence under section 6 of the Act” from the Table to the clause.	10
		11
<b>[4]</b>	<b>Clause 12</b>	12
	Insert at the end of the Table to the clause:	13
	Variation of licence under section 10A of the Act      \$83	14
	Variation of accreditation under section 10A of the Act      \$91	15
<b>[5]</b>	<b>Clause 12A</b>	16
	Insert after clause 12:	17
	<b>12A Waiver of fees</b>	18
	If the Authority thinks proper, the Authority may determine that the fee for the variation of a licence or accreditation required to be paid under this Regulation be waived wholly or in part.	19
		20
		21