

RADIATION CONTROL ACT 1990 No. 13

NEW SOUTH WALES



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RADIATION CONTROL ACT 1990 No. 13

NEW SOUTH WALES



Act No. 13, 1990

An Act to make provision for the regulation and control of the sale, use, keeping and disposal of radioactive substances and radiation apparatus; to repeal the Radioactive Substances Act 1957; and for other purposes. [Assented to 7 June 1990]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Radiation Control Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Object of Act

3. The object of this Act is to secure the protection of persons and the environment from exposure to ionising radiation, and harmful 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 therapeutic purposes.

Definitions

4. (1) In this Act:

"**approved**" means approved for the time being by the Director-General;

"**Council**" means the Radiation Advisory Council constituted by this Act;

"**Department**" means the Department of Health;

"**Director-General**" means the Director-General of the Department;

"**environment**" includes all aspects of the surroundings of people, whether affecting them as individuals or in their social groupings;

"**inspector**" means a person appointed as an inspector for the purposes of this Act;

"**ionising radiation**" means electromagnetic or particulate radiation capable of producing ions directly or indirectly in passage through matter, but does not include electromagnetic radiation of a wavelength greater than 100 nanometres;

"**licence**" means a licence (including a temporary licence) in force under section 6;

"non-ionising radiation" means:

- (a) electromagnetic radiation of a wavelength greater than 100 nanometres; or
- (b) non-varying electric or magnetic fields; or
- (c) sonic, infrasonic or ultrasonic waves that are prescribed as non-ionising radiation for the purposes of this definition;

"occupier", in relation to premises, means:

- (a) the person in occupation or control of the premises; or
- (b) if the premises have different parts occupied or controlled by different persons, the person in occupation or control of the part concerned;

"owner", in relation to any apparatus or thing that has been leased or let out on hire, means the lessee or the person who takes it on hire;

"premises" includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) land or a place (whether enclosed or built on or not); and
- (c) any part of premises;

"radiation apparatus" means a manufactured or assembled article, or any component, part or accessory of such an article, which when in operation contains or acts as part of an electrical circuit, or which acts by electromagnetic amplification employing a resonant space, and emits (or in the absence of effective shielding or other control would emit) ionising or non-ionising radiation;

"radioactive ore" means an ore or mineral containing more than the concentration of uranium or thorium prescribed for the purposes of this definition;

"radioactive substance" means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour (including any article or compound whether it has or has not been subjected to any artificial treatment or process) which emits ionising radiation spontaneously with a specific activity greater than 100 becquerels per gram and which consists of or contains more than the prescribed concentration of any radioactive element whether natural or artificial;

"registered premises" means premises registered under this Act;

"sealed radioactive source" means a radioactive substance enclosed in a container which prevents escape of the substance and permits controlled emission of radiation from the container;

"sell" means sell by wholesale or retail, and includes barter, supply for profit, lease, let out on hire, offer or expose for sale, receive for sale, have in possession for sale, send, forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale;

"unsealed radioactive source" means a radioactive substance that is not a sealed radioactive source;

"use" includes:

- (a) operate; and
- (b) use in the course of manufacture; and
- (c) have in possession for use; and
- (d) handle or manipulate (whether or not by indirect or remote means).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Application of Act to radioactive ore being mined or treated

5. This Act does not apply to a radioactive ore while it is being mined in a mine (as defined in section 4 (1) of the Mines Inspection Act 1901) or is the subject of treatment (as so defined).

PART 2 - REGULATORY CONTROLS

Restrictions on use and sale of radioactive substances and certain radiation apparatus

6. (1) This section applies to the following:

- (a) all radioactive substances;
- (b) all ionising radiation apparatus;
- (c) non-ionising radiation apparatus prescribed as apparatus to which this section applies.

(2) A person must not use or sell anything to which this section applies unless the person is the holder of a licence or temporary licence under this section and does so in compliance with any conditions to which the licence or temporary licence is subject.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) A person must not sell anything to which this section applies except to a person who holds a licence or temporary licence under this section authorising the use or sale of that thing.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(4) The Director-General may, on application in the approved form and payment of the prescribed fee, grant a licence or a temporary licence but only if the Council recommends that the licence or temporary licence be granted.

(5) The Council is not to recommend that a licence, or a temporary licence, authorising a person to use anything to which this section applies be granted unless it is satisfied:

- (a) that the applicant is a natural person and is a fit and proper person to hold the licence; and
- (b) that the applicant has appropriate knowledge of the principles and practices of radiation hygiene and protection applicable to the activities proposed to be carried on by the applicant in pursuance of the licence.

(6) A licence or temporary licence is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Responsibilities of owners of sealed radioactive sources and certain radiation apparatus

7. (1) This section applies to the following things:

- (a) all sealed radioactive sources;
- (b) radiation apparatus that is prescribed as apparatus to which this section applies.

(2) The owner of anything to which this section applies is guilty of an offence unless it is registered under this section in the owner's name and any conditions to which that registration is subject are complied with.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) The owner of anything registered under this section must not allow a person to use it unless the person is authorised to do so by a licence or a temporary licence.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(4) The Director-General may, on application in the approved form by or on behalf of the owner of a sealed radioactive source or radiation apparatus and payment of the prescribed fee, register it in the owner's name, but only if the Council recommends that the Director-General do so.

(5) The Council is not to recommend the registration of a sealed radioactive source or radiation apparatus under this section unless the Council is satisfied that it complies with any applicable requirements of the regulations.

(6) Registration under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Responsibilities of occupier of premises on which unsealed radioactive source is kept or used

8. (1) The occupier of any premises on which an unsealed radioactive source is kept or used is guilty of an offence unless the premises are registered under this section and any conditions to which that registration is subject are complied with.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(2) The occupier of premises registered under this section must not allow a person to use any unsealed radioactive source kept on the

premises unless the person is authorised to do so by a licence or temporary licence.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) The Director-General may, on application in the approved form by or on behalf of the occupier of premises and payment of the prescribed fee, register the premises in the name of the occupier, but only if the Council recommends that the Director-General do so.

(4) The Council is not to recommend the registration of premises under this section unless the Council is satisfied that the premises comply with any applicable provisions of the regulations.

(5) Registration under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

(6) The Minister may, if the Council so recommends, by notice in writing given to the occupier of any premises exempt the premises from the operation of this section and any such exemption remains in force until cancelled by the Minister by notice in writing given to the occupier.

Accreditation of radiation experts

9. (1) A person must not carry on any of the activities prescribed as the activities of a consulting radiation expert unless the person is accredited by the Director-General as a radiation expert and does so in compliance with any conditions to which that accreditation is subject.

Maximum penalty: 100 penalty units.

(2) The Director-General may, on application in the approved form and payment of the prescribed fee, accredit a person as a consulting radiation expert but only if the Council recommends that the person be accredited.

(3) The Council is not to recommend that a person be accredited unless satisfied that the person has the expertise necessary to properly carry on the activities authorised by the accreditation.

(4) An accreditation under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Conditions of licences etc.

10. (1) A condition of a licence, registration or accreditation may be imposed by the Director-General by notice in writing given to the holder of the licence, registration or accreditation.

(2) The Director-General may, by notice in writing to the holder of a licence, registration or accreditation, vary or revoke a condition of it or impose a further condition, but only on the recommendation of the Council.

Term and renewal of licences etc.

11. (1) A licence or registration (including any renewed licence or registration) remains in force for such term as the Director-General specifies in the licence or registration, unless it is cancelled or surrendered sooner.

(2) The term specified in a temporary licence is not to exceed 3 months.

(3) An accreditation remains in force until it is cancelled or surrendered.

(4) On application made in the approved manner and payment of the prescribed fee, the Director-General is to renew a licence (other than a temporary licence) or registration for a period of not less than 12 months.

Transfer of registration

12. The Director-General may, on application in the approved form by or on behalf of any person in whose name any thing or premises are registered and payment of the prescribed fee, transfer the registration into the name of another person.

Surrender, suspension and cancellation of licences etc.

13. (1) The holder of a licence, registration or accreditation can surrender it.

(2) The Director-General can suspend or cancel a licence, registration or accreditation if satisfied:

- (a) that the grant of the licence, registration or accreditation was obtained improperly; or
- (b) that the holder of the licence, registration or accreditation has contravened a condition of it; or
- (c) that the holder of the licence, registration or accreditation has been convicted of an offence against this Act or the regulations; or
- (d) that, in the case of a licence or accreditation, the holder has ceased to hold a qualification on the basis of which the Director-General granted the licence or accreditation; or
- (e) that, in the case of an accreditation, the holder has ceased working as a consulting radiation expert.

(3) A decision of the Director-General to suspend or cancel a licence, registration or accreditation has no effect:

- (a) until the expiration of the period within which a person may appeal against the decision; or
- (b) if a person appeals against the decision within that period, unless and until the decision is confirmed by the District Court or the appeal is withdrawn.

(4) A licence, registration or accreditation:

- (a) surrendered or cancelled under this section ceases to be of any force or effect; or
- (b) suspended under this section is of no force or effect for the period of the suspension.

(5) If a licence or registration has been suspended, it can be renewed but remains subject to suspension until the expiration of the period of suspension.

(6) The holder of a licence, registration or accreditation which is suspended or cancelled must surrender it to the Director-General.

Maximum penalty: 10 penalty units.

Appeals

14. (1) A person may, in accordance with the rules of the District Court, appeal to the District Court against a decision of the Director-General:

- (a) to refuse to grant the person a licence, registration or accreditation; or
 - (b) to impose conditions on, or vary the conditions of, a licence, registration or accreditation; or
 - (c) to suspend or cancel a licence, registration or accreditation.
- (2) The appeal is to be by way of a new hearing and new evidence can be given on the appeal.
- (3) The decision of the District Court on the appeal is final and is to be given effect to by the Director-General.

PART 3 - ENFORCEMENT

Powers of inspection etc.

15. (1) An inspector may enter premises if the inspector suspects on reasonable grounds that:

- (a) an offence against this Act or the regulations is being or has been committed on the premises; or
- (b) any radioactive substance or radiation apparatus is kept or used on the premises.

(2) An inspector is not entitled to enter a part of premises used for residential purposes, except:

- (a) with the consent of the occupier; or
- (b) under the authority of a search warrant.

(3) An inspector who enters premises under this section may do any one or more of the following:

- (a) search the premises and inspect any substance or apparatus found there;
- (b) require any person there to answer questions or produce records under the person's control concerning any activities apparently carried on there;
- (c) make copies of or take extracts from records so produced;
- (d) make such examination and inquiry and such tests as the inspector considers necessary to ascertain whether the provisions of this Act or the regulations are being or have been complied with;
- (e) take such photographs as the inspector considers necessary in connection with the administration of this Act or the regulations;

- (f) take without payment, for the purpose of examination or testing, samples of any substance that the inspector suspects on reasonable grounds is a substance in respect of which an offence against this Act or the regulations has been or is being committed;
- (g) seize and remove anything that the inspector suspects on reasonable grounds is a substance or thing in respect of which an offence against this Act or the regulations has been or is being committed.

(4) A requirement under this section to produce a record includes, if the record is not written at all (as, for example, in the case of records stored electronically) or not written wholly in the English language, a requirement to produce a statement, written in the English language, setting out such of the particulars in the record as are not written in the English language.

(5) An inspector is not authorised to take a sample of any substance or to remove anything that appears to the inspector to be in the custody of a person unless the inspector makes out and tenders a receipt to the person.

(6) Each inspector is to be provided by the Director-General with a certificate of authority and on applying for admission to any premises must, if requested to do so, produce the certificate to the occupier of the premises.

Search warrants

16. (1) An inspector may apply to an authorised justice for the issue of a search warrant if the inspector believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to exercise any function of an inspector under this Act.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section:

"**authorised justice**" means a Magistrate or a justice of the peace employed in the Attorney General's Department.

Obstruction etc. of inspector

17. A person must not:

- (a) assault, threaten, hinder or obstruct an inspector when the inspector is exercising any function of an inspector under this Act; or
- (b) fail to comply with a requirement made by an inspector under the authority of this Act.

Maximum penalty: 100 penalty units.

Notices to take action

18. (1) An inspector may serve a notice under this section on a person if the inspector believes on reasonable grounds that:

- (a) any requirement under this Act, the regulations or the conditions of a licence or registration is not being complied with and the person is responsible for complying with it; or
- (b) the person is responsible for any unnecessary exposure to or contamination by radiation.

(2) The notice:

- (a) is to be in writing; and
- (b) may contain a direction requiring the person on whom it is served to take specified steps to comply with the direction within a specified time; and
- (c) is to contain a statement to the effect that the person on whom the notice is served is entitled, within 7 days after receiving the notice or within such further time as the Council may allow, to make a submission to the Council as to why the owner should not comply with the direction concerned.

(3) The inspector must as soon as practicable give a copy of the notice to the Chairperson of the Council.

(4) If the person on whom the notice is served fails to make a submission to the Council within the period allowed or does so but the Council confirms the notice (with or without variation), the person must comply with the notice.

Maximum penalty: 200 penalty units.

(5) The person may appeal to the District Court against a decision of the Council under this section and the following provisions apply to the appeal:

- (a) there is no requirement to comply with the notice pending determination of the appeal, unless the appeal is withdrawn;
- (b) the appeal is to be in accordance with the rules of the District Court;
- (c) the appeal is to be by way of a new hearing and new evidence can be given on the appeal;
- (d) the decision of the Court is final and is to be given effect to by the Council.

Powers to deal with dangerous situations

19. (1) If the Director-General 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 of any person or premises by a radioactive substance, the Director-General may, to avoid, remove or alleviate the danger or potential danger:

- (a) direct the person responsible for the danger or potential danger or any person affected by it to take, or refrain from taking any specified action; or
- (b) direct that the radioactive substance or radiation apparatus giving rise to the danger or potential danger or anything contaminated or affected by it be seized, removed, disposed of, treated or otherwise dealt with; or
- (c) give any other direction that the Director-General considers appropriate; or
- (d) take any action that the Director-General considers necessary to alleviate the danger or potential danger (including any action that a person has been directed to take but has failed to take).

(2) Directions may be given or action taken under subsection (1) by the Director-General or, with the prior approval of the Director-General, by an inspector, member of the Police Force or other person appointed for the purpose by the Director-General.

(3) A direction may be given:

- (a) by notice published in the Gazette; or
- (b) by instrument in writing served on the person to whom it is directed; or
- (c) orally in circumstances of imminent danger, so long as, within 24 hours after it is given orally, notice of the direction is also given by instrument in writing served on the person concerned.

(4) A person must not:

- (a) contravene a direction given under this section; or
- (b) hinder or obstruct any person exercising any function, or complying with any direction, under this section.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(5) The exercise of the Director-General's functions under this section is subject to the State Emergency and Rescue Management Act 1989.

Special inquiries

20. (1) The Minister may authorise a person who has been admitted as a barrister for at least 5 years, or as a solicitor for at least 7 years or as a barrister or solicitor for at least 7 years to conduct an inquiry into any accident or incident involving a radioactive substance or radiation apparatus.

(2) The person who is directed to conduct such an inquiry is, for that purpose, to have the same powers, authorities, protections and immunities conferred by the Royal Commissions Act 1923 on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part 2 of that Act.

(3) The Royal Commissions Act 1923 (Division 2 of Part 2 excepted) applies to any witness summoned by or appearing before the person conducting an inquiry under this section in the same way as it applies to any witness summoned by or appearing before a commission.

Decontamination and acquisition of premises

21. (1) The Director-General may cause to be undertaken, or facilitate the undertaking of, the decontamination, or the removal and disposal, of premises contaminated by radioactivity.

(2) For the purposes of subsection (1), the Health Administration Corporation constituted under the Health Administration Act 1982 is authorised to acquire premises contaminated by radioactivity.

(3) This section does not prevent the acquisition, by the Crown or by any authority of the State, of any premises contaminated by radioactivity.

(4) For the purposes of this section, premises are to be regarded as contaminated by radioactivity if the premises or a part of the premises have a level of radioactivity of or above the level prescribed for the purposes of this section.

Offence by employee - liability of employer

22. (1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

Offences by corporations

23. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Increased penalty for offence causing serious harm

24. (1) This section applies when a person is convicted of an offence under section 6, 7, 8 or 19 and it is proved beyond reasonable doubt that the person, or a person involved in the commission 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.

(2) When this section applies, the maximum penalty that may be imposed in respect of the offence concerned is increased to 10,000 penalty units in the case of a corporation or 1,500 penalty units or imprisonment for 2 years, or both, in any other case.

Proceedings for offences

25. (1) Proceedings for an offence under this Act or the regulations are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate; or
- (b) the Supreme Court in its summary jurisdiction.

(2) Proceedings may be taken and prosecuted only by a person acting with the authority of the Director-General and may not be taken in the Supreme Court except with the consent of the Minister.

(3) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations is 100 penalty units.

(4) In proceedings for an offence, an authority or consent to prosecute purporting to have been signed by the Director-General or the Minister is evidence of that authority or consent without proof of the signature of the Director-General or the Minister.

Forfeiture

26. (1) When a person is convicted of an offence against this Act or the regulations, the court may order forfeiture to the Crown of any

radioactive substance or radiation apparatus in respect of which the offence was committed if the court finds it to be the property of the person so convicted.

(2) On application made by or on behalf of the Director-General in the prescribed manner, a Local Court may order forfeiture to the Crown of any substance or article seized by an inspector under this Act.

(3) The making of an order under this section operates to forfeit the property concerned to the Crown.

(4) Forfeited property is to be disposed of as the Minister directs.

Retention and disposal of seized property

27. (1) A substance or thing seized by an inspector under this Act may be retained for 6 months (or a longer period approved under subsection (3)) but then must be returned to the person from whom it was seized unless:

- (a) it has been forfeited to the Crown under section 26; or
- (b) the Director-General gives notice in the prescribed manner before that period expires to the effect that application will be made under section 26 on a specified day for forfeiture to the Crown of the substance or thing.

(2) Unless the substance or thing is forfeited to the Crown as a result of the making of that application, the Director-General is to return it to the person from whom it was seized or to the person who appears to the Director-General to be entitled to possession of it.

(3) A Local Court or the Supreme Court may on the application of the Director-General approve the retention of a seized substance or thing for a specified period longer than 6 months.

Recovery of costs

28. If costs or expenses are incurred by the Director-General or a public body in taking action or causing action to be taken under this Act in respect of a danger or potential danger resulting from an act or omission by any person in contravention of this Act or the regulations, the Director-General or public body may recover those costs or expenses from that person in a court of competent jurisdiction as a debt.

PART 4 - ADMINISTRATION

Radiation Advisory Council

29. (1) There is constituted by this Act a Radiation Advisory Council.

(2) The Council is to consist of 14 members appointed by the Minister, being:

- (a) an officer of the Department, who is to be Chairperson of the Council; and
- (b) a medical practitioner who is a specialist in radiology; and
- (c) a radiographer with expertise in the field of human diagnostic radiography; and
- (d) a person with expertise in the industrial uses of radiation; and
- (e) a person with expertise in health physics; and
- (f) a medical practitioner who specialises in nuclear medicine; and
- (g) a person with expertise in non-ionising radiation; and
- (h) a person with expertise in occupational health and safety; and
- (i) a person who has been admitted as a barrister for at least 5 years, as a solicitor for at least 7 years or as a barrister or solicitor for at least 7 years; and
- (j) a person who represents community interests; and
- (k) a member or an officer of the State Pollution Control Commission nominated by the Commission; and
- (l) a radiotherapist; and
- (m) a medical physicist; and
- (n) a person chosen by the Minister.

(3) Schedule 1 has effect with respect to the members and procedure of the Council.

Functions of the Council

30. (1) The Council is to advise the Minister on:

- (a) proposed amendments to this Act and the making, amendment or repeal of regulations under this Act; and
- (b) the administration of this Act and the regulations; and
- (c) measures to prevent or minimise the dangers arising from radiation; and

- (d) the granting, renewal, suspension and cancellation of any licence, registration or accreditation under this Act; and
- (e) such other matters relating to radiation safety as the Minister considers appropriate.

(2) Any such advice may be given either at the request of the Minister or without any such request.

(3) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.

Committees of Council

31. (1) The Council may establish committees to assist it in connection with the exercise of its functions.

(2) The members of a committee need not be members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

Appointment of inspectors

32. (1) The Director-General may appoint any officer of the Department of Health to be an inspector for the purposes of this Act.

(2) A person is not to be appointed as an inspector unless the person has the qualifications determined as appropriate by the Council.

PART 5 - GENERAL

Annual report of Council to Parliament

33. (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Council is to prepare and forward to the Minister a report of its work and activities for the 12 months ending on 30 June in that year.

(2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Act binds Crown

34. This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Service of documents

35. (1) A document required or permitted by this Act or the regulations to be served on a person, whether the expression "serve", "give" or "send" or any other expression is used, may be served:

- (a) on a natural person by delivering it to the person personally or by leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document; or
 - (b) on a corporation by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the corporation.
- (2) Nothing in this section:
- (a) affects the operation of any other law of the State or elsewhere that authorises the service of a document in any other way; or
 - (b) affects the power of a court to authorise service of a document in any other way.

Certificate evidence

36. A certificate issued by the Director-General to the effect that a specified person was or was not the holder of a specified licence, registration or accreditation at a specified time is, in any proceedings, evidence of the matters certified.

Delegation

37. (1) The Director-General may delegate to an officer of the Department a function of the Director-General exercisable under this Act.

(2) A power of delegation under this section may not itself be delegated.

Consultation and co-operation between Ministers

38. The Minister, in the administration of this Act, is to consult and co-operate with:

- (a) the Minister administering the Occupational Health and Safety Act 1983 and the Minister administering the Mining Act 1973 on matters relating to safe working practices involving radiation; and
- (b) the Minister administering the Mines Inspection Act 1901 on matters relating to radiation protection in mines; and
- (c) the Minister administering the State Pollution Control Commission Act 1970 on matters relating to the protection of the environment from radiation pollution.

Exemptions

39. (1) The regulations may make provision for exemptions (whether or not subject to conditions) from compliance with all or specified provisions of this Act and the regulations, including provision:

- (a) authorising the Minister to grant such an exemption; and
- (b) specifying circumstances in which an exemption granted under any law of another State, a Territory or the Commonwealth is to be considered to be an exemption granted under the regulations.

(2) The regulations are not to authorise the granting of an exemption by the Minister other than an exemption:

- (a) granted on the recommendation of the Council; or
- (b) granted to apply for a period not exceeding 60 days.

Regulations

40. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the Governor may make regulations for or with respect to regulating activities concerned with radioactive substances or radioactive apparatus, including the following activities:

- (a) activities of producing, manufacturing, supplying, keeping, conveying, using or otherwise dealing with radioactive substances or radiation apparatus;
 - (b) activities concerning any aspect of waste management, including waste disposal, treatment, storage, recycling and minimisation.
- (3) The regulations authorised by this section include regulations that make provision for or with respect to:
- (a) requiring specified standards to be observed, practices and procedures to be followed and measures to be taken in relation to activities referred to in subsection (2);
 - (b) recommending practices and procedures that may be followed, and measures that may be taken, to further the achievement of the standards referred to in paragraph (a);
 - (c) regulating, restricting or prohibiting any act or thing that is involved in or related to an activity referred to in subsection (2);
 - (d) the granting, issuing or giving of a licence, permit, registration, authority or approval and the terms or conditions to which it is subject;
 - (e) the giving of directions for the purposes of the regulations;
 - (f) the protection of the health and safety, and the training, examination and certification, of persons who engage or seek to engage in activities referred to in subsection (2);
 - (g) the medical examination of persons exposed or believed to have been exposed to radiation in the course of activities referred to in subsection (2);
 - (h) requiring the keeping of records, furnishing of information, and notification of accidents or other matters or events by persons carrying on activities referred to in subsection (2);
 - (i) the monitoring of levels of radiation exposure of persons engaged in activities referred to in subsection (2) and the monitoring of the health of such persons during and after such activities;
 - (j) the protection of persons and the environment against the harmful effects of radiation resulting from activities referred to in subsection (2);
 - (k) the monitoring of levels of radiation in the environment; and
 - (l) requiring the payment of fees and charges for services provided by the Director-General under this Act.

(4) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

**Amendment of Public Health Act 1902 No. 30, s. 63AA
(Decontamination and acquisition of premises)**

41. The Public Health Act 1902 is amended by omitting section 63AA.

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

42. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order of Acts the following matter:

section 16 of the Radiation Control Act 1990;

Repeal of Radioactive Substances Act 1957 No. 5 etc.

43. (1) The Radioactive Substances Act 1957 and the Radioactive Substances Regulations 1959 are repealed.

(2) The Radiological Advisory Council constituted under that Act is dissolved.

Savings and transitional provisions

44. Schedule 2 has effect.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL**

(Sec. 29)

Definition

1. In this Schedule:

"member" means a member of the Council.

Deputies of members

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued*

- (2) In the absence of a member, the member's deputy:
- (a) may, if available, act in the place of the member; and
 - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (3) The deputy of the member who is Chairperson of the Council does not (because of this clause) have the functions of Chairperson.
- (4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office

3. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Allowances

4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued***

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
 - (i) ceases to hold the relevant qualifications (if any).
- (2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

6. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued***

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

8. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

Quorum

9. The quorum for a meeting of the Council is 8 members.

Presiding member

10. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

11. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

First meeting

12. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 44)

PART 1 - PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2 - PROVISIONS CONSEQUENT ON THE
ENACTMENT OF THIS ACT**

Licences

2. (1) A licence issued under section 9 or 10 of the Radioactive Substances Act 1957 and in force immediately before the repeal of that Act is to be taken to have been issued under section 6 of this Act.

(2) A reference in a licence issued under section 10 of the Radioactive Substances Act 1957 (which is to be taken to have been issued under section 6 of this Act) to irradiating apparatus is to be read as a reference to radiation apparatus.

[*Minister's second reading speech made in -
Legislative Assembly on 22 May 1990
Legislative Council on 23 May 1990*]







FIRST PRINT

RADIATION CONTROL BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to repeal the Radioactive Substances Act 1957 and replace it with an Act which provides for the regulation and control of radioactive substances, radioactive sources and radiation apparatus. The proposed Act does not apply to radioactive ore while it is being mined or treated.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 states the object of the proposed Act, namely, to protect persons and the environment from exposure to ionising radiation and harmful non-ionising radiation.

Clause 4 defines certain expressions used in the proposed Act including "ionising radiation", "non-ionising radiation", "radiation apparatus", "sealed radioactive source" and "unsealed radioactive source".

Clause 5 states that the proposed Act does not apply to a radioactive ore while it is being mined or treated (within the meaning of the Mines Inspection Act 1901).

PART 2 - REGULATORY CONTROLS

Clause 6 makes it an offence for a person to use or sell a radioactive substance, ionising radiation apparatus or prescribed non-ionising radiation apparatus unless the person holds a licence to do so. (Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.)

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The clause also makes it an offence to sell such substances or apparatus except to a person who holds a licence. The above penalties apply.

The Director-General can grant licences on the recommendation of the Radiation Advisory Council (established by clause 28). The Council, in making a recommendation, has to be satisfied that certain specified criteria are met.

Clause 7 makes it an offence for a person to own a sealed radioactive source or prescribed radiation apparatus unless it is registered. (Maximum penalty: 1,500 penalty units in the case of a corporation or, in any other case, 250 penalty units or imprisonment for 2 years, or both.)

The clause also makes it an offence for an owner to allow a person who is not licensed to do so to use such a source or apparatus. The above penalties apply.

The Director-General can register such a source or apparatus on the recommendation of the Council.

Clause 8 makes the occupier of premises on which an unsealed radioactive source is kept guilty of an offence unless the premises are registered. (Maximum penalty: 1,500 penalty units in the case of a corporation or, in any other case, 250 penalty units or imprisonment for 2 years, or both.)

The clause also makes it an offence for the occupier of such premises to allow a person who is unlicensed to use the unsealed radioactive source. The above penalties apply.

The Director-General can register premises on the recommendation of the Council.

Clause 9 makes it an offence for a person to carry on the activities of a consulting radiation expert unless the person has been accredited by the Director-General. (Maximum penalty: 100 penalty units.)

The Director-General can accredit a person as a radiation expert on the recommendation of the Council.

Clause 10 enables conditions of licences, registration or accreditation to be imposed or varied by the Director-General.

Clause 11 provides for the term of a licence, registration or accreditation and the renewal of licences, registrations and accreditations.

Clause 12 enables the Director-General, on application, to transfer any registration under the proposed Act.

Clause 13 enables the Director-General to suspend or cancel a licence, registration or accreditation in specified circumstances.

Clause 14 provides a right of appeal to the District Court against the refusal, variation, suspension or cancellation of a licence, registration or accreditation.

PART 3 - ENFORCEMENT

Clause 15 allows an inspector appointed under clause 31 to enter premises and conduct investigations if it is suspected that the proposed Act or a regulation made

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under it is being contravened or to inspect radioactive substances or radiation apparatus. Residential premises must not be entered except with the permission of the occupier or under the authority of a search warrant.

Clause 16 provides for the issue of search warrants by an authorised justice and applies the Search Warrants Act 1985 to such warrants.

Clause 17 makes it an offence for a person to hinder an inspector or fail to comply with a requirement of an inspector. (Maximum penalty: 100 penalty units.)

Clause 18 enables an inspector to serve a notice on a person requiring certain measures to be taken to remedy a contravention of the Act or any unnecessary exposure to or contamination by radiation. A person commits an offence by not complying with the notice. (Maximum penalty: 200 penalty units.) An appeal may be made to the District Court.

Clause 19 enables the Director-General to give directions to a person or to order the seizure or disposal of radioactive substances or radiation apparatus if a dangerous or potentially dangerous situation exists.

It is an offence to hinder a person taking action under this clause. (Maximum penalty: 1,500 penalty units in the case of a corporation or, in any other case, 250 penalty units or imprisonment for 2 years, or both.)

Clause 20 gives the Minister power to authorise a legally qualified person to make an inquiry (in the nature of a Royal Commission) into any accident or incident involving a radioactive substance or radiation apparatus.

Clause 21 re-enacts section 63AA of the Public Health Act 1902 which is repealed by clause 40. The clause enables the Director-General to undertake the decontamination of premises. The Health Administration Corporation can acquire contaminated premises.

Clause 22 makes an employer liable for a contravention of the proposed Act or the regulations by an employee unless the employer had no knowledge of the contravention or could not have prevented it.

Clause 23 makes directors and persons concerned in the management of a corporation individually liable for a contravention of the proposed Act by the corporation.

Clause 24 provides for proceedings for offences against the proposed Act or the regulations to be taken in a Local Court or the Supreme Court in its summary jurisdiction.

Clause 25 provides for forfeiture and disposal of a radioactive substance or radiation apparatus in a case where an offence has been committed against the proposed Act.

Clause 26 deals with the procedure to be followed if an inspector seizes any substance or thing.

Clause 27 enables the Director-General or a public body to recover expenses incurred in taking action under the proposed Act in respect of a danger or potential danger caused by a person contravening the proposed Act or regulations.

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PART 4 - ADMINISTRATION

Clause 28 constitutes the Radiation Advisory Council which consists of 12 members (having specified qualifications) appointed by the Minister.

Clause 29 specifies the functions of the Council which include advising the Minister on measures to prevent or minimise the dangers arising from radiation.

Clause 30 enables the Council to establish committees.

Clause 31 allows the Director-General to appoint officers of the Department of Health holding appropriate qualifications to be inspectors.

PART 5 - GENERAL

Clause 32 requires the Council to prepare and forward to the Minister an annual report of its work and activities for presentation to Parliament.

Clause 33 states that the proposed Act binds the Crown.

Clause 34 specifies how documents under the proposed Act can be served.

Clause 35 provides for certain certificates of the Director-General to be accepted as evidence.

Clause 36 enables the Director-General to delegate functions under the proposed Act.

Clause 37 requires the Minister, in the administration of the proposed Act, to consult and co-operate with the Ministers administering the Occupational Health and Safety Act 1983, the Mining Act 1973, the Mines Inspection Act 1901 and the State Pollution Control Commission Act 1970.

Clause 38 enables regulations to be made by the Governor-in-Council which make provision for exemptions to be granted.

Clause 39 enables regulations to be made by the Governor-in-Council on a wide range of matters with respect to the control of activities relating to radioactive substances and radiation apparatus.

Clause 40 repeals section 63AA of the Public Health Act 1902 (see clause 21).

Clause 41 consequentially amends the Search Warrants Act 1985 (see clause 16).

Clause 42 repeals the Radioactive Substances Act 1957 and the regulations in force under that Act.

Clause 43 gives effect to the Schedule of savings and transitional provisions (Schedule 2).

**SCHEDULE 1 - PROVISIONS RELATING TO
MEMBERS AND PROCEDURE OF COUNCIL**

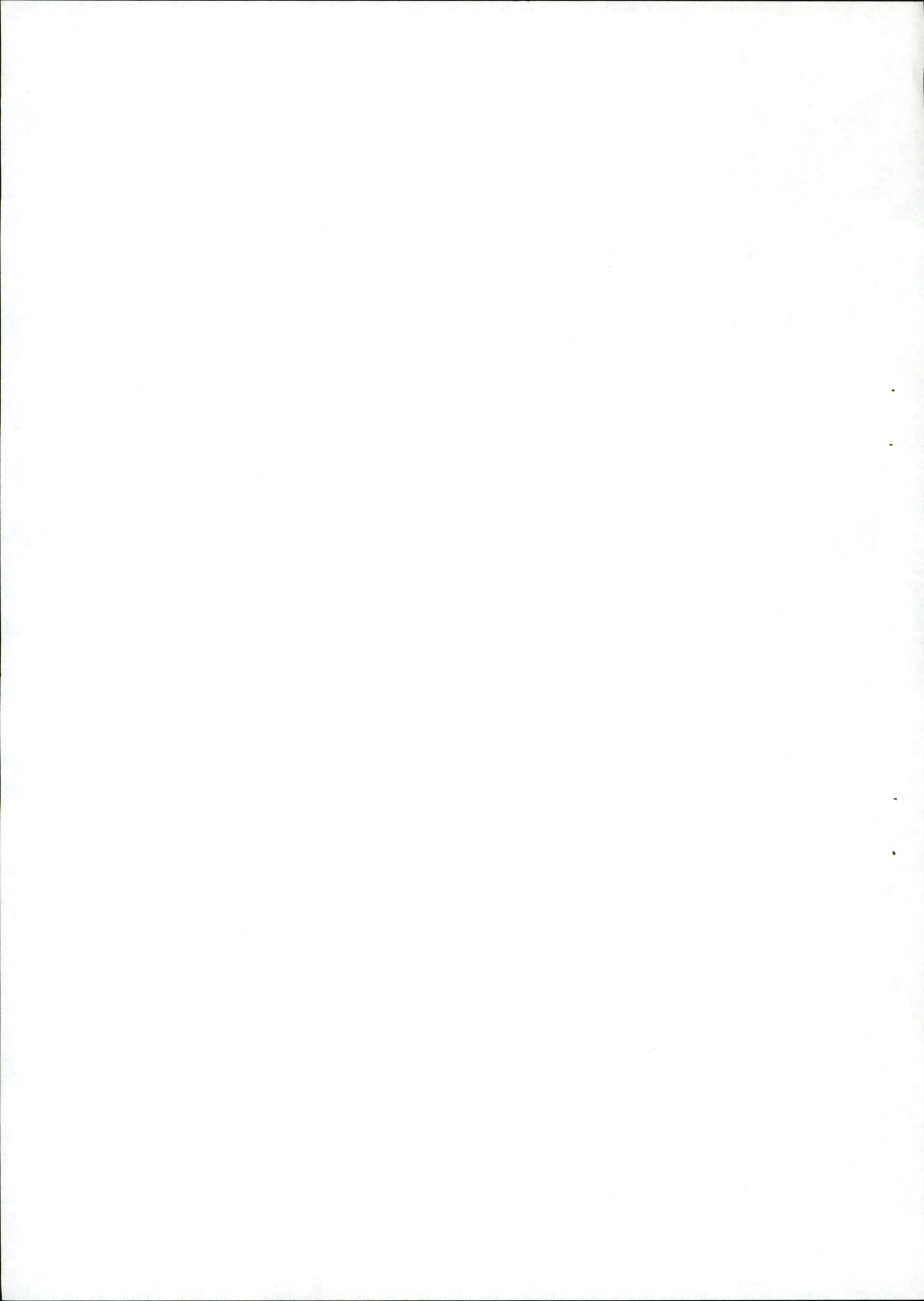
Schedule 1 contains provisions relating to the members and procedure of the Council, including provisions dealing with terms of office, vacation of office, general procedure, presiding member and voting.

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SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 2 allows savings and transitional regulations to be made and provides that licences issued and in force under the Radioactive Substances Act 1957 are to be taken to have been issued under the proposed Act.

The expression "penalty unit", used throughout the Bill, has its basis in section 56 of the Interpretation Act 1987. At present, 1 penalty unit is equivalent to \$100.



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RADIATION CONTROL BILL 1990

NEW SOUTH WALES



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SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF COUNCIL

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

RADIATION CONTROL BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to make provision for the regulation and control of the sale, use, keeping and disposal of radioactive substances and radiation apparatus; to repeal the Radioactive Substances Act 1957; and for other purposes.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Radiation Control Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Object of Act

3. The object of this Act is to secure the protection of persons and the environment from exposure to ionising radiation, and harmful 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 therapeutic purposes.

Definitions

4. (1) In this Act:

"**approved**" means approved for the time being by the Director-General;

"**Council**" means the Radiation Advisory Council constituted by this Act;

"**Department**" means the Department of Health;

"**Director-General**" means the Director-General of the Department;

"**environment**" includes all aspects of the surroundings of people, whether affecting them as individuals or in their social groupings;

"**inspector**" means a person appointed as an inspector for the purposes of this Act;

"**ionising radiation**" means electromagnetic or particulate radiation capable of producing ions directly or indirectly in passage through matter, but does not include electromagnetic radiation of a wavelength greater than 100 nanometres;

"**licence**" means a licence (including a temporary licence) in force under section 6;

"non-ionising radiation" means:

- (a) electromagnetic radiation of a wavelength greater than 100 nanometres; or
- (b) non-varying electric or magnetic fields; or
- (c) sonic, infrasonic or ultrasonic waves that are prescribed as non-ionising radiation for the purposes of this definition;

"occupier", in relation to premises, means:

- (a) the person in occupation or control of the premises; or
- (b) if the premises have different parts occupied or controlled by different persons, the person in occupation or control of the part concerned;

"owner", in relation to any apparatus or thing that has been leased or let out on hire, means the lessee or the person who takes it on hire;

"premises" includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) land or a place (whether enclosed or built on or not); and
- (c) any part of premises;

"radiation apparatus" means a manufactured or assembled article, or any component, part or accessory of such an article, which when in operation contains or acts as part of an electrical circuit, or which acts by electromagnetic amplification employing a resonant space, and emits (or in the absence of effective shielding or other control would emit) ionising or non-ionising radiation;

"radioactive ore" means an ore or mineral containing more than the concentration of uranium or thorium prescribed for the purposes of this definition;

"radioactive substance" means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour (including any article or compound whether it has or has not been subjected to any artificial treatment or process) which emits ionising radiation spontaneously with a specific activity greater than 100 becquerels per gram and which consists of or contains more than the prescribed concentration of any radioactive element whether natural or artificial;

"registered premises" means premises registered under this Act;

"sealed radioactive source" means a radioactive substance enclosed in a container which prevents escape of the substance and permits controlled emission of radiation from the container;

"sell" means sell by wholesale or retail, and includes barter, supply for profit, lease, let out on hire, offer or expose for sale, receive for sale, have in possession for sale, send, forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale;

"unsealed radioactive source" means a radioactive substance that is not a sealed radioactive source;

"use" includes:

- (a) operate; and
- (b) use in the course of manufacture; and
- (c) have in possession for use; and
- (d) handle or manipulate (whether or not by indirect or remote means).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Application of Act to radioactive ore being mined or treated

5. This Act does not apply to a radioactive ore while it is being mined in a mine (as defined in section 4 (1) of the Mines Inspection Act 1901) or is the subject of treatment (as so defined).

PART 2 - REGULATORY CONTROLS

Restrictions on use and sale of radioactive substances and certain radiation apparatus

6. (1) This section applies to the following:

- (a) all radioactive substances;
- (b) all ionising radiation apparatus;
- (c) non-ionising radiation apparatus prescribed as apparatus to which this section applies.

(2) A person must not use or sell anything to which this section applies unless the person is the holder of a licence or temporary licence under this section and does so in compliance with any conditions to which the licence or temporary licence is subject.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) A person must not sell anything to which this section applies except to a person who holds a licence or temporary licence under this section authorising the use or sale of that thing.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(4) The Director-General may, on application in the approved form and payment of the prescribed fee, grant a licence or a temporary licence but only if the Council recommends that the licence or temporary licence be granted.

(5) The Council is not to recommend that a licence, or a temporary licence, authorising a person to use anything to which this section applies be granted unless it is satisfied:

- (a) that the applicant is a natural person and is a fit and proper person to hold the licence; and
- (b) that the applicant has appropriate knowledge of the principles and practices of radiation hygiene and protection applicable to the activities proposed to be carried on by the applicant in pursuance of the licence.

(6) A licence or temporary licence is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Responsibilities of owners of sealed radioactive sources and certain radiation apparatus

7. (1) This section applies to the following things:

- (a) all sealed radioactive sources;
- (b) radiation apparatus that is prescribed as apparatus to which this section applies.

(2) The owner of anything to which this section applies is guilty of an offence unless it is registered under this section in the owner's name and any conditions to which that registration is subject are complied with.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) The owner of anything registered under this section must not allow a person to use it unless the person is authorised to do so by a licence or a temporary licence.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(4) The Director-General may, on application in the approved form by or on behalf of the owner of a sealed radioactive source or radiation apparatus and payment of the prescribed fee, register it in the owner's name, but only if the Council recommends that the Director-General do so.

(5) The Council is not to recommend the registration of a sealed radioactive source or radiation apparatus under this section unless the Council is satisfied that it complies with any applicable requirements of the regulations.

(6) Registration under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Responsibilities of occupier of premises on which unsealed radioactive source is kept or used

8. (1) The occupier of any premises on which an unsealed radioactive source is kept or used is guilty of an offence unless the premises are registered under this section and any conditions to which that registration is subject are complied with.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(2) The occupier of premises registered under this section must not allow a person to use any unsealed radioactive source kept on the

premises unless the person is authorised to do so by a licence or temporary licence.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) The Director-General may, on application in the approved form by or on behalf of the occupier of premises and payment of the prescribed fee, register the premises in the name of the occupier, but only if the Council recommends that the Director-General do so.

(4) The Council is not to recommend the registration of premises under this section unless the Council is satisfied that the premises comply with any applicable provisions of the regulations.

(5) Registration under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

(6) The Minister may, if the Council so recommends, by notice in writing given to the occupier of any premises exempt the premises from the operation of this section and any such exemption remains in force until cancelled by the Minister by notice in writing given to the occupier.

Accreditation of radiation experts

9. (1) A person must not carry on any of the activities prescribed as the activities of a consulting radiation expert unless the person is accredited by the Director-General as a radiation expert and does so in compliance with any conditions to which that accreditation is subject.

Maximum penalty: 100 penalty units.

(2) The Director-General may, on application in the approved form and payment of the prescribed fee, accredit a person as a consulting radiation expert but only if the Council recommends that the person be accredited.

(3) The Council is not to recommend that a person be accredited unless satisfied that the person has the expertise necessary to properly carry on the activities authorised by the accreditation.

(4) An accreditation under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Conditions of licences etc.

10. (1) A condition of a licence, registration or accreditation may be imposed by the Director-General by notice in writing given to the holder of the licence, registration or accreditation.

(2) The Director-General may, by notice in writing to the holder of a licence, registration or accreditation, vary or revoke a condition of it or impose a further condition, but only on the recommendation of the Council.

Term and renewal of licences etc.

11. (1) A licence or registration (including any renewed licence or registration) remains in force for such term as the Director-General specifies in the licence or registration, unless it is cancelled or surrendered sooner.

(2) The term specified in a temporary licence is not to exceed 3 months.

(3) An accreditation remains in force until it is cancelled or surrendered.

(4) On application made in the approved manner and payment of the prescribed fee, the Director-General is to renew a licence (other than a temporary licence) or registration for a period of not less than 12 months.

Transfer of registration

12. The Director-General may, on application in the approved form by or on behalf of any person in whose name any thing or premises are registered and payment of the prescribed fee, transfer the registration into the name of another person.

Surrender, suspension and cancellation of licences etc.

13. (1) The holder of a licence, registration or accreditation can surrender it.

(2) The Director-General can suspend or cancel a licence, registration or accreditation if satisfied:

- (a) that the grant of the licence, registration or accreditation was obtained improperly; or
- (b) that the holder of the licence, registration or accreditation has contravened a condition of it; or
- (c) that the holder of the licence, registration or accreditation has been convicted of an offence against this Act or the regulations; or
- (d) that, in the case of a licence or accreditation, the holder has ceased to hold a qualification on the basis of which the Director-General granted the licence or accreditation; or
- (e) that, in the case of an accreditation, the holder has ceased working as a consulting radiation expert.

(3) A decision of the Director-General to suspend or cancel a licence, registration or accreditation has no effect:

- (a) until the expiration of the period within which a person may appeal against the decision; or
- (b) if a person appeals against the decision within that period, unless and until the decision is confirmed by the District Court or the appeal is withdrawn.

(4) A licence, registration or accreditation:

- (a) surrendered or cancelled under this section ceases to be of any force or effect; or
- (b) suspended under this section is of no force or effect for the period of the suspension.

(5) If a licence or registration has been suspended, it can be renewed but remains subject to suspension until the expiration of the period of suspension.

(6) The holder of a licence, registration or accreditation which is suspended or cancelled must surrender it to the Director-General.

Maximum penalty: 10 penalty units.

Appeals

14. (1) A person may, in accordance with the rules of the District Court, appeal to the District Court against a decision of the Director-General:

- (a) to refuse to grant the person a licence, registration or accreditation; or
 - (b) to impose conditions on, or vary the conditions of, a licence, registration or accreditation; or
 - (c) to suspend or cancel a licence, registration or accreditation.
- (2) The appeal is to be by way of a new hearing and new evidence can be given on the appeal.
- (3) The decision of the District Court on the appeal is final and is to be given effect to by the Director-General.

PART 3 - ENFORCEMENT

Powers of inspection etc.

15. (1) An inspector may enter premises if the inspector suspects on reasonable grounds that:

- (a) an offence against this Act or the regulations is being or has been committed on the premises; or
- (b) any radioactive substance or radiation apparatus is kept or used on the premises.

(2) An inspector is not entitled to enter a part of premises used for residential purposes, except:

- (a) with the consent of the occupier; or
- (b) under the authority of a search warrant.

(3) An inspector who enters premises under this section may do any one or more of the following:

- (a) search the premises and inspect any substance or apparatus found there;
- (b) require any person there to answer questions or produce records under the person's control concerning any activities apparently carried on there;
- (c) make copies of or take extracts from records so produced;
- (d) make such examination and inquiry and such tests as the inspector considers necessary to ascertain whether the provisions of this Act or the regulations are being or have been complied with;
- (e) take such photographs as the inspector considers necessary in connection with the administration of this Act or the regulations;

- (f) take without payment, for the purpose of examination or testing, samples of any substance that the inspector suspects on reasonable grounds is a substance in respect of which an offence against this Act or the regulations has been or is being committed;
- (g) seize and remove anything that the inspector suspects on reasonable grounds is a substance or thing in respect of which an offence against this Act or the regulations has been or is being committed.

(4) A requirement under this section to produce a record includes, if the record is not written at all (as, for example, in the case of records stored electronically) or not written wholly in the English language, a requirement to produce a statement, written in the English language, setting out such of the particulars in the record as are not written in the English language.

(5) An inspector is not authorised to take a sample of any substance or to remove anything that appears to the inspector to be in the custody of a person unless the inspector makes out and tenders a receipt to the person.

(6) Each inspector is to be provided by the Director-General with a certificate of authority and on applying for admission to any premises must, if requested to do so, produce the certificate to the occupier of the premises.

Search warrants

16. (1) An inspector may apply to an authorised justice for the issue of a search warrant if the inspector believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to exercise any function of an inspector under this Act.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section:

"authorised justice" means a Magistrate or a justice of the peace employed in the Attorney General's Department.

Obstruction etc. of inspector

17. A person must not:

- (a) assault, threaten, hinder or obstruct an inspector when the inspector is exercising any function of an inspector under this Act; or
- (b) fail to comply with a requirement made by an inspector under the authority of this Act.

Maximum penalty: 100 penalty units.

Notices to take action

18. (1) An inspector may serve a notice under this section on a person if the inspector believes on reasonable grounds that:

- (a) any requirement under this Act, the regulations or the conditions of a licence or registration is not being complied with and the person is responsible for complying with it; or
- (b) the person is responsible for any unnecessary exposure to or contamination by radiation.

(2) The notice:

- (a) is to be in writing; and
- (b) may contain a direction requiring the person on whom it is served to take specified steps to comply with the direction within a specified time; and
- (c) is to contain a statement to the effect that the person on whom the notice is served is entitled, within 7 days after receiving the notice or within such further time as the Council may allow, to make a submission to the Council as to why the owner should not comply with the direction concerned.

(3) The inspector must as soon as practicable give a copy of the notice to the Chairperson of the Council.

(4) If the person on whom the notice is served fails to make a submission to the Council within the period allowed or does so but the Council confirms the notice (with or without variation), the person must comply with the notice.

Maximum penalty: 200 penalty units.

(5) The person may appeal to the District Court against a decision of the Council under this section and the following provisions apply to the appeal:

- (a) there is no requirement to comply with the notice pending determination of the appeal, unless the appeal is withdrawn;
- (b) the appeal is to be in accordance with the rules of the District Court;
- (c) the appeal is to be by way of a new hearing and new evidence can be given on the appeal;
- (d) the decision of the Court is final and is to be given effect to by the Council.

Powers to deal with dangerous situations

19. (1) If the Director-General 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 of any person or premises by a radioactive substance, the Director-General may, to avoid, remove or alleviate the danger or potential danger:

- (a) direct the person responsible for the danger or potential danger or any person affected by it to take, or refrain from taking any specified action; or
- (b) direct that the radioactive substance or radiation apparatus giving rise to the danger or potential danger or anything contaminated or affected by it be seized, removed, disposed of, treated or otherwise dealt with; or
- (c) give any other direction that the Director-General considers appropriate; or
- (d) take any action that the Director-General considers necessary to alleviate the danger or potential danger (including any action that a person has been directed to take but has failed to take).

(2) Directions may be given or action taken under subsection (1) by the Director-General or, with the prior approval of the Director-General, by an inspector, member of the Police Force or other person appointed for the purpose by the Director-General.

(3) A direction may be given:

- (a) by notice published in the Gazette; or
- (b) by instrument in writing served on the person to whom it is directed; or
- (c) orally in circumstances of imminent danger, so long as, within 24 hours after it is given orally, notice of the direction is also given by instrument in writing served on the person concerned.

(4) A person must not:

- (a) contravene a direction given under this section; or
- (b) hinder or obstruct any person exercising any function, or complying with any direction, under this section.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(5) The exercise of the Director-General's functions under this section is subject to the State Emergency and Rescue Management Act 1989.

Special inquiries

20. (1) The Minister may authorise a person who has been admitted as a barrister for at least 5 years, or as a solicitor for at least 7 years or as a barrister or solicitor for at least 7 years to conduct an inquiry into any accident or incident involving a radioactive substance or radiation apparatus.

(2) The person who is directed to conduct such an inquiry is, for that purpose, to have the same powers, authorities, protections and immunities conferred by the Royal Commissions Act 1923 on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part 2 of that Act.

(3) The Royal Commissions Act 1923 (Division 2 of Part 2 excepted) applies to any witness summoned by or appearing before the person conducting an inquiry under this section in the same way as it applies to any witness summoned by or appearing before a commission.

Decontamination and acquisition of premises

21. (1) The Director-General may cause to be undertaken, or facilitate the undertaking of, the decontamination, or the removal and disposal, of premises contaminated by radioactivity.

(2) For the purposes of subsection (1), the Health Administration Corporation constituted under the Health Administration Act 1982 is authorised to acquire premises contaminated by radioactivity.

(3) This section does not prevent the acquisition, by the Crown or by any authority of the State, of any premises contaminated by radioactivity.

(4) For the purposes of this section, premises are to be regarded as contaminated by radioactivity if the premises or a part of the premises have a level of radioactivity of or above the level prescribed for the purposes of this section.

Offence by employee - liability of employer

22. (1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

Offences by corporations

23. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Proceedings for offences

24. (1) Proceedings for an offence under this Act or the regulations are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate; or
- (b) the Supreme Court in its summary jurisdiction.

(2) Proceedings may be taken and prosecuted only by a person acting with the authority of the Director-General and may not be taken in the Supreme Court except with the consent of the Minister.

(3) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations is 100 penalty units.

(4) In proceedings for an offence, an authority or consent to prosecute purporting to have been signed by the Director-General or the Minister is evidence of that authority or consent without proof of the signature of the Director-General or the Minister.

Forfeiture

25. (1) When a person is convicted of an offence against this Act or the regulations, the court may order forfeiture to the Crown of any radioactive substance or radiation apparatus in respect of which the offence was committed if the court finds it to be the property of the person so convicted.

(2) On application made by or on behalf of the Director-General in the prescribed manner, a Local Court may order forfeiture to the Crown of any substance or article seized by an inspector under this Act.

(3) The making of an order under this section operates to forfeit the property concerned to the Crown.

(4) Forfeited property is to be disposed of as the Minister directs.

Retention and disposal of seized property

26. (1) A substance or thing seized by an inspector under this Act may be retained for 6 months (or a longer period approved under subsection (3)) but then must be returned to the person from whom it was seized unless:

- (a) it has been forfeited to the Crown under section 25; or
- (b) the Director-General gives notice in the prescribed manner before that period expires to the effect that application will be made under section 25 on a specified day for forfeiture to the Crown of the substance or thing.

(2) Unless the substance or thing is forfeited to the Crown as a result of the making of that application, the Director-General is to return it to the person from whom it was seized or to the person who appears to the Director-General to be entitled to possession of it.

(3) A Local Court or the Supreme Court may on the application of the Director-General approve the retention of a seized substance or thing for a specified period longer than 6 months.

Recovery of costs

27. If costs or expenses are incurred by the Director-General or a public body in taking action or causing action to be taken under this Act in respect of a danger or potential danger resulting from an act or omission by any person in contravention of this Act or the regulations, the Director-General or public body may recover those costs or expenses from that person in a court of competent jurisdiction as a debt.

PART 4 - ADMINISTRATION

Radiation Advisory Council

28. (1) There is constituted by this Act a Radiation Advisory Council.

(2) The Council is to consist of 12 members appointed by the Minister, being:

- (a) an officer of the Department, who is to be Chairperson of the Council; and
- (b) a medical practitioner who is a specialist in radiology, and

- (c) a radiographer with expertise in the field of human diagnostic radiography; and
- (d) a person with expertise in the industrial uses of radiation; and
- (e) a person with expertise in health physics; and
- (f) a medical practitioner who specialises in nuclear medicine; and
- (g) a person with expertise in non-ionising radiation; and
- (h) a person with expertise in occupational health and safety; and
- (i) a person who has been admitted as a barrister for at least 5 years, as a solicitor for at least 7 years or as a barrister or solicitor for at least 7 years; and
- (j) a person who represents community interests; and
- (k) a member or an officer of the State Pollution Control Commission nominated by the Commission; and
- (l) a radiotherapist.

(3) Schedule 1 has effect with respect to the members and procedure of the Council.

Functions of the Council

29. (1) The Council is to advise the Minister on:

- (a) proposed amendments to this Act and the making, amendment or repeal of regulations under this Act; and
- (b) the administration of this Act and the regulations; and
- (c) measures to prevent or minimise the dangers arising from radiation; and
- (d) the granting, renewal, suspension and cancellation of any licence, registration or accreditation under this Act; and
- (e) such other matters relating to radiation safety as the Minister considers appropriate.

(2) Any such advice may be given either at the request of the Minister or without any such request.

(3) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.

Committees of Council

30. (1) The Council may establish committees to assist it in connection with the exercise of its functions.

(2) The members of a committee need not be members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

Appointment of inspectors

31. (1) The Director-General may appoint any officer of the Department of Health to be an inspector for the purposes of this Act.

(2) A person is not to be appointed as an inspector unless the person has the qualifications determined as appropriate by the Council.

PART 5 - GENERAL

Annual report of Council to Parliament

32. (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Council is to prepare and forward to the Minister a report of its work and activities for the 12 months ending on 30 June in that year.

(2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Act binds Crown

33. This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Service of documents

34. (1) A document required or permitted by this Act or the regulations to be served on a person, whether the expression "serve", "give" or "send" or any other expression is used, may be served:

- (a) on a natural person by delivering it to the person personally or by leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document; or
 - (b) on a corporation by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the corporation.
- (2) Nothing in this section:
- (a) affects the operation of any other law of the State or elsewhere that authorises the service of a document in any other way; or
 - (b) affects the power of a court to authorise service of a document in any other way.

Certificate evidence

35. A certificate issued by the Director-General to the effect that a specified person was or was not the holder of a specified licence, registration or accreditation at a specified time is, in any proceedings, evidence of the matters certified.

Delegation

36. (1) The Director-General may delegate to an officer of the Department a function of the Director-General exercisable under this Act.

(2) A power of delegation under this section may not itself be delegated.

Consultation and co-operation between Ministers

37. The Minister, in the administration of this Act, is to consult and co-operate with:

- (a) the Minister administering the Occupational Health and Safety Act 1983 and the Minister administering the Mining Act 1973 on matters relating to safe working practices involving radiation; and
- (b) the Minister administering the Mines Inspection Act 1901 on matters relating to radiation protection in mines; and
- (c) the Minister administering the State Pollution Control Commission Act 1970 on matters relating to the protection of the environment from radiation pollution.

Exemptions

38. (1) The regulations may make provision for exemptions (whether or not subject to conditions) from compliance with all or specified provisions of this Act and the regulations, including provision:

- (a) authorising the Minister to grant such an exemption; and
- (b) specifying circumstances in which an exemption granted under any law of another State, a Territory or the Commonwealth is to be considered to be an exemption granted under the regulations.

(2) The regulations are not to authorise the granting of an exemption by the Minister other than an exemption:

- (a) granted on the recommendation of the Council; or
- (b) granted to apply for a period not exceeding 60 days.

Regulations

39. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the Governor may make regulations for or with respect to regulating activities concerned with radioactive substances or radioactive apparatus, including the following activities:

- (a) activities of producing, manufacturing, supplying, keeping, conveying, using or otherwise dealing with radioactive substances or radiation apparatus;
- (b) activities concerning any aspect of waste management, including waste disposal, treatment, storage, recycling and minimisation.

(3) The regulations authorised by this section include regulations that make provision for or with respect to:

- (a) requiring specified standards to be observed, practices and procedures to be followed and measures to be taken in relation to activities referred to in subsection (2);
- (b) recommending practices and procedures that may be followed, and measures that may be taken, to further the achievement of the standards referred to in paragraph (a);

- (c) regulating, restricting or prohibiting any act or thing that is involved in or related to an activity referred to in subsection (2);
 - (d) the granting, issuing or giving of a licence, permit, registration, authority or approval and the terms or conditions to which it is subject;
 - (e) the giving of directions for the purposes of the regulations;
 - (f) the protection of the health and safety, and the training, examination and certification, of persons who engage or seek to engage in activities referred to in subsection (2);
 - (g) the medical examination of persons exposed or believed to have been exposed to radiation in the course of activities referred to in subsection (2);
 - (h) requiring the keeping of records, furnishing of information, and notification of accidents or other matters or events by persons carrying on activities referred to in subsection (2);
 - (i) the monitoring of levels of radiation exposure of persons engaged in activities referred to in subsection (2) and the monitoring of the health of such persons during and after such activities;
 - (j) the protection of persons and the environment against the harmful effects of radiation resulting from activities referred to in subsection (2);
 - (k) the monitoring of levels of radiation in the environment; and
 - (l) requiring the payment of fees and charges for services provided by the Director-General under this Act.
- (4) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

**Amendment of Public Health Act 1902 No. 30, s. 63AA
(Decontamination and acquisition of premises)**

40. The Public Health Act 1902 is amended by omitting section 63AA.

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

41. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order of Acts the following matter:

section 16 of the Radiation Control Act 1990;

Repeal of Radioactive Substances Act 1957 No. 5 etc.

42. (1) The Radioactive Substances Act 1957 and the Radioactive Substances Regulations 1959 are repealed.

(2) The Radiological Advisory Council constituted under that Act is dissolved.

Savings and transitional provisions

43. Schedule 2 has effect.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL**

(Sec. 28)

Definition

1. In this Schedule:

"member" means a member of the Council.

Deputies of members

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) The deputy of the member who is Chairperson of the Council does not (because of this clause) have the functions of Chairperson.

(4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued*

Terms of office

3. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Allowances

4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued*

- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (i) ceases to hold the relevant qualifications (if any).
- (2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

6. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

8. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued***

Quorum

9. The quorum for a meeting of the Council is 7 members.

Presiding member

10. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

11. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

First meeting

12. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS
(Sec. 43)

PART 1 - PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2 - PROVISIONS CONSEQUENTIAL ON THE
ENACTMENT OF THIS ACT**

Licences

2. (1) A licence issued under section 9 or 10 of the Radioactive Substances Act 1957 and in force immediately before the repeal of that Act is to be taken to have been issued under section 6 of this Act.

(2) A reference in a licence issued under section 10 of the Radioactive Substances Act 1957 (which is to be taken to have been issued under section 6 of this Act) to irradiating apparatus is to be read as a reference to radiation apparatus.

SECOND PRINT

RADIATION CONTROL BILL 1990

NEW SOUTH WALES



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44. Savings and transitional provisions

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF COUNCIL

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, , 1990*

NEW SOUTH WALES



Act No. , 1990

An Act to make provision for the regulation and control of the sale, use, keeping and disposal of radioactive substances and radiation apparatus; to repeal the Radioactive Substances Act 1957; and for other purposes.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Radiation Control Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Object of Act

3. The object of this Act is to secure the protection of persons and the environment from exposure to ionising radiation, and harmful 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 therapeutic purposes.

Definitions

4. (1) In this Act:

"approved" means approved for the time being by the Director-General;

"Council" means the Radiation Advisory Council constituted by this Act;

"Department" means the Department of Health;

"Director-General" means the Director-General of the Department;

"environment" includes all aspects of the surroundings of people, whether affecting them as individuals or in their social groupings;

"inspector" means a person appointed as an inspector for the purposes of this Act;

"ionising radiation" means electromagnetic or particulate radiation capable of producing ions directly or indirectly in passage through matter, but does not include electromagnetic radiation of a wavelength greater than 100 nanometres;

"licence" means a licence (including a temporary licence) in force under section 6;

"non-ionising radiation" means:

- (a) electromagnetic radiation of a wavelength greater than 100 nanometres; or
- (b) non-varying electric or magnetic fields; or
- (c) sonic, infrasonic or ultrasonic waves that are prescribed as non-ionising radiation for the purposes of this definition;

"occupier", in relation to premises, means:

- (a) the person in occupation or control of the premises; or
- (b) if the premises have different parts occupied or controlled by different persons, the person in occupation or control of the part concerned;

"owner", in relation to any apparatus or thing that has been leased or let out on hire, means the lessee or the person who takes it on hire;

"premises" includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) land or a place (whether enclosed or built on or not); and
- (c) any part of premises;

"radiation apparatus" means a manufactured or assembled article, or any component, part or accessory of such an article, which when in operation contains or acts as part of an electrical circuit, or which acts by electromagnetic amplification employing a resonant space, and emits (or in the absence of effective shielding or other control would emit) ionising or non-ionising radiation;

"radioactive ore" means an ore or mineral containing more than the concentration of uranium or thorium prescribed for the purposes of this definition;

"radioactive substance" means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour (including any article or compound whether it has or has not been subjected to any artificial treatment or process) which emits ionising radiation spontaneously with a specific activity greater than 100 becquerels per gram and which consists of or contains more than the prescribed concentration of any radioactive element whether natural or artificial;

"registered premises" means premises registered under this Act;

"sealed radioactive source" means a radioactive substance enclosed in a container which prevents escape of the substance and permits controlled emission of radiation from the container;

"sell" means sell by wholesale or retail, and includes barter, supply for profit, lease, let out on hire, offer or expose for sale, receive for sale, have in possession for sale, send, forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale;

"unsealed radioactive source" means a radioactive substance that is not a sealed radioactive source;

"use" includes:

- (a) operate; and
- (b) use in the course of manufacture; and
- (c) have in possession for use; and
- (d) handle or manipulate (whether or not by indirect or remote means).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Application of Act to radioactive ore being mined or treated

5. This Act does not apply to a radioactive ore while it is being mined in a mine (as defined in section 4 (1) of the Mines Inspection Act 1901) or is the subject of treatment (as so defined).

PART 2 - REGULATORY CONTROLS

Restrictions on use and sale of radioactive substances and certain radiation apparatus

6. (1) This section applies to the following:

- (a) all radioactive substances;
- (b) all ionising radiation apparatus;
- (c) non-ionising radiation apparatus prescribed as apparatus to which this section applies.

(2) A person must not use or sell anything to which this section applies unless the person is the holder of a licence or temporary licence under this section and does so in compliance with any conditions to which the licence or temporary licence is subject.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) A person must not sell anything to which this section applies except to a person who holds a licence or temporary licence under this section authorising the use or sale of that thing.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(4) The Director-General may, on application in the approved form and payment of the prescribed fee, grant a licence or a temporary licence but only if the Council recommends that the licence or temporary licence be granted.

(5) The Council is not to recommend that a licence, or a temporary licence, authorising a person to use anything to which this section applies be granted unless it is satisfied:

- (a) that the applicant is a natural person and is a fit and proper person to hold the licence; and
- (b) that the applicant has appropriate knowledge of the principles and practices of radiation hygiene and protection applicable to the activities proposed to be carried on by the applicant in pursuance of the licence.

(6) A licence or temporary licence is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Responsibilities of owners of sealed radioactive sources and certain radiation apparatus

7. (1) This section applies to the following things:

- (a) all sealed radioactive sources;
- (b) radiation apparatus that is prescribed as apparatus to which this section applies.

(2) The owner of anything to which this section applies is guilty of an offence unless it is registered under this section in the owner's name and any conditions to which that registration is subject are complied with.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) The owner of anything registered under this section must not allow a person to use it unless the person is authorised to do so by a licence or a temporary licence.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(4) The Director-General may, on application in the approved form by or on behalf of the owner of a sealed radioactive source or radiation apparatus and payment of the prescribed fee, register it in the owner's name, but only if the Council recommends that the Director-General do so.

(5) The Council is not to recommend the registration of a sealed radioactive source or radiation apparatus under this section unless the Council is satisfied that it complies with any applicable requirements of the regulations.

(6) Registration under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Responsibilities of occupier of premises on which unsealed radioactive source is kept or used

8. (1) The occupier of any premises on which an unsealed radioactive source is kept or used is guilty of an offence unless the premises are registered under this section and any conditions to which that registration is subject are complied with.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(2) The occupier of premises registered under this section must not allow a person to use any unsealed radioactive source kept on the

premises unless the person is authorised to do so by a licence or temporary licence.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(3) The Director-General may, on application in the approved form by or on behalf of the occupier of premises and payment of the prescribed fee, register the premises in the name of the occupier, but only if the Council recommends that the Director-General do so.

(4) The Council is not to recommend the registration of premises under this section unless the Council is satisfied that the premises comply with any applicable provisions of the regulations.

(5) Registration under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

(6) The Minister may, if the Council so recommends, by notice in writing given to the occupier of any premises exempt the premises from the operation of this section and any such exemption remains in force until cancelled by the Minister by notice in writing given to the occupier.

Accreditation of radiation experts

9. (1) A person must not carry on any of the activities prescribed as the activities of a consulting radiation expert unless the person is accredited by the Director-General as a radiation expert and does so in compliance with any conditions to which that accreditation is subject.

Maximum penalty: 100 penalty units.

(2) The Director-General may, on application in the approved form and payment of the prescribed fee, accredit a person as a consulting radiation expert but only if the Council recommends that the person be accredited.

(3) The Council is not to recommend that a person be accredited unless satisfied that the person has the expertise necessary to properly carry on the activities authorised by the accreditation.

(4) An accreditation under this section is subject to such conditions as may be imposed by the Director-General on the recommendation of the Council.

Conditions of licences etc.

10. (1) A condition of a licence, registration or accreditation may be imposed by the Director-General by notice in writing given to the holder of the licence, registration or accreditation.

(2) The Director-General may, by notice in writing to the holder of a licence, registration or accreditation, vary or revoke a condition of it or impose a further condition, but only on the recommendation of the Council.

Term and renewal of licences etc.

11. (1) A licence or registration (including any renewed licence or registration) remains in force for such term as the Director-General specifies in the licence or registration, unless it is cancelled or surrendered sooner.

(2) The term specified in a temporary licence is not to exceed 3 months.

(3) An accreditation remains in force until it is cancelled or surrendered.

(4) On application made in the approved manner and payment of the prescribed fee, the Director-General is to renew a licence (other than a temporary licence) or registration for a period of not less than 12 months.

Transfer of registration

12. The Director-General may, on application in the approved form by or on behalf of any person in whose name any thing or premises are registered and payment of the prescribed fee, transfer the registration into the name of another person.

Surrender, suspension and cancellation of licences etc.

13. (1) The holder of a licence, registration or accreditation can surrender it.

(2) The Director-General can suspend or cancel a licence, registration or accreditation if satisfied:

- (a) that the grant of the licence, registration or accreditation was obtained improperly; or
- (b) that the holder of the licence, registration or accreditation has contravened a condition of it; or
- (c) that the holder of the licence, registration or accreditation has been convicted of an offence against this Act or the regulations; or
- (d) that, in the case of a licence or accreditation, the holder has ceased to hold a qualification on the basis of which the Director-General granted the licence or accreditation; or
- (e) that, in the case of an accreditation, the holder has ceased working as a consulting radiation expert.

(3) A decision of the Director-General to suspend or cancel a licence, registration or accreditation has no effect:

- (a) until the expiration of the period within which a person may appeal against the decision; or
- (b) if a person appeals against the decision within that period, unless and until the decision is confirmed by the District Court or the appeal is withdrawn.

(4) A licence, registration or accreditation:

- (a) surrendered or cancelled under this section ceases to be of any force or effect; or
- (b) suspended under this section is of no force or effect for the period of the suspension.

(5) If a licence or registration has been suspended, it can be renewed but remains subject to suspension until the expiration of the period of suspension.

(6) The holder of a licence, registration or accreditation which is suspended or cancelled must surrender it to the Director-General.

Maximum penalty: 10 penalty units.

Appeals

14. (1) A person may, in accordance with the rules of the District Court, appeal to the District Court against a decision of the Director-General:

- (a) to refuse to grant the person a licence, registration or accreditation; or
 - (b) to impose conditions on, or vary the conditions of, a licence, registration or accreditation; or
 - (c) to suspend or cancel a licence, registration or accreditation.
- (2) The appeal is to be by way of a new hearing and new evidence can be given on the appeal.
- (3) The decision of the District Court on the appeal is final and is to be given effect to by the Director-General.

PART 3 - ENFORCEMENT

Powers of inspection etc.

15. (1) An inspector may enter premises if the inspector suspects on reasonable grounds that:

- (a) an offence against this Act or the regulations is being or has been committed on the premises; or
- (b) any radioactive substance or radiation apparatus is kept or used on the premises.

(2) An inspector is not entitled to enter a part of premises used for residential purposes, except:

- (a) with the consent of the occupier; or
- (b) under the authority of a search warrant.

(3) An inspector who enters premises under this section may do any one or more of the following:

- (a) search the premises and inspect any substance or apparatus found there;
- (b) require any person there to answer questions or produce records under the person's control concerning any activities apparently carried on there;
- (c) make copies of or take extracts from records so produced;
- (d) make such examination and inquiry and such tests as the inspector considers necessary to ascertain whether the provisions of this Act or the regulations are being or have been complied with;
- (e) take such photographs as the inspector considers necessary in connection with the administration of this Act or the regulations;

- (f) take without payment, for the purpose of examination or testing, samples of any substance that the inspector suspects on reasonable grounds is a substance in respect of which an offence against this Act or the regulations has been or is being committed;
- (g) seize and remove anything that the inspector suspects on reasonable grounds is a substance or thing in respect of which an offence against this Act or the regulations has been or is being committed.

(4) A requirement under this section to produce a record includes, if the record is not written at all (as, for example, in the case of records stored electronically) or not written wholly in the English language, a requirement to produce a statement, written in the English language, setting out such of the particulars in the record as are not written in the English language.

(5) An inspector is not authorised to take a sample of any substance or to remove anything that appears to the inspector to be in the custody of a person unless the inspector makes out and tenders a receipt to the person.

(6) Each inspector is to be provided by the Director-General with a certificate of authority and on applying for admission to any premises must, if requested to do so, produce the certificate to the occupier of the premises.

Search warrants

16. (1) An inspector may apply to an authorised justice for the issue of a search warrant if the inspector believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:

- (a) to enter the premises; and
- (b) to exercise any function of an inspector under this Act.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section:

"authorised justice" means a Magistrate or a justice of the peace employed in the Attorney General's Department.

Obstruction etc. of inspector

17. A person must not:

- (a) assault, threaten, hinder or obstruct an inspector when the inspector is exercising any function of an inspector under this Act; or
- (b) fail to comply with a requirement made by an inspector under the authority of this Act.

Maximum penalty: 100 penalty units.

Notices to take action

18. (1) An inspector may serve a notice under this section on a person if the inspector believes on reasonable grounds that:

- (a) any requirement under this Act, the regulations or the conditions of a licence or registration is not being complied with and the person is responsible for complying with it; or
- (b) the person is responsible for any unnecessary exposure to or contamination by radiation.

(2) The notice:

- (a) is to be in writing; and
- (b) may contain a direction requiring the person on whom it is served to take specified steps to comply with the direction within a specified time; and
- (c) is to contain a statement to the effect that the person on whom the notice is served is entitled, within 7 days after receiving the notice or within such further time as the Council may allow, to make a submission to the Council as to why the owner should not comply with the direction concerned.

(3) The inspector must as soon as practicable give a copy of the notice to the Chairperson of the Council.

(4) If the person on whom the notice is served fails to make a submission to the Council within the period allowed or does so but the Council confirms the notice (with or without variation), the person must comply with the notice.

Maximum penalty: 200 penalty units.

(5) The person may appeal to the District Court against a decision of the Council under this section and the following provisions apply to the appeal:

- (a) there is no requirement to comply with the notice pending determination of the appeal, unless the appeal is withdrawn;
- (b) the appeal is to be in accordance with the rules of the District Court;
- (c) the appeal is to be by way of a new hearing and new evidence can be given on the appeal;
- (d) the decision of the Court is final and is to be given effect to by the Council.

Powers to deal with dangerous situations

19. (1) If the Director-General 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 of any person or premises by a radioactive substance, the Director-General may, to avoid, remove or alleviate the danger or potential danger:

- (a) direct the person responsible for the danger or potential danger or any person affected by it to take, or refrain from taking any specified action; or
- (b) direct that the radioactive substance or radiation apparatus giving rise to the danger or potential danger or anything contaminated or affected by it be seized, removed, disposed of, treated or otherwise dealt with; or
- (c) give any other direction that the Director-General considers appropriate; or
- (d) take any action that the Director-General considers necessary to alleviate the danger or potential danger (including any action that a person has been directed to take but has failed to take).

(2) Directions may be given or action taken under subsection (1) by the Director-General or, with the prior approval of the Director-General, by an inspector, member of the Police Force or other person appointed for the purpose by the Director-General.

(3) A direction may be given:

- (a) by notice published in the Gazette; or
- (b) by instrument in writing served on the person to whom it is directed; or
- (c) orally in circumstances of imminent danger, so long as, within 24 hours after it is given orally, notice of the direction is also given by instrument in writing served on the person concerned.

(4) A person must not:

- (a) contravene a direction given under this section; or
- (b) hinder or obstruct any person exercising any function, or complying with any direction, under this section.

Maximum penalty: 1,500 penalty units in the case of a corporation or 250 penalty units or imprisonment for 2 years, or both, in any other case.

(5) The exercise of the Director-General's functions under this section is subject to the State Emergency and Rescue Management Act 1989.

Special inquiries

20. (1) The Minister may authorise a person who has been admitted as a barrister for at least 5 years, or as a solicitor for at least 7 years or as a barrister or solicitor for at least 7 years to conduct an inquiry into any accident or incident involving a radioactive substance or radiation apparatus.

(2) The person who is directed to conduct such an inquiry is, for that purpose, to have the same powers, authorities, protections and immunities conferred by the Royal Commissions Act 1923 on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part 2 of that Act.

(3) The Royal Commissions Act 1923 (Division 2 of Part 2 excepted) applies to any witness summoned by or appearing before the person conducting an inquiry under this section in the same way as it applies to any witness summoned by or appearing before a commission.

Decontamination and acquisition of premises

21. (1) The Director-General may cause to be undertaken, or facilitate the undertaking of, the decontamination, or the removal and disposal, of premises contaminated by radioactivity.

(2) For the purposes of subsection (1), the Health Administration Corporation constituted under the Health Administration Act 1982 is authorised to acquire premises contaminated by radioactivity.

(3) This section does not prevent the acquisition, by the Crown or by any authority of the State, of any premises contaminated by radioactivity.

(4) For the purposes of this section, premises are to be regarded as contaminated by radioactivity if the premises or a part of the premises have a level of radioactivity of or above the level prescribed for the purposes of this section.

Offence by employee - liability of employer

22. (1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

Offences by corporations

23. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Increased penalty for offence causing serious harm

24. (1) This section applies when a person is convicted of an offence under section 6, 7, 8 or 19 and it is proved beyond reasonable doubt that the person, or a person involved in the commission 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.

(2) When this section applies, the maximum penalty that may be imposed in respect of the offence concerned is increased to 10,000 penalty units in the case of a corporation or 1,500 penalty units or imprisonment for 2 years, or both, in any other case.

Proceedings for offences

25. (1) Proceedings for an offence under this Act or the regulations are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate; or
- (b) the Supreme Court in its summary jurisdiction.

(2) Proceedings may be taken and prosecuted only by a person acting with the authority of the Director-General and may not be taken in the Supreme Court except with the consent of the Minister.

(3) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations is 100 penalty units.

(4) In proceedings for an offence, an authority or consent to prosecute purporting to have been signed by the Director-General or the Minister is evidence of that authority or consent without proof of the signature of the Director-General or the Minister.

Forfeiture

26. (1) When a person is convicted of an offence against this Act or the regulations, the court may order forfeiture to the Crown of any

radioactive substance or radiation apparatus in respect of which the offence was committed if the court finds it to be the property of the person so convicted.

(2) On application made by or on behalf of the Director-General in the prescribed manner, a Local Court may order forfeiture to the Crown of any substance or article seized by an inspector under this Act.

(3) The making of an order under this section operates to forfeit the property concerned to the Crown.

(4) Forfeited property is to be disposed of as the Minister directs.

Retention and disposal of seized property

27. (1) A substance or thing seized by an inspector under this Act may be retained for 6 months (or a longer period approved under subsection (3)) but then must be returned to the person from whom it was seized unless:

- (a) it has been forfeited to the Crown under section 26; or
- (b) the Director-General gives notice in the prescribed manner before that period expires to the effect that application will be made under section 26 on a specified day for forfeiture to the Crown of the substance or thing.

(2) Unless the substance or thing is forfeited to the Crown as a result of the making of that application, the Director-General is to return it to the person from whom it was seized or to the person who appears to the Director-General to be entitled to possession of it.

(3) A Local Court or the Supreme Court may on the application of the Director-General approve the retention of a seized substance or thing for a specified period longer than 6 months.

Recovery of costs

28. If costs or expenses are incurred by the Director-General or a public body in taking action or causing action to be taken under this Act in respect of a danger or potential danger resulting from an act or omission by any person in contravention of this Act or the regulations, the Director-General or public body may recover those costs or expenses from that person in a court of competent jurisdiction as a debt.

PART 4 - ADMINISTRATION

Radiation Advisory Council

29. (1) There is constituted by this Act a Radiation Advisory Council.

(2) The Council is to consist of 14 members appointed by the Minister, being:

- (a) an officer of the Department, who is to be Chairperson of the Council; and
- (b) a medical practitioner who is a specialist in radiology; and
- (c) a radiographer with expertise in the field of human diagnostic radiography; and
- (d) a person with expertise in the industrial uses of radiation; and
- (e) a person with expertise in health physics; and
- (f) a medical practitioner who specialises in nuclear medicine; and
- (g) a person with expertise in non-ionising radiation; and
- (h) a person with expertise in occupational health and safety; and
- (i) a person who has been admitted as a barrister for at least 5 years, as a solicitor for at least 7 years or as a barrister or solicitor for at least 7 years; and
- (j) a person who represents community interests; and
- (k) a member or an officer of the State Pollution Control Commission nominated by the Commission; and
- (l) a radiotherapist; and
- (m) a medical physicist; and
- (n) a person chosen by the Minister.

(3) Schedule 1 has effect with respect to the members and procedure of the Council.

Functions of the Council

30. (1) The Council is to advise the Minister on:

- (a) proposed amendments to this Act and the making, amendment or repeal of regulations under this Act; and
- (b) the administration of this Act and the regulations; and
- (c) measures to prevent or minimise the dangers arising from radiation; and

- (d) the granting, renewal, suspension and cancellation of any licence, registration or accreditation under this Act; and
- (e) such other matters relating to radiation safety as the Minister considers appropriate.

(2) Any such advice may be given either at the request of the Minister or without any such request.

(3) The Council has such other functions as are conferred or imposed on it by or under this or any other Act.

Committees of Council

31. (1) The Council may establish committees to assist it in connection with the exercise of its functions.

(2) The members of a committee need not be members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

Appointment of inspectors

32. (1) The Director-General may appoint any officer of the Department of Health to be an inspector for the purposes of this Act.

(2) A person is not to be appointed as an inspector unless the person has the qualifications determined as appropriate by the Council.

PART 5 - GENERAL

Annual report of Council to Parliament

33. (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Council is to prepare and forward to the Minister a report of its work and activities for the 12 months ending on 30 June in that year.

(2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Act binds Crown

34. This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Service of documents

35. (1) A document required or permitted by this Act or the regulations to be served on a person, whether the expression "serve", "give" or "send" or any other expression is used, may be served:

- (a) on a natural person by delivering it to the person personally or by leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document; or
 - (b) on a corporation by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the corporation.
- (2) Nothing in this section:
- (a) affects the operation of any other law of the State or elsewhere that authorises the service of a document in any other way; or
 - (b) affects the power of a court to authorise service of a document in any other way.

Certificate evidence

36. A certificate issued by the Director-General to the effect that a specified person was or was not the holder of a specified licence, registration or accreditation at a specified time is, in any proceedings, evidence of the matters certified.

Delegation

37. (1) The Director-General may delegate to an officer of the Department a function of the Director-General exercisable under this Act.

(2) A power of delegation under this section may not itself be delegated.

Consultation and co-operation between Ministers

38. The Minister, in the administration of this Act, is to consult and co-operate with:

- (a) the Minister administering the Occupational Health and Safety Act 1983 and the Minister administering the Mining Act 1973 on matters relating to safe working practices involving radiation; and
- (b) the Minister administering the Mines Inspection Act 1901 on matters relating to radiation protection in mines; and
- (c) the Minister administering the State Pollution Control Commission Act 1970 on matters relating to the protection of the environment from radiation pollution.

Exemptions

39. (1) The regulations may make provision for exemptions (whether or not subject to conditions) from compliance with all or specified provisions of this Act and the regulations, including provision:

- (a) authorising the Minister to grant such an exemption; and
- (b) specifying circumstances in which an exemption granted under any law of another State, a Territory or the Commonwealth is to be considered to be an exemption granted under the regulations.

(2) The regulations are not to authorise the granting of an exemption by the Minister other than an exemption:

- (a) granted on the recommendation of the Council; or
- (b) granted to apply for a period not exceeding 60 days.

Regulations

40. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the Governor may make regulations for or with respect to regulating activities concerned with radioactive substances or radioactive apparatus, including the following activities:

- (a) activities of producing, manufacturing, supplying, keeping, conveying, using or otherwise dealing with radioactive substances or radiation apparatus;
 - (b) activities concerning any aspect of waste management, including waste disposal, treatment, storage, recycling and minimisation.
- (3) The regulations authorised by this section include regulations that make provision for or with respect to:
- (a) requiring specified standards to be observed, practices and procedures to be followed and measures to be taken in relation to activities referred to in subsection (2);
 - (b) recommending practices and procedures that may be followed, and measures that may be taken, to further the achievement of the standards referred to in paragraph (a);
 - (c) regulating, restricting or prohibiting any act or thing that is involved in or related to an activity referred to in subsection (2);
 - (d) the granting, issuing or giving of a licence, permit, registration, authority or approval and the terms or conditions to which it is subject;
 - (e) the giving of directions for the purposes of the regulations;
 - (f) the protection of the health and safety, and the training, examination and certification, of persons who engage or seek to engage in activities referred to in subsection (2);
 - (g) the medical examination of persons exposed or believed to have been exposed to radiation in the course of activities referred to in subsection (2);
 - (h) requiring the keeping of records, furnishing of information, and notification of accidents or other matters or events by persons carrying on activities referred to in subsection (2);
 - (i) the monitoring of levels of radiation exposure of persons engaged in activities referred to in subsection (2) and the monitoring of the health of such persons during and after such activities;
 - (j) the protection of persons and the environment against the harmful effects of radiation resulting from activities referred to in subsection (2);
 - (k) the monitoring of levels of radiation in the environment; and
 - (l) requiring the payment of fees and charges for services provided by the Director-General under this Act.

Radiation Control 1990

(4) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

**Amendment of Public Health Act 1902 No. 30, s. 63AA
(Decontamination and acquisition of premises)**

41. The Public Health Act 1902 is amended by omitting section 63AA.

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

42. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order of Acts the following matter:

section 16 of the Radiation Control Act 1990;

Repeal of Radioactive Substances Act 1957 No. 5 etc.

43. (1) The Radioactive Substances Act 1957 and the Radioactive Substances Regulations 1959 are repealed.

(2) The Radiological Advisory Council constituted under that Act is dissolved.

Savings and transitional provisions

44. Schedule 2 has effect.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL**

(Sec. 29)

Definition

1. In this Schedule:

"member" means a member of the Council.

Deputies of members

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued***

- (2) In the absence of a member, the member's deputy:
- (a) may, if available, act in the place of the member; and
 - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (3) The deputy of the member who is Chairperson of the Council does not (because of this clause) have the functions of Chairperson.
- (4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office

3. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Allowances

4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued***

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
 - (i) ceases to hold the relevant qualifications (if any).
- (2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

6. If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF COUNCIL - *continued***

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

8. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

Quorum

9. The quorum for a meeting of the Council is 8 members.

Presiding member

10. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

11. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

First meeting

12. The Minister is to call the first meeting of the Council in such manner as the Minister thinks fit.

SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 44)

PART 1 - PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2 - PROVISIONS CONSEQUENT ON THE
ENACTMENT OF THIS ACT**

Licences

2. (1) A licence issued under section 9 or 10 of the Radioactive Substances Act 1957 and in force immediately before the repeal of that Act is to be taken to have been issued under section 6 of this Act.

(2) A reference in a licence issued under section 10 of the Radioactive Substances Act 1957 (which is to be taken to have been issued under section 6 of this Act) to irradiating apparatus is to be read as a reference to radiation apparatus.
