

Authorised Version No. 033

Radiation Act 2005

No. 62 of 2005

Authorised Version incorporating amendments as at
1 July 2021

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Authorised Version No. 033

Radiation Act 2005

No. 62 of 2005

Authorised Version incorporating amendments as at

1 July 2021

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to protect the health and safety of persons and the environment from the harmful effects of radiation.

2 Commencement

- (1) Section 1, section 146 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on 1 September 2007.

3 Definitions

- (1) In this Act—

activity ratio, for a sealed source, means the ratio determined in accordance with section 3A;

S. 3(1) def. of *activity ratio* inserted by No. 59/2013 s. 4(1).

approved assessor means a person who holds an assessor's approval;

S. 3(1) def. of *approved assessor* inserted by No. 59/2013 s. 4(1).

approved security plan means a security plan for which an approved assessor has issued a security compliance certificate under section 67K;

S. 3(1) def. of *approved security plan* inserted by No. 59/2013 s. 4(1).

S. 3(1) def. of
*approved
transport
security plan*
inserted by
No. 59/2013
s. 4(1).

approved tester means a person who holds a
tester's approval;

approved transport security plan means a
transport security plan for which an
approved assessor has issued a security
compliance certificate under section 67K;

S. 3(1) def. of
*assessor's
approval*
inserted by
No. 59/2013
s. 4(1).

assessor's approval means an approval issued
under Part 5A;

authorised officer means a person appointed
under section 69;

authority means—

- (a) a facility construction licence;
- (b) a management licence;
- (c) a use licence;
- (d) a tester's approval;

authority holder means a licence holder or
approved tester;

S. 3(1) def. of
*category 1
group of
sealed
sources*
inserted by
No. 59/2013
s. 4(1).

category 1 group of sealed sources means 2 or
more sealed sources that when kept at the
same place and secured in the same way at
that place, or when transported in the same
vehicle, have an aggregate activity ratio of
greater than or equal to 1000;

S. 3(1) def. of
*category 1
sealed source*
inserted by
No. 59/2013
s. 4(1).

category 1 sealed source means a sealed source
that has an activity ratio of greater than or
equal to 1000;

category 2 group of sealed sources means 2 or more sealed sources that when kept at the same place and secured in the same way at that place, or when transported in the same vehicle, have an aggregate activity ratio of less than 1000 but greater than or equal to 10;

S. 3(1) def. of *category 2 group of sealed sources* inserted by No. 59/2013 s. 4(1).

category 2 sealed source means a sealed source that has an activity ratio of less than 1000 but greater than or equal to 10;

S. 3(1) def. of *category 2 sealed source* inserted by No. 59/2013 s. 4(1).

category 3 group of sealed sources means 2 or more sealed sources that when kept at the same place and secured in the same way at that place, or when transported in the same vehicle, have an aggregate activity ratio of less than 10 but greater than or equal to 1;

S. 3(1) def. of *category 3 group of sealed sources* inserted by No. 59/2013 s. 4(1).

category 3 sealed source means a sealed source that has an activity ratio of less than 10 but greater than or equal to 1;

S. 3(1) def. of *category 3 sealed source* inserted by No. 59/2013 s. 4(1).

certificate of compliance means a certificate issued under section 33(1);

certificate of examination and analysis means a certificate completed in accordance with section 88 or 89;

clean up includes any measures—

- (a) to remove, destroy or otherwise dispose of any radiation source; and
- (b) to restore a place to a state as close as practicable to the state it was in immediately before the emission of radiation from a radiation source; and

- (c) to assess the nature and extent of the damage and risk caused by any emission of radiation from a radiation source; and
- (d) to take any measurement, recording or sample or to prepare any report, plan, drawing or other document, or to make any inspection, calculation, test or analysis relating to the emission of radiation from a radiation source; and
- (e) to retain any consultant, contractor, expert, agency or person for the purpose of taking any clean up measures referred to in paragraphs (a) to (d); and
- (f) to determine the most appropriate action to take in relation to the measures set out in paragraphs (a) to (e);

Committee means the Radiation Advisory Committee established under section 103;

Department means the Department of Health;

S. 3(1) def. of *Department* amended by No. 29/2010 s. 67(a).

facility construction licence means a licence issued under Part 6 allowing the licence holder to construct a radiation facility or to change the use of land or an existing building to that of a radiation facility;

S. 3(1) def. of *facility construction licence* amended by No. 59/2013 s. 4(2).

facility construction licence holder means a person who holds a facility construction licence;

high consequence group of sealed sources means a category 1 group of sealed sources, a category 2 group of sealed sources or a category 3 group of sealed sources;

S. 3(1) def. of *high consequence group of sealed sources* inserted by No. 59/2013 s. 4(1).

high consequence sealed source means a category 1 sealed source, a category 2 sealed source or a category 3 sealed source;

S. 3(1) def. of *high consequence sealed source* inserted by No. 59/2013 s. 4(1).

identification document, in relation to a person, means a document that—

S. 3(1) def. of *identification document* inserted by No. 59/2013 s. 4(1).

- (a) shows the identity of a person; and
- (b) is prescribed;

ionising radiation means electromagnetic or particulate radiation capable of producing ions directly or indirectly but does not include electromagnetic radiation of a wavelength of greater than 100 nanometres;

ionising radiation apparatus means an apparatus that produces ionising radiation when energised but does not include—

- (a) a sealed source apparatus; or
- (b) an apparatus that is—
 - (i) prescribed by the regulations not to be an ionising radiation apparatus; or
 - (ii) declared not to be an ionising radiation apparatus under section 4;

licence means a facility construction licence, a management licence or a use licence;

licence holder means a facility construction licence holder, a management licence holder or a use licence holder;

management licence means a licence issued under Part 6 allowing the licence holder to conduct the radiation practice specified in that licence;

management licence holder means a person who holds a management licence;

National Directory for Radiation Protection or ***NDRP*** means the National Directory for Radiation Protection—

(a) published from time to time by the Chief Executive Officer within the meaning of the Australian Radiation Protection and Nuclear Safety Act 1998 of the Commonwealth; and

(b) as amended from time to time—

and includes any matter contained in any document, code, standard, guideline, rule, specification or method formulated, issued, prescribed or published by any person, authority or body that is applied, adopted or incorporated by the National Directory for Radiation Protection whether that document, code, standard, guideline, rule, specification or method is formulated, issued, prescribed or published—

(c) at the time the National Directory for Radiation Protection is published or at any time before then; or

(d) from time to time;

non-ionising radiation means electromagnetic radiation of a wavelength of greater than 100 nanometres;

non-ionising radiation apparatus means an apparatus that—

- (a) produces non-ionising radiation when energised; and
- (b) is prescribed by the regulations to be a non-ionising radiation apparatus;

place includes a public place, residential premises, a building or a part of a building or a vehicle;

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 140.1).

public place means a place, or part of a place, that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money;

Examples

Examples of public places include—

- (a) streets, roads, footpaths and passages (whether or not on private property);
- (b) forecourts of public and commercial buildings;
- (c) carparks;
- (d) parks, gardens and recreation reserves;

radiation analyst means a person appointed under section 112;

radiation apparatus means an ionising radiation apparatus or non-ionising radiation apparatus;

radiation facility means a facility that is prescribed by the regulations to be a radiation facility but does not include—

- (a) a mill or facility of the kind described in section 8 of the **Nuclear Activities (Prohibitions) Act 1983**; or
- (b) a nuclear reactor or nuclear power reactor within the meaning of the **Nuclear Activities (Prohibitions) Act 1983**—

the construction or operation of which is prohibited by section 8 of that Act;

radiation practice means any of the following activities—

- (a) possessing a radiation source;
- (b) selling a radiation source;
- (c) transporting radioactive material;
- (d) repairing a radiation source;
- (e) maintaining a radiation source;
- (ea) managing or controlling the use of a radiation source;
- (f) testing a radiation source where that testing does not involve using a radiation source;
- (g) mining radioactive material;
- (h) processing radioactive material;
- (i) disposing of a radiation source;
- (j) decommissioning a radiation facility;
- (k) procuring or arranging research involving the irradiation of persons;

S. 3(1) def. of
*radiation
practice*
amended by
Nos 29/2006
s. 3(Sch. 1
item 33.1),
24/2010 s. 4.

(l) any activity (not referred to in paragraphs (a) to (k)) conducted in relation to a radiation source that may result in exposing a person or the environment to radiation—

but does not include—

(m) an activity referred to in paragraphs (a) to (l) that is prescribed by the regulations not to be a radiation practice; or

(n) using a radiation source;

Note

A person who carries out an activity referred to in paragraphs (b) to (l) during the course of his or her employment is not to be taken to be conducting a radiation practice: see subsection (2).

Radiation Protection Principle means the principle set out in section 7;

radiation source means—

(a) radioactive material;

(b) a radiation apparatus;

(c) a sealed source apparatus;

radioactive material means—

(a) any material that spontaneously emits ionising radiation that—

(i) has an activity concentration equal to, or greater than, the amount prescribed by the regulations; and

(ii) consists of, or contains, an activity equal to, or greater than, the amount prescribed by the regulations; or

- (b) any material that spontaneously emits ionising radiation that—
 - (i) has an activity concentration, or consists of, or contains, an activity, less than the amount prescribed by the regulations; and
 - (ii) occurs in prescribed circumstances—

but does not include—

- (c) raw material with unmodified concentrations of radionuclides unless that material is prescribed by the regulations to be radioactive material;
- (d) material that is—
 - (i) prescribed by the regulations not to be radioactive material; or
 - (ii) declared not to be radioactive material under section 4;

register means the register established and maintained under section 138;

sealed source means radioactive material that is—

- (a) permanently sealed in a capsule; or
- (b) closely bound and in solid form;

sealed source apparatus means an apparatus that produces ionising radiation because it contains a sealed source but does not include an apparatus that is—

- (a) prescribed by the regulations not to be a sealed source apparatus; or
- (b) declared not to be a sealed source apparatus under section 4;

<i>Secretary</i> means the Department Head (within the meaning of the Public Administration Act 2004) of the Department;	S. 3(1) def. of Secretary substituted by No. 29/2010 s. 67(b).
<i>security compliance certificate</i> means a certificate issued under section 67K;	S. 3(1) def. of security compliance certificate inserted by No. 59/2013 s. 4(1).
<i>security plan</i> means a plan prepared in accordance with Division 1 of Part 6A;	S. 3(1) def. of security plan inserted by No. 59/2013 s. 4(1).
<i>security standard</i> means a standard specified under section 67N;	S. 3(1) def. of security standard inserted by No. 59/2013 s. 4(1).
<i>tanning unit</i> means an electrically powered radiation apparatus designed to produce tanning of the human skin by utilising ultraviolet radiation;	S. 3(1) def. of tanning unit inserted by No. 59/2013 s. 4(1).
<i>tester's approval</i> means an approval issued under Part 6;	
<i>transport security plan</i> means a plan prepared in accordance with Division 2 of Part 6A;	S. 3(1) def. of transport security plan inserted by No. 59/2013 s. 4(1).
<i>Tribunal</i> means Victorian Civil and Administrative Tribunal established by the Victorian Civil and Administrative Tribunal Act 1998 ;	
<i>use</i> , in relation to a radiation source, means actual use by a natural person of a radiation source and includes—	

- (a) the use of radiation emitted from a radiation source;
- (b) the injection, or implanting, of radioactive material into a person or animal;

use licence means a licence issued under Part 6 allowing the licence holder to use a radiation source;

S. 3(1) def. of *use licence holder* amended by No. 59/2013 s. 4(3).

use licence holder means a person who holds a use licence;

S. 3(1) def. of *vehicle* inserted by No. 59/2013 s. 4(1).

vehicle has the same meaning as in the **Road Safety Act 1986**.

S. 3(2) amended by No. 29/2006 s. 3(Sch. 1 item 33.2).

- (2) For the purposes of this Act, a person who carries out an activity referred to in paragraphs (b) to (l) of the definition of *radiation practice* during the course of his or her employment is not to be taken to be conducting a radiation practice.

S. 3A inserted by No. 59/2013 s. 5.

3A Activity ratios for sealed sources

- (1) For the purposes of this Act, the activity ratio for a sealed source is to be determined in accordance with the formula—

$$\frac{A}{D}$$

where—

- A** is the activity of the sealed source's prescribed radionuclide in gigabecquerel units; and
- D** is the value specified in the regulations for the prescribed radionuclide.

4 Declarations that certain materials and apparatuses are not radiation sources

- (1) The Secretary, by notice published in the Government Gazette, may declare—
 - (a) a material or class of material that spontaneously emits ionising radiation not to be a radioactive material for the purposes of this Act;
 - (b) an apparatus or class of apparatus that produces ionising radiation because it contains a sealed source not to be a sealed source apparatus for the purposes of this Act;
 - (c) an apparatus or class of apparatus that produces ionising radiation when energised not to be an ionising radiation apparatus for the purposes of this Act.
- (2) The Secretary may only make a declaration under subsection (1) if he or she is satisfied that the ionising radiation—
 - (a) emitted by the material or class of material;
or
 - (b) produced by the apparatus or class of apparatus—does not pose a significant risk to the health or safety of any person or the safety of the environment.

5 Tabling and disallowance of declarations under section 4

- (1) On or before the 6th sitting day after a declaration under section 4 is published in the Government Gazette, the Minister must ensure that a copy of that declaration is laid before each House of the Parliament.

- (2) A failure to comply with subsection (1) does not affect the operation or effect of the declaration but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (3) A declaration under section 4 may be disallowed in whole or in part by either House of Parliament.
- (4) Part 5 of the **Subordinate Legislation Act 1994** applies to a declaration under section 4 as if—
 - (a) a reference in that Part to a "statutory rule" were a reference to a declaration under section 4; and
 - (b) a reference in section 23(1)(c) of that Act to "section 15(1)" were a reference to subsection (1).
- (5) A reference to a declaration under section 4 in this section includes a reference to any amendment to a declaration under section 4.

6 Crown to be bound

This Act binds the Crown, not only in right of the State of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2—The Radiation Protection Principle

7 The Radiation Protection Principle

The Radiation Protection Principle is the principle that persons and the environment should be protected from unnecessary exposure to radiation through the processes of justification, limitation and optimisation where—

- (a) justification involves assessing whether the benefits of a radiation practice or the use of a radiation source outweigh the detriment;
- (b) limitation involves setting radiation dose limits, or imposing other measures, so that the health risks to any person or the risk to the environment exposed to radiation are below levels considered unacceptable;
- (c) optimisation—
 - (i) in relation to the conduct of a radiation practice, or the use of a radiation source, that may expose a person or the environment to ionising radiation, means keeping—
 - (A) the magnitude of individual doses of, or the number of people that may be exposed to, ionising radiation; or
 - (B) if the magnitude of individual doses, or the number of people that may be exposed, is uncertain, the likelihood of incurring exposures of ionising radiation—
as low as reasonably achievable taking into account economic, social and environmental factors;

- (ii) in relation to the conduct of a radiation practice, or the use of a radiation source, that may expose a person or the environment to non-ionising radiation, equates to cost-effectiveness.

8 Interpretation that promotes the Radiation Protection Principle to be preferred

In interpreting a provision of this Act or the regulations, a construction that would promote the Radiation Protection Principle is to be preferred to a construction that would not promote the Radiation Protection Principle.

Part 3—The role of the Secretary

9 Functions of the Secretary

The functions of the Secretary under this Act and the regulations are to—

- (a) exempt certain radioactive material and apparatuses from being radioactive material or sealed source apparatuses or ionising radiation apparatuses under this Act; and
- (b) regulate activities relating to the management, operation or use of radiation sources and the construction of radiation facilities through the licensing of these activities; and
- (c) approve testers of prescribed radiation sources within the meaning of Part 5; and
- (d) specify radiation safety standards and radiation safety tests for the testing of prescribed radiation sources within the meaning of Part 5; and
- (da) approve assessors of security plans and transport security plans; and
- (db) specify security standards for high consequence sealed sources and high consequence groups of sealed sources; and
- (e) appoint authorised officers to—
 - (i) monitor and enforce compliance with this Act and the regulations; and
 - (ii) exercise the emergency powers under this Act in relation to radiation events; and

S. 9(da)
inserted by
No. 59/2013
s. 6(a).

S. 9(db)
inserted by
No. 59/2013
s. 6(a).

S. 9(ha)
inserted by
No. 59/2013
s. 6(b).

- (f) give authorisations to authorised officers to exercise their emergency powers under this Act in relation to radiation events; and
- (g) appoint radiation analysts; and
- (h) serve infringement notices in relation to offences which have been prescribed as offences for which an infringement notice may be served; and
- (ha) issue improvement notices or prohibition notices in relation to contraventions, or likely contraventions, of the Act or the regulations; and
- (i) advise the Minister on matters relating to radiation safety; and
- (j) promote or conduct studies, investigations and research relating to radiation protection and nuclear safety, including the health and safety of persons and the safety of the environment; and
- (k) perform any other function conferred on the Secretary under this Act or the regulations.

10 General powers of the Secretary

The Secretary may do all things that are necessary or convenient to enable him or her to carry out his or her functions under this Act or the regulations.

11 Secretary must have regard to the Radiation Protection Principle and NDRP

The Secretary, in performing or exercising a function or power conferred on him or her under this Act or the regulations, must have regard to—

- (a) the Radiation Protection Principle; and
- (b) the NDRP to the extent that the NDRP is not inconsistent with this Act or the regulations.

Part 4—Licensed activities

12 Conduct of radiation practice prohibited unless licensed

- (1) A person must not conduct a radiation practice unless the person—
 - (a) holds a management licence, that is in force, that allows the person to conduct that radiation practice; or
 - (b) is exempted under section 16 from the requirement to hold a licence in respect of that radiation practice and the person conducts the radiation practice in accordance with the exemption.

Penalty: In the case of a natural person,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

- (2) An offence under this section is an indictable offence.

13 Use of a radiation source prohibited unless licensed

- (1) A natural person must not use a radiation source unless the person—
 - (a) holds a use licence, that is in force, that allows that use; or
 - (b) is exempted under section 16 from the requirement to hold a licence in respect of that use and the person uses the radiation source in accordance with the exemption; or

- (c) is an approved tester and uses the radiation source in accordance with a tester's approval he or she holds that is in force.

Penalty: 1200 penalty units.

- (2) An offence under this section is an indictable offence.

14 Construction of radiation facilities prohibited in certain cases

- (1) An owner or occupier of land must not—

(a) construct a radiation facility on land that they own or occupy unless they hold a facility construction licence, that is in force, that allows them to construct the radiation facility; or

S. 14(1)(b)
amended by
No. 59/2013
s. 7(1).

(b) permit or allow another person to construct a radiation facility on land that they own or occupy unless the other person holds a facility construction licence, that is in force, in relation to the radiation facility to be constructed; or

S. 14(1)(c)
inserted by
No. 59/2013
s. 7(2).

(c) change the use of land that they own or occupy to use for a radiation facility unless they hold a facility construction licence, that is in force, that allows them to use that land for a radiation facility; or

S. 14(1)(d)
inserted by
No. 59/2013
s. 7(2).

(d) change the use of a building that they own or occupy to use as a radiation facility unless they hold a facility construction licence, that is in force, that allows them to use that building as a radiation facility.

Penalty: In the case of a natural person,
600 penalty units;

In the case of a body corporate,
3000 penalty units.

- (2) An offence under this section is an indictable offence.

15 Licence holders must comply with conditions of licence

- (1) A management licence holder must not knowingly, recklessly or negligently fail to comply with any condition of their licence.

S. 15(1)
amended by
No. 24/2010
s. 5(1).

Penalty: In the case of a natural person,
1200 penalty units;
In the case of a body corporate,
6000 penalty units.

- (2) A use licence holder must not knowingly, recklessly or negligently fail to comply with any condition of his or her licence.

S. 15(2)
amended by
No. 24/2010
s. 5(2).

Penalty: 600 penalty units.

- (3) A facility construction licence holder must not knowingly, recklessly or negligently fail to comply with any condition of their licence.

S. 15(3)
amended by
No. 24/2010
s. 5(3).

Penalty: In the case of a natural person,
600 penalty units;
In the case of a body corporate,
3000 penalty units.

Note

The Secretary may impose licence conditions on licences under section 47.

- (4) An offence under subsection (1), (2) or (3) is an indictable offence.

16 Exemptions from holding a licence

- (1) The Secretary, by notice published in the Government Gazette, may exempt a person or a class of person from the requirement to hold—
- (a) a management licence in respect of the radiation practice specified in the notice; or

S. 16(1)(b)
amended by
No. 59/2013
s. 8(1).

(b) a use licence in respect of the use of a radiation source specified in the notice; or

S. 16(1)(c)
inserted by
No. 59/2013
s. 8(2).

(c) a facility construction licence in respect of a radiation source specified in the notice.

- (2) An exemption may be of general or specific application.
- (3) The Secretary may only exempt a person under subsection (1) if he or she is satisfied that the radiation practice or use will not pose a significant risk to the health or safety of any person or the safety of the environment.
- (4) An exemption is subject to the terms, conditions and limitations that are specified in the notice.
- (5) Without limiting subsection (4), an exemption may be subject to a condition requiring a person or class of person to comply with a document, code, standard, rule or guideline formulated, issued, prescribed or published by any person or body whether—
- (a) as formulated, issued, prescribed or published at the time notice of the exemption is published in the Government Gazette or at any time before notice of the exemption is published in the Government Gazette; or
 - (b) as published or amended from time to time.

S. 16(5)
inserted by
No. 24/2010
s. 6.

S. 16A
inserted by
No. 59/2013
s. 9.

16A Exemption from transport security plan requirements

- (1) The Secretary, by notice published in the Government Gazette, may exempt a management licence holder from preparing and providing to the Secretary an approved transport security plan and security compliance certificate.

- (2) An exemption may be of general or specific application.
- (3) The Secretary may only exempt a licence holder under subsection (1) if he or she is satisfied that the transportation of a high consequence sealed source or a high consequence group of sealed sources will not pose a significant risk to the health or safety of any person or the safety of the environment.
- (4) An exemption is subject to the terms, conditions and limitations that are specified in the notice.

17 Persons must not falsely represent that they are licence holders

A person must not directly or indirectly represent that he or she is a licence holder unless the person is a licence holder.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

18 Offence to allow persons who do not hold a use licence to use a radiation source

- (1) A management licence holder must not direct, request or knowingly allow a person who the management licence holder knows is not a use licence holder, or is a use licence holder whose licence is suspended, to use a radiation source in the management licence holder's possession.

Penalty: In the case of a natural person,
1200 penalty units;
In the case of a body corporate,
6000 penalty units.

- (2) An offence under subsection (1) is an indictable offence.

- (3) Subsection (1) does not apply if the person who uses a radiation source in the management licence holder's possession—
- (a) is exempted under section 16 from holding a use licence in respect of that use; and
 - (b) uses that source in accordance with that exemption.

19 Offence to allow a use licence holder to use a radiation source in a manner not permitted by licence

- (1) A management licence holder must not direct, request or knowingly allow a use licence holder to use a radiation source in the management licence holder's possession in a manner that the management licence holder knows is contrary to the conditions of the use licence holder's use licence.

Penalty: In the case of a natural person,
1200 penalty units;

In the case of a body corporate,
6000 penalty units.

- (2) An offence under subsection (1) is an indictable offence.

20 Secretary to be notified of loss or theft of radiation source

- (1) A management licence holder, on becoming aware that a radiation source that was in their possession is lost or has been stolen, must immediately notify the Secretary of the loss or theft.

Penalty: In the case of a natural person,
600 penalty units;

In the case of a body corporate,
3000 penalty units.

- (2) An offence under this section is an indictable offence.

21 Offence to abandon radiation source

- (1) A management licence holder must not knowingly, recklessly or negligently abandon a radiation source that is in their possession.

Penalty: In the case of a natural person,
1800 penalty units;
In the case of a body corporate,
9000 penalty units.

- (2) An offence under this section is an indictable offence.

22 Offences to cause another person to receive a higher radiation dose than is prescribed

- (1) A person must not, when conducting a radiation practice in relation to a radiation source, knowingly, recklessly or negligently cause another person to receive a radiation dose that is greater than the dose limit that is prescribed.

Penalty: In the case of a natural person,
600 penalty units;
In the case of a body corporate,
3000 penalty units.

- (2) A person must not, when using a radiation source, knowingly, recklessly or negligently cause another person to receive a radiation dose that is greater than the dose limit that is prescribed.

Penalty: 240 penalty units.

- (3) An offence under subsection (1) is an indictable offence.

- (4) Subsection (1) or (2) does not apply if the other person receives the radiation dose during the course, or for the purposes, of any treatment for, or diagnosis of, an illness or injury.

23 Offences to cause serious harm to the environment

- (1) A person must not, when conducting a radiation practice in relation to a radiation source, knowingly, recklessly or negligently cause serious harm to the environment.

Penalty: In the case of a natural person,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

- (2) A person must not, when using a radiation source, knowingly, recklessly or negligently cause serious harm to the environment.

Penalty: 1200 penalty units.

- (3) An offence under subsection (1) or (2) is an indictable offence.

23A Offence to permit use of high consequence sealed sources by unverified person

- (1) A management licence holder must not direct, request or allow a person to use a high consequence sealed source that the licence holder possesses or controls knowing that the licence holder has not verified the identity of the person using an identification document.

Penalty: In the case of a natural person,
1200 penalty units;

In the case of a body corporate,
6000 penalty units.

S. 23A
inserted by
No. 59/2013
s. 10.

- (2) A person does not commit an offence under subsection (1) if the person uses the high consequence sealed source while accompanied by a person whose identity has been verified by the management licence holder using an identification document.

23B Offence to permit transport of high consequence sealed sources by unverified person

S. 23B
inserted by
No. 59/2013
s. 10.

- (1) A management licence holder must not direct, request or allow a person to transport a high consequence sealed source or a high consequence group of sealed sources that the licence holder possesses or controls knowing that the licence holder has not verified the identity of the person using an identification document.

Penalty: In the case of a natural person,
1200 penalty units;

In the case of a body corporate,
6000 penalty units.

- (2) A person does not commit an offence under subsection (1) if the person transports the high consequence sealed source or a high consequence group of sealed sources while accompanied by a person whose identity has been verified by the management licence holder using an identification document.

23C Offence to permit access to high consequence sealed sources by unverified person

S. 23C
inserted by
No. 59/2013
s. 10.

- (1) A management licence holder must not direct, request or allow a person to access a high consequence sealed source or a high consequence group of sealed sources that the licence holder possesses or controls knowing that the licence

holder has not verified the identity of the person using an identification document.

Penalty: In the case of a natural person,
1200 penalty units;

In the case of a body corporate,
6000 penalty units.

- (2) A person does not commit an offence under subsection (1) if the person accesses the high consequence sealed source or high consequence group of sealed sources while—
- (a) accompanied by a person whose identity has been verified by the management licence holder using an identification document; or
 - (b) subject to surveillance at all times.

- (3) In this section—

access includes having the means to unlock a building, room, container, tank, vehicle or any other thing or place in which a high consequence sealed source or high consequence group of sealed sources is situated;

surveillance includes recorded surveillance by any of the following—

- (a) a monitored closed circuit television camera;
- (b) a motion sensor camera;
- (c) anti-stay behind detection and alarms based on motion detection; or
- (d) any other measure prescribed in the regulations.

23D Offence to conduct a commercial tanning practice

S. 23D
inserted by
No. 59/2013
s. 11.

A person must not—

- (a) provide, or offer to provide, for fee or reward the use of a tanning unit; or
- (b) operate or offer to operate for fee or reward a tanning unit.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

Part 5—Approved testers and testing and use of prescribed radiation sources

Division 1—Introductory

24 Definitions

In this Part—

prescribed radiation source means a radiation source that is prescribed to be a prescribed radiation source;

radiation safety standard means a standard specified under section 29(1);

specified radiation safety test means a test specified under section 30(1).

Division 2—Approved testers

25 Role of approved testers

The role of an approved tester is to—

- (a) conduct tests on prescribed radiation sources to determine whether the prescribed radiation sources meet the relevant radiation safety standards; and
- (b) issue certificates of compliance in respect of prescribed radiation sources if the prescribed radiation sources meet the relevant radiation safety standards.

26 Approved testers must comply with conditions of tester's approval

- (1) An approved tester must not knowingly, recklessly or negligently fail to comply with any condition of his or her tester's approval.

S. 26(1)
amended by
No. 24/2010
s. 7.

Penalty: 600 penalty units.

Note

The Secretary may impose conditions on a tester's approval under section 47.

- (2) An offence under this section is an indictable offence.

27 Only approved testers who hold testers' approvals that are in force may issue certificates of compliance

- (1) A person must not issue a certificate of compliance in relation to a prescribed radiation source unless he or she holds a tester's approval that is in force.

S. 27(1)
amended by
No. 59/2013
s. 12(1).

Penalty: 60 penalty units.

* * * * *

S. 27(2)
repealed by
No. 59/2013
s. 12(2).

28 Offence to impersonate approved tester

A person must not directly or indirectly represent that he or she is an approved tester unless the person is an approved tester.

Penalty: 60 penalty units.

Division 3—Radiation safety standards and tests

29 Secretary may specify radiation safety standards

- (1) The Secretary must, in respect of every prescribed radiation source, specify the standard that must be met by the prescribed radiation source when it is tested by an approved tester.
- (2) On specifying a radiation safety standard, the Secretary must publish—
 - (a) notice of that specification in the Government Gazette; and
 - (b) the radiation safety standard on the Internet.
- (3) A radiation safety standard specified under this section takes effect on and from the date on which notice of its specification is published in the Government Gazette or a later date that is specified in the notice.

30 Secretary may specify radiation safety tests

- (1) The Secretary may specify the method, form or manner of test to be conducted on a prescribed radiation source to determine whether the prescribed radiation source meets the radiation safety standard applicable to that prescribed radiation source.
- (2) If the Secretary specifies a specified radiation safety test, the Secretary must publish—
 - (a) notice of that specification in the Government Gazette; and
 - (b) the specified radiation safety test on the Internet.
- (3) A specified radiation safety test takes effect on and from the date on which notice of its specification is published in the Government Gazette or a later date that is specified in the notice.

31 Standards and tests specified by Secretary may incorporate documents and other material

- (1) A radiation safety standard or a specified radiation safety test may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person, authority or body whether—
 - (a) wholly or partially or as amended by the standard or test; or
 - (b) as formulated, issued, prescribed or published at the time the standard or test is specified or at any time before the standard or test is specified; or
 - (c) as amended from time to time.
- (2) Section 32 of the **Interpretation of Legislation Act 1984** does not apply to a radiation safety standard or a specified radiation safety test.

Division 4—Testing and certificates of compliance

32 Testing in accordance with specified radiation safety tests

If an approved tester—

- (a) employed by a person who possesses a prescribed radiation source is requested or directed by that person to test a prescribed radiation source; or
- (b) is engaged to test a prescribed radiation source—

and there is a specified radiation safety test applicable to that prescribed radiation source, the approved tester must conduct that test in accordance with the specified radiation safety test.

33 Certificates of compliance

- (1) If, following the conduct of a test to determine whether a prescribed radiation source meets the radiation safety standard applicable to that source, the approved tester is of the view that the prescribed radiation source meets the applicable radiation safety standard, the approved tester must issue a certificate of compliance in respect of that prescribed radiation source.
- (2) A certificate of compliance must—
 - (a) be in a form approved by the Secretary; and
 - (b) contain any information required by the Secretary; and
 - (c) specify the date of expiry prescribed for certificates of compliance issued in respect of the prescribed radiation source.
- (3) An approved tester must give a certificate of compliance to the person who is in possession of the prescribed radiation source to which the certificate relates within 7 days of issuing the certificate.

34 Approved testers to provide certificate information to Secretary

An approved tester must provide to the Secretary the information contained in a certificate of compliance—

- (a) in writing; and
- (b) within 7 days of issuing the certificate.

35 Approved tester must not knowingly issue a certificate of compliance that is false

- (1) An approved tester must not knowingly issue a certificate of compliance that is false or misleading in a material particular.

Penalty: 600 penalty units.

- (2) An offence under this section is an indictable offence.

Division 5—Use of prescribed radiation sources

36 Use of prescribed radiation sources prohibited unless there is a certificate of compliance

- (1) A person who is in possession of a prescribed radiation source must not require, direct, allow or permit a person to use the prescribed radiation source unless there is a certificate of compliance in respect of that source that has not expired.

Penalty: In the case of a natural person,
1200 penalty units;

In the case of a body corporate,
6000 penalty units.

- (2) An offence under this section is an indictable offence.

Pt 5A
(Heading and
ss 36A–36E)
inserted by
No. 59/2013
s. 13.

Part 5A—Approved assessors of security plans and transport security plans

S. 36A
inserted by
No. 59/2013
s. 13.

36A Role of approved assessors of security plans and transport security plans

The role of an approved assessor is to—

- (a) assess a security plan or transport security plan to determine whether—
 - (i) the plan meets the requirements set out in section 67C or 67H (as the case requires); and
 - (ii) the plan meets the standards specified by the Secretary under section 67N; and
- (b) issue security compliance certificates in respect of security plans and transport security plans if the relevant plans meet the specified standards.

S. 36B
inserted by
No. 59/2013
s. 13.

36B Approved assessor must comply with conditions of assessor's approval

- (1) An approved assessor must not knowingly, recklessly or negligently fail to comply with every condition of his or her assessor's approval.

Penalty: 600 penalty units.

Note

The Secretary may impose conditions on an assessor's approval under section 47.

- (2) An offence under this section is an indictable offence.

36C Only approved assessors who hold assessor's approvals that are in force may issue security compliance certificates

S. 36C
inserted by
No. 59/2013
s. 13.

A person must not issue a security compliance certificate in relation to a security plan or a transport security plan unless he or she holds an assessor's approval that is in force.

Penalty: 60 penalty units.

36D Offence to impersonate approved assessor

S. 36D
inserted by
No. 59/2013
s. 13.

A person must not directly or indirectly represent that he or she is an approved assessor unless the person is an approved assessor.

Penalty: 60 penalty units.

36E Approved assessor must not knowingly issue a security compliance certificate that is false

S. 36E
inserted by
No. 59/2013
s. 13.

(1) An approved assessor must not knowingly issue a security compliance certificate knowing that it is false or misleading in a material particular.

Penalty: 600 penalty units.

(2) An offence under this section is an indictable offence.

Part 6—Authorities under the Act

Division 1—Issue of authorities

37 Who may apply for an authority?

- (1) Any person may apply to the Secretary for—
 - (a) a management licence; or
 - (b) a facility construction licence.
- (2) Only a natural person may apply to the Secretary for—
 - (a) a use licence; or
 - (b) a tester's approval; or
 - (c) an assessor's approval.

S. 37(2)(b)
amended by
No. 59/2013
s. 14(1).

S. 37(2)(c)
inserted by
No. 59/2013
s. 14(2).

38 Form of application

An application for an authority must—

- (a) be in a form approved by the Secretary; and
- (b) set out which authority is being applied for;
and
- (c) be accompanied by—
 - (i) any information required by the Secretary that relates to the authority;
and
 - (ii) the prescribed fee (if any).

39 Further information for management licence applications

(1) An application under section 37 for a management licence must also include—

S. 39
amended by
No. 59/2013
s. 15(3) (ILA
s. 39B(1)).

(a) a description of the proposed radiation practice that will be conducted; and

(b) information (as determined by the Secretary) about the radiation sources or kinds of radiation sources in relation to which the applicant will conduct a radiation practice; and

S. 39(1)(b)
amended by
No. 59/2013
s. 15(1).

(c) if the radiation practice to be conducted includes possession of a high consequence sealed source or high consequence group of sealed sources—

S. 39(1)(c)
inserted by
No. 59/2013
s. 15(2).

(i) a copy of an approved security plan and security compliance certificate issued by an approved assessor for that source or group of sealed sources; and

(ii) if the applicant is a natural person, evidence of the person's identity; and

(iii) if the applicant is a body corporate, evidence of the identity of the person who is to be responsible for the security of a high consequence sealed source or high consequence group of sealed sources under the licence; and

(d) if the radiation practice to be conducted includes transport of a high consequence sealed source or high consequence group of sealed sources—

S. 39(1)(d)
inserted by
No. 59/2013
s. 15(2).

(i) if the applicant is a natural person, evidence of the person's identity; and

- (ii) if the applicant is a body corporate, evidence of the identity of the person who is to be responsible for the security of a high consequence sealed source or high consequence group of sealed sources under the licence.

S. 39(2)
inserted by
No. 59/2013
s. 15(3).

- (2) Evidence of the person's identity that is required under subsection (1)(c) or (1)(d) must be in accordance with the guidelines prepared under section 67A.

40 Further information for use licence applications

An application under section 37 for a use licence must also include—

- (a) information (as determined by the Secretary) about—
 - (i) the radiation sources or kinds of radiation sources the applicant will use; and
 - (ii) the purpose for which the radiation sources or kinds of radiation sources will be used; and
- (b) evidence of the applicant's qualifications (if any) that may be relevant to the proposed use of a radiation source.

S. 41
amended by
No. 59/2013
s. 16(4) (ILA
s. 39B(1)).

41 Further information for facility construction licence applications

- (1) An application under section 37 for a facility construction licence must also—

- (a) include—
 - (i) a description of the radiation facility to be constructed or used; and

S. 41(1)(a)(i)
amended by
No. 59/2013
s. 16(1).

- (ii) a description of the location where the proposed radiation facility is to be constructed or used; and **S. 41(1)(a)(ii) amended by No. 59/2013 s. 16(1).**
- (iii) a description of every radiation practice that will be conducted at the proposed radiation facility; and
- (iv) information (as determined by the Secretary) about the radiation sources or kinds of radiation sources in relation to which a radiation practice will be conducted at the proposed radiation facility; and
- (b) in the case of a radiation facility to be constructed on land owned or occupied by a person other than the applicant, be accompanied by evidence of the written consent of the owner or occupier of the land on which the proposed radiation facility will be constructed for the construction of that facility; and **S. 41(1)(b) amended by No. 59/2013 s. 16(2).**
- (c) in the case of land to be used for, or a building that is to be used as, a radiation facility that is owned or occupied by a person other than the applicant, be accompanied by written evidence of the consent of the owner or occupier of the land or building proposed to be used as a radiation facility for that facility; and **S. 41(1)(c) inserted by No. 59/2013 s. 16(3).**
- (d) in the case of a radiation facility to be constructed or used that will house a high consequence sealed source or high consequence group of sealed sources— **S. 41(1)(d) inserted by No. 59/2013 s. 16(3).**
- (i) a copy of an approved security plan and security compliance certificate issued by an approved assessor for that sealed source or group of sealed sources; and

- (ii) if the applicant is a natural person, evidence of the person's identity; and
- (iii) if the applicant is a body corporate, evidence of the identity of the person who is to be responsible for the security of the high consequence sealed source or high consequence group of sealed sources under the licence.

S. 41(2)
inserted by
No. 59/2013
s. 16(4).

- (2) Evidence of the person's identity that is required under subsection (1)(d)(ii) or (iii) must be in accordance with the guidelines prepared under section 67A.

42 Further information for a tester's approval application

An application under section 37 for a tester's approval must also include evidence of the applicant's qualifications (if any) that may be relevant to an approved tester carrying out his or her duties under this Act or the regulations.

S. 42A
inserted by
No. 59/2013
s. 17.

42A Further information for an assessor's approval

An application under section 37 for an assessor's approval must also include evidence of the applicant's qualifications (if any) that may be relevant to an approved assessor carrying out his or her duties under this Act or the regulations.

43 Consideration of application for and issue of authority

- (1) Subject to this section and sections 44 to 46, on receipt of an application under section 37, the Secretary may issue an authority to the applicant.
- (2) The Secretary may refuse to issue an authority if—
 - (a) the Secretary considers that the applicant is not a fit and proper person to hold the authority; or

- (b) in the case of an application for a licence, the Secretary considers that—
 - (i) it is necessary to do so in the interests of the health or safety of persons or the safety of the environment; or
 - (ii) the application does not comply with the requirements of this Division; or
 - (iii) the proposed radiation practice or use described in the application is inappropriate or not justified.
- (3) If the Secretary refuses to issue an authority, the Secretary must—
 - (a) notify the applicant—
 - (i) of his or her refusal; and
 - (ii) about how the applicant may seek review of the Secretary's decision; and
 - (b) give the applicant a statement of reasons for refusing to issue the authority.
- (4) A notification under subsection (3)(a) and a statement of reasons given under subsection (3)(b) must be—
 - (a) in writing; and
 - (b) given to the applicant within 14 days of the Secretary deciding to refuse the application.

44 Further considerations in relation to use licence applications

- (1) Without limiting section 43(2)(a), in considering whether an applicant for a use licence is a fit and proper person to hold a use licence, the Secretary may have regard to—
 - (a) information about the applicant given to the Secretary by a relevant practitioner registration board under section 45; and

(b) the qualifications (if any) of the applicant and the relevance of those qualifications to the proposed use described in the application.

S. 44(2) substituted by No. 97/2005 s. 182(Sch. 4 item 42.1).

(2) In this section—

S. 44(2) def. of *relevant practitioner registration board* amended by No. 13/2010 s. 51(Sch. item 45.1), substituted by No. 27/2012 s. 23.

relevant practitioner registration board means, in relation to an applicant for a use licence who is or was—

- (a) registered to practise a health profession other than as a student by a National Board under the Health Practitioner Regulation National Law—the National Board that registered that person;
- (b) a registered veterinary practitioner within the meaning of the **Veterinary Practice Act 1997**—the Veterinary Practitioners Registration Board of Victoria established under Part 6 of that Act.

45 Requests for certain information from a relevant health practitioner board about an applicant

- (1) The Secretary may request information about an applicant for a use licence from a relevant practitioner registration board for the purpose of determining whether the applicant is a fit and proper person to hold a use licence.
- (2) A relevant practitioner registration board may, on receiving a request under subsection (1), disclose to the Secretary information about the applicant obtained by the board under the Act under which the board is established.

(3) In this section—

relevant practitioner registration board has the same meaning as in section 44(2).

46 Further considerations in relation to a tester's approval application

Without limiting section 43(2)(a), in considering whether an applicant for a tester's approval is a fit and proper person to hold a tester's approval, the Secretary may have regard to the qualifications (if any) of the applicant and the relevance of those qualifications to the duties of an approved tester under this Act or the regulations.

47 Conditions of authority

- (1) An authority is subject to any conditions that the Secretary considers appropriate.
- (2) Without limiting subsection (1), an authority may be subject to a condition requiring the authority holder to comply with—
 - (a) a document, code, standard, guideline, rule, specification or method applied, adopted or incorporated by the NDRP at the time the authority is issued; or
 - (b) a code, standard or guideline not referred to in paragraph (a) as in force at the time the authority is issued relating to the protection of human health or the environment from the harmful effects of radiation; or
 - (c) any matter that the Secretary considers the authority holder must comply with in order to protect human health or the environment from the harmful effects of radiation.
- (3) A code, standard or guideline referred to in subsection (2)(b) may be a code, standard or guideline formulated, issued, prepared, prescribed or published by any person or body.

48 Period and date of expiry of authority

- (1) An authority—
 - (a) may be issued by the Secretary for a period not exceeding 3 years that is specified in the authority; and
 - (b) expires on the date specified in the authority.
- (2) However, the Secretary may, in accordance with Division 3, cancel or suspend an authority before the period specified in the authority expires.

49 When authority takes effect

- (1) An authority takes effect on—
 - (a) the day on which it is issued by the Secretary; or
 - (b) a date specified in the authority.
- (2) The date specified in the authority must not be a date before the day on which the authority is issued by the Secretary.

50 Content of authority

- (1) An authority issued under section 43 must—
 - (a) set out the name of the authority holder; and
 - (b) specify the period the authority is in force and the date the authority expires; and
 - (c) include the conditions of the authority; and
 - (d) include any other information the Secretary considers appropriate.
- (2) A management licence issued under section 43 must also—
 - (a) describe the radiation practice allowed to be conducted under the licence; and

- (b) identify and describe every radiation source or kinds of radiation sources in relation to which the management licence holder will conduct a radiation practice under the licence.
- (3) A use licence issued under section 43 must also—
 - (a) describe the use allowed under the licence; and
 - (b) identify or describe—
 - (i) every kind of radiation source that the use licence holder may use under the licence; or
 - (ii) the purpose for which a radiation source identified or described in the licence may be used.

Division 2—Renewal of authorities

51 Application for renewal of authority

- (1) An authority holder may apply to the Secretary for the renewal of their authority.
- (2) An application may be made—
 - (a) before the authority expires; or
 - (b) despite anything to the contrary in an authority, within 60 days after the authority expires.
- (3) The application must be—
 - (a) in the form approved by the Secretary; and
 - (b) accompanied by—
 - (i) any information required by the Secretary that relates to the authority; and
 - (ii) the prescribed fee (if any).

- (4) If there is a prescribed fee that must be paid for an application made within 60 days after the authority expires (a *late application*), that prescribed fee must be the same as the prescribed fee that must be paid for an authority that is renewed—
- (a) on an application that is made before that authority expired; and
 - (b) with the same date of expiry as specified in the authority that is renewed on the late application.
- (5) If the application is made before the authority expires, then despite anything to the contrary in the authority, the authority continues in force until the Secretary renews the authority or refuses to renew the authority under section 52.

52 Consideration of application for and issue of renewal of authority

- (1) In considering an application for the renewal of an authority, the Secretary must renew the authority, unless, having regard to the information accompanying the application, there are good reasons not to do so.
- (2) If the Secretary renews an authority on an application made before the authority expires, the authority must be taken to have been renewed on the day on which the current authority was due to expire, and must be dated accordingly.
- (3) If the Secretary renews an authority on an application made within 60 days after the authority expires, the authority must be taken—
- (a) to have been renewed on the day the Secretary renewed the authority; and

- (b) not to have been in force between the expiry of the authority and the renewal of the authority.
- (4) If the Secretary refuses to renew an authority, the Secretary must—
 - (a) notify the applicant—
 - (i) of his or her decision; and
 - (ii) about how the applicant may seek review of the Secretary's decision; and
 - (b) give the applicant a statement of reasons for refusing to renew the authority.
- (5) A notification under subsection (4)(a) and a statement of reasons given under subsection (4)(b) must be—
 - (a) in writing; and
 - (b) given to the applicant within 14 days of the Secretary deciding to refuse the application.

53 Period and date of expiry of renewed authority

- (1) An authority that is renewed under this Division—
 - (a) may be renewed by the Secretary for a period not exceeding 3 years that is specified in the authority; and
 - (b) expires on the date specified in the authority.
- (2) However, the Secretary may, in accordance with Division 3, cancel or suspend the authority before the period specified in the authority expires.

54 Conditions of renewed authority

Section 47 applies to an authority renewed under this Division as if it were an authority issued under Division 1.

55 Content of renewed authority

Section 50 applies to an authority renewed under this Division as if it were an authority issued under Division 1.

Division 3—Suspension and cancellation of authorities

56 Suspension or cancellation of authority

The Secretary may suspend or cancel an authority under this Division—

- (a) if the Secretary reasonably believes any one of the following grounds exists—
 - (i) the authority holder is no longer a fit and proper person to hold the authority; or
 - (ii) the authority was issued to the authority holder or renewed on the basis of information that was false and misleading in a material particular; or
 - (iii) the authority holder has breached a condition of their authority; or
 - (iv) the authority holder has not complied with a provision of this Act or the regulations; or
 - (v) there is a risk to the health or safety of persons or the safety of the environment if the authority is not suspended or cancelled; or
 - (vi) the authority holder no longer meets the requirements that the Secretary considered in issuing or renewing the authority (as the case requires); or
- (b) by agreement between the Secretary and the authority holder.

57 Show cause notice

- (1) On forming a belief that a ground specified in section 56(a) exists, the Secretary must give an authority holder written notice stating the following—
 - (a) the action the Secretary proposes taking under this Division; and
 - (b) the grounds for the proposed action; and
 - (c) an outline of the facts and circumstances forming the basis for the grounds; and
 - (d) if the proposed action is suspension of the authority, the proposed suspension period; and
 - (e) an invitation to the holder to show cause, within a period specified in the notice, why the proposed action should not be taken.
- (2) For the purposes of subsection (1)(e), the period specified in the notice must not be less than 28 days commencing on the day the notice is given to the authority holder.

58 Representations about show cause notices

If the authority holder receives a notice under section 57(1), the holder may make written representations to the Secretary in the period specified in that notice showing cause why the authority should not be suspended or cancelled.

59 Ending show cause process without further action

- (1) If, after considering all representations made under section 58, the Secretary no longer believes a ground exists to suspend or cancel the authority, the Secretary—
 - (a) may not suspend or cancel the authority; and

- (b) must, as soon as practicable, give notice to the authority holder stating that the authority will not be suspended or cancelled.
- (2) A notice given under subsection (1)(b) must be in writing.

60 Suspension or cancellation

- (1) If, after considering any representations made under section 58, the Secretary believes that a ground exists to suspend or cancel the authority and that a suspension or cancellation of the authority is warranted, the Secretary may—
 - (a) if the proposed action stated in the show cause notice under section 57(1) was to suspend the authority for a period specified in the show cause notice, decide to suspend the authority for not longer than the stated period; or
 - (b) if the proposed action stated in the show cause notice was to cancel the authority, decide to either cancel the authority or suspend it for a period.
- (2) On suspending or cancelling an authority under subsection (1), the Secretary must—
 - (a) notify the authority holder and the relevant practitioner registration board or National Board that registered the authority holder of—
 - (i) the decision to suspend or cancel the authority; and
 - (ii) the day on which the suspension or cancellation is to take effect; and
 - (b) notify the authority holder about how the authority holder may seek review of the Secretary's decision; and

S. 60(2)(a)
substituted by
No. 97/2005
s. 182(Sch. 4
item 42.2),
amended by
No. 13/2010
s. 51(Sch.
item 45.2(a)).

- (c) give the authority holder a statement of reasons for the suspension or cancellation of the authority.
- (3) A notification to the authority holder under subsection (2)(a) and (b) and a statement of reasons under subsection (2)(c) must be—
 - (a) in writing; and
 - (b) given to the authority holder as soon as practicable after the authority holder's authority is suspended or cancelled.
- (4) The day on which a suspension or cancellation takes effect may be—
 - (a) the day on which the authority holder is notified under subsection (2); or
 - (b) a later day the authority holder is notified of under that subsection.
- (5) In this section—

relevant practitioner registration board means, in relation to an authority holder who is—

- (a) registered to practise a health profession other than as a student by a National Board under the Health Practitioner Regulation National Law—the National Board that registered that person;
- (b) a registered veterinary practitioner within the meaning of the **Veterinary Practice Act 1997**—the Veterinary Practitioners Registration Board of Victoria established under Part 6 of that Act.

S. 60(5)
substituted by
No. 97/2005
s. 182(Sch. 4
item 42.3).

S. 60(5) def. of
*relevant
practitioner
registration
board*
amended by
No. 13/2010
s. 51(Sch.
item 45.2(b)),
substituted by
No. 27/2012
s. 24.

61 Return of cancelled authority to Secretary

If the Secretary cancels an authority, the authority holder must return the authority to the Secretary within 14 days after being notified under section 60(2)(a) unless the holder has a reasonable excuse.

Penalty: 20 penalty units.

62 Immediate suspension of authority in urgent circumstances

- (1) In this section, urgent circumstances exist if a ground exists to suspend or cancel an authority and it is necessary, to protect the health or safety of persons or the environment from the harmful effects of radiation, to immediately suspend the authority until the suspension or cancellation procedure under sections 57 to 60 is completed.
- (2) If the Secretary is satisfied that urgent circumstances exist in respect of an authority, he or she may decide to immediately suspend the authority.
- (3) On suspending an authority under subsection (2), the Secretary must—
 - (a) notify the authority holder and the relevant practitioner registration board of the immediate suspension; and
 - (b) notify the authority holder about how the authority holder may seek review of the Secretary's decision; and
 - (c) give the authority holder a statement of reasons for the immediate suspension.

- (4) A notification to the authority holder under subsection (3)(a) and (b) and a statement of reasons under subsection (3)(c) must be—
- (a) in writing; and
 - (b) given to the authority holder as soon as practicable after the authority holder's authority is suspended.
- (5) A suspension under subsection (2) takes effect when the authority holder is notified under subsection (3)(a) of the decision to immediately suspend the authority.
- (6) If the Secretary gives the authority holder a show cause notice under section 57(1) within 14 days after the Secretary suspends an authority under this section, the suspension remains in force until the first of the following occurs—
- (a) the Secretary cancels the suspension;
 - (b) a decision under section 60 to cancel or suspend the authority takes effect;
 - (c) a decision under section 59 is made not to cancel or suspend the authority.
- (7) If a show cause notice under section 57(1) is not given to an authority holder within the period referred to in subsection (6), the suspension lapses at the end of that period unless the Secretary has already cancelled the suspension.
- (8) In this section—
- relevant practitioner registration board* has the same meaning as in section 60(5).

63 Effect of suspension on authorities

- (1) A management licence is deemed to not be in force for the purposes of section 12 while it is suspended but the suspension does not affect the licence for any other purposes.

- (2) A use licence is deemed to not be in force for the purposes of section 13 while it is suspended but the suspension does not affect the licence for any other purposes.
- (3) A facility construction licence is deemed to not be in force for the purposes of section 14 while it is suspended but the suspension does not affect the licence for any other purposes.
- (4) A tester's approval is deemed to not be in force for the purposes of section 13 or 27 while it is suspended but the suspension does not affect the tester's approval for any other purposes.

Division 4—Other actions in relation to authorities

64 Transfer of management licence or facility construction licence

- (1) A management licence holder or a facility construction licence holder may apply to the Secretary for approval to transfer their licence to another person.
- (2) An application under this section must be—
 - (a) in a form approved by the Secretary; and
 - (b) accompanied by—
 - (i) any information required by the Secretary; and
 - (ii) the prescribed fee (if any).
- (3) On receipt of an application under this section, the Secretary may approve, or refuse to approve, the transfer of the licence.
- (4) The Secretary may refuse to approve the transfer of the licence if the Secretary considers that—
 - (a) the person to whom the licence is to be transferred is not a fit and proper person to hold the licence; or

- (b) it is necessary to do so in the interests of the health or safety of persons or the safety of the environment; or
 - (c) the application does not comply with the requirements of this Part.
- (5) The Secretary must notify the applicant within 14 days after his or her decision to approve, or refuse to approve, the transfer of the licence.
- (6) If the Secretary refuses to approve the transfer of the licence, the Secretary must also—
 - (a) notify the applicant about how the applicant may seek review of the Secretary's decision to refuse to approve the transfer of the licence; and
 - (b) give the applicant a statement of reasons for refusing to approve the transfer of the licence.
- (7) A notification under this section and the statement of reasons given under subsection (6)(b) must be in writing.
- (8) A transfer of a licence takes effect on—
 - (a) the day on which it is approved by the Secretary; or
 - (b) a date specified in the approval.
- (9) The date specified in the approval must not be a date before the day on which the transfer of the licence is approved.

65 Variation of authority by Secretary on his or her own initiative

- (1) The Secretary may vary an authority or the conditions of an authority on his or her own initiative.

- (2) If the Secretary decides to vary an authority or the conditions of an authority on his or her own initiative, the Secretary must immediately notify the authority holder of that decision and the variation to the authority or the conditions of the authority (as the case requires).
- (3) The notification must—
 - (a) be in writing; and
 - (b) state how the authority holder may seek review of the Secretary's decision to vary the authority or the conditions of an authority.
- (4) A variation of an authority, or to the conditions of the authority, under this section takes effect 14 days after the day on which the authority holder is notified of the variation.

66 Variation of authority by Secretary on application of authority holder

- (1) An authority holder may apply to the Secretary for a variation to the authority or the conditions of an authority.
- (2) An application under this section must be—
 - (a) in a form approved by the Secretary; and
 - (b) accompanied by—
 - (i) any information required by the Secretary; and
 - (ii) the prescribed fee (if any); and

S. 66(2)(b)(ii)
amended by
No. 59/2013
s. 18(1).

(c) in the case of an application for a variation to a management licence that allows the possession of a high consequence sealed source or high consequence group of sealed sources, must include—

S. 66(2)(c)
inserted by
No. 59/2013
s. 18(2).

- (i) a copy of an approved security plan and security compliance certificate issued by an approved assessor for that sealed source or group of sealed sources; and
- (ii) if the applicant is a natural person, evidence of the person's identity; and
- (iii) if the applicant is a body corporate, evidence of the identity of the person who is to be responsible for the security of the high consequence sealed source or high consequence group of sealed sources under the licence; and

(d) in the case of an application for a variation to a management licence that allows the transport of a high consequence sealed source or high consequence group of sealed sources, must include—

S. 66(2)(d)
inserted by
No. 59/2013
s. 18(2).

- (i) if the applicant is a natural person, evidence of the person's identity; and
- (ii) if the applicant is a body corporate, evidence of the identity of the person who is to be responsible for the security of the high consequence sealed source or high consequence group of sealed sources under the licence.

(2A) Evidence of the person's identity that is required under subsection (2)(c) or (2)(d) must be in accordance with the guidelines prepared under section 67A.

S. 66(2A)
inserted by
No. 59/2013
s. 18(3).

- (3) On receipt of an application under this section, the Secretary may agree, or refuse to agree, to the variation of the authority or the conditions of an authority.
- (4) The Secretary must notify the applicant within 14 days after his or her decision to agree or refuse to agree to the variation of the authority or the conditions of an authority.
- (5) If the Secretary refuses to agree to the variation, the Secretary must also—
 - (a) notify the applicant about how the applicant may seek review of the Secretary's decision to refuse to agree to the variation; and
 - (b) give the applicant a statement of reasons for refusing to agree to the variation.
- (6) A notification under this section and the statement of reasons given under subsection (5)(b) must be in writing.
- (7) If the Secretary agrees to the variation, the variation takes effect on—
 - (a) the day on which the authority holder is notified of the variation; or
 - (b) a day specified in the variation.
- (8) The date specified in the variation must not be a date before the day on which the variation is agreed to by the Secretary.

67 Surrender of authority

An authority holder may surrender their authority by notice in writing given to the Secretary.

Division 5—Other matters

**Pt 6 Div. 5
(Heading and
s. 67A)
inserted by
No. 59/2013
s. 19.**

67A Guidelines on evidence as to identity

**S. 67A
inserted by
No. 59/2013
s. 19.**

- (1) The Secretary may prepare guidelines for the purpose of guiding applicants for authorities as to what is required for the purposes of sections 23A, 23B, 23C, 39, 41 and 66.
- (2) Guidelines prepared under subsection (1) must be published in the Government Gazette.

Pt 6A
(Heading and
ss 67B–67O)
inserted by
No. 59/2013
s. 20.

Part 6A—Security plans and transport security plans

Division 1—Security plans

S. 67B
inserted by
No. 59/2013
s. 20.

67B Certain management licence applicants must prepare and submit plan for approval

The following persons must prepare and submit a security plan to an approved assessor for approval under this Part—

- (a) an applicant for a management licence who intends to possess a high consequence sealed source or high consequence group of sealed sources;
- (b) an applicant for a facility construction licence who intends to construct or use land for or a building as a radiation facility that will house a high consequence sealed source or high consequence group of sealed sources;
- (c) a management licence holder who intends to make an application to vary their management licence in order to possess a high consequence sealed source or high consequence group of sealed sources.

S. 67C
inserted by
No. 59/2013
s. 20.

67C Contents of security plan

- (1) A security plan prepared and submitted under section 67B must—
 - (a) address the security standard specified by the Secretary under section 67N for the high consequence sealed source or high consequence group of sealed sources in relation to which the applicant for, or holder of, a management licence will conduct a radiation practice; and

- (b) set out the security measures to be implemented to control any issues identified in the security standard; and
 - (c) include any other matters specified by the Secretary in accordance with subsection (2); and
 - (d) be in the form specified by the Secretary.
- (2) The Secretary, by notice published in the Government Gazette, may specify any additional matters that must be addressed by the security plan.

67D Management licence holders who possess high consequence sealed sources must have approved security plans

S. 67D
inserted by
No. 59/2013
s. 20.

- (1) A management licence holder must at all times have an approved security plan for every high consequence sealed source or every high consequence group of sealed sources the holder is licensed to possess.

Penalty: In the case of a natural person,
1200 penalty units;

In the case of a body corporate,
6000 penalty units.

- (2) An offence under this section is an indictable offence.

67E Approved security plan to be provided to Secretary

S. 67E
inserted by
No. 59/2013
s. 20.

A management licence holder who is licensed to possess a high consequence sealed source or high consequence group of sealed sources must not knowingly fail to provide to the Secretary, within 30 days after receiving a security compliance certificate for a security plan relating to the high consequence sealed source or high consequence

group of sealed sources, a copy of the approved security plan.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

S. 67F
inserted by
No. 59/2013
s. 20.

67F Review of approved security plans

(1) Subject to subsection (2), a management licence holder who is licensed to possess a high consequence sealed source or high consequence group of sealed sources must submit to the Secretary a revised security plan that has been approved by an approved assessor as soon as practicable after—

(a) a significant change in the operation of, or to the environment in which, the radiation practice involving the high consequence sealed source or high consequence group of sealed sources is being conducted; or

(b) the licence holder has been notified of an amendment to the security standard under section 67O.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

(2) An approved security plan is not required to be revised, approved and submitted under subsection (1) if the only change to the operation of, or to the environment in which, the radiation practice involving the high consequence sealed source or high consequence group of sealed sources is being conducted is any of the following—

- (a) the name of the natural person who is responsible for implementing the plan;
- (b) any change to the details of the management licence that do not relate to possession or transport of a high consequence sealed source or high consequence group of sealed sources;
- (c) an amendment to the plan that is prescribed by the regulations for the purposes of this subsection.

Division 2—Transport security plans

67G Transport security plan

- (1) Subject to subsection (2), a management licence holder who is licensed to transport a high consequence sealed source or high consequence group of sealed sources must, in accordance with this Part, prepare, and submit to an approved assessor for approval under this Part, a transport security plan each time the licence holder proposes to transport a high consequence sealed source or high consequence group of sealed sources.
- (2) In the case of a proposal to transport similar category 2 sealed sources or category 3 sealed sources, or a category 2 group of sealed sources or category 3 group of sealed sources, using a series of shipments, a single transport security plan may be prepared if the plan includes details for each shipment.

S. 67G
inserted by
No. 59/2013
s. 20.

S. 67H
inserted by
No. 59/2013
s. 20.

67H Contents of transport security plan

- (1) A transport security plan must—
 - (a) address the security standard specified under section 67N for the high consequence sealed sources or high consequence groups of sealed sources proposed to be transported; and
 - (b) set out the security measures to be implemented to control any issues identified in the security standard; and
 - (c) include any other matters specified by the Secretary in accordance with subsection (2); and
 - (d) be in the form specified by the Secretary.
- (2) The Secretary, by notice published in the Government Gazette, may specify any additional matters that must be addressed by the transport security plan.

S. 67I
inserted by
No. 59/2013
s. 20.

67I Review of transport security plan

A management licence holder who is licensed to transport a high consequence sealed source or high consequence group of sealed sources in respect of which there is an approved transport security plan that provides for a series of shipments must submit to the Secretary a revised transport security plan that has been approved by an approved assessor as soon as practicable after a significant change to the manner in which a high consequence sealed source or high consequence group of sealed sources is to be transported.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

67J Offence to transport high consequence sealed source without transport security plan

S. 67J
inserted by
No. 59/2013
s. 20.

A management licence holder who is licensed to transport a high consequence sealed source or high consequence group of sealed sources must not transport a high consequence sealed source or high consequence group of sealed sources knowing that—

- (a) there is no approved transport security plan for that sealed source or group of sealed sources; or
- (b) a copy of the approved transport security plan and security compliance certificate has not been submitted to the Secretary—
 - (i) in the case of a proposal to transport a category 1 sealed source or a category 1 group of sealed sources, at least 7 days before the transport is proposed to take place; or
 - (ii) in the case of a proposal to transport a category 2 sealed source, a category 3 sealed source, a category 2 group of sealed sources or category 3 group of sealed sources, at least 7 days before the transport (or first transport in the case of a series of shipments) is proposed to take place.

Penalty: In the case of a natural person,
1200 penalty units;

In the case of a body corporate,
6000 penalty units.

Division 3—Assessment of security plans and transport security plans

S. 67K
inserted by
No. 59/2013
s. 20.

67K Review and approval of security plan or transport security plan

- (1) On receipt of a security plan or transport security plan, an approved assessor must assess the plan against the applicable security standard.
- (2) If, after the assessment, the approved assessor is of the view that the security plan or transport security plan meets the applicable security standard, the approved assessor must issue a security compliance certificate in respect of that security plan or transport security plan.
- (3) A security compliance certificate must—
 - (a) be in the form approved by the Secretary; and
 - (b) contain any information required by the Secretary; and
 - (c) be given to the person who requested the assessment of the security plan or transport security plan.

S. 67L
inserted by
No. 59/2013
s. 20.

67L Approved assessor to provide certificate information to Secretary

An approved assessor must provide to the Secretary the information contained in the security compliance certificate—

- (a) in writing; and
- (b) within 7 days after issuing the certificate.

Division 4—Compliance with security plans and transport security plans

67M Offence to fail to comply with security plan or transport security plan

S. 67M
inserted by
No. 59/2013
s. 20.

A management licence holder who is licensed to possess or transport a high sealed consequence sealed source or high consequence group of sealed sources must not knowingly fail to comply with the most recent approved security plan or approved transport security plan for that sealed source or group of sealed sources.

Penalty: In the case of a natural person,
1200 penalty units;
In the case of a body corporate,
6000 penalty units.

Division 5—Standards for security plans and transport security plans and security compliance certificate

67N Secretary may specify security standards for high consequence sealed sources and high consequence groups of sealed sources

S. 67N
inserted by
No. 59/2013
s. 20.

- (1) The Secretary must, in respect of high consequence sealed sources and high consequence groups of sealed sources, specify a security standard that a security plan or transport security plan must meet to be approved by an approved assessor.
- (2) A security standard specified under this section must set out security measures that must be met according to the level of threat from terrorist activity in relation to radiation sources.

- (3) On specifying a security standard, the Secretary must publish—
 - (a) notice of that specification in the Government Gazette; and
 - (b) the security standard on the Internet.
- (4) A security standard specified under this section takes effect on and from the date on which notice of its specification is published in the Government Gazette or a later date that is specified in the notice.

S. 67O
inserted by
No. 59/2013
s. 20.

67O Notification of change to security standard involving changes to security measures

- (1) This section applies if the Secretary amends a security standard and the amendment relates to a security measure set out in the standard.
- (2) The Secretary must, in writing, notify the following persons of the amendment of the security standard and the details of the amendment—
 - (a) every management licence holder who is licensed to possess a high consequence sealed source or a high consequence group of sealed sources, if the approved security plan relating to that sealed source or group of sealed sources contains matter to which the amendment relates;
 - (b) every management licence holder who is licensed to transport a high consequence sealed source or a high consequence group of sealed sources, if the approved transport security plan relating to that sealed source or group of sealed sources contains matter to which the amendment relates;
 - (c) every approved assessor.

Part 7—Enforcement

Division 1—Introductory

68 Definitions

In this Part—

occupier, in relation to a place that is a vehicle,
means the driver or person who is in charge
of the vehicle;

regulated activity means any activity conducted
under or in accordance with an authority or
an exemption under section 16.

Division 2—Authorised officers

69 Appointment

- (1) The Secretary, by instrument, may appoint a person employed under Part 3 of the **Public Administration Act 2004** as an authorised officer.
- (2) The Secretary must not appoint a person as an authorised officer unless the Secretary is satisfied the person is suitably qualified or trained to exercise the powers of an authorised officer under this Act.

70 Authorised officer's identity card

- (1) The Secretary must issue an identity card to an authorised officer appointed under section 69.
- (2) An identity card must—
 - (a) contain the name and a photograph of the authorised officer to whom it is issued; and

- (b) identify the authorised officer to whom it is issued as an authorised officer under this Act; and
- (c) be signed by the Secretary.

71 Production of identity card

An authorised officer must produce his or her identity card for inspection—

- (a) before exercising a power under this Part; or
- (b) if asked to do so by any person at any time during the exercise of a power under this Part.

72 Authorised officers must cease exercising powers if they do not produce identity card on request

An authorised officer must not perform or exercise a function or power under this Part if the authorised officer does not immediately produce his or her identity card after being asked to do so.

73 Authorised officers subject to Secretary's direction

- (1) The Secretary may give a direction to an authorised officer in relation to the officer's performance or exercise of a function or power under this Act.
- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

Division 3—Entry powers of authorised officers

74 Power to enter places

- (1) For the purpose of monitoring compliance with this Act or the regulations, or investigating a possible contravention of this Act or the regulations, an authorised officer may—

- (a) enter, without consent, any place that is a non-residential premises that the authorised officer reasonably believes is being used in connection with a regulated activity at—
 - (i) any reasonable hour in the daytime; or
 - (ii) any time that those premises are open for business;
 - (b) enter a public place at any time without the consent of the occupier of the public place;
 - (c) enter any other place (including residential premises) if—
 - (i) the occupier or apparent occupier of the place consents to the entry of the place; or
 - (ii) the authorised officer is authorised to do so under a search warrant.
- (2) For the purpose of asking the occupier of a place that is a residential premises for consent to enter, the authorised officer may, without the occupier's consent or a warrant—
- (a) enter land around residential premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

75 Procedure for entry without consent

- (1) Subject to Division 4, before entering any place in accordance with section 74(1)(a), an authorised officer must—
- (a) announce that he or she is an authorised officer under this Act and is authorised to enter that place; and

- (b) inform any person at the place of the purpose of the entry; and
 - (c) give any person at the place an opportunity to allow that entry.
- (2) However, the authorised officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure the safety of any person.

76 Procedure for entry with consent

- (1) This section applies if an authorised officer intends to ask an occupier or apparent occupier of a place to consent to that officer entering the place in accordance with section 74(1)(c)(i).
- (2) Before asking for the consent, the officer must inform the occupier or apparent occupier—
- (a) of the purpose of the entry; and
 - (b) that the occupier or apparent occupier is not required to consent; and
 - (c) that the occupier or apparent occupier may refuse to consent to the taking of—
 - (i) any thing or sample of, or from, any thing found during a search at the place; or
 - (ii) any copy or extract from a document found during a search at the place; and
 - (d) that anything seized or taken during a search of the place with the consent of the occupier or apparent occupier may be used in evidence in proceedings.
- (3) If the consent is given, the authorised officer may ask the occupier or apparent occupier to sign an acknowledgment of the consent.

- (4) The acknowledgment must state—
- (a) that the occupier or apparent occupier (as the case requires) has been informed—
 - (i) of the purpose of the entry; and
 - (ii) that the occupier or apparent occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) that the occupier or apparent occupier gives the officer consent to enter the place and exercise powers under this Part; and
 - (d) the time and date the consent was given.
- (5) If the occupier or apparent occupier signs the acknowledgment, the authorised officer must immediately give a copy to the person.

Division 4—Investigation and enforcement powers of authorised officers

77 General powers of authorised officers

- (1) An authorised officer who enters any place under this Part, or under this Part under an authorisation under Part 8, may do any of the following—
- (a) inspect, examine, or make enquiries, at the place;
 - (b) examine or inspect any thing (including a document or part of a document) at the place;
 - (c) bring any equipment or materials to the place that may be required;

- (d) seize any thing (including a radiation source or a document) at the place if the authorised officer reasonably believes—
 - (i) the seized thing is connected with an alleged contravention of this Act or the regulations; or
 - (ii) there is serious risk to the health or safety of any person or the safety of the environment if the thing is not seized;
- (e) seize any thing (including a radiation source), or take a sample of, or from, any thing, at the place for examination, analysis, measurement or testing;
- (f) analyse, measure or test, with equipment brought to the place or already at the place—
 - (i) any thing at the place; or
 - (ii) for the emission of radiation from a radiation source at the place;
- (g) seal a radiation source at the place;
- (h) make a radiation source at the place inoperative;
- (i) take any photographs or make any audio or visual recordings at the place;
- (j) make copies of, or take extracts from, any document kept at the place;
- (k) use or test any equipment at the place;
- (l) exercise any other power conferred on the authorised officer by this Act;
- (m) do any other thing that is reasonably necessary for the purpose of the authorised officer performing or exercising his or her functions or powers under this Act.

- (2) In doing any thing referred to in subsection (1), an authorised officer may be assisted by any person.

78 Power to direct persons to produce documents, operate equipment, answer questions etc.

- (1) An authorised officer who enters a place under this Part, or under this Part under an authorisation under Part 8, may direct a person at the place to—
- (a) produce a document or part of a document located at the place that is in the person's possession or control;
 - (b) operate equipment to access information from that equipment;
 - (c) provide a list of all persons who use radiation sources at the place;
 - (d) answer any questions put by the authorised officer.
- (2) A person must not refuse or fail to comply with a direction under subsection (1) unless the person has a reasonable excuse.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (3) Before directing a person to produce a document or part of a document or to answer questions under subsection (1), an authorised officer must warn the person that a refusal or failure to comply with the direction, without reasonable excuse, is an offence.

Note

Before directing a person to do a thing under subsection (1), an authorised officer must also produce his or her identity card for inspection if asked to do so by any person:
See section 71.

- (4) A person is not liable to be prosecuted for an offence against subsection (2) if the authorised officer concerned failed to comply with section 71 and subsection (3).

Division 5—Search warrants

79 Issue of search warrants

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to a place if the authorised officer believes on reasonable grounds that there is, or may be within the next 72 hours, a particular thing (including a document) at the place that may afford evidence of the commission of an offence against this Act or the regulations.
- (2) A magistrate may issue the search warrant if he or she is satisfied by evidence on oath or by affirmation or by affidavit that there are reasonable grounds for suspecting that there is, or may be within 72 hours, a particular thing (including a document) at the place that may afford evidence of the commission of an offence against this Act or the regulations.
- (3) The search warrant may authorise a named authorised officer and any assistants the authorised officer considers necessary—
- (a) to enter the place or part of the place named or described in the warrant; and
 - (b) to search for the thing named or described in the warrant.
- (4) In addition to any other requirement, the search warrant must state—
- (a) the offence suspected; and
 - (b) the place to be searched; and

S. 79(2)
amended by
No. 6/2018
s. 68(Sch. 2
item 105).

- (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time or during specified hours; and
 - (f) that the warrant authorises entry on only one occasion; and
 - (g) a day, not later than 7 days after the warrant is issued, on which it ceases to have effect.
- (5) Subject to subsection (6), a search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) Despite section 78 of the **Magistrates' Court Act 1989**, a search warrant must not authorise an authorised officer to arrest a person.
- (7) The rules that apply to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to search warrants under this section.

80 Announcement before entry on warrant

- (1) Before executing a search warrant, the authorised officer named in the warrant, or a person assisting the authorised officer, must—
- (a) announce that he or she is authorised by the warrant to enter the place; and
 - (b) give any person at the place an opportunity to allow that entry.
- (2) However, the authorised officer, or person assisting the authorised officer, need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure—

- (a) the safety of any person or the environment;
or
- (b) that the effective execution of the warrant is not frustrated.

81 Copy of warrant to be given to occupier

If an occupier or apparent occupier is present at the place when a search warrant is being executed, the authorised officer must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection; and
- (b) give that person a copy of the execution copy of the warrant.

Division 6—Seized things and samples taken

82 Authorised officers to give receipts for seized things and samples taken

- (1) If an authorised officer seizes a thing, or takes a sample of, or from, a thing at a place under this Part, the officer must give a receipt for the thing to the person in charge of the thing or the place from which it was taken.
- (2) A receipt must—
 - (a) identify the thing seized or sample taken; and
 - (b) state the name of the authorised officer who seized the thing or took the sample and the reason why the thing was seized or the sample was taken.
- (3) If for any reason it is not practicable for an authorised officer to comply with subsection (1), the authorised officer may—
 - (a) leave the receipt at the place in a conspicuous position and in a reasonably secure way; or

- (b) send the receipt, by post, to the occupier of the place from where the thing was seized or the sample was taken.

83 Copies of seized documents

- (1) If an authorised officer retains possession of a document seized from a person under this Part, the authorised officer must give the person, within 21 days of the seizure, a copy of the document certified as correct by the authorised officer.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals as evidence of equal validity to the original.

84 Retention and return of seized documents or things

- (1) If an authorised officer seizes a document or other thing under this Part, the authorised officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised officer must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 85 extending the period during which the document or thing may be retained.
- (3) This section does not apply to a document or other thing seized under this Part that is forfeited to the Secretary under section 86.

85 Magistrates' Court may extend 3 month period

- (1) An authorised officer may apply to the Magistrates' Court—
- (a) within 3 months after seizing a document or other thing under this Part; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension (not exceeding 3 months) of the period for which the authorised officer may retain the document or thing but so that the total period of retention does not exceed 12 months.

- (2) The Magistrates' Court may order such an extension if it is satisfied that—
- (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary—
 - (i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
 - (ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (3) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

86 Forfeiture and destruction of seized things

- (1) Any thing (including a document) that an authorised officer has seized and retained under this Part is forfeited to the Secretary if the Secretary—
 - (a) cannot find its owner despite making reasonable enquiries; or
 - (b) cannot return it to the owner despite making reasonable efforts; or
 - (c) decides it is necessary to retain the thing to prevent the commission of an offence against this Act or the regulations.
- (2) If a thing is forfeited to the Secretary under subsection (1)(c), the Secretary must notify (in writing) the owner accordingly, setting out how the owner may seek review of the decision referred to in that subsection, unless the Secretary cannot find the owner despite making reasonable enquiries.

87 Secretary may cause forfeited things to be destroyed or otherwise disposed of

The Secretary may cause any thing that has been seized and retained under this Part by an authorised officer, and forfeited to the Secretary by operation of section 86, to be destroyed or otherwise disposed of.

Division 7—Examinations, analyses, measurement and testing

88 Examination, analysis, measurement or testing of things seized or samples taken

- (1) An authorised officer who seizes a thing, or takes a sample of, or from, a thing, at a place under section 77(1)(e) or under the authority of a search warrant may—

- (a) if the authorised officer is not also a radiation analyst, give the thing or sample to a radiation analyst for examination, analysis, measurement or testing; or
 - (b) if the authorised officer is also a radiation analyst—
 - (i) complete a certificate of examination, analysis, measurement or testing for the thing or sample; or
 - (ii) give the thing or sample to a radiation analyst for examination, analysis, measurement or testing.
- (2) A radiation analyst given a thing or sample under subsection (1) may complete a certificate of examination, analysis, measurement or testing for the thing or sample.
- (3) If a radiation analyst completes a certificate of examination and analysis under subsection (2), the radiation analyst must give the certificate to the authorised officer who gave them the thing or sample as soon as practicable after completing the certificate.

89 Examination, analysis, measurement or testing of things, or testing for emissions of radiation, at a place

An authorised officer who is a radiation analyst and who—

- (a) examines, analyses, measures or tests any thing at a place under section 77(1); or
- (b) analyses, measures or tests for the emission of radiation from a radiation source at a place under section 77(1)—

may complete a certificate of examination and analysis for the thing or emission of radiation from a radiation source.

90 Certificates must indicate methodology used

A certificate of examination and analysis must include information about the methodology used to conduct the analysis, measurement or testing.

Division 7A—Improvement notices and prohibition notices

Pt 7 Div. 7A
(Heading and
ss 90A–90C)
inserted by
No. 59/2013
s. 21.

90A Secretary may issue improvement notice or prohibition notice

S. 90A
inserted by
No. 59/2013
s. 21.

- (1) This section applies if the Secretary believes that a person—
 - (a) has contravened a provision of this Act or the regulations in circumstances that make it likely that the contravention is continuing or will reoccur; or
 - (b) is likely to contravene a provision of this Act or the regulations.
- (2) If this section applies, the Secretary may issue to the person—
 - (a) an improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention; or
 - (b) a prohibition notice prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until the Secretary has certified in writing that the contravention has ceased or that the likelihood of the contravention occurring has passed.

- (3) An improvement notice or a prohibition notice must—
- (a) state the grounds on which the issue of the improvement notice or prohibition notice is based;
 - (b) specify the provision of this Act or the regulations that the Secretary considers has been or is likely to be contravened;
 - (c) specify the actions or measures that the person is required to take and the period within which the actions or measures are to be completed;
 - (d) set out the penalty for contravening the improvement notice or prohibition notice;
 - (e) state how the person may seek review of the issue of the improvement notice or prohibition notice;
 - (f) include a statement as to the effect of section 90C.
- (4) An improvement notice or a prohibition notice issued under this section remains in force until the Secretary notifies, in writing, the person who received the notice that it is no longer in force.

S. 90B
inserted by
No. 59/2013
s. 21.

90B Person must comply with improvement notice or prohibition notice

- (1) A person to whom an improvement notice or a prohibition notice is issued for a contravention of this Act must comply with the improvement notice or prohibition notice.

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (2) A person to whom an improvement notice or a prohibition notice is issued for a contravention of the regulations must comply with the improvement notice or prohibition notice.

Penalty: 20 penalty units.

90C Proceedings for offences affected by notices

S. 90C
inserted by
No. 59/2013
s. 21.

- (1) Subject to subsection (2), the issue of an improvement notice or a prohibition notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the improvement notice or prohibition notice was issued.
- (2) If a person fulfils all the requirements of an improvement notice or a prohibition notice, at the expiry of the notice, no proceeding may be commenced for the offence against this Act or the regulations constituted by the contravention or alleged contravention to which that improvement notice or prohibition notice related.

Division 8—Miscellaneous

91 Offence to impersonate an authorised officer

A person who is not an authorised officer must not, in any way, hold himself or herself out to be an authorised officer.

Penalty: 60 penalty units.

Part 8—Radiation emergencies

92 Definition

In this Part—

radiation event means an incident or event which results, or may result, in the emission of radiation from a radiation source.

93 Secretary to give authorisation for exercise of emergency powers

If the Secretary believes on reasonable grounds that a radiation event has occurred that poses, or may occur that would pose, a serious risk to the health or safety of persons or the safety of the environment, the Secretary may give an authorisation to an authorised officer in relation to the radiation event.

94 How may an authorisation be given?

- (1) An authorisation under this Part may be given orally or in writing.
- (2) If the authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable.
- (3) An authorisation must—
 - (a) state that it is given under this Part; and
 - (b) generally describe the radiation event to which it relates; and
 - (c) if the radiation event has occurred, name or describe the place at which the radiation event has occurred; and
 - (d) specify the time at which it is given; and
 - (e) specify the period of time it is in force.

95 Extension of period of time authorisation is in force

- (1) Subject to this section, the Secretary may extend the period of time of an authorisation under this Part.
- (2) An authorisation under this Part may only be extended before the period of time it is in force expires.
- (3) The Secretary must not extend the period of time of an authorisation under this Part unless he or she believes on reasonable grounds that the radiation event to which the authorisation relates will continue to pose a serious risk to the health or safety of persons or the safety of the environment after the expiry of the period of time the authorisation is in force.

96 What is authorised?

- (1) An authorisation may authorise an authorised officer to—
 - (a) direct a person or group of people to enter, not to enter or to leave any particular place; and
 - (b) subject to subsection (3), detain a person (whether alone or with others); and
 - (c) direct a person to submit to decontamination procedures carried out by a person specified by the authorised officer; and
 - (d) direct the owner or occupier of a place to decontaminate the place; and
 - (e) enter a place and exercise any or all of the powers the authorised officer has under section 77(1) or 78(1) at that place;

- (f) dispose of, or destroy, any radiation source that caused the radiation incident or any other thing seized that has been contaminated by radiation as a result of the radiation event; and
 - (g) give any direction to a person that is reasonable or necessary to protect the health or safety of another person or the safety of the environment.
- (2) An authorised officer must facilitate any reasonable request for communication made by a person subject to detention under subsection (1)(b).
- (3) An authorised officer may only detain a person—
- (a) to cause tests to be conducted on the person to determine whether, by reason of the radiation event, the person has been contaminated and poses a serious risk to the health or safety of another person or the safety of the environment; and
 - (b) if the person is contaminated such that they pose a serious risk to the health or safety of another person or the safety of the environment, to prevent the person contaminating other persons or the environment.
- (4) In doing any thing referred to in subsection (1), an authorised officer may be assisted by any person.

- (5) A person must not refuse or fail to comply with a direction under subsection (1)(a), (c), (d) or (g) unless the person has a reasonable excuse.

Penalty: In the case of a natural person,
60 penalty units;

In the case of a body corporate,
300 penalty units.

97 Authorised officers to display identity cards at all times when exercising emergency powers

- (1) An authorised officer must at all times display his or her identity card when exercising a power under an authorisation.
- (2) However, if it is impracticable for an authorised officer to display his or her identity card when exercising a power under an authorisation, the authorised officer need not do so.

98 Use of reasonable and necessary force

- (1) If a person refuses to comply with a direction given under this Part, an authorised officer or a person assisting the authorised officer may request a police officer to use reasonable and necessary force to ensure compliance with that direction.
- (2) If requested to do so under subsection (1), a police officer may use reasonable and necessary force to ensure compliance with a direction under this Part.

S. 98(1)
amended by
No. 37/2014
s. 10(Sch.
item 140.2).

S. 98(2)
amended by
No. 37/2014
s. 10(Sch.
item 140.2).

99 Compensation

- (1) A person who suffers loss as a result of the giving of an authorisation to an authorised officer under this Part, may apply to the Secretary for compensation if the person considers that there were insufficient grounds for the giving of that authorisation.

- (2) If there were insufficient grounds for the giving of an authorisation to an authorised officer under this Part, the Secretary is to pay just and reasonable compensation to the applicant.
- (3) The Secretary is to send written notification of his or her determination as to the payment of compensation under this section to each applicant for the payment of compensation.
- (4) If the Secretary has not determined an application for compensation under this section within—
- (a) 28 days of receiving the application; or
 - (b) the period agreed to by the Secretary and the applicant for the payment of compensation under subsection (5)—
- the Secretary is taken to have refused to pay any compensation.
- (5) The Secretary and the applicant for the payment of compensation may agree that the Secretary may determine the applicant's application for the payment of compensation within a period that is greater than the 28 days specified in subsection (4)(a).
- (6) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the Secretary as to the refusal to pay compensation or as to the amount of compensation may apply to the Magistrates' Court for a review of the determination—
- (a) within 28 days after the day on which notification of the determination was received; or
 - (b) in a case to which subsection (4) applies, within 28 days after the relevant period.

(7) In subsection (6)(b)—

relevant period means—

- (a) 28 days after the Secretary receives the application for the payment of compensation; or
 - (b) the period agreed to by the Secretary and the applicant for the payment of compensation under subsection (5).
- (8) If the amount of compensation sought exceeds the jurisdictional limit of the Magistrates' Court, the application under subsection (6) is to be made to the Supreme Court.

Part 9—Review of decisions

100 Definitions

In this Part—

S. 100 def. of
*eligible
person*
amended by
No. 59/2013
s. 22(1).

eligible person means—

- (a) an applicant for an authority under section 37;
- (b) an authority holder;
- (c) the owner of a thing seized under Part 7 and forfeited to the Secretary under section 86 because of a decision under section 86(1)(c);
- (d) a person to whom an improvement notice or a prohibition notice has been issued under section 90A;

relevant applicant or licensee means—

- (a) an applicant for—
 - (i) a facility construction licence; or
 - (ii) a management licence to conduct a radiation practice at a radiation facility; or
- (b) a facility construction licence holder; or
- (c) a management licence holder who conducts a radiation practice at a radiation facility under a management licence;

S. 100 def. of
*reviewable
decision*
amended by
No. 59/2013
s. 22(2).

reviewable decision means—

- (a) in relation to an eligible person who is an applicant for an authority under section 37, a decision made under section 43 to refuse to issue an authority;

- (b) in relation to an eligible person who is an authority holder—
 - (i) a decision made under Division 1 of Part 6 to impose a condition on the authority holder's authority;
 - (ii) a decision made under section 52 not to renew an authority;
 - (iii) a decision made under Division 2 of Part 6 to impose a condition on an authority that is renewed under that Division;
 - (iv) a decision under section 60 or 62 to suspend or cancel an authority;
 - (v) a decision made under section 64 to refuse to transfer a management licence or a facility construction licence;
 - (vi) a decision made under section 65 or 66 to vary an authority, or the conditions of, an authority;
- (c) in relation to a person who is the owner of a thing seized under Part 7 and forfeited to the Secretary under section 86, a decision made by the Secretary under section 86(1)(c) that results in the forfeiture of that thing to the Secretary;
- (d) in relation to a person to whom an improvement notice or a prohibition notice has been issued under section 90A, a decision of the Secretary to issue the notice.

101 Review

- (1) An eligible person in relation to a reviewable decision may apply to the Secretary for a review of the decision.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the applicant was notified of the decision; and
 - (b) the day on which the eligible person is notified by the Secretary of the eligible person's right to a review.
- (3) The Secretary must, on receiving an application, review the reviewable decision.
- (4) The Secretary may—
 - (a) make a decision affirming, varying or revoking the reviewable decision; and
 - (b) if the Secretary revokes the decision, make such other decision as the Secretary considers appropriate under the provision under which the reviewable decision was made.
- (5) The Secretary must—
 - (a) notify an applicant for review in writing of his or her decision within 28 days after he or she receives the application for review; and
 - (b) at the same time give a statement of reasons, in writing, for his or her decision to the applicant for review.

- (6) If the Secretary does not make a decision within 28 days after he or she receives the application for review, the Secretary is deemed to have affirmed the decision.
- (7) The Secretary must inform an applicant for review (other than a relevant applicant or licensee) in writing of the applicant's right to external review under section 102.

102 VCAT review of certain decisions of Secretary

- (1) An eligible person (other than a relevant applicant or licensee) whose interests are affected by a decision of the Secretary under section 101 may apply to the Tribunal for review of the decision.
- (2) An authority holder (other than a relevant applicant or licensee) whose authority is suspended or cancelled under section 60 or 62 may apply to the Tribunal for review of the decision of the Secretary to suspend or cancel their authority.
- (3) An application for review must be made within 28 days after the latest of—
 - (a) the day on which the decision is made; and
 - (b) in the case of—
 - (i) an eligible person referred to in subsection (1), the day on which the person is informed by the Secretary of the person's right to an external review under section 101; or
 - (ii) an authority holder referred to in subsection (2), the day on which the person is notified by the Secretary of the holder's right to an external review under this section; and

- (c) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Part 10—The Radiation Advisory Committee

103 Radiation Advisory Committee

The Radiation Advisory Committee is established.

104 Membership

- (1) The Committee consists of at least 5 members appointed by the Minister.
- (2) A member is appointed for the term, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (3) Subject to subsections (4) and (5), a member is appointed on the terms and conditions that are specified in the instrument of appointment.
- (4) The Minister may remove a member from office at any time.
- (5) A member may resign from office by notice in writing signed by him or her and delivered to the Minister.
- (6) A member is entitled to be paid the fees and allowances from time to time determined by the Governor in Council.
- (7) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

S. 104(7)
substituted by
No. 80/2006
s. 26(Sch.
item 91).

105 Acting appointments

- (1) The Minister may appoint a person to act in the place of a member who is absent from duty or who, for any other reason, is unable to perform the duties of the office.
- (2) An acting member is appointed for the term, and on such other terms and conditions, as are specified in the instrument of appointment.

- (3) A person appointed under subsection (1) has all the powers, and may perform all the duties, of the member for whom he or she is acting.
- (4) The Minister may at any time terminate an acting appointment.

106 Proceedings of the Committee

Subject to this Act, the Committee may regulate its own proceedings.

107 Function of the Committee

- (1) The function of the Committee is to consider, advise and report to the Minister or the Secretary on any matter relating to the administration of this Act or the regulations referred to it by the Minister or the Secretary.
- (2) Without limiting subsection (1), the Minister or the Secretary may refer the following kinds of matters to the Committee to consider, advise and report on—
 - (a) the promotion of radiation safety procedures and practices;
 - (b) recommending the criteria for the licensing of persons to use radiation sources and the qualifications, training or experience required by those persons to do so;
 - (c) recommending which radiation sources should be prescribed as prescribed radiation sources;
 - (d) the radiation safety standards to be specified under section 29;
 - (e) the nature, extent and frequency of tests to be conducted on prescribed radiation sources and the specification of radiation safety tests under section 30;

- (f) codes of practice, standards or guidelines with respect to particular radiation sources, radiation practices or uses.

108 Consultation in carrying out its function

In carrying out its function, the Committee may consult with or consider submissions from any person or body.

109 Assistance

- (1) The Committee may, with the consent of the Minister, request a person to assist the Committee with the Committee's work or a sub-committee of the Committee with the sub-committee's work.
- (2) A person who assists the Committee or a sub-committee of the Committee under subsection (1) is entitled to be paid the fees and allowances from time to time determined by the Governor in Council.

110 Annual reports

The Committee must give the Minister a report on its activities during a financial year no later than 1 November following that year.

111 Minister to lay annual reports before Houses of Parliament

The Minister must cause every report under section 110 to be laid before each House of the Parliament as soon as practicable after it is received.

Part 11—General

Division 1—Radiation analysts

112 Appointment of radiation analysts

- (1) The Secretary, by instrument, may appoint a person as a radiation analyst. The person appointed need not be a person employed under Part 3 of the **Public Administration Act 2004**.
- (2) The Secretary may appoint a person as a radiation analyst only if the Secretary considers the person has the necessary expertise or experience to be a radiation analyst.

113 Radiation analyst's terms and conditions

- (1) A radiation analyst holds office on the terms and conditions specified in the instrument of appointment.
- (2) The Secretary may revoke an appointment at any time.
- (3) A radiation analyst ceases to hold office—
 - (a) if the appointment provides for a term of appointment—at the end of the term; or
 - (b) as provided for in the terms and conditions specified in the instrument of appointment; or
 - (c) if the Secretary revokes his or her appointment under subsection (2).
- (4) A radiation analyst may resign by signed notice of resignation given to the Secretary.

114 Functions of radiation analysts

A radiation analyst has the following functions certifying the results of examinations, analyses, measurements or tests conducted—

- (a) to decide the type, activity concentration or activity of a radionuclide present that is, or was, in a thing or a sample of, or from, a thing;
- (b) to decide the type, and energy spectrum, of radiation that is, or was, being emitted, and rate at which the radiation is, or was, being emitted, from a thing or a sample of, or from, a thing;
- (c) to calculate the amount of radiation to which a person has, or may have, been exposed or which a person has, or may have, received from a radiation source.

Division 2—Other offences

115 Tampering with radiation sources sealed by authorised officers

- (1) A person must not open, alter, break or remove any seal placed on a radiation source by an authorised officer unless the person has a reasonable excuse.

Penalty: In the case of a natural person,
600 penalty units;

In the case of a body corporate,
3000 penalty units.

- (2) An offence under this section is an indictable offence.

116 False and misleading information

- (1) A person must not knowingly give the Secretary or an authorised officer information that is false or misleading in a material particular.

Penalty: In the case of a natural person,
1200 penalty units;
In the case of a body corporate,
6000 penalty units.

- (2) An offence under this section is an indictable offence.

117 Offence to hinder or obstruct an authorised officer

A person must not hinder or obstruct an authorised officer who is exercising a power under this Act unless the person has a reasonable excuse.

Penalty: 60 penalty units.

Pt 11 Div. 3
(Heading)
substituted by
No. 24/2010
s. 9(1).

Division 3—Infringement notices

118 Definition

In this Division—

prescribed offence means an offence against this Act or the regulations which is prescribed for the purposes of this Division.

119 Power to serve a notice

- (1) The Secretary may serve an infringement notice on any person that he or she has reason to believe has committed a prescribed offence.
- (2) An offence referred to in subsection (1) for which an infringement notice may be issued is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 119(2)
substituted by
No. 32/2006
s. 94(Sch.
item 41(1)).

* * * * *

S. 120
repealed by
No. 32/2006
s. 94(Sch.
item 41(2)).

121 Infringement penalties

The infringement penalty for an offence against a prescribed offence is the lesser of—

- (a) 10 penalty units; or
- (b) one fifth of the maximum penalty that could be imposed by a court for the prescribed offence.

* * * * *

Ss 122–126
repealed by
No. 32/2006
s. 94(Sch.
item 41(2)).

Division 4—Provisions relating to offences

127 Self-incrimination

- (1) A natural person is not excused from complying with a direction of an authorised officer given under section 78, or an authorisation under Part 8, on the ground that to do so may result in information being provided that might incriminate the person.
- (2) Any information provided by a natural person in complying with a direction given under section 78, or an authorisation under Part 8, is not admissible in evidence against the person in criminal proceedings other than in proceedings in respect of the provision of false information.
- (3) Despite subsection (2), any information provided by a natural person in complying with a direction given under section 78, or an authorisation under Part 8, that is contained in any document that is required to be kept by any law is admissible in

evidence against the person in criminal proceedings.

128 Offences by corporations

- (1) If a corporation commits an offence against this Act or the regulations, each officer of the corporation is to be taken to have committed that offence if the officer knowingly authorised or permitted the commission of that offence.
- (2) An officer of a corporation may be proceeded against under this Act pursuant to this section whether or not the corporation has been proceeded against under this Act.
- (3) Nothing in this section affects the liability of a corporation for the commission of an offence against this Act or the regulations.
- (4) In this section—

officer means a director of the corporation or a person who is otherwise concerned in its management.

129 Time within which proceedings for offences may be brought

- (1) Despite section 7 of the **Criminal Procedure Act 2009**, proceedings for a summary offence against this Act or the regulations may be commenced within 3 years of the commission of the alleged offence or a further period being within 1 year after the day on which the Secretary first obtains evidence of the commission of the alleged offence considered sufficient by the Secretary to warrant commencing proceedings.
- (2) For the purposes of subsection (1), a certificate given by the Secretary as to the date on which the Secretary first obtained evidence considered sufficient to warrant commencing proceedings is to be taken to be evidence of that fact.

S. 129(1)
amended by
No. 68/2009
s. 97(Sch.
item 100).

130 Evidence of signatures

A signature purporting to be the signature of the Minister, the Secretary, an authorised officer or a radiation analyst is evidence of the signature it purports to be.

131 Evidentiary certificates

- (1) In any proceeding for an offence against this Act or the regulations, a certificate signed by the Secretary stating any of the following matters is evidence of the matter—
- (a) a stated document is one of the following things made, given or issued under this Act or the regulations—
 - (i) an appointment or a decision;
 - (ii) a notice, direction or requirement;
 - (iii) an authority;
 - (iv) a record or an extract from a record;
 - (v) the register or an extract from the register;
 - (b) a stated document is a copy of a thing referred to in paragraph (a);
 - (c) on a stated day, or during a stated period, a stated person was or was not the holder of an authority;
 - (d) on a stated day, or during a stated period, an authority—
 - (i) was or was not in force; or
 - (ii) was or was not subject to a stated condition;
 - (e) on a stated day, or during a stated period, an authority was suspended;

- (f) on a stated day an authority was cancelled, varied, transferred or surrendered;
 - (g) on a stated day, or during a stated period, an appointment as an authorised officer or a radiation analyst was, or was not, in force for a stated person;
 - (h) on a stated day, a stated person was given a stated notice or direction under this Act;
 - (i) on a stated day, a stated requirement was made of a stated person;
 - (j) a stated amount is payable under this Act by a stated person and has not been paid.
- (2) A certificate of examination and analysis signed by a radiation analyst stating any of the following matters is evidence of the matters—
- (a) the analyst's qualifications;
 - (b) the analyst took, or received from a stated person, a thing or sample;
 - (c) a thing or sample was examined, analysed, measured or tested at a stated place on a stated day or during a stated period;
 - (d) the methodology used to examine, analyse, measure or test a thing or sample;
 - (e) the results of the examination, analysis, measurement or test;
 - (f) the type, activity concentration or activity of a radionuclide present that is, or was, in a thing or a sample of, or from, a thing;
 - (g) the type, and energy spectrum, of radiation emission, and the rate of radiation emission, from a radiation source, at a stated place on stated day or during a stated period;

- (h) the amount of radiation to which a person has, or may have, been exposed to or received at a stated place on a stated day or during a stated period.
- (3) In any proceeding for an offence against this Act or the regulations where an application for an order under section 86 of the **Sentencing Act 1991** is made, a certificate signed by the Secretary stating that costs were incurred for—
 - (a) a clean up following an incident involving the emission of radiation from a radiation source;
 - (b) the storage of a radiation source;
 - (c) destroying or disposing of a radiation source—

and the way in which, and purpose for which, they were incurred, is evidence of the matters stated.

Division 5—Compensation and recovery of costs

132 Orders for compensation and the recovery of certain costs immediately after a finding of guilt

- (1) For the purposes of this Act, in section 86 of the **Sentencing Act 1991**—
 - (a) *loss* includes—
 - (i) the reasonable costs of a clean up following an incident involving the emission of radiation from a radiation source;
 - (ii) the reasonable costs for the storage of a radiation source;
 - (iii) the reasonable costs of destroying or otherwise disposing of a radiation source or any thing that has been

contaminated by the emission of radiation from a radiation source;

(b) *compensation for the loss and value of the property lost* includes the estimated costs to—

- (i) complete a clean up or part of a clean up following an incident involving the emission of radiation from a radiation source;
- (ii) store a radiation source;
- (iii) destroy or otherwise dispose of a radiation source or any thing that has been contaminated by the emission of radiation from a radiation source.

(2) The court may only make an order against a person under section 86 of the **Sentencing Act 1991** with respect to an offence against this Act or the regulations if it is satisfied that the person was served with notice of—

- (a) the applicant's intention to make the application; and
- (b) the amount and details of the amount sought by the applicant—

at least 28 days before the application is made.

(3) The applicant may use an affidavit by any witness or an affidavit as to particular facts if—

- (a) the applicant served notice of intention to use the affidavit with a copy of the affidavit attached on the person at least 28 days before the application is made; and
- (b) the person did not serve notice of objection to the use of the affidavit on the applicant at least 14 days before the application is made.

- (4) The court may make an order even though the amount of the order exceeds the upper monetary limit of the court's civil jurisdiction.
- (5) If—
 - (a) an order of the court includes an amount for estimated costs; and
 - (b) the costs incurred are less than the estimated costs—the applicant must refund the difference to the person.
- (6) A person entitled to a refund may recover the refund in any court of competent jurisdiction as a debt due to the person.
- (7) Any money recovered by the Secretary under this section is to be paid into the Consolidated Fund.
- (8) Any sum required by the Secretary to refund a person under this section is to be paid out of the Consolidated Fund and the Consolidated Fund is, to the necessary extent, appropriated accordingly.
- (9) If any property of the Crown or resource of the State is damaged or injured in the course of the commission of an offence against this Act or the regulations, the Secretary may make an application under section 86 of the **Sentencing Act 1991** on behalf of the Crown.

133 Cost recovery by Secretary in certain cases where persons do not comply with a direction

- (1) If a person given a direction by an authorised officer under section 96(1)(d) or (g) fails or refuses to comply with the direction, the Secretary, or a person authorised by the Secretary, may do the thing the person was directed to do.

- (2) Any reasonable costs incurred by the Secretary, or a person authorised by the Secretary, in doing the thing referred to in subsection (1), are a debt payable to the Secretary by the person given the direction.
- (3) The Secretary may recover the costs referred to in subsection (2) in a court of competent jurisdiction.

Division 6—Reporting

134 Annual report

- (1) The Secretary, in respect of each financial year, must publish a report that—
 - (a) describes the activities of the Secretary under this Act; and
 - (b) includes a summary of all authorities issued, renewed, suspended, cancelled, varied, transferred or surrendered during that year; and
 - (c) includes all radiation incidents investigated in that year; and
 - (d) includes a summary of all prosecutions for offences against this Act or the regulations commenced in that year; and
 - (e) includes any other prescribed matter.
- (2) The report must be published no later than 1 November following that year.

135 Secretary to notify CEO of ARPANSA of prescribed radiation incidents

The Secretary, on becoming aware of a prescribed radiation incident, must notify the Chief Executive Officer within the meaning of the Australian Radiation Protection and Nuclear Safety Act 1998 of the Commonwealth of that incident.

Division 7—Miscellaneous

136 Disclosure of information to other agencies

(1) The Secretary may disclose information that he or she, or an authorised officer, collects or is given under this Act or the regulations to—

(a) the Health Complaints Commissioner appointed under the **Health Complaints Act 2016**;

S. 136(1)(a) substituted by No. 22/2016 s. 244.

(b) a National Board established under Part 5 of the Health Practitioner Regulation National Law or the Veterinary Practitioners Board of Victoria established under Part 6 of the **Veterinary Practice Act 1997**;

S. 136(1)(b) substituted by No. 97/2005 s. 182(Sch. 4 item 42.4), amended by Nos 13/2010 s. 51(Sch. item 45.3), 27/2012 s. 25.

(c) the Health Insurance Commission established by section 4 of the Health Insurance Commission Act 1974 of the Commonwealth;

(d) the Environment Protection Authority continued by section 356 of the **Environment Protection Act 2017**;

S. 136(1)(d) amended by No. 39/2018 s. 52.

(e) the Victorian WorkCover Authority under the **Workplace Injury Rehabilitation and Compensation Act 2013**;

S. 136(1)(e) amended by No. 67/2013 s. 649(Sch. 9 item 30).

(ea) Victoria Police;

S. 136(1)(ea) inserted by No. 59/2013 s. 23(a).

(f) the Secretary to the Department of Primary Industries;

S. 136(1)(ga)
inserted by
No. 59/2013
s. 23(b).

- (g) the Secretary to the Department of Sustainability and Environment;
 - (ga) the Australian Security Intelligence Organisation and other Australian intelligence agencies;
 - (h) a person or body established under a law of another jurisdiction that has functions or powers that correspond to the functions or powers of the Secretary under this Act or a person or body referred to in paragraphs (a) to (e);
 - (i) a person or body established under a law of another jurisdiction that has functions or powers relating to radiation safety (other than a person or body referred to in paragraphs (a) to (e) and (h)).
- (2) The Secretary may only disclose information in accordance with this section for the purpose of—
- (a) fulfilling his or her functions under this Act or the regulations;
 - (b) assisting a person or body referred to in subsection (1)(a) to (i) to fulfil their functions.

S. 136(3)
repealed by
No. 97/2005
s. 182(Sch. 4
item 42.5).

* * * * *

137 Secretary and authorised officers need not be licensed to exercise powers or perform duties

The Secretary, or an authorised officer, are not required to hold any authority to exercise any power or perform any duty under this Act or the regulations.

137A Service of notices, orders and other documents

S. 137A
inserted by
No. 46/2008
s. 266.

- (1) Any notice, order or other document under this Act or the regulations required or authorised to be given or served to or upon any person may be served by—
 - (a) giving it or serving it personally on the person; or
 - (b) sending it by post or electronic communication to the person at that person's usual or last known place of residence or business; or
 - (c) leaving it at that person's usual or last known place of residence with a person on the premises who is apparently at least 16 years old; or
 - (d) leaving it at that person's usual or last known place of business with a person who is apparently employed at the premises and who is apparently at least 16 years old.
- (2) This section is in addition to, and not in derogation from, sections 109X and 601CX of the Corporations Act.
- (3) If a notice, order or other document is addressed to the owner or occupier of premises, the notice, order or other document may be served by—
 - (a) delivering the notice, order or other document or a true copy to a person on the premises who is apparently at least 16 years old; or
 - (b) if there is no person on the premises who can be so served by fixing the notice, order or other document on some conspicuous part of the premises.

- (4) If a notice, order or other document is required to be given to or served on a person whose name and address are unknown, the notice, order or other document may be served by publishing the notice, order or other document in—
- (a) the Government Gazette; and
 - (b) a newspaper generally circulating in Victoria 3 times at intervals of not less than one week between any 2 publications.
- (5) Any notice, order or other document required to be given to or served on the owner or occupier of any premises may if the name of the owner or occupier is not known be addressed to the owner or occupier by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice, order or other document is given without further name or description.
- (6) If there are more owners or occupiers than one it is sufficient if the notice, order or other document is served on any one of them and the name of any one of them is specified with the addition of the words "and others".
- (7) Non-service on the owner does not affect the validity of service on the occupier.
- (8) Non-service on the occupier does not affect the validity of service on the owner.
- (9) Instead of attending at any proceedings under this Act or the regulations, a person who gives or serves any notice, order or other document under this Act or the regulations may make an affidavit that—
- (a) identifies and is endorsed on, or attached to a true copy of the original notice, order or other document; and

- (b) states the time and manner in which the original notice, order or other document was given or served.
- (10) A document purporting to be an affidavit under subsection (9) is to be received in any proceedings and is evidence of the statements contained in the document.

138 Register

- (1) The Secretary must establish and maintain a register of—
 - (a) declarations made under section 4; and
 - (b) exemptions granted under section 16; and
 - (c) authorities issued or renewed under Divisions 1 or 2 of Part 6; and
 - (d) authorities suspended or cancelled under Division 3 of Part 6; and
 - (e) facility construction licences and management licences transferred under Division 4 of Part 6; and
 - (f) authorities that have been varied and the variations of conditions of authorities under Division 4 of Part 6; and
 - (g) authorities surrendered under Division 4 of Part 6.
- (2) The register must contain the information that is prescribed.
- (3) The Secretary may publish and maintain on the Internet any one or more of the following things from the register—
 - (a) the name of a use licence holder;

S. 138(1)(a)
amended by
No. 24/2010
s. 9(2).

S. 138(3)
inserted by
No. 24/2010
s. 8,
amended by
No. 29/2011
s. 3(Sch. 1
item 78.1).

- (b) the number assigned to a use licence holder for the purpose of the register;
 - (c) the date on which a use licence expires;
 - (d) the description of the use allowed under a use licence;
 - (e) the identity or description, as the case requires, of—
 - (i) every kind of radiation source that may be used under a use licence; or
 - (ii) the purpose for which a radiation source identified or described in a use licence may be used;
 - (f) if a use licence is suspended, the date of suspension;
 - (g) if a use licence has been cancelled, the date of cancellation;
 - (h) if a use licence has expired, the date of expiry.
- (4) The Secretary may only publish and maintain on the Internet—
- (a) a date of cancellation of a use licence referred to in subsection (3)(g) for a period of 12 months after the date of cancellation;
 - (b) a date of expiry of a use licence referred to in subsection (3)(h) for a period of 3 months after the date of expiry.

S. 138(4)
inserted by
No. 24/2010
s. 8.

139 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the matters or things contained in the NDRP;
 - (b) the prescription of a facility as a radiation facility;

- (c) requiring authority holders and persons who were authority holders to keep information or records specified by the regulations—
 - (i) in a specified manner or form specified by the regulations; and
 - (ii) for periods of time specified by the regulations;
- (d) requiring authority holders and persons who were authority holders to give information or records specified by the regulations to the Secretary;
- (da) requiring a management licence holder to keep records of—
 - (i) the names of the persons whose identity the licence holder has verified for the purpose of section 23A, 23B or 23C; and
 - (ii) the identification documents used for that purpose;
- (e) radiation dose limits that may be received by a person;
- (f) regulating the transportation and storage of radiation sources;
- (g) regulating the securing and sealing of radiation sources;
- (h) regulating the disposal and destruction of radiation sources;
- (i) regulating the personal monitoring of persons exposed or likely to be exposed to radiation emitted from a radiation source;
- (j) regulating the supply and use of personal monitoring devices;

S. 139(1)(da)
inserted by
No. 59/2013
s. 24.

- (k) giving the Secretary access to records relating to personal monitoring or exposure to radiation emitted from a radiation source;
- (l) the examination, testing, analysis, maintenance, repair and labelling of radiation sources;
- (m) regulating the supply of protective clothing or equipment or the use of protective clothing or equipment in the vicinity of a radiation source;
- (n) regulating the use of radiation sources or exposure to radiation emitted from radiation sources;
- (o) prescribing action to be taken in circumstances where—
 - (i) a person has been subject to an excessive dose of radiation emitted from a radiation source;
 - (ii) there has been contamination of a place by the emission of radiation from a radiation source;
- (p) generally protecting persons from the effects caused by or relating to radiation emitted from a radiation source, including—
 - (i) safeguarding the health of persons at a place, or in the vicinity of a place, where there is a radiation source;
 - (ii) requiring special facilities, equipment and radiation safety precautions to be adopted or implemented at a place where there is a radiation source;
- (q) regulating the use of equipment that is ancillary to a radiation source;

- (r) radiation safety officers, including their appointment, functions, duties and qualifications;
 - (s) the surrender or delivery to the Secretary of a radiation source and the circumstances of that surrender or delivery;
 - (t) information to be given to the Secretary about radiation incidents;
 - (u) the date of expiry of certificates of compliance;
 - (v) the imposition of duties on approved testers;
 - (w) fees for the purposes of this Act and the refund or waiver of such fees;
 - (x) any matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
- (a) be of general or of limited application; and
 - (b) differ according to differences in time, place or circumstance; and
 - (c) apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification, or method, formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and

S. 139(2)(e)
amended by
No. 24/2010
s. 9(3).

- (d) confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (e) provide in a specified case or class of case for the exemption of persons or things from any of the provisions of this Act or the regulations, whether unconditionally or on specified conditions, and either wholly or to such an extent as is specified; and
 - (f) if this section authorises or requires regulations that regulate any matter or thing, prohibit that matter or thing or any aspect of that matter or thing;
 - (g) impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (3) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (c) the reduction, waiver or refund, in whole or in part, of the fees.
- (4) A fee imposed by the regulations in relation to the issue or renewal of an authority may be more than the amount that is related to the cost of providing a service in relation to the issue or renewal of the authority.
- (5) If under subsection (3)(c) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—

- (a) in respect of certain authorities or classes of authorities; or
- (b) when an event happens; or
- (c) in respect of certain persons or classes of persons; or
- (d) in respect of any combination of such authorities, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

Part 12—Savings, transitionals and amendment of Acts

Part 12 Div. 1
(Heading and
ss 140–145)
amended by
No. 66/2008
s. 33,
repealed by
No. 29/2011
s. 3(Sch. 1
item 78.2).

* * * * *

Division 2—Savings and transitionals

146 Continued operation of Health (Radiation Safety) Regulations 1994 until repeal of Health Act provisions

Despite the **Subordinate Legislation Act 1994**, the Health (Radiation Safety) Regulations 1994, as in force immediately before the commencement of this section, continue until the commencement of section 140.

147 Other savings and transitional matters

The Schedule has effect.

148 Radiation Amendment Act 2013—transitional provision—security plans and transport security plans

- (1) Part 6A does not apply to a management licence holder who, immediately before the commencement of section 20 of the **Radiation Amendment Act 2013**, was licensed to possess, or possess and transport, one or more high consequence sealed sources or high consequence group of sealed sources until 12 months after that commencement date.

S. 148
inserted by
No. 59/2013
s. 25.

- (2) Part 6A does not apply to a management licence holder who, immediately before the commencement of section 20 of the **Radiation Amendment Act 2013**, was licensed to transport one or more high consequence sealed sources or high consequence group of sealed sources until 6 months after that commencement date.

149 Radiation Amendment Act 2013—transitional provision—commercial tanning units

S. 149
inserted by
No. 59/2013
s. 26.

- (1) On and from the commencement of section 11 of the **Radiation Amendment Act 2013**, the Secretary must cancel a management licence authorising the conduct of a radiation practice involving a tanning unit.
- (2) On the cancellation of a management licence under subsection (1), the former holder of that licence is entitled to a refund of any amount paid for the licence that is for a period after that cancellation.

Schedule

Section 147

Savings and transitionals

Part 1—Introduction

1 Definitions

In this Schedule—

commencement day means 1 September 2007;

new RAC means the Committee;

old RAC means the Radiation Advisory
Committee appointed under section 108AK
of the **Health Act 1958**;

old radiation provisions means sections 108AA to
108AK of the **Health Act 1958** (as in force
immediately before the commencement day);

old regulations means the Health (Radiation
Safety) Regulations 1994;

operator licence has the same meaning as in the
old regulations.

2 General transitional provision

Except where the contrary intention appears, this
Schedule does not affect or take away from the
Interpretation of Legislation Act 1984.

3 Savings and transitional regulations

The regulations may contain provisions of a
savings and transitional nature consequent on the
enactment of this Act and the repeal of the old
radiation provisions.

Part 2—The Radiation Advisory Committee

4 Old RAC abolished

On the commencement day, the old RAC is abolished and its members go out of office as members.

5 The old RAC members become members of new RAC

- (1) On the commencement day each person who, immediately before that day was a member of the old RAC, becomes a member of the new RAC.
- (2) A person referred to in subclause (1)—
 - (a) holds office as a member of the new RAC for the balance of the term of his or her appointment to the old RAC;
 - (b) holds office as a member of the new RAC on the same terms and conditions as applied to his or her appointment to the old RAC, but may resign or be removed in accordance with Part 10;
 - (c) is eligible for re-appointment to the new RAC at the expiry of his or her term.

6 Matters and things commenced by old RAC but not completed before its abolition

On the commencement day the new RAC may continue or complete any matter or thing commenced by the old RAC as if that matter or thing were commenced by the new RAC under Part 10.

7 Annual report

If, before the commencement day, the old RAC had not made its report on its activities under section 108AK(10) of the **Health Act 1958**, the new RAC must make a report on those activities

under section 110 as if the activities of the old RAC were the activities of the new RAC.

Part 3—Licences

8 Operator licences converted to use licences

On the commencement day, an operator licence issued under section 108AF(2) of the old radiation provisions in force immediately before that day is deemed to be a use licence—

- (a) subject to conditions that are the same as only those conditions, limitations or restrictions that applied to the operator licence that are not inconsistent with this Act or the regulations; and
- (b) with the same date of expiry as the date of expiry of the operator licence.

9 Other licences converted to management licences

Subject to clause 11, on the commencement day, a licence issued under section 108AF(2) of the old radiation provisions and referred to in regulation 12 of the old regulations in force immediately before the commencement day is deemed to be a management licence—

- (a) subject to conditions that are the same as only those conditions, limitations or restrictions that applied to the relevant licence issued under that section that are not inconsistent with this Act or the regulations; and
- (b) with the same date of expiry as the date of expiry of the relevant licence issued under that section.

10 Certain registrations converted to management licences

- (1) Subject to clause 11, on the commencement day, every person in whose name a sealed radio-active source is registered under section 108AE(2) of the old radiation provisions immediately before the commencement day is deemed to be issued with a management licence allowing the person to possess a sealed source that is the same as that sealed radio-active source.
- (2) A management licence deemed to be issued under subclause (1) is deemed to—
 - (a) be subject to conditions that are the same as only those conditions that applied to the registration of the sealed radio-active source that are not inconsistent with this Act or the regulations; and
 - (b) have the same date of expiry as the date of expiry for the registration of the sealed radio-active source.
- (3) Subject to clause 11, on the commencement day, every person in whose name an ionizing radiation apparatus is registered under section 108AE(2) of the old radiation provisions immediately before the commencement day is deemed to be issued with a management licence allowing the person to possess an ionising radiation apparatus that is the same as that ionizing radiation apparatus.
- (4) A management licence deemed to be issued under subclause (3) is deemed to—
 - (a) be subject to conditions that are the same as only those conditions that applied to the registration of the ionizing radiation apparatus that are not inconsistent with this Act or the regulations; and

- (b) have the same date of expiry as the date of expiry for the registration of the ionizing radiation apparatus.
- (5) Subject to clause 11, on the commencement day, every person in whose name a non-ionizing radiation apparatus is registered under section 108AE(2) of the old radiation provisions immediately before the commencement day is deemed to be issued with a management licence allowing the person to possess a non-ionising radiation apparatus that is the same as that non-ionizing radiation apparatus.
- (6) A management licence deemed to be issued under subclause (5) is deemed to—
 - (a) be subject to conditions that are the same as only those conditions that applied to the registration of the non-ionizing radiation apparatus that are not inconsistent with this Act or the regulations; and
 - (b) have the same date of expiry as the date of expiry for the registration of the non-ionizing radiation apparatus.
- (7) In this clause—

ionizing radiation apparatus, non-ionizing radiation apparatus and *sealed radio-active source* have the same meaning as in section 108AB of the old radiation provisions.

11 Secretary may consolidate two or more management licences

- (1) Subject to this clause, if, because of clause 9 or 10, a person holds 2 or more management licences, the Secretary may cancel those licences and issue one management licence to the person that allows the person to conduct the radiation practices allowed to be conducted under the cancelled licences.

- (2) Division 3 of Part 6 of this Act does not apply to the cancellation of a management licence under this clause.
- (3) Division 1 of Part 6 (other than sections 38(c)(ii), 43(2) and 48) applies to the issue of a management licence under this clause as if the management licence had been issued on an application under that Division.
- (4) The date of expiry of a management licence issued under this clause is the latest date a cancelled licence would have expired but for the cancellation of that licence under this clause.

12 Pending licence and registration application decisions at the time of the commencement of this Act

- (1) On the commencement day—
 - (a) every application under section 108AF of the old radiation provisions for an operator licence in respect of which the Secretary has not made a decision whether to issue the licence, is deemed to be an application under section 37 for a use licence and must be dealt with by the Secretary as if it were an application made under section 37;
 - (b) every application under section 108AF of the old radiation provisions for a licence referred to in regulation 12 of the old regulations in respect of which the Secretary has not made a decision whether to issue the licence, is deemed to be an application under section 37 for a management licence and must be dealt with by the Secretary as if it were an application made under section 37;
 - (c) every application under section 108AE of the old radiation provisions for the registration of a relevant apparatus or source in respect

of which the Secretary has not made a decision whether to register the relevant apparatus or source, is deemed to be an application under section 37 for a management licence to possess the relevant apparatus or source and must be dealt with by the Secretary as if it were an application made under section 37.

(2) In this clause—

relevant apparatus or source means an ionizing radiation apparatus, a non-ionizing radiation apparatus of a prescribed class prescribed under the old regulations or a sealed radio-active source;

ionizing radiation apparatus, non-ionizing radiation apparatus and *sealed radio-active source* have the same meaning as in section 108AB of the old radiation provisions.

Part 4—Other

13 Certain references in Acts, instruments and other documents to be construed

- (1) Unless the context otherwise requires, on and from the commencement day, in any Act (other than this Act), or in any instrument made under any Act (other than this Act) or in any other document of any kind—
- (a) a reference to Division 2AA of Part 5 of the **Health Act 1958** (as in force immediately before the commencement day) is to be taken to be a reference to the **Radiation Act 2005**;
 - (b) a reference to a radio-active substance is to be taken to be a reference to radioactive material;

- (c) a reference to a radiation apparatus (within the meaning of section 108AB of the old radiation provisions) is to be taken to be a reference to a radiation apparatus within the meaning of this Act;
 - (d) a reference to an ionizing radiation apparatus is to be taken to be a reference to an ionising radiation apparatus;
 - (e) a reference to a non-ionizing radiation apparatus of a prescribed class is to be taken to be a reference to a non-ionising radiation apparatus;
 - (f) a reference to an unsealed radio-active source is to be taken to be a reference to radioactive material that is not a sealed source;
 - (g) a reference to a sealed radio-active source is to be taken to be a reference to a sealed source;
 - (h) a licence issued under the old radiation provisions is to be taken to be a reference to a licence issued under this Act;
 - (i) a reference to an exemption under the old radiation provisions is to be taken to be a reference to an exemption under section 16.
- (2) In this clause—

ionizing radiation apparatus, non-ionizing radiation apparatus, radio-active substance, sealed radio-active source and unsealed radio-active source have the same meaning as in section 108AB of the old radiation provisions.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 11 August 2005

Legislative Council: 8 September 2005

The long title for the Bill for this Act was "to protect the health and safety of persons and the environment from the harmful effects of radiation, to make consequential amendments to the **Health Act 1958**, the **Dangerous Goods Act 1985**, the **Environment Protection Act 1970**, the **Magistrates' Court Act 1989**, the **Nuclear Activities (Prohibitions) Act 1983**, the **Road Transport (Dangerous Goods) Act 1995** and for other purposes."

The **Radiation Act 2005** was assented to on 20 September 2005 and came into operation as follows:

Sections 1, 2 and 146 on 21 September 2005: section 2(1); rest of Act on 1 September 2007: section 2(2).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

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a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Radiation Act 2005** by Acts and subordinate instruments.

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 42) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 33) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 41) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 91) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 266 on 1.1.09: Special Gazette (No. 365) 12.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Dangerous Goods Amendment (Transport) Act 2008, No. 66/2008

Assent Date: 18.11.08
Commencement Date: S. 33 on 1.1.09: Government Gazette 18.12.08 p. 2998
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 100) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

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Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 45) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Radiation Amendment Act 2010, No. 24/2010

Assent Date: 1.6.10
Commencement Date: Ss 4–9 on 13.7.10: Government Gazette 8.7.10 p. 1518
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10
Commencement Date: S. 67 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 78) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Health Professions Registration (Repeal) Act 2012, No. 27/2012

Assent Date: 29.5.12
Commencement Date: Ss 23–25 on 1.7.12: s. 2
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Radiation Amendment Act 2013, No. 59/2013

Assent Date: 22.10.13
Commencement Date: Ss 4–10, 12–25 on 1.6.14: s. 2(3); ss 11, 26 on 1.1.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013

Assent Date: 12.11.13
Commencement Date: S. 649(Sch. 9 item 30) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 140) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

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Health Complaints Act 2016, No. 22/2016

Assent Date: 3.5.16
Commencement Date: S. 244 on 1.2.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date: 27.2.18
Commencement Date: S. 68(Sch. 2 item 105) on 1.3.19: s. 2(2)
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

Environment Protection Amendment Act 2018, No. 39/2018 (as amended by No. 11/2020)

Assent Date: 28.8.18
Commencement Date: S. 52 on 1.7.21: Special Gazette (No. 124) 16.3.21 p. 1
Current State: This information relates only to the provision/s amending the **Radiation Act 2005**

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

No entries at date of publication.