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Australian Radiation Protection and Nuclear Safety Act 1998

No. 133, 1998



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**An Act to regulate activities involving radiation,
and for related purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement.....	2
3 Object of Act.....	2
4 Act binds the Crown.....	2
5 External Territories.....	2
6 Extraterritorial operation.....	2
7 Act not to prejudice Australia’s defence	2
8 Act not to prejudice national security.....	3
9 Operation of Act.....	4
10 Prohibition on certain nuclear installations	4
11 Application of Act to Commonwealth contractors.....	5
12 Offences.....	5
Part 2—Definitions	6
13 Definitions	6
Part 3—The CEO of ARPANSA	10
14 The CEO (or Chief Executive Officer) of ARPANSA	10
15 Functions of the CEO	10
16 Minister’s directions to CEO.....	11
17 Delegation by Minister	11
18 Delegation by CEO.....	11
Part 4—The Radiation Health and Safety Advisory Council	13
19 Radiation Health and Safety Advisory Council	13
20 Functions of the Council.....	13
21 Membership of the Council.....	13
22 Radiation Health Committee.....	14
23 Functions of the Radiation Health Committee.....	14
24 Membership of the Radiation Health Committee	15
25 Nuclear Safety Committee	16
26 Functions of the Nuclear Safety Committee.....	16
27 Membership of the Nuclear Safety Committee.....	16
28 Remuneration.....	17
29 Regulations	17

Part 5—Regulation of controlled material, controlled apparatus and controlled facilities	19
Division 1—Prohibitions	19
30 Construction, operation etc. of nuclear installations or prescribed radiation facilities	19
31 Possession etc. of controlled material or controlled apparatus.....	19
Division 2—Licences	21
32 Issue of facility licence	21
33 Issue of source licence	21
34 Application fees	21
35 Licence conditions.....	22
36 Amendment of licence.....	23
37 Period of licence.....	23
38 Cancellation and suspension of licence.....	23
39 Surrender of licence.....	24
40 Review of licence decisions	24
Division 3—Enforcement	26
41 CEO may give directions to controlled persons.....	26
42 Review of decisions to give directions.....	27
43 Injunctions	27
44 Forfeiture.....	28
Part 6—Administrative matters	29
Division 1—Appointment, conditions etc. of CEO	29
45 Appointment of CEO.....	29
46 Remuneration and allowances.....	29
47 Outside employment.....	29
48 Recreation leave etc.....	29
49 Resignation	30
50 Disclosure of interests.....	30
51 Termination of appointment.....	30
52 Other terms and conditions of appointment.....	31
53 Acting appointment	31
Division 2—Money	33
54 CEO may charge for services.....	33
55 Notional payments by the Commonwealth.....	33
56 ARPANSA Reserve.....	33
57 Amounts recoverable as debts.....	34

Division 3—Miscellaneous	35
58 Staff and consultants.....	35
59 Annual report.....	35
60 Quarterly reports	36
61 Reports to Parliament	36
Part 7—Powers of inspection etc.	38
62 Appointment of inspectors.....	38
63 Powers available to inspectors for monitoring compliance	38
64 Inspector must produce identity card on request.....	39
65 Powers available to inspectors for dealing with hazardous situations.....	39
66 Searches and seizures related to offences.....	40
67 General powers of inspectors in relation to premises.....	40
68 Details of warrant to be given to occupier etc.	41
69 Announcement before entry	42
70 Use of electronic equipment at premises.....	42
71 Compensation for damage to electronic equipment	44
72 Copies of seized things to be provided.....	44
73 Occupier entitled to be present during search.....	45
74 Receipts for things seized under warrant.....	45
75 Retention of seized things	45
76 Magistrate may permit a thing to be retained	46
77 Monitoring warrants	47
78 Offence related warrants.....	48
79 Offence related warrants by telephone.....	49
80 Offences relating to warrants	51
81 Part does not limit power to impose licence conditions	51
82 Operation of <i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>	52
Part 8—Miscellaneous	53
83 Operation of State and Territory laws.....	53
84 Powers to be exercised in accordance with international agreements.....	53
85 Regulations	54



Australian Radiation Protection and Nuclear Safety Act 1998

No. 133, 1998

An Act to regulate activities involving radiation, and for related purposes

[Assented to 24 December 1998]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Section 2

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Object of Act

The object of this Act is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation.

4 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

5 External Territories

This Act extends to every external Territory.

6 Extraterritorial operation

This Act applies within and outside Australia.

7 Act not to prejudice Australia's defence

- (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, if taking the action or refraining from taking the action would be, or could reasonably be expected to be, prejudicial to Australia's defence.

- (2) Without limiting subsection (1), the Chief of the Defence Force may, after consulting with the Minister, declare by notice in writing that:
- (a) specified provisions of this Act or the regulations do not apply in relation to specified members of the Defence Force; or
 - (b) specified provisions of this Act or the regulations apply subject to such modifications as are set out in the declaration in relation to specified members of the Defence Force.
- The declaration has effect accordingly.
- (3) In making a declaration under subsection (2), the Chief of the Defence Force must take into account the need to promote the object of this Act to the greatest extent consistent with the maintenance of Australia's defence.
- (4) A declaration under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

8 Act not to prejudice national security

- (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, if taking the action or refraining from taking the action would be, or could reasonably be expected to be, prejudicial to Australia's national security.
- (2) Without limiting subsection (1), the Director-General of Security may, after consulting with the Minister, declare by notice in writing that specified provisions of this Act or the regulations do not apply, or apply subject to such modifications as are set out in the declaration, in relation to:
- (a) premises or a workplace under the control of the Director-General; or
 - (b) a person who is employed under section 84 of the *Australian Security Intelligence Organization Act 1979*; or
 - (c) the performance of work by such a person for the purpose of carrying out a function set out in section 17 of that Act.

Section 9

The declaration has effect accordingly.

- (3) In making a declaration under subsection (2), the Director-General must take into account the need to promote the object of this Act to the greatest extent consistent with the maintenance of Australia's national security.
- (4) A declaration under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

9 Operation of Act

- (1) It is the intention of the Parliament that this Act is not to exclude the operation of the *Nuclear Non-Proliferation (Safeguards) Act 1987*, to the extent that the *Nuclear Non-Proliferation (Safeguards) Act 1987* is capable of operating concurrently with this Act.

Example: A controlled person may be required by this Act to hold a licence, and by the *Nuclear Non-Proliferation (Safeguards) Act 1987* to hold a permit, in respect of the same thing. The controlled person must satisfy the requirements of both Acts in so far as they are capable of being satisfied concurrently.

- (2) The application of this Act in relation to nuclear material and associated items within the meaning of the *Nuclear Non-Proliferation (Safeguards) Act 1987* is subject to any modifications that are prescribed by the regulations.

10 Prohibition on certain nuclear installations

- (1) Nothing in this Act is to be taken to authorise the construction or operation of any of the following nuclear installations:
 - (a) a nuclear fuel fabrication plant;
 - (b) a nuclear power plant;
 - (c) an enrichment plant;
 - (d) a reprocessing facility.
- (2) The CEO must not issue a licence under section 32 in respect of any of the facilities mentioned in subsection (1).

11 Application of Act to Commonwealth contractors

- (1) This Act applies to a Commonwealth contractor, in respect of conduct referred to in subsection 30(1) that is engaged in by the Commonwealth contractor, only if, and in so far as, the conduct is engaged in:
 - (a) for or on behalf of a Commonwealth entity; and
 - (b) under or for the purposes of a contract with the Commonwealth entity.
- (2) This Act applies to a Commonwealth contractor, in respect of a dealing by the Commonwealth contractor with controlled material or controlled apparatus, only if, and in so far as, the dealing is:
 - (a) for or on behalf of a Commonwealth entity; and
 - (b) under or for the purposes of a contract with the Commonwealth entity.

Example: A private airline company leases premises on land owned by the Commonwealth, and deals with controlled material on behalf of a client that is not a Commonwealth entity. The airline company is not covered by the Act in respect of that dealing.

12 Offences

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.
- (2) A maximum penalty that is specified:
 - (a) at the foot of a section of this Act (other than a section that is divided into subsections); or
 - (b) at the foot of a subsection of this Act;indicates that a person who contravenes the section or subsection is guilty of an offence against the section or subsection that is punishable, on conviction, by a penalty up to that maximum.

Part 2—Definitions

13 Definitions

In this Act, unless the contrary intention appears:

annual charge means charge imposed by the Licence Charges Act.

CEO or Chief Executive Officer means the CEO referred to in section 14.

Commonwealth contractor means a person (other than a Commonwealth entity) who is a party to a contract with a Commonwealth entity.

Note: Section 11 limits the circumstances in which the provisions of this Act apply to Commonwealth contractors.

Commonwealth entity means any of the following:

- (a) the Commonwealth;
- (b) a body corporate established for a public purpose by or under an Act;
- (c) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:
 - (i) the Commonwealth;
 - (ii) a body covered by paragraph (b);
- (d) an employee of a person or body covered by any of the above paragraphs.

controlled apparatus means any of the following:

- (a) an apparatus that produces ionizing radiation when energised or that would, if assembled or repaired, be capable of producing ionizing radiation when energised;
- (b) an apparatus that produces ionizing radiation because it contains radioactive material;

- (c) an apparatus prescribed by the regulations that produces harmful non-ionizing radiation when energised.

controlled facility means:

- (a) a nuclear installation; or
- (b) a prescribed radiation facility.

controlled material means any natural or artificial material, whether in solid or liquid form, or in the form of a gas or vapour, which emits ionizing radiation spontaneously.

controlled person means any of the following:

- (a) a Commonwealth entity;
- (b) a Commonwealth contractor;
- (c) a person in the capacity of an employee of a Commonwealth contractor;
- (d) a person in a prescribed Commonwealth place.

Council means the Radiation Health and Safety Advisory Council established by section 19.

deal with, in relation to a controlled apparatus or controlled material, means any of the following:

- (a) possess, or have control of, the apparatus or material;
- (b) use or operate the apparatus, or use the material;
- (c) dispose of the apparatus or material.

evidential material means any of the following:

- (a) any thing with respect to which an offence against this Act or the regulations has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of any such offence;
- (c) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing any such offence.

Section 13

facility licence means a licence issued under section 32.

inspector means a person appointed as an inspector under section 62.

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

licence means a source licence or a facility licence.

Licence Charges Act means the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*.

modifications includes omissions, additions and substitutions.

non-ionizing radiation means electromagnetic radiation of a wavelength greater than 100 nanometres.

nuclear installation means any of the following:

- (a) a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and sub-critical assemblies);
- (b) a plant for preparing or storing fuel for use in a nuclear reactor as described in paragraph (a);
- (c) a nuclear waste storage or disposal facility with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section;
- (d) a facility for production of radioisotopes with an activity that is greater than the activity level prescribed by regulations made for the purposes of this section.

occupier, in relation to premises, includes a person present at the premises who is in apparent control of the premises.

person covered by a licence means a controlled person who is authorised under the licence to deal with a controlled apparatus or

controlled material or to undertake an activity in relation to a controlled facility.

premises includes the following:

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built on or not);
- (c) a part of a thing referred to in paragraph (a) or (b).

prescribed Commonwealth place means a place that is referred to in paragraph 52(i) of the Constitution and is prescribed by the regulations for the purposes of this definition.

prescribed radiation facility means a facility or installation that is prescribed by the regulations for the purposes of this definition.

radiation means ionizing radiation or non-ionizing radiation.

radiation control officer means a person who:

- (a) holds a senior position in a regulatory body of a State or Territory; and
- (b) is responsible for matters relating to radiation protection or nuclear safety.

seize includes secure against interference.

source licence means a licence issued under section 33.

thing includes a substance, and a thing in electronic or magnetic form.

Part 3—The CEO of ARPANSA

14 The CEO (or Chief Executive Officer) of ARPANSA

There is to be a CEO of ARPANSA.

Note: ARPANSA (the Australian Radiation Protection and Nuclear Safety Agency) is a part of the Department of State administered by the Minister.

15 Functions of the CEO

- (1) The CEO has the following functions:
 - (a) to promote uniformity of radiation protection and nuclear safety policy and practices across jurisdictions of the Commonwealth, the States and the Territories;
 - (b) to provide advice on radiation protection, nuclear safety and related issues;
 - (c) to undertake research in relation to radiation protection, nuclear safety and medical exposures to radiation;
 - (d) to provide services relating to radiation protection, nuclear safety and medical exposures to radiation;
 - (e) to accredit persons with technical expertise for the purposes of this Act;
 - (f) to monitor the operations of ARPANSA, the Council, the Radiation Health Committee and the Nuclear Safety Committee;
 - (g) to report on the operations of ARPANSA, the Council, the Radiation Health Committee and the Nuclear Safety Committee;
 - (h) to monitor compliance with Division 1 of Part 5 and make recommendations to the Director of Public Prosecutions;
 - (i) such other functions as are conferred by this Act, the regulations or any other law.

- (2) The CEO must take all reasonable steps to avoid any conflict of interest between the CEO's regulatory functions and the CEO's other functions.

16 Minister's directions to CEO

- (1) If the Minister is satisfied that it is in the public interest to do so, the Minister must, by notice in writing, give directions to the CEO with respect to the performance of the CEO's functions or the exercise of the CEO's powers.
- (2) The CEO must comply with the directions.
- (3) Within 15 sitting days of issuing a notice to the CEO under this section, the Minister must cause a copy of the notice to be tabled in each House of the Parliament.

17 Delegation by Minister

- (1) The Minister may, by instrument in writing, delegate the Minister's powers under section 7, 8 or 44 to the CEO.
- (2) The Minister may, by instrument in writing, delegate the Minister's powers under section 40 to any of the following:
 - (a) the CEO;
 - (b) the Secretary to the Department;
 - (c) a person holding, or performing the duties of, a Senior Executive Service office, or equivalent, in the Department.
- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

18 Delegation by CEO

- (1) The CEO may, by instrument in writing, delegate any of the CEO's powers or functions to a person holding, or performing the duties of:
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Section 18

- (a) a Senior Executive Service office, or equivalent, in the Department;
 - (b) a Senior Officer Grade A, B or C, or equivalent, in the Department.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the CEO.

Part 4—The Radiation Health and Safety Advisory Council

19 Radiation Health and Safety Advisory Council

The Radiation Health and Safety Advisory Council is established.

20 Functions of the Council

The Council has the following functions:

- (a) to identify emerging issues relating to radiation protection and nuclear safety and to advise the CEO on them;
- (b) to examine matters of major concern to the community in relation to radiation protection and nuclear safety and to advise the CEO on them;
- (c) to advise the CEO on the adoption of recommendations, policies, codes and standards in relation to radiation protection and nuclear safety;
- (d) to advise the CEO, at the CEO's request, on other matters relating to radiation protection and nuclear safety;
- (e) to advise the CEO on such other matters relating to radiation protection and nuclear safety as the Council considers appropriate;
- (f) to report to the CEO on matters relating to radiation protection and nuclear safety.

21 Membership of the Council

- (1) The Council consists of the following members:
 - (a) the CEO;
 - (b) 2 radiation control officers;
 - (c) a person to represent the interests of the general public;
 - (d) up to 8 other members.

Section 22

- (2) Each member, other than the CEO, is to be appointed by the Minister by written instrument.
- (3) Before appointing a member, the Minister must consult the CEO in relation to the appointment.
- (4) Before appointing a member, the Minister must consult such consumer groups and such environmental groups as the Minister considers appropriate.
- (5) The Minister must not appoint a person as a member unless the Minister is satisfied that the person has expertise relevant to, or knowledge of, radiation protection or nuclear safety.
- (6) The Minister must appoint a member to be the Chair of the Council.
- (7) Each member, including the Chair, holds office on a part-time basis.

22 Radiation Health Committee

The Radiation Health Committee is established.

23 Functions of the Radiation Health Committee

- (1) The Radiation Health Committee has the following functions:
 - (a) to advise the CEO and the Council on matters relating to radiation protection;
 - (b) to develop policies and to prepare draft publications for the promotion of uniform national standards of radiation protection;
 - (c) to formulate draft national policies, codes and standards in relation to radiation protection for consideration by the Commonwealth, the States and the Territories;
 - (d) from time to time, to review national policies, codes and standards in relation to radiation protection to ensure that they continue to substantially reflect world best practice;

- (e) to consult publicly in the development and review of policies, codes and standards in relation to radiation protection.
- (2) The Committee's functions are to be performed only on the request of the CEO or the Council.

24 Membership of the Radiation Health Committee

- (1) The Radiation Health Committee consists of the following members:
 - (a) a representative of each State and Territory, each of whom must be a radiation control officer;
 - (b) the CEO;
 - (c) a representative of the Nuclear Safety Committee;
 - (d) a person to represent the interests of the general public;
 - (e) up to 2 other members.
- (2) Each member, other than the CEO, is to be appointed by the CEO by written instrument.
- (3) Before appointing a member, the CEO must consult the Council in relation to the appointment.
- (4) Before appointing a member, the CEO must consult such consumer groups and such environmental groups as the CEO considers appropriate.
- (5) The CEO must not appoint a person as a member unless the CEO is satisfied that the person has expertise relevant to, or knowledge of, radiation protection or radiation health.
- (6) The CEO must appoint a member to be the Chair of the Committee.
- (7) Each member, including the Chair, holds office on a part-time basis.

Section 25

25 Nuclear Safety Committee

The Nuclear Safety Committee is established.

26 Functions of the Nuclear Safety Committee

- (1) The Nuclear Safety Committee has the following functions:
 - (a) to advise the CEO and the Council on matters relating to nuclear safety and the safety of controlled facilities;
 - (b) to review and assess the effectiveness of standards, codes, practices and procedures in relation to the safety of controlled facilities;
 - (c) to develop detailed policies and to prepare draft publications for the promotion of uniform national standards in relation to the safety of controlled facilities;
 - (d) to report to the CEO on matters relating to nuclear safety and the safety of controlled facilities.
- (2) The Committee's functions are to be performed only on the request of the CEO or the Council.

27 Membership of the Nuclear Safety Committee

- (1) The Nuclear Safety Committee consists of the following members:
 - (a) the CEO;
 - (b) a person to represent the interests of the general public;
 - (c) a representative of the Radiation Health Committee;
 - (d) a person to represent the local government or the local administration of an area affected by a matter related to the safety of a controlled facility;
 - (e) up to 8 other members.
 - (2) Each member, other than the CEO, is to be appointed by the CEO by written instrument.
 - (3) Before appointing a member, the CEO must consult the Council in relation to the appointment.
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- (4) Before appointing a member, the CEO must consult such consumer groups and such environmental groups as the CEO considers appropriate.
- (5) The CEO must not appoint a person as a member unless the CEO is satisfied that the person has expertise in, or knowledge of:
 - (a) nuclear safety; or
 - (b) other industrial or safety-related regulation; or
 - (c) a related area.
- (6) The CEO must appoint a member to be the Chair of the Committee.
- (7) Each member, including the Chair, holds office on a part-time basis.

28 Remuneration

- (1) A member of the Council, the Radiation Health Committee or the Nuclear Safety Committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member referred to in subsection (1) is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

29 Regulations

The regulations may prescribe matters relating to the Council, the Radiation Health Committee and the Nuclear Safety Committee, including, but not limited to, the following:

- (a) the term of appointment of members;
- (b) resignation of members;
- (c) disclosure of interests by members;

Section 29

(d) procedural matters.

Part 5—Regulation of controlled material, controlled apparatus and controlled facilities

Division 1—Prohibitions

30 Construction, operation etc. of nuclear installations or prescribed radiation facilities

- (1) A controlled person must not do any of the following:
- (a) prepare a site for a controlled facility;
 - (b) construct a controlled facility;
 - (c) have possession or control of a controlled facility;
 - (d) operate a controlled facility;
 - (e) de-commission, dispose of or abandon a controlled facility;
- unless:
- (f) the person is authorised to do so by a facility licence; or
 - (g) the person is exempted in relation to the conduct concerned by regulations made for the purposes of this section.

Maximum penalty: 2,000 penalty units.

- (2) The holder of a facility licence must comply with the conditions of the licence.

Maximum penalty: 2,000 penalty units, or such lower amount as is prescribed by the regulations.

- (3) A person covered by a facility licence must comply with the conditions of the licence that are applicable to the person.

31 Possession etc. of controlled material or controlled apparatus

- (1) A controlled person must not deal with a controlled material or controlled apparatus unless:
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Section 31

- (a) the dealing is authorised by a source licence; or
- (b) the dealing is prescribed by the regulations as an exempt dealing for the purposes of this section.

Maximum penalty: 2,000 penalty units.

- (2) The holder of a source licence must comply with the conditions of the licence.

Maximum penalty: 2,000 penalty units, or such lower amount as is prescribed by the regulations.

- (3) A person covered by a source licence must comply with the conditions of the licence that are applicable to the person.

Division 2—Licences

32 Issue of facility licence

- (1) The CEO may issue a licence to a controlled person that authorises persons to do some or all of the things referred to in subsection 30(1).
- (2) A licence issued to the Commonwealth may be issued in the name of a Department of State.
- (3) In deciding whether to issue a licence under subsection (1), the CEO must take into account the matters (if any) specified in the regulations, and must also take into account international best practice in relation to radiation protection and nuclear safety.

33 Issue of source licence

- (1) The CEO may issue a licence to a controlled person that authorises persons to deal with a controlled apparatus or a controlled material.
- (2) A licence issued to the Commonwealth may be issued in the name of a Department of State.
- (3) In deciding whether to issue a licence under subsection (1), the CEO must take into account the matters (if any) specified in the regulations, and must also take into account international best practice in relation to radiation protection and nuclear safety.

34 Application fees

An application for a licence must:

- (a) be in a form approved by the CEO; and
- (b) be accompanied by such fee as is prescribed by the regulations.

Section 35

35 Licence conditions

- (1) A licence is subject to the following conditions:
 - (a) the conditions set out in this section;
 - (b) the conditions prescribed by the regulations;
 - (c) conditions imposed by the CEO at the time of issuing the licence;
 - (d) any conditions imposed by the CEO under subsection 36(2) after the licence is issued.
- (2) Licence conditions may include conditions that are specific to particular apparatus or material, including apparatus or material that may, at a time after the licence is issued, come into the possession or control of persons covered by the licence.
- (3) A facility licence is subject to the condition that any person authorised by the licence to prepare a site for a controlled facility or to construct, have possession or control of, operate, de-commission, dispose of or abandon a controlled facility must:
 - (a) at any time when the person has possession or control of such a site or facility—allow the CEO, or a person authorised by the CEO, to enter and inspect the site or facility at reasonable times; and
 - (b) comply with any requirements specified in the regulations in relation to such an inspection.
- (4) A source licence is subject to the condition that any person authorised by the licence to deal with a controlled apparatus or controlled material must:
 - (a) at any time when the person has possession or control of such apparatus or material—allow the CEO, or a person authorised by the CEO, to inspect the apparatus or material at reasonable times; and
 - (b) comply with any requirements specified in the regulations in relation to such an inspection.

36 Amendment of licence

- (1) The CEO may, at any time, by notice in writing given to the licence holder, amend a licence.
- (2) Without limiting subsection (1), the CEO may:
 - (a) impose additional licence conditions; or
 - (b) remove or vary licence conditions that were imposed by the CEO; or
 - (c) extend or reduce the authority granted by the licence.
- (3) If the conditions are specific to particular material, or to particular apparatus, the notice under subsection (1) must be given to the licence holder who, according to the CEO's records, has possession or control of the material or apparatus at the time the condition is imposed, removed or varied.

37 Period of licence

A licence continues in force until it is cancelled or surrendered.

38 Cancellation and suspension of licence

- (1) The CEO may, by notice in writing given to the licence holder, suspend or cancel a licence if:
 - (a) a condition of the licence has been breached, whether by the licence holder or by a person covered by the licence; or
 - (b) the CEO believes on reasonable grounds that the licence holder, or a person covered by the licence, has committed an offence against this Act or the regulations; or
 - (c) any annual charge payable in respect of the licence remains unpaid after the due date; or
 - (d) the licence was obtained improperly.

Section 39

39 Surrender of licence

The holder of a licence may, with the consent of the CEO, surrender the licence.

40 Review of licence decisions

- (1) An eligible person in relation to a licence decision may request that the Minister reconsider the licence decision.
- (2) The request must be:
 - (a) in writing; and
 - (b) given to Minister within 90 days of the making of the licence decision.

- (3) The Minister must reconsider the licence decision and confirm, vary or set aside the licence decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

- (4) The Minister is taken to have confirmed the licence decision under subsection (3) if the Minister does not give written notice of the Minister's decision under that subsection within 60 days of the request.
- (5) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under subsection (3) to confirm, vary or set aside the licence decision.
- (6) For the purposes of this section:

licence decision means any of the following decisions of the CEO:

- (a) to refuse to grant a licence;
- (b) to impose conditions on a licence;
- (c) to suspend a licence;
- (d) to cancel a licence;
- (e) to amend a licence;
- (f) not to approve the surrender of a licence.

eligible person, in relation to a licence decision, means:

- (a) in relation to a decision to refuse to grant a licence—the person who applied for the licence; and
- (b) in relation to any other licence decision—the licence holder.

Section 41

Division 3—Enforcement

41 CEO may give directions to controlled persons

- (1) This section applies if:
 - (a) the CEO believes, on reasonable grounds, that a controlled person is not complying with the Act or regulations in respect of a thing; and
 - (b) the CEO believes that it is necessary to exercise powers under this section in order to protect the health and safety of people or to avoid damage to the environment.
- (2) The CEO may give written directions to a controlled person requiring the controlled person to take such steps in relation to the thing as the CEO considers appropriate.
- (3) The controlled person must take the steps specified in the notice within the time specified in the notice.

Maximum penalty: 30 penalty units.

- (4) As soon as possible after giving directions under subsection (2), the CEO must provide a copy of the directions to the Minister.
- (5) The Minister must cause a copy of the directions to be tabled in each House of the Parliament within 15 sitting days of that House after the directions have been given.
- (6) If the person does not take the steps specified in the notice within the time specified in the notice, the CEO may arrange for those steps to be taken.
- (7) If the Commonwealth incurs costs because of arrangements made by the CEO under subsection (6), the person is liable to pay to the Commonwealth an amount equal to the costs and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.

42 Review of decisions to give directions

- (1) A controlled person to whom a direction is given under section 41 may request that the Minister reconsider the decision to give the direction.
- (2) The request must be:
 - (a) in writing; and
 - (b) given to Minister within 90 days of the giving of the direction.
- (3) The Minister must reconsider the decision and confirm, vary or set aside the decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.
- (4) The Minister is taken to have confirmed the decision under subsection (3) if the Minister does not give written notice of the Minister's decision under that subsection within 60 days of the request.
- (5) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under subsection (3) to confirm, vary or set aside the decision.

43 Injunctions

- (1) If a person has engaged, is engaging, or is proposing to engage in any conduct that is or would be an offence against this Act or the regulations, the Federal Court of Australia (the *Court*) may, on the application of the CEO, grant an injunction restraining the person from engaging in the conduct.
- (2) If:
 - (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do a thing; and
 - (b) the refusal or failure is, or would be, an offence against this Act;

Section 44

the Court may, on the application of the CEO, grant an injunction requiring the person to do the thing.

- (3) The power of the Court to grant an injunction may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind.
- (4) The Court may discharge or vary an injunction granted under this section.
- (5) The Court may grant an interim injunction pending the determination of an application under subsection (1).
- (6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the Court.

44 Forfeiture

- (1) If a court:
 - (a) convicts a person of an offence against this Act or the regulations; or
 - (b) makes an order under section 19B of the *Crimes Act 1914* in respect of a person charged with an offence against this Act;the court may order forfeiture to the Commonwealth of any substance or thing used or otherwise involved in the commission of the offence.
- (2) A substance or thing ordered by a court to be forfeited under this section becomes the property of the Commonwealth and may be sold or otherwise dealt with in accordance with the directions of the Minister.
- (3) Until the Minister gives a direction, the substance or thing must be kept in such custody as the Minister directs.

Part 6—Administrative matters

Division 1—Appointment, conditions etc. of CEO

45 Appointment of CEO

- (1) The CEO is to be appointed by the Governor-General for a term of up to 5 years.
- (2) The CEO holds office on a full-time basis.

46 Remuneration and allowances

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. However, if no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid such allowances as are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

47 Outside employment

The CEO must not engage in any paid employment outside the duties of the office without the Minister's written approval.

48 Recreation leave etc.

- (1) Subject to section 87E of the *Public Service Act 1922*, the CEO has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO other leave of absence on such terms and conditions as the Minister determines. The terms and

Section 49

conditions may include terms and conditions relating to remuneration.

49 Resignation

The CEO may resign by giving the Governor-General a signed resignation notice.

50 Disclosure of interests

The CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the CEO has or acquires and that could conflict with the proper performance of the CEO's functions.

51 Termination of appointment

- (1) The Governor-General may terminate the appointment of the CEO for physical or mental incapacity, misbehaviour, incompetence or inefficiency.
 - (2) The Governor-General must terminate the appointment of the CEO if the CEO does any of the following:
 - (a) is absent from duty (except on leave of absence) for 14 consecutive days, or for 28 days in any period of 12 months;
 - (b) becomes bankrupt;
 - (c) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (d) compounds with his or her creditors;
 - (e) assigns his or her remuneration for the benefit of his or her creditors;
 - (f) contravenes section 50, without a reasonable excuse;
 - (g) engages in paid employment outside the duties of the office, without the Minister's written approval.
 - (3) If the CEO is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
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- (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;
- the Governor-General may, with the consent of the CEO, retire the CEO from office on the ground of physical or mental incapacity.
- (4) For the purposes of the *Superannuation Act 1976*, the CEO is taken to have been retired from office on the ground of invalidity if:
- (a) the CEO is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) the Commonwealth Superannuation Board of Trustees No. 2 gives a certificate under section 54C of the *Superannuation Act 1976*.
- (5) For the purposes of the *Superannuation Act 1990*, the CEO is taken to have been retired from office on the ground of invalidity if:
- (a) the CEO is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) the Commonwealth Superannuation Board of Trustees No. 1 gives a certificate under section 13 of the *Superannuation Act 1990*.

52 Other terms and conditions of appointment

The CEO holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General in writing.

53 Acting appointment

- (1) The Minister may appoint a person to act as CEO:
- (a) if there is a vacancy in the office of CEO, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the CEO is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Section 53

- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Division 2—Money

54 CEO may charge for services

The CEO may charge for services provided by the CEO in the performance of the CEO's functions.

55 Notional payments by the Commonwealth

- (1) The purpose of this section is to ensure that fees and charges under this Act and the regulations, and charges under the Licence Charges Act, are notionally payable by the Commonwealth (or parts of the Commonwealth).
- (2) The Minister for Finance and Administration may give written directions for the purposes of this section, including directions relating to the transfer of amounts within, or between, accounts operated by the Commonwealth.

56 ARPANSA Reserve

- (1) This subsection establishes a reserve called the ARPANSA Reserve.
 - (2) The Reserve is a component of the Reserved Money Fund.
 - (3) The following amounts must be transferred to the Reserve from the Consolidated Revenue Fund:
 - (a) money appropriated by the Parliament for the purposes of the Reserve;
 - (b) amounts equal to amounts received by the Commonwealth under the Licence Charges Act;
 - (c) amounts equal to fees received by the Commonwealth under section 34;
 - (d) amounts equal to amounts received by the Commonwealth in connection with the performance of the CEO's functions under this Act or the regulations;
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Section 57

- (e) amounts equal to interest received by the Commonwealth from the investment of money from the Reserve;
 - (f) amounts equal to money received by the Commonwealth in relation to property paid for with money from the Reserve;
 - (g) amounts recovered by the Commonwealth under subsection 41(7), to the extent that they are referable to costs paid out of the Reserve;
 - (h) amounts equal to amounts of any gifts given or bequests made for the purposes of the Reserve.
- (4) The purposes of the Reserve are to make payments:
- (a) to further the object of this Act (as set out in section 3); and
 - (b) otherwise in connection with the performance of the CEO's functions under this Act or the regulations.

57 Amounts recoverable as debts

The following amounts may be recovered in a court of competent jurisdiction as debts due to the Commonwealth:

- (a) amounts payable to the Commonwealth under the Licence Charges Act;
- (b) fees payable to the Commonwealth under section 34;
- (c) amounts payable to the Commonwealth in connection with the performance of the CEO's functions.

Division 3—Miscellaneous

58 Staff and consultants

- (1) The staff necessary to assist the CEO are to be persons appointed or employed under the *Public Service Act 1922*.
- (2) The CEO has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.
- (3) The CEO, on behalf of the Commonwealth, may engage consultants to assist in the performance of any of the CEO's functions.

59 Annual report

- (1) As soon as practicable after the end of each financial year, the CEO must prepare and give to the Minister a report on the operations during that year of:
 - (a) the CEO; and
 - (b) ARPANSA; and
 - (c) the Council, the Radiation Health Committee and the Nuclear Safety Committee.
- (2) The report must include details of directions given by the Minister during the financial year under section 16.
- (3) The report must include details of any breach of licence conditions by a licensee during the financial year, of which the CEO is aware.
- (4) The report must include details of all reports received by the CEO during the financial year under paragraph 20(f) or 26(1)(d).

Section 60

- (5) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of the day on which the report was given to the Minister.

60 Quarterly reports

- (1) As soon as practicable after the end of each quarter, the CEO must prepare and give to the Minister a report on the operations during that quarter of:
- (a) the CEO; and
 - (b) ARPANSA; and
 - (c) the Council, the Radiation Health Committee and the Nuclear Safety Committee.
- (2) The report must include details of directions given by the Minister during the quarter under section 16.
- (3) The report must include details of any breach of licence conditions by a licensee during the quarter, of which the CEO is aware.
- (4) The report must include details of all reports received by the CEO during the quarter under paragraph 20(f) or 26(1)(d).
- (5) The report must include a list of all facilities licensed under Part 5 during the quarter.
- (6) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of the day on which the report was given to the Minister.
- (7) In this section:

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October of any year.

61 Reports to Parliament

- (1) The CEO may at any time cause a report about matters relating to the CEO's functions to be tabled in either House of the Parliament.
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Section 61

- (2) If a serious accident or malfunction occurs at a nuclear installation, the CEO must cause a report about the incident to be tabled in each House of the Parliament no later than 3 sitting days after the incident occurs.
- (3) The CEO must give a copy of the report to the Minister.

Part 7—Powers of inspection etc.

62 Appointment of inspectors

- (1) The CEO may, by instrument in writing, appoint any of the following persons as an inspector:
 - (a) a person who is appointed or employed by the Commonwealth;
 - (b) a person who is appointed or employed by a State or Territory.
- (2) In exercising powers or performing functions as an inspector, an inspector must comply with any directions of the CEO.
- (3) The CEO must issue an identity card to an inspector, in the form prescribed by the regulations. The identity card must contain a recent photograph of the inspector.
- (4) If a person to whom an identity card has been issued ceases to be an inspector, the person must immediately return the identity card to the CEO.

Maximum penalty: 1 penalty unit.

- (5) An inspector must carry the identity card at all times when exercising powers or performing functions as an inspector.

63 Powers available to inspectors for monitoring compliance

- (1) For the purpose of finding out whether this Act or the regulations have been complied with, an inspector may:
 - (a) enter any premises; and
 - (b) exercise the powers set out in subsection 67(1).
- (2) An inspector is not authorised to enter premises under subsection (1) unless:

- (a) the occupier of the premises has consented to the entry; or
- (b) the entry is made under a warrant issued under section 77.

64 Inspector must produce identity card on request

An inspector is not entitled to exercise any powers under this Part in relation to premises if:

- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the requirement.

65 Powers available to inspectors for dealing with hazardous situations

- (1) This section applies if an inspector has reasonable grounds for suspecting that:
 - (a) there may be on any premises a particular thing (the *hazardous thing*) in respect of which this Act or the regulations have not been complied with; and
 - (b) it is necessary in the interests of public health to exercise powers under this section in order to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.
- (2) The inspector may do any of the following:
 - (a) enter the premises;
 - (b) search the premises for the hazardous thing;
 - (c) seize the hazardous thing, if the inspector finds it on the premises;
 - (d) if the inspector has reasonable grounds for suspecting that a controlled person has not complied with this Act or the regulations in respect of the hazardous thing—require the controlled person to take such steps that the inspector considers necessary.

Section 66

- (3) The inspector may exercise the powers in subsection (2) only to the extent that it is necessary for the purpose of avoiding an imminent risk of death, serious illness, serious injury or serious damage to the environment.

66 Searches and seizures related to offences

- (1) This section applies if an inspector has reasonable grounds for suspecting that there may be evidential material (the *suspected material*) on any premises.
- (2) The inspector may:
- (a) enter the premises, with the consent of the occupier or under a warrant issued under section 78; and
 - (b) exercise the powers set out in subsection (3) and subsection 67(1); and
 - (c) seize the suspected material, if the inspector finds it on the premises.
- (3) If:
- (a) in the course of searching, in accordance with a warrant, for a particular thing, an inspector finds another thing that the inspector believes on reasonable grounds to be evidential material; and
 - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that other thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating an offence against this Act or the regulations;
- the warrant is taken to authorise the inspector to seize that other thing.

67 General powers of inspectors in relation to premises

- (1) The powers an inspector may exercise under paragraphs 63(1)(b) and 66(2)(b) are as follows:
- (a) to search the premises and any thing on the premises;
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Section 68

- (b) to inspect, examine, take measurements of, or conduct tests (including by the taking of samples) concerning, any thing on the premises that relates to controlled material, controlled apparatus or a controlled facility;
 - (c) to take photographs (including video recordings), take audio recordings or make sketches of the premises or any thing on the premises;
 - (d) if the inspector was only authorised to enter the premises because the occupier of the premises consented to the entry—to require the occupier to:
 - (i) answer any questions put by the inspector; and
 - (ii) produce any book, record or document requested by the inspector;
 - (e) if the inspector was authorised to enter the premises by a warrant under section 77 or 78—to require any person in or on the premises to:
 - (i) answer any questions put by the inspector; and
 - (ii) produce any book, record or document requested by the inspector;
 - (f) to inspect any book, record or document on the premises;
 - (g) to take extracts from or make copies of any such book, record or document;
 - (h) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises.
- (2) A person must not refuse or fail to comply with a requirement under paragraph (1)(e).

Maximum penalty: 30 penalty units.

68 Details of warrant to be given to occupier etc.

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently

Section 69

represents the occupier is present at the premises, the inspector must make available to that person a copy of the warrant.

- (2) The inspector must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

69 Announcement before entry

- (1) An inspector must, before entering the premises under a warrant:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
 - (a) to ensure the safety of a person; or
 - (b) to prevent serious damage to the environment; or
 - (c) to ensure that the effective execution of the warrant is not frustrated.

70 Use of electronic equipment at premises

- (1) The inspector may operate electronic equipment at the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
 - (2) If the inspector, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
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- (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
- (3) An inspector may seize equipment under paragraph (2)(a) only if:
 - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence.
- (4) If the inspector believes on reasonable grounds that:
 - (a) evidential material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The inspector must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert;whichever happens first.

Section 71

- (7) If the inspector believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate for an extension of that period.
- (8) The inspector must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

71 Compensation for damage to electronic equipment

- (1) The owner of equipment is entitled to compensation for damage to the equipment if:
 - (a) the damage was caused to equipment as a result of it being operated as mentioned in section 70; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

72 Copies of seized things to be provided

- (1) Subject to subsection (2), if an inspector seizes, under a warrant relating to premises:
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;

Section 73

the inspector must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

- (2) Subsection (1) does not apply if:
- (a) the thing that has been seized was seized under paragraph 70(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

73 Occupier entitled to be present during search

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

74 Receipts for things seized under warrant

- (1) If a thing is seized under this Part, the inspector must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

75 Retention of seized things

- (1) Subject to any contrary order of a court, if an inspector seizes a thing under this Part, an inspector must return it if:

Section 76

- (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (b) the period of 60 days after its seizure ends;
- whichever first occurs, unless the thing is forfeited or forfeitable to the Commonwealth.
- (2) At the end of the 60 days specified in subsection (1), an inspector must take reasonable steps to return the thing to the person from whom it was seized, unless:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) an inspector may retain the thing because of an order under section 76; or
 - (c) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or
 - (d) an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the thing.
- (3) The thing may be returned under subsection (2) either unconditionally or on such terms and conditions as the CEO sees fit.

76 Magistrate may permit a thing to be retained

- (1) An inspector may apply to a magistrate for an order that he or she may retain the thing for a further period if:
- (a) before the end of 60 days after the seizure; or
 - (b) before the end of a period previously specified in an order of a magistrate under this section;
- proceedings in respect of which the thing may afford evidence have not commenced.

- (2) If the magistrate is satisfied that it is necessary for an inspector to continue to retain the thing:
- (a) for the purposes of an investigation as to whether an offence against this Act has been committed; or
 - (b) to enable evidence of an offence against this Act to be secured for the purposes of a prosecution;
- the magistrate may order that an inspector may retain the thing for a period (not being a period exceeding 3 years) specified in the order.
- (3) Before making the application, the inspector must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

77 Monitoring warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of finding out whether this Act or the regulations have been complied with.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
- (a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
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Section 78

- (i) to enter the premises; and
- (ii) to exercise the powers set out in subsection 67(1) in relation to the premises; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

78 Offence related warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.
 - (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the premises evidential material.
 - (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
 - (4) The warrant must:
 - (a) name one or more inspectors; and
 - (b) authorise the persons so named, with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in subsections 66(3) and 67(1); and
 - (iii) to seize the evidential material; and
 - (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
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Section 79

- (d) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
- (e) state the purpose for which the warrant is issued.

79 Offence related warrants by telephone

- (1) If, in an urgent case, an inspector considers it necessary to do so, the person may apply to a magistrate by telephone for a warrant under section 78 in relation to premises.
- (2) Before applying for the warrant, the person must prepare an information of the kind mentioned in subsection 78(2) in relation to the premises that sets out the grounds on which the warrant is sought.
- (3) If it is necessary to do so, the person may apply for the warrant before the information is sworn.
- (4) If the magistrate is satisfied:
 - (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 78 if the application had been made under that section.
- (5) If the magistrate completes and signs the warrant:
 - (a) the magistrate must:
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the day on which and the time at which the warrant was signed; and
 - (iii) tell the inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and

Section 79

- (iv) record on the warrant the reasons for granting the warrant; and
- (b) the inspector must:
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (6) The inspector must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
 - (a) the form of warrant completed by the person; and
 - (b) the information referred to in subsection (2), which must have been duly sworn.
- (7) When the magistrate receives those documents, the magistrate must:
 - (a) attach them to the warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 78.
- (8) A form of warrant duly completed under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (9) If:
 - (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

Section 80

- (10) A reference in this Part to a warrant under section 78 includes a reference to a warrant signed by a magistrate under this section.

80 Offences relating to warrants

- (1) A person must not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: Imprisonment for 2 years.

- (2) A person must not:
- (a) state in a document that purports to be a form of warrant under section 79 the name of a magistrate unless that magistrate issued the warrant; or
 - (b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the magistrate; or
 - (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the first-mentioned person knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) to depart in a material particular from the terms authorised by a magistrate under that section; or
 - (d) give to a magistrate a form of warrant under that section that is not the form of warrant that the person purported to execute.

Maximum penalty: Imprisonment for 2 years.

81 Part does not limit power to impose licence conditions

This Part is not to be taken to limit the CEO's power to impose licence conditions.

Section 82

82 Operation of *Nuclear Non-Proliferation (Safeguards) Act 1987*

- (1) This Part is not to be taken to excuse an inspector from complying with sections 23, 25 and 26 of the *Nuclear Non-Proliferation (Safeguards) Act 1987*.
- (2) In particular, the exercise of powers by an inspector under this Part is not taken to be a reasonable excuse for the purposes of those sections.

Part 8—Miscellaneous

83 Operation of State and Territory laws

If a law of a State or Territory, or one or more provisions of such a law, is prescribed by the regulations, that law or provision does not apply in relation to the following:

- (a) an activity of a controlled person in relation to a controlled apparatus or a controlled material;
- (b) an activity of a controlled person in relation to a controlled facility.

84 Powers to be exercised in accordance with international agreements

- (1) Where this Act confers a power, discretion, duty or function on a person, the exercise of the power or discretion or the performance of the duty or function is authorised by this Act only to the extent that the exercise or performance is not inconsistent with Australia's obligations under the relevant international agreements.
- (2) Where this Act confers a power or discretion on a person, the person must have regard to Australia's obligations under the relevant international agreements in exercising that power or discretion.
- (3) For the purposes of this section, an agreement is a *relevant international agreement* if:
 - (a) immediately before the commencement of this Act, it was a relevant international agreement for the purposes of section 70 of the *Nuclear Non-Proliferation (Safeguards) Act 1987*; or
 - (b) it is an international agreement prescribed by the regulations.

Section 85

85 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may:
 - (a) require specified standards to be observed, practices and procedures to be followed and measures to be taken by controlled persons in relation to activities relating to controlled facilities, and in relation to dealings with controlled apparatus or controlled material; and
 - (b) regulate, restrict or prohibit any act of a controlled person in relation to such activities or dealings; and
 - (c) require the keeping of records, the giving of information and the notification of specified occurrences by controlled persons in relation to such activities or dealings; and
 - (d) provide for the establishment of committees to advise the CEO on matters relating to radiation or nuclear safety; and
 - (e) provide for matters relating to the payment of annual charge, including the time and manner of payment, pro-rating and refunds; and
 - (f) prescribe fees in respect of matters under this Act or the regulations; and
 - (g) prescribe penalties of not more than 50 penalty units for offences against the regulations.

*[Minister's second reading speech made in—
House of Representatives on 11 November 1998
Senate on 23 November 1998]*

(168/98)



Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998

No. 134, 1998

**An Act to impose charges on licences issued under
the *Australian Radiation Protection and Nuclear
Safety Act 1998*, and for related purposes**

Contents

1	Short title	1
2	Commencement.....	2
3	Definitions	2
4	Facility licence—annual charge	2
5	Source licence—annual charge	2
6	Regulations	2



Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998

No. 134, 1998

An Act to impose charges on licences issued under the *Australian Radiation Protection and Nuclear Safety Act 1998*, and for related purposes

[Assented to 24 December 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*.

Section 2

2 Commencement

This Act commences on the same day as the *Australian Radiation Protection and Nuclear Safety Act 1998*.

3 Definitions

facility licence means a facility licence issued under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

source licence means a source licence issued under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

4 Facility licence—annual charge

- (1) A person who is the holder of a facility licence at any time during a financial year is liable to pay a charge for the licence for that year.
- (2) The amount of the charge for a year is such amount as is prescribed by the regulations.

5 Source licence—annual charge

- (1) A person who is the holder of a source licence at any time during a financial year is liable to pay a charge for the licence for that year.
- (2) The amount of the charge for a year is such amount as is prescribed by the regulations.

6 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 11 November 1998
Senate on 23 November 1998]*

(167/98)



Australian Radiation Protection and Nuclear Safety (Consequential Amendments) Act 1998

No. 135, 1998

**An Act to deal with consequential matters arising
from the enactment of the *Australian Radiation
Protection and Nuclear Safety Act 1998*, and for
other purposes**

Contents

1	Short title	1
2	Commencement.....	2
3	Schedule(s)	2
Schedule 1—Amendments, repeal and transitional provisions		3
Part 1—Amendments and repeal		3
<i>Australian Nuclear Science and Technology Organisation Act 1987</i>		3
<i>Environment Protection (Nuclear Codes) Act 1978</i>		3
Part 2—Transitional provisions		4



Australian Radiation Protection and Nuclear Safety (Consequential Amendments) Act 1998

No. 135, 1998

An Act to deal with consequential matters arising from the enactment of the *Australian Radiation Protection and Nuclear Safety Act 1998*, and for other purposes

[Assented to 24 December 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Radiation Protection and Nuclear Safety (Consequential Amendments) Act 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on the same day as the *Australian Radiation Protection and Nuclear Safety Act 1998*.
- (2) Item 5 of Schedule 1 to this Act commences on a day to be fixed by Proclamation.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments, repeal and transitional provisions

Part 1—Amendments and repeal

Australian Nuclear Science and Technology Organisation Act 1987

1 Part VI

Repeal the Part.

2 Section 31

Omit “\$1,000,000”, substitute “\$5,000,000”.

3 Part VIIA

Repeal the Part.

4 Paragraph 42(1)(b)

Omit “, 37D, 37N, 37T”.

Environment Protection (Nuclear Codes) Act 1978

5 The whole of the Act

Repeal the Act.

Part 2—Transitional provisions

6 Transfer of assets and liabilities of the Nuclear Safety Bureau

- (1) At the commencement time:
 - (a) the assets and liabilities of the Nuclear Safety Bureau are transferred to the Commonwealth; and
 - (b) the Commonwealth becomes the Nuclear Safety Bureau's successor in law in relation to an asset or liability transferred under paragraph (a); and
- (2) Any instrument or document relating to a transferred asset or liability continues to have effect after the commencement time as if a reference in the instrument or document to the Nuclear Safety Bureau were a reference to the Commonwealth.
- (3) In this item:

asset means:

 - (a) any legal or equitable estate or interest in real or personal property, including a contingent or prospective one; or
 - (b) any right, privilege or immunity, including a contingent or prospective one.

commencement time means the time at which section 1 of this Act commenced.

liability means a liability, duty or obligation, including a contingent or prospective one.

7 Powers of the CEO during the transition period

- (1) Despite the repeal of Part VIIA of the *Australian Nuclear Science and Technology Organisation Act 1987* by this Act, the CEO is to be treated, throughout the ANSTO transition period, as having all the powers and functions conferred by that Part on the Director of the Nuclear Safety Bureau in relation to ANSTO.

(2) In this item:

ANSTO means the Organisation within the meaning of subsection 3(1) of the *Australian Nuclear Science and Technology Organisation Act 1987*.

ANSTO transition period means the period:

- (a) beginning on the day on which the *Australian Radiation Protection and Nuclear Safety Act 1998* commenced; and
- (b) ending on the day on which ANSTO is granted or refused any licence under section 32 or 33 of the *Australian Radiation Protection and Nuclear Safety Act 1998*.

CEO has the same meaning as in the *Australian Radiation Protection and Nuclear Safety Act 1998*.

8 Prohibitions not to apply to certain activities and persons

(1) If a person lodges an application during the transition period under section 32 or 33 of the *Australian Radiation Protection and Nuclear Safety Act 1998* for a licence to authorise specified activities by specified persons, then the prohibitions contained in sections 30 and 31 of that Act do not apply to those persons in respect of those activities until:

- (a) the application is granted; or
- (b) the application is refused.

(2) In this item:

transition period means the period of 6 months beginning on the day on which the *Australian Radiation Protection and Nuclear Safety Act 1998* commenced.

[Minister's second reading speech made in—
House of Representatives on 11 November 1998
Senate on 23 November 1998]

(166/98)
