



Australian Radiation Protection and Nuclear Safety Amendment Act 2015

No. 125, 2015

***An Act to amend the *Australian Radiation
Protection and Nuclear Safety Act 1998*, and for
related purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 125, 2015

An Act to amend the *Australian Radiation Protection and Nuclear Safety Act 1998*, and for related purposes

[Assented to 10 September 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Radiation Protection and Nuclear Safety Amendment Act 2015*.

No. 125, 2015 *Australian Radiation Protection and Nuclear Safety Amendment Act* 1
2015

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The 28th day after this Act receives the Royal Assent.	8 October 2015

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Australian Radiation Protection and Nuclear Safety Act 1998

1 Subsection 11(2)

Omit all the words after “in so far” (not including the example), substitute:

as:

- (a) the dealing is for or on behalf of a Commonwealth entity; and
- (b) the dealing is under or for the purposes of a contract with the Commonwealth entity; and
- (c) the controlled material or controlled apparatus is owned or controlled by the Commonwealth entity.

2 At the end of section 11

Add:

- (3) If conduct of, or a dealing by, a person in the person’s capacity as a Commonwealth contractor is not covered by subsection (1) or (2), then:
 - (a) that does not prevent this Act from applying in respect of the conduct or dealing in the person’s capacity as a permitted person under section 11A; and
 - (b) in applying that section to the conduct or dealing, the person is not to be taken to be a controlled person (and therefore excluded from the scope of that section) merely because the person is a Commonwealth contractor.

3 After section 11

Insert:

11A Application of Act to permitted persons

- (1) A *permitted person*, in relation to a licence, is a person (other than a controlled person) who is permitted, under an arrangement with

the licence holder, to do any of the following things that the licence authorises the licence holder to do:

- (a) undertake an activity referred to in subsection 30(1) in relation to a controlled facility that is owned or controlled by the licence holder;
 - (b) deal with a controlled material or controlled apparatus that is owned or controlled by the licence holder.
- (2) This Act applies to the permitted person only in respect of the activity or dealing to which the arrangement applies.

Severability

- (3) Without limiting its effect apart from this section, this Act also has the effect it would have if paragraphs (1)(a) and (b) of this section were expressly limited to an activity or a dealing:
- (a) that is for the purposes of the licence holder; or
 - (b) that is undertaken or done:
 - (i) in a Territory; or
 - (ii) in a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*).

4 Section 13 (at the end of the definition of *controlled facility*)

Add:
; or (c) a prescribed legacy site.

5 Section 13

Insert:
improvement notice: see subsection 80A(2).

6 Section 13 (paragraph (a) of the definition of *nuclear installation*)

Omit “nuclear materials”, substitute “radioactive materials”.

7 Section 13 (paragraph (c) of the definition of *nuclear installation*)

Omit “nuclear waste”, substitute “radioactive waste”.

8 Section 13 (at the end of the definition of *nuclear installation*)

Add:

- ; (e) a plant for storing spent fuel that has been used in a nuclear reactor as described in paragraph (a).

9 Section 13

Insert:

permitted person: see section 11A.

Note: Section 11A limits the circumstances in which the provisions of this Act apply to a permitted person.

10 Section 13 (definition of *person covered by a licence*)

Repeal the definition, substitute:

person covered by a licence means:

- (a) 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; or
- (b) a permitted person in relation to the licence.

11 Section 13

Insert:

prescribed legacy site means a place (whether enclosed or built on or not) that is prescribed by the regulations for the purposes of this definition.

remediate, in relation to a prescribed legacy site, means to apply measures to the site to reduce the exposure of people or the environment to radiation from contamination of the site with radioactive material.

12 Paragraph 18(1)(b)

Omit “a Senior Officer Grade A, B or C”, substitute “an Executive Level 1 or 2 position”.

13 After subsection 18(1)

Insert:

- (1A) However, the CEO may only delegate the CEO's powers or functions under section 80C (review of improvement notice decisions) to a person holding, or performing the duties of, a Senior Executive Service office, or equivalent, in the Department.

14 Subsections 23(2) and 26(2)

Omit "or the Council".

15 Section 30 (heading)

Repeal the heading, substitute:

30 Construction, operation etc. of controlled facilities

16 After paragraph 30(1)(e)

Insert:

- (ea) remediate a prescribed legacy site;

17 After paragraph 31(1)(a)

Insert:

- (aa) the dealing is authorised by a facility licence; or

18 After subsection 32(1)

Insert:

- (1A) A licence under subsection (1):
- (a) may relate to one or more controlled facilities; and
 - (b) may also authorise persons to deal with a controlled apparatus or a controlled material.

19 After paragraph 35(1)(a)

Insert:

- (aa) the condition set out in subsection 80B(1);

20 Subsection 35(3)

Omit "or abandon", substitute ", abandon or remediate".

21 Subsection 35(4)

Omit “source”.

22 At the end of subsection 36(2)

Add:

; or (d) if the licence was issued for a specified period—extend that period.

23 Section 37

Repeal the section, substitute:

37 Period of licence

- (1) A licence may be issued:
 - (a) for an indefinite period; or
 - (b) for a period specified in the licence.
- (2) A licence continues in force until:
 - (a) it is cancelled or surrendered; or
 - (b) if the licence was issued for a specified period—the end of that period (or that period as extended under paragraph 36(2)(d)), unless earlier cancelled or surrendered.

24 Paragraph 40(2)(b)

Repeal the paragraph, substitute:

- (b) given to the Minister within 28 days of the making of the licence decision.

25 Subsection 40(6) (at the end of the definition of *licence decision*)

Add:

- (g) to issue a licence for a particular period, rather than for a longer period or indefinitely;
- (h) not to extend the period for which a licence was issued.

26 Before subsection 41(1)

Insert:

When this section applies

27 Subsection 41(2)

Repeal the subsection, substitute:

- (1A) This section also applies if:
- (a) the CEO believes, on reasonable grounds, that there is a risk of death, serious illness, serious injury or serious damage to the environment, arising from radiation, in connection with a controlled facility, controlled material or controlled apparatus; and
 - (b) the CEO believes that there is an urgent need to exercise powers under this section in order to minimise the risk.

Power to give directions, and consequences of a direction

- (2) The CEO may give written directions to a controlled person requiring the controlled person to take such steps as the CEO considers appropriate:
- (a) if subsection (1) applies—in relation to the thing; or
 - (b) if subsection (1A) applies—in relation to the controlled facility, controlled material or controlled apparatus.

28 Paragraph 42(2)(b)

- (b) given to the Minister within 28 days of the giving of the direction.

29 At the end of Part 5

Add:

Division 4—Information-gathering

44A CEO may require controlled person to provide information, produce documents or appear before the CEO

- (1) This section applies to a controlled person if the CEO believes, on reasonable grounds, that the person has information or a document that is relevant for the purpose of finding out whether this Act, the regulations or the conditions of a licence have been complied with.

- (2) The CEO may, for that purpose, require the controlled person, by written notice given to the person, to:
 - (a) give information to the CEO; or
 - (b) produce to the CEO documents in the person's custody or control, or copies of such documents; or
 - (c) answer questions specified in the notice; or
 - (d) if the person is an individual—appear before the CEO at a time and place specified in the notice to give information or answer questions, either orally or in writing, or produce to the CEO documents in the person's custody or control, or copies of such documents; or
 - (e) if the person is a body corporate—cause a competent officer of the body to appear before the CEO at a time and place specified in the notice to give information or answer questions, either orally or in writing, or produce to the CEO documents in the person's custody or control, or copies of such documents.
- (3) If the notice makes a requirement under paragraph (2)(a), (b) or (c), the controlled person must comply with the requirement:
 - (a) within 28 days after the notice is given (unless paragraph (b) applies); or
 - (b) if a shorter period is specified in the notice—within that shorter period.
- (4) If the notice makes a requirement under paragraph (2)(d) or (e), the time specified in the notice as mentioned in that paragraph may be any reasonable time after the notice is given.
- (5) If the controlled person is an individual, the individual is excused from giving information, answering a question or producing a document in accordance with the notice if the information, the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty.
- (6) The controlled person (the *recipient*) is excused from giving information, answering a question or producing a document in accordance with the notice if doing so would involve a contravention of an obligation under an international agreement:

- (a) to which Australia, the recipient or another controlled person is a party; and
- (b) that relates specifically to:
 - (i) the recipient; or
 - (ii) if the recipient is an officer or an employee of a controlled person—that controlled person.

Note: In a prosecution for an offence against section 44B, a defendant bears an evidential burden in relation to the matters in subsections (5) and (6) of this section (see subsection 13.3(3) of the *Criminal Code*).

44B Offence—failure to comply with requirement

A controlled person commits an offence if:

- (a) the controlled person is given a notice under section 44A; and
- (b) the controlled person fails to comply with the notice.

Penalty: 30 penalty units.

30 At the end of paragraph 59(b)

Add:

- ; (iv) details of directions given by the CEO during the period under section 41 of this Act;
- (v) details of improvement notices given by inspectors during the period under section 80A of this Act.

31 Subsection 60(2)

Repeal the subsection, substitute:

- (2) The report must include details of the following:
 - (a) directions given by the Minister during the quarter under section 16;
 - (b) directions given by the CEO during the quarter under section 41;
 - (c) improvement notices given by inspectors during the quarter under section 80A.

32 Before section 62

Insert:

Division 1—Appointment and powers of inspectors

33 Paragraph 65(1)(b)

Repeal the paragraph, substitute:

- (b) 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.

34 Subsection 65(3)

Omit all the words after “for the purpose of”, substitute “protecting the health and safety of people or avoiding damage to the environment”.

35 Section 74 (heading)

Repeal the heading, substitute:

74 Receipts for things seized

36 After section 80

Insert:

Division 2—Improvement notices

80A Inspectors may give improvement notices

- (1) This section applies if an inspector reasonably believes that:
 - (a) the holder of a licence or a person covered by a licence is contravening, or is likely to contravene, a provision of this Act or the regulations; or
 - (b) a condition of a licence is being contravened, or is likely to be contravened.
- (2) The inspector may give the holder of the licence a notice in writing (an **improvement notice**) requiring the holder of the licence to:
 - (a) remedy the contravention; or
 - (b) prevent a likely contravention from occurring; or
 - (c) remedy the matters or activities causing the contravention or likely contravention; or

- (d) cease an activity causing the contravention or likely contravention.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Contents of improvement notice

- (3) The improvement notice must state:
- (a) the licence to which the notice relates; and
 - (b) the provision or condition the inspector believes is being, or is likely to be, contravened; and
 - (c) briefly, how the provision or condition is being, or is likely to be, contravened; and
 - (d) the name of the inspector; and
 - (e) the time by which the notice must be complied with.
- (4) The time stated for compliance with the improvement notice must be reasonable in all the circumstances.

Note: The improvement notice may require immediate compliance if the circumstances are sufficiently serious.

Inspector does not have to produce identity card

- (5) Section 64 does not apply to the exercise of the power to give an improvement notice.

80B Compliance with improvement notices

- (1) A licence is subject to the condition that an improvement notice relating to the licence and issued to the holder of the licence must be complied with by the time specified in the notice.

Note: It is an offence for the holder of a licence to fail to comply with a condition of the licence (see subsection 30(2) for facility licences and subsection 31(2) for source licences).

- (2) The condition set out in subsection (1) is in addition to, and does not limit, any obligation that the holder of the licence has under any other provision of this Act or under the regulations or the licence.

80C Review of improvement notice decisions

- (1) A licence holder to whom an improvement notice has been given may request that the CEO reconsider a decision made by an inspector under section 80A in relation to the improvement notice (the *improvement notice decision*).
- (2) The request must be:
 - (a) in writing; and
 - (b) given to the CEO within 28 days of the making of the improvement notice decision.
- (3) The CEO must reconsider the improvement notice decision and confirm, vary or set aside the improvement notice decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the licence holder to be notified of the licence holder's review rights.
- (4) The CEO is taken to have confirmed the improvement notice decision under subsection (3) if the CEO does not give written notice of the CEO's decision under that subsection within 28 days of the request.
- (5) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the CEO under subsection (3) to confirm, vary or set aside the improvement notice decision.

Division 3—Miscellaneous

37 Paragraphs 83(a) and (b)

After “controlled person”, insert “or a permitted person”.

38 At the end of section 83

Add:

Note: For limits on the circumstances in which the provisions of this Act apply to Commonwealth contractors and permitted persons, see sections 11 and 11A.

39 Subsection 84(3)

Repeal the subsection, substitute:

Schedule 1 Amendments
Part 1 Amendments

- (3) For the purposes of this section, an agreement is a *relevant international agreement* if it is an international agreement prescribed by the regulations.

Part 2—Transitional provisions

40 Definitions

In this Part:

amended Act means the *Australian Radiation Protection and Nuclear Safety Act 1998* as in force after the commencement time.

commencement time means the commencement of this Schedule.

old Act means the *Australian Radiation Protection and Nuclear Safety Act 1998* as in force immediately before the commencement time.

41 Time for requesting reviews of decisions

- (1) The amendment made by item 24 applies in relation to licence decisions made after the commencement time.
- (2) The amendment made by item 28 applies in relation to directions given after the commencement time.

42 Directions under section 41

Despite the repeal of subsection 41(2) of the old Act by item 27, a direction that was in force under that subsection immediately before the commencement time remains in force after the commencement time as if it were a direction given under paragraph 41(2)(a) of the amended Act.

43 Application of improvement notice provisions

Division 2 of Part 7 of the amended Act, as inserted by item 36, applies to licences issued before or after the commencement time.

44 Relevant international agreements

Despite the repeal of subsection 84(3) of the old Act by item 39, the Physical Protection Convention (within the meaning of the *Nuclear Non-Proliferation (Safeguards) Act 1987*) continues to be a relevant international agreement for the purposes of section 84 of the amended Act until regulations made for the purposes of subsection 84(3) of the amended Act commence.

*[Minister's second reading speech made in—
House of Representatives on 18 June 2015
Senate on 17 August 2015]*

(104/15)

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2015