



Australian Naval Nuclear Power Safety Act 2024

No. 91, 2024

**An Act to regulate activities relating to
conventionally-armed, nuclear-powered
submarines to ensure the nuclear safety of those
activities, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**An Act to regulate activities relating to
conventionally-armed, nuclear-powered
submarines to ensure the nuclear safety of those
activities, and for related purposes**

[Assented to 24 October 2024]

The Parliament of Australia enacts:

Section 1

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act is the *Australian Naval Nuclear Power Safety Act 2024*.

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	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the first day of the first calendar month to start after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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 Simplified outline of this Act

This Act is about regulating activities relating to AUKUS submarines to ensure the nuclear safety of those activities.

AUKUS submarines are conventionally-armed, nuclear-powered submarines operated, or under construction in Australia, for naval or military purposes by Australia (these are “Australian submarines”) or by the United Kingdom or the United States of America (these are “UK/US submarines”).

The activities that are regulated by this Act are called “regulated activities”. There are 3 types of regulated activities.

- The first type are “facility activities”. These are activities that relate to particular facilities (called “NNP facilities”) that are relevant to AUKUS submarines (such as facilities to construct an AUKUS submarine) (see sections 11 and 12 for facility activities and NNP facilities).
- The second type are “submarine activities”. These are activities that relate to AUKUS submarines themselves (such as constructing an AUKUS submarine) (see section 13 for submarine activities).
- The third type are “material activities”. These are activities that relate to certain material, equipment and plant (called “NNP material” and “NNP equipment or plant”) which emit or produce radiation and are from, or for use on, AUKUS submarines (see sections 14 and 15 for material activities).

Regulated activities can only occur in designated zones (which are particular areas in Australia (see section 10)) or in relation to Australian submarines.

There are nuclear safety duties that apply to people when they conduct regulated activities. For example, they must ensure nuclear safety, and must be authorised by a licence, when conducting those activities. There are additional nuclear safety duties that apply to licence holders (such as the duty to establish, implement and maintain a nuclear safety management system and report nuclear safety incidents) as well as other persons authorised under a licence (such as the duty to implement and comply with the nuclear safety management system and comply with licence conditions). A

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person who breaches a nuclear safety duty may be subject to civil or criminal penalties. Part 2 deals with nuclear safety duties.

A person must be authorised by an Australian naval nuclear power safety licence to conduct a regulated activity. Only Commonwealth-related persons can apply for a licence and be a licence holder, but other people may be authorised under a licence. Part 3 deals with licences.

This Act establishes an independent regulator, called the “Australian Naval Nuclear Power Safety Regulator”, which has functions relating to regulated activities, such as licensing, investigating whether people are complying with this Act, and taking enforcement action if they are not. Part 4 deals with compliance and enforcement powers. Part 5 establishes the Regulator and deals with other administrative matters relating to the Regulator.

Division 2—Defined terms

Subdivision A—Simplified outline of this Division

4 Simplified outline of this Division

This Division is about the terms that are defined in this Act.

The Dictionary is a list of every term that is defined in this Act.
The Dictionary is in section 5.

A term will either be defined in the Dictionary itself, or in another provision of this Act. If another provision defines the term, the Dictionary will have a signpost to that definition.

Subdivision B—The Dictionary

5 The Dictionary

(1) In this Act:

approved form means a form approved under section 146.

AUKUS submarine: see subsection 7(1).

Australian Naval Nuclear Power Safety Inspector means any of the following:

- (a) the Director-General;
- (b) the Deputy Director-General;
- (c) an individual in respect of whom an appointment is in force under section 86.

Australian naval nuclear power safety licence: see section 27.

Australian submarine: see subsection 7(2).

authorised person, in relation to a licence, means a person authorised to conduct a regulated activity under the licence (see paragraphs 27(a) and (b)).

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Note: Other parts of speech and grammatical forms of “authorised person” (for example, “person authorised”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

civil penalty order has the same meaning as in the Regulatory Powers Act.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Commonwealth company has the same meaning as in subsection 89(1) of the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth contractor: see subsection 29(2).

Commonwealth entity has the same meaning as in section 10 of the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth officer means:

- (a) a Minister; or
- (b) an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of a non-corporate Commonwealth entity, including (to avoid doubt):
 - (i) a member of the Australian Defence Force; and
 - (ii) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*).

Commonwealth-related person: see subsection 29(1).

corporate Commonwealth entity has the same meaning as in paragraph 11(a) of the *Public Governance, Performance and Accountability Act 2013*.

defence staff member means any of the following:

- (a) the Chief of the Defence Force or the Vice Chief of the Defence Force;
- (b) the Chief of Navy, the Chief of Army or the Chief of Air Force;

- (c) a member of the Permanent Forces (within the meaning of the *Defence Act 1903*);
- (d) a member of the Reserves (within the meaning of the *Defence Act 1903*);
- (e) the Secretary of the Department or an APS employee in the Department;
- (f) the Head of the Australian Submarine Agency or an APS employee in the Australian Submarine Agency.

Deputy Director-General means the Deputy Director-General of the Australian Naval Nuclear Power Safety Regulator appointed under section 109 for the purposes of section 108.

designated zone: see subsection 10(2).

Director-General means the Director-General of the Australian Naval Nuclear Power Safety Regulator appointed under section 109 for the purposes of section 106.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

Note: Other parts of speech and grammatical forms of “engage in conduct” (for example, “engages in conduct”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

evidential material means any of the following:

- (a) a thing with respect to which an offence provision, or a civil penalty provision, of this Act has been contravened or is suspected, on reasonable grounds, to have been contravened;
- (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence provision or a civil penalty provision;
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence provision or a civil penalty provision.

facility activity: see section 11.

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Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

foreign naval or government vessel means any of the following:

- (a) a warship or other vessel that:
 - (i) is operated for naval or military purposes by a foreign country; and
 - (ii) is under the command of a member of the armed forces of the foreign country; and
 - (iii) bears external marks of nationality; and
 - (iv) is manned by seafarers under armed forces discipline (however described);
- (b) a vessel that is used by a foreign country, for the time being, on government non-commercial service as a naval auxiliary;
- (c) a vessel used by a foreign country, for the time being, for customs or law enforcement purposes.

function includes power, obligation or duty.

identity card, in relation to an inspector, means a card issued to the inspector under section 87.

improvement notice: see subsection 77(1).

inspector means an Australian Naval Nuclear Power Safety Inspector.

investigation area means any of the following (including while it is not complete):

- (a) an Australian submarine;
- (b) a designated zone;
- (c) an NNP facility or other premises within a designated zone;
- (d) any other premises;

but does not include a foreign naval or government vessel.

Note: An investigation area may not be complete because, for example, it is being constructed or disposed of.

investigation powers: see section 48 and subsections 49(2) and 52(2).

investigation warrant means:

- (a) a warrant issued by an issuing officer under section 68; or
- (b) a warrant signed by an issuing officer under section 69.

ionising radiation: see subsection 15(3).

issuing officer: see subsection 95(1).

licence: means an Australian naval nuclear power safety licence.

material activity: see section 14.

member of the Regulator: see subsection 101(2).

monitoring area means any of the following (including while it is not complete):

- (a) an Australian submarine;
 - (b) a designated zone;
 - (c) an NNP facility or other premises within a designated zone;
- but does not include a foreign naval or government vessel.

Note: A monitoring area may not be complete because, for example, it is being constructed or disposed of.

monitoring powers: see section 41 and subsection 42(1).

NNP equipment or plant: see subsection 15(2).

NNP facility: see section 12.

NNP material: see subsection 15(1).

non-corporate Commonwealth entity has the same meaning as in paragraph 11(b) of the *Public Governance, Performance and Accountability Act 2013*.

non-ionising radiation: see subsection 15(4).

nuclear safety includes:

- (a) in all cases—protecting the health and safety of people, and the environment, from the harmful effects of ionising radiation and non-ionising radiation; and

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- (b) in relation to an activity that is a regulated activity—the following matters to the extent they relate to the matters in paragraph (a):
- (i) the implementation of proper operating conditions for the activity;
 - (ii) the prevention of accidents relating to the activity;
 - (iii) the mitigation of the consequences of such accidents (if they occur).

nuclear safety incident: see subsection 21(2).

occupier, in relation to a monitoring area, an investigation area or premises, includes an individual present in the area or premises who is in apparent control of the area or premises.

offence provision, of this Act, includes an offence provision of the *Crimes Act 1914* or the *Criminal Code* to the extent that it relates to this Act.

Note: See also section 140.

Osborne designated zone: see subsection 10(4).

paid work: see subsection 114(2).

person assisting an inspector: see subsection 88(1).

premises includes the following:

- (a) a structure, building, vehicle, vessel or aircraft, that is in Australia;
 - (b) a place (whether or not enclosed or built on) that is in Australia;
 - (c) a part of a thing referred to in paragraph (a) or (b);
- but does not include a foreign naval or government vessel.

prohibition notice: see subsection 78(2).

radioactive waste management facility includes a facility for managing, storing or disposing of radioactive waste.

reasonably practicable: see subsection (2).

regulated activity: see section 9.

Regulator means the Australian Naval Nuclear Power Safety Regulator established under section 100.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

relevant person, in relation to a monitoring area or an investigation area, means the following:

- (a) if the area is an Australian submarine or another vessel—the commanding officer of the submarine or master of the vessel, or an individual who apparently represents the commanding officer or master;
- (b) if the area is an aircraft—the pilot in command, a crew member, or the operator, of the aircraft, or an individual who apparently represents the pilot in command or the operator of the aircraft;
- (c) otherwise—any owner or occupier of the area, or an individual who apparently represents an owner or occupier of the area.

spent nuclear fuel means nuclear fuel that has been irradiated in a nuclear reactor core and permanently removed from the core.

staff of the Regulator means the persons referred to in subsection 118(1).

Stirling designated zone: see subsection 10(3).

submarine activity: see section 13.

this Act includes instruments made under this Act.

UK/US submarine: see subsection 7(3).

- (2) **Reasonably practicable**, in relation to a duty imposed on a person under subsection 18(1), 20(1), 22(1) or 24(1) to ensure nuclear safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring nuclear safety, taking into account and weighing up all relevant matters, including:

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- (a) the likelihood of the hazard or risk concerned eventuating;
and
- (b) the degree of harm that might result from the hazard or risk concerned eventuating; and
- (c) what the person concerned knows, or ought reasonably to know, about:
 - (i) the hazard or the risk concerned; and
 - (ii) ways of eliminating or minimising the hazard or risk concerned; and
- (d) the availability and suitability of ways to eliminate or minimise the hazard or risk concerned; and
- (e) after assessing the extent of the hazard or risk concerned and the available ways of eliminating or minimising the hazard or risk concerned, the cost associated with available ways of eliminating or minimising the hazard or risk concerned, including whether the cost is grossly disproportionate to the hazard or risk concerned.

Division 3—Core provisions

Subdivision A—Objects of this Act

6 Objects of this Act

The objects of this Act are:

- (a) to promote the nuclear safety of activities relating to AUKUS submarines; and
- (b) to promote public confidence and trust in relation to the nuclear safety of Australia's nuclear-powered submarine enterprise; and
- (c) to promote the defence and interests of Australia; and
- (d) to support the AUKUS partnership.

7 What are AUKUS submarines?

- (1) An *AUKUS submarine* is:
 - (a) an Australian submarine; or
 - (b) a UK/US submarine;and includes such a submarine that is not complete (for example, because it is being constructed).
- (2) An *Australian submarine* is a conventionally-armed, nuclear-powered submarine operated, or under construction or being disposed of in Australia, for naval or military purposes by Australia.
- (3) An *UK/US submarine* is a conventionally-armed, nuclear-powered submarine operated, or under construction in Australia, for naval or military purposes by the United Kingdom or the United States of America.

8 Regulating persons when they conduct regulated activities

For the purposes of achieving the objects of this Act, this Act has rules that apply to persons when they conduct regulated activities.

Section 8A

- Note 1: Regulated activities are activities that relate to AUKUS submarines. For what is a regulated activity, see sections 9 to 15.
- Note 2: People who conduct regulated activities must comply with nuclear safety duties (see Part 2 for those duties). A person who breaches a nuclear safety duty may be subject to civil or criminal penalties (Part 2 also deals with penalties for breaches).

8A Prohibition on storage and disposal of spent nuclear fuel that is not from an Australian submarine

- (1) Nothing in this Act is to be taken to authorise the following:
 - (a) the storage in Australia of spent nuclear fuel that is not from an Australian submarine;
 - (b) the disposal in Australia of spent nuclear fuel that is not from an Australian submarine.
- (2) The Regulator must not issue a licence in respect of an activity to which subsection (1) applies.

8B Prohibition on certain kinds of construction, etc.

- (1) Nothing in this Act is to be taken to authorise the construction or operation of any of the following:
 - (a) a nuclear fuel fabrication plant;
 - (b) a nuclear power plant;
 - (c) an enrichment plant;
 - (d) a reprocessing facility.
- (2) Paragraph (1)(b) does not apply to a nuclear power plant (however described) that is related to use in an AUKUS submarine.
- (3) The Regulator must not issue a licence in respect of the construction or operation of a plant or facility to which subsection (1) applies.

Subdivision B—Regulated activities

9 What are regulated activities?

There are 3 types of *regulated activity*:

- (a) a facility activity; and
- (b) a submarine activity; and
- (c) a material activity.

10 Regulated activities and designated zones

- (1) Regulated activities can only occur in a designated zone or in relation to an Australian submarine.

Note: Facility activities can only occur in a designated zone, and submarine activities and material activities can occur either in a designated zone or in relation to an Australian submarine.

- (2) Each of the following is a **designated zone**:
- (a) the Stirling designated zone;
 - (b) the Osborne designated zone;
 - (c) any other area in Australia that is prescribed by the regulations to be a designated zone.
- (3) The **Stirling designated zone** is the area known as HMAS *Stirling* at Garden Island in Western Australia, as described by the regulations.
- (4) The **Osborne designated zone** is the area known as Osborne Naval Shipyard in South Australia, as described by the regulations.

Subdivision C—Facility activities (first type of regulated activity)

11 What are facility activities?

Each of the following is a **facility activity**:

- (a) preparing a site for an NNP facility in a designated zone;
- (b) constructing an NNP facility in a designated zone;
- (c) having possession or control of an NNP facility in a designated zone;
- (d) operating an NNP facility in a designated zone;
- (e) decommissioning an NNP facility in a designated zone;
- (f) disposing of an NNP facility in a designated zone.

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Note: Paragraphs (a) to (f) are not necessarily mutually exclusive of each other.

12 What are NNP facilities?

An *NNP facility* (short for naval nuclear propulsion facility) is any of the following facilities:

- (a) a facility for constructing an AUKUS submarine;
- (b) a facility for maintaining naval nuclear propulsion plant from, or for use on, an AUKUS submarine;
- (c) a facility for storing naval nuclear propulsion plant from, or for use on, an AUKUS submarine;
- (d) a radioactive waste management facility that:
 - (i) is for managing, storing or disposing of radioactive waste from an AUKUS submarine; and
 - (ii) has an activity that is greater than the activity level prescribed by the regulations.

Note: Paragraphs (a) to (d) are not necessarily mutually exclusive of each other.

Subdivision D—Submarine activities (second type of regulated activity)

13 What are submarine activities?

Each of the following is a *submarine activity*:

- (a) constructing an AUKUS submarine in a designated zone;
- (b) having possession or control of an Australian submarine;
- (c) operating an Australian submarine;
- (d) maintaining an Australian submarine;
- (e) decommissioning an Australian submarine;
- (f) disposing of an Australian submarine.

Note: Paragraphs (a) to (f) are not necessarily mutually exclusive of each other.

Subdivision E—Material activities (third type of regulated activity)

14 What are material activities?

- (1) Each of the following is a *material activity*:
 - (a) having possession or control of NNP material or NNP equipment or plant in a designated zone or an Australian submarine;
 - (b) using NNP material in a designated zone or an Australian submarine;
 - (c) using or operating NNP equipment or plant in a designated zone or an Australian submarine;
 - (d) maintaining, storing or disposing of NNP material or NNP equipment or plant in a designated zone or an Australian submarine.

Note: Paragraphs (a) to (d) are not necessarily mutually exclusive of each other.

- (2) However, an activity covered by subsection (1) is not a *material activity* if the regulations prescribe that the activity is not a material activity.

15 What are NNP material and NNP equipment or plant?

- (1) *NNP material* (short for naval nuclear propulsion material) means any natural or artificial material (whether in solid or liquid form, or in the form of a gas or vapour) that:
 - (a) emits ionising radiation spontaneously; and
 - (b) is from, or for use on, an AUKUS submarine.
- (2) *NNP equipment or plant* (short for naval nuclear propulsion equipment or plant) means any equipment or plant from, or for use on, an AUKUS submarine, that:
 - (a) produces ionising radiation when energised or that would, if assembled or repaired, be capable of producing ionising radiation when energised; or
 - (b) produces ionising radiation because it contains radioactive material; or

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- (c) both:
 - (i) produces harmful non-ionising radiation when energised; and
 - (ii) is prescribed by the regulations.
- (3) ***Ionising radiation*** is electromagnetic or particulate radiation capable of producing ions directly or indirectly, but does not include electromagnetic radiation of a wavelength greater than 100 nanometres.
- (4) ***Non-ionising radiation*** is electromagnetic radiation of a wavelength greater than 100 nanometres.

Subdivision F—The Regulator

16 The Regulator

For the purposes of achieving the objects of this Act, this Act:

- (a) establishes the Australian Naval Nuclear Power Safety Regulator; and
- (b) confers functions on the Regulator in relation to regulated activities (such as promoting, monitoring and enforcing compliance with this Act); and
- (c) ensures the independence of the Regulator.

Note: Part 5 deals with the Regulator.

Part 2—Ensuring nuclear safety when conducting regulated activities

Division 1—Simplified outline of this Part

17 Simplified outline of this Part

There are nuclear safety duties that apply to people when they conduct regulated activities. Division 2 deals with these duties.

There are nuclear safety duties that apply to any person who conducts a regulated activity. These are duties to ensure nuclear safety, and to be authorised by a licence, when conducting those activities. Subdivision A of Division 2 deals with these duties.

Licence holders are subject to nuclear safety duties that apply just to them, such as the duty to establish, implement and maintain a nuclear safety management system, report nuclear safety incidents and comply with licence conditions. Subdivision B of Division 2 deals with the duties applying to licence holders.

People who are authorised by a licence to conduct a regulated activity are also subject to nuclear safety duties that apply just to them, such as the duty to implement and comply with the nuclear safety management system and comply with licence conditions. Subdivision C of Division 2 deals with the duties applying to authorised persons.

A person who breaches a nuclear safety duty may be subject to civil or criminal penalties for the breach. There are varying levels of civil and criminal penalties, depending on the duty involved and the person to whom the duty applies.

Division 2—Nuclear safety duties

Subdivision A—Nuclear safety duties applying to all persons conducting regulated activities

18 General nuclear safety duty

- (1) A person who conducts a regulated activity must, so far as reasonably practicable, ensure nuclear safety when conducting the activity.

Civil penalty provisions

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

Civil penalty: 10,000 penalty units.

- (3) A person is liable to a civil penalty if:
- (a) the person contravenes subsection (1); and
 - (b) a nuclear safety incident occurs; and
 - (c) the contravention caused or contributed to the nuclear safety incident.

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

Civil penalty: 20,000 penalty units.

Offences

- (4) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct is a regulated activity; and
 - (c) the conduct results in a contravention of subsection (1).
- Penalty:
- (a) for an individual—imprisonment for 12 years or 700 penalty units, or both; or
 - (b) for a body corporate—28,000 penalty units.
- (5) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct is a regulated activity; and
 - (c) the conduct results in a contravention of subsection (1); and
 - (d) a nuclear safety incident occurs; and
 - (e) the person is reckless, or negligent, as to whether the conduct would cause or contribute to the nuclear safety incident.
- Penalty:
- (a) for an individual—imprisonment for 25 years or 1,400 penalty units, or both; or
 - (b) for a body corporate—57,500 penalty units.
- (6) Strict liability applies to paragraphs (4)(b) and (5)(b) and (d).

19 Duty to be authorised by a licence

- (1) A person must not conduct a regulated activity if the person does not hold a licence authorising the person to conduct the regulated activity.

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

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Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

Civil penalty: 5,000 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person conducts an activity; and
 - (b) the activity is a regulated activity; and
 - (c) the person does not hold a licence authorising the person to conduct the regulated activity.

Penalty:

- (a) for an individual—imprisonment for 6 years or 350 penalty units, or both; or
 - (b) for a body corporate—14,000 penalty units.
- (4) Strict liability applies to paragraphs (3)(b) and (c).

Exception

- (5) Subsections (2) and (3) do not apply if:
- (a) the person is not the holder of a licence but is authorised by a licence to conduct the regulated activity; or
 - (b) an exemption granted under section 144 applies to the person in relation to the activity.

Note 1: For the purposes of subsection (2), a defendant bears an evidential burden in relation to the matter in subsection (5) (see section 96 of the Regulatory Powers Act).

Note 2: For the purposes of subsection (3), a defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Subdivision B—Nuclear safety duties applying to licence holders

20 Duty on licence holders—nuclear safety management systems

- (1) A person who is the holder of a licence must establish, implement and maintain a nuclear safety management system that ensures, so far as reasonably practicable, the nuclear safety of regulated activities conducted by the licence holder and other persons authorised by the licence.

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

Civil penalty: 5,000 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person is the holder of a licence; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes subsection (1).

Penalty:

- (a) for an individual—imprisonment for 6 years or 350 penalty units, or both; or
 - (b) for a body corporate—14,000 penalty units.
- (4) Strict liability applies to paragraph (3)(a).

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21 Duty on licence holders—reporting nuclear safety incidents

- (1) A person who is the holder of a licence must report, in accordance with subsection (3), any nuclear safety incident that occurs in relation to a regulated activity authorised by the licence.

Note: A person covered by this subsection may also have a duty under another law of the Commonwealth to report the incident to another entity.

- (2) An incident is a **nuclear safety incident** if:
- (a) it relates to nuclear safety; and
 - (b) it:
 - (i) results in, or could have resulted in, the death of, serious injury to, or serious illness in, an individual; or
 - (ii) results in, or could have resulted in, a serious environmental incident; or
 - (iii) is of a kind prescribed by the regulations.
- (3) The report under subsection (1):
- (a) must be given to the Regulator immediately after the person becomes aware of the incident; and
 - (b) must be in writing, or may be given orally but must be confirmed by written notice given to the Regulator as soon as practicable after being given orally; and
 - (c) must be in the approved form (if any); and
 - (d) must contain the information (if any) prescribed by the regulations; and
 - (e) must be given to the Regulator in the manner (if any) prescribed by the regulations.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must

not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

Civil penalty: 5,000 penalty units.

Offence

- (5) A person commits an offence if:
- (a) the person is the holder of a licence; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes subsection (1).

Penalty:

- (a) for an individual—imprisonment for 6 years or 350 penalty units, or both; or
 - (b) for a body corporate—14,000 penalty units.
- (6) Strict liability applies to paragraphs (5)(a) and (c).

22 Duty on licence holders—competence and supervision

- (1) A person who is the holder of a licence must, so far as reasonably practicable, ensure that:
- (a) the persons authorised to conduct regulated activities under the licence have the appropriate expertise, training and information to ensure the nuclear safety of those activities; and
 - (b) those activities are appropriately supervised.

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

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Civil penalty: 5,000 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person is the holder of a licence; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes subsection (1).

Penalty:

- (a) for an individual—imprisonment for 6 years or 350 penalty units, or both; or
 - (b) for a body corporate—14,000 penalty units.
- (4) Strict liability applies to paragraph (3)(a).

23 Duty on licence holders—complying with licence conditions

- (1) A person who is the holder of a licence must comply with the conditions of the licence that apply to the person.

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

Civil penalty: 5,000 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person is the holder of a licence; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes a licence condition.
-

Penalty:

- (a) for an individual—imprisonment for 6 years or 350 penalty units, or both; or
 - (b) for a body corporate—14,000 penalty units.
- (4) Strict liability applies to paragraphs (3)(a) and (c).

Exception

- (5) Subsections (2) and (3) do not apply if an exemption granted under section 144 applies to the person in relation to the licence condition.

Note 1: For the purposes of subsection (2), a defendant bears an evidential burden in relation to the matter in subsection (5) (see section 96 of the Regulatory Powers Act).

Note 2: For the purposes of subsection (3), a defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Subdivision C—Nuclear safety duties applying to persons authorised by a licence

24 Duty on authorised persons—nuclear safety management systems

- (1) A person who is authorised to conduct a regulated activity under a licence must, so far as reasonably practicable, implement and comply with the nuclear safety management system that applies to the regulated activity.

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

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Civil penalty: 2,500 penalty units.

Offence

- (3) A person commits an offence if:
- (a) the person is authorised to conduct a regulated activity under a licence; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes subsection (1).

Penalty:

- (a) for an individual—imprisonment for 3 years or 175 penalty units, or both; or
 - (b) for a body corporate—7,000 penalty units.
- (4) Strict liability applies to paragraph (3)(a).

25 Duty on authorised persons—complying with licence conditions

- (1) A person who is authorised by a licence (other than the licence holder) must comply with the conditions of the licence that apply to the person.

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Note 2: Under subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty imposed for a contravention of a civil penalty provision must not be more than that specified for the provision (or, for a body corporate, not more than 5 times that specified).

Civil penalty: 2,500 penalty units.

Offence

- (3) A person commits an offence if:
- (a) a person is authorised by a licence; and

- (b) the person engages in conduct; and
- (c) the conduct contravenes a licence condition.

Penalty:

- (a) for an individual—imprisonment for 3 years or 175 penalty units, or both; or
 - (b) for a body corporate—7,000 penalty units.
- (4) Strict liability applies to paragraphs (3)(a) and (c).

Exception

- (5) Subsections (2) and (3) do not apply if an exemption granted under section 144 applies to the person in relation to the licence condition.

Note 1: For the purposes of subsection (2), a defendant bears an evidential burden in relation to the matter in subsection (5) (see section 96 of the Regulatory Powers Act).

Note 2: For the purposes of subsection (3), a defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Part 3—Australian naval nuclear power safety licences

Division 1—Simplified outline of this Part

26 Simplified outline of this Part

A person must be authorised by an Australian naval nuclear power safety licence to conduct a regulated activity, and comply with the conditions of the licence (see sections 19, 23 and 25 for the offences and civil penalty provisions relating to this).

Only Commonwealth-related persons can apply to the Regulator for a licence and be a licence holder (see section 29 for who are Commonwealth-related persons).

However, other people may also be authorised under the licence (see paragraphs 27(a) and (b) for who is authorised under a licence).

On receiving an application for a licence, the Regulator must decide whether to issue the licence. The Regulator can also impose conditions on the licence, as well as vary, suspend or cancel the licence.

Division 2—Australian naval nuclear power safety licences

27 Australian naval nuclear power safety licences

An *Australian naval nuclear power safety licence* authorises:

- (a) the licence holder; and
- (b) a person, or class of persons, specified in the licence as being an authorised person;

to conduct one or more regulated activities that are specified in the licence, subject to the conditions of the licence.

28 Who may apply for a licence?

A Commonwealth-related person may apply for a licence.

29 Who are Commonwealth-related persons?

(1) A *Commonwealth-related person* is:

- (a) the Commonwealth; or
- (b) a corporate Commonwealth entity; or
- (c) a Commonwealth company; or
- (d) a Commonwealth contractor.

(2) A person is a *Commonwealth contractor* if:

- (a) the person is not a person referred to in paragraph (1)(a), (b) or (c); and
- (b) the person is a party to a contract with a person referred to in any of those paragraphs; and
- (c) the contract relates to a regulated activity.

30 Requirements of the application

(1) An application for a licence must:

- (a) specify the regulated activity to be authorised by the licence; and
- (b) specify the persons, or class of persons, to be authorised to conduct the regulated activity; and

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- (c) specify the period of the licence; and
 - (d) for a licence to authorise a facility activity—specify the designated zone, and the area within that zone, in which the facility activity may be conducted under the licence; and
 - (e) for a licence to authorise a submarine activity:
 - (i) for a submarine activity referred to in paragraph 13(a)—specify the designated zone, and the area within that zone, in which the submarine activity may be conducted under the licence; or
 - (ii) for any other submarine activity—specify the Australian submarine in relation to which the submarine activity may be conducted under the licence; and
 - (f) for a licence to authorise a material activity—specify:
 - (i) the designated zone or Australian submarine; and
 - (ii) the area within that zone or submarine;in which the material activity may be conducted under the licence; and
 - (g) for an application made by the Commonwealth—specify the non-corporate Commonwealth entity or Commonwealth officer who is making the application on behalf of the Commonwealth; and
 - (h) be in writing; and
 - (i) be in the approved form (if any); and
 - (j) contain the information (if any) prescribed by the regulations; and
 - (k) be accompanied by the documents (if any) prescribed by the regulations; and
 - (l) be given to the Regulator in the manner (if any) prescribed by the regulations.
- (2) To avoid doubt, the application may relate to:
- (a) one or more regulated activities; and
 - (b) one or more designated zones, or areas of designated zones; and
 - (c) one or more AUKUS submarines.

30A Regulator may require further information

- (1) The Regulator may, by written notice given to the applicant for a licence, require the applicant to give the Regulator further information in connection with the application.
- (2) Any information required under subsection (1) must be of a kind prescribed by the regulations.
- (3) The Regulator may make the requirement under subsection (1) at any time before the Regulator makes a decision on the application under section 31, whether before or after the Regulator has begun to consider the application.
- (4) If the Regulator makes a requirement under subsection (1) in relation to an application, the Regulator may refuse to consider, or further consider, the application until the further information required has been given to the Regulator.

31 Issuing licences

- (1) If a Commonwealth-related person makes an application for a licence under section 28, the Regulator may issue, or refuse to issue, the licence to the person.
- (2) In deciding whether to issue a licence, the Regulator must:
 - (a) be satisfied:
 - (i) that the applicant will be able to comply with the conditions of the licence; and
 - (ii) of any matter prescribed by the regulations; and
 - (b) take into account:
 - (i) international best practice in relation to nuclear safety that is relevant to naval nuclear propulsion; and
 - (ii) any matter prescribed by the regulations.
- (3) A licence under subsection (1) may authorise:
 - (a) any or all of the regulated activities specified in the application; and
 - (b) any or all of the persons, or class of persons, specified in the application; and

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- (c) regulated activities to be conducted in any or all of the designated zones, or areas in those zones, specified in the application.
- (4) A licence issued to the Commonwealth may be issued in the name of the non-corporate Commonwealth entity or Commonwealth officer who made the application for the licence on behalf of the Commonwealth.

32 Licence conditions

- (1) A licence is subject to all of the following conditions:
 - (a) the condition set out in subsection (2);
 - (b) the conditions prescribed by the regulations;
 - (c) conditions specified by the Regulator in the licence at the time of issuing the licence;
 - (d) any conditions specified by the Regulator under subsection 34(2) after the licence is issued.
- (2) A licence is subject to the condition that the licence holder must take all reasonably practicable steps to prevent:
 - (a) breaches of the licence conditions that apply to the licence holder (other than this condition); and
 - (b) breaches of any licence conditions that apply to persons authorised to conduct regulated activities under the licence.
- (3) A condition may be prescribed or specified for the purposes of paragraph (1)(b) or (c) only if the condition is necessary to ensure nuclear safety.
- (4) Without limiting the conditions that may be prescribed or specified for the purposes of paragraph (1)(b) or (c), conditions about the following matters may be prescribed or specified for the purposes of those paragraphs:
 - (a) nuclear safety management systems;
 - (b) nuclear safety incident reporting;
 - (c) the expertise, training and supervision of authorised persons;
 - (d) plans or arrangements about any of the following:
 - (i) nuclear safety;

- (ii) organisational structure, resourcing and culture relating to nuclear safety;
- (iii) interaction with other regulated activities conducted in the same designated zone or in relation to the same Australian submarine by persons other than those authorised by the licence (for example, by persons authorised by another licence);
- (iv) emergency preparedness and response;
- (v) prevention and minimisation of nuclear safety incidents;
- (vi) prevention and minimisation of errors (whether human, mechanical, system or otherwise) and organisational failures;
- (vii) protection of the environment;
- (viii) investigation and reporting of breaches of licence conditions;
- (ix) record-keeping;
- (x) compliance with applicable standards and codes;
- (xi) maintaining effective control over regulated activities;
- (xii) security;
- (xiii) interaction with obligations imposed by other laws;
- (xiv) management of radioactive waste;
- (xv) disposal or decommissioning of something relating to a regulated activity.

33 Period of licences

- (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 34(2)(d)), unless earlier cancelled or surrendered.

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- (3) However, a licence is not in force during any period it is suspended, to the extent it is suspended.

34 Varying licences

- (1) The Regulator may, by notice in writing given to the licence holder, vary a licence.
- (2) Without limiting subsection (1), the Regulator may:
- (a) impose additional licence conditions; or
 - (b) remove or vary licence conditions that were imposed by the Regulator; or
 - (c) extend or reduce the authority granted by the licence (including by adding or removing the regulated activities authorised by the licence, or by adding or removing persons or classes of persons authorised to conduct regulated activities); or
 - (d) if the licence was issued for a specified period—extend that period.
- (3) A licence may be varied under subsection (1):
- (a) on written application by the licence holder; or
 - (b) on the Regulator’s own initiative.
- (4) A notice given under subsection (1) is not a legislative instrument.

35 Suspending or cancelling licences

Discretionary power to suspend or cancel licence

- (1) The Regulator 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 authorised by the licence; or
 - (b) the Regulator believes on reasonable grounds that the licence holder, or a person authorised by the licence, has:
 - (i) committed an offence against this Act; or
 - (ii) contravened a civil penalty provision of this Act; or
 - (c) the licence was obtained improperly.

- (2) A licence may be suspended or cancelled under subsection (1):
- (a) on written application by the licence holder; or
 - (b) on the Regulator's own initiative.

Requirement to suspend licence

- (3) The Regulator must, by notice in writing given to the licence holder, suspend a licence if the Regulator is satisfied that the suspension is necessary for the purpose of:
- (a) protecting human life; or
 - (b) ensuring nuclear safety; or
 - (c) dealing with an emergency involving a serious threat to the environment.

Special provisions for suspending licences

- (4) A licence may be suspended under subsection (1) or (3) wholly or to the extent specified in writing by the Regulator.
- (5) A suspension:
- (a) comes into force on the day specified by the Regulator in writing or, if no day is so specified, on the day the licence holder is notified in writing of the suspension; and
 - (b) remains in force until:
 - (i) the end of the period specified in writing by the Regulator, which must not exceed the period prescribed by the regulations; or
 - (ii) if no period is specified—the end of the period prescribed by the regulations;unless it is cancelled or surrendered earlier.
- (6) A period referred to in subparagraph (5)(b)(i) may be specified by reference to the fulfilment of a requirement or condition specified by the Regulator.

Instruments are not legislative instruments

- (7) A specification under subsection (5) is not a legislative instrument.

Section 36

36 Regulator to give notice before varying, suspending or cancelling licences

- (1) This section applies if:
 - (a) the Regulator is proposing to take any of the following action:
 - (i) vary a licence under subsection 34(1);
 - (ii) suspend or cancel a licence under subsection 35(1); and
 - (b) the licence holder did not apply to the Regulator under subsection 34(3) or 35(2) to take that action.
- (2) The Regulator must, before taking the action:
 - (a) give the licence holder a notice, in writing, inviting the licence holder to show cause, within a reasonable period specified in the notice, why the action should not be taken; and
 - (b) consider any representations the licence holder makes to the Regulator within that period.
- (3) A notice given under subsection (2) is not a legislative instrument.

37 Surrendering licences

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

38 Review of licence decisions

Decisions which may be reviewed

- (1) This section applies to any decisions of the Regulator under this Part (the **original decision**), other than a decision made under subsection 35(3) (which requires the Regulator to suspend a licence in certain circumstances).

Internal review

- (2) As soon as practicable after the original decision is made, a written notice must be given to the person (the **relevant person**) who is:

- (a) for a decision relating to a refusal to issue a licence, or to issue a licence on terms that are different from those applied for—the applicant for the licence; and
 - (b) for a decision relating to varying, suspending, cancelling or surrendering a licence—the licence holder.
- (3) The notice must contain:
 - (a) the terms of the decision; and
 - (b) the reasons for the decision; and
 - (c) a statement setting out particulars of the person’s right to have the decision reviewed under this section.
- (4) The relevant person may apply to the Regulator for review of the original decision unless the original decision was made by the Director-General.
- (5) An application for review under subsection (4) must:
 - (a) be in the approved form; and
 - (b) contain the information required by the regulations; and
 - (c) be made within:
 - (i) 30 days after the day on which the written notice of the decision was given to the relevant person; or
 - (ii) such longer period as allowed by the Regulator either before or after the end of the 30-day period.
- (6) The Regulator must, on receiving an application under subsection (4) for review of the original decision, cause the original decision to be reviewed by a person who is to perform the Regulator’s power under this section, being a person who:
 - (a) was not involved in making the original decision; and
 - (b) occupies a position that is senior to that occupied by any person involved in making the original decision.
- (7) A person who reviews the original decision under this section may:
 - (a) make a decision affirming, varying or revoking the original decision; and
 - (b) if the person revokes the original decision—make such other decision as the person thinks appropriate.

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- (8) A failure to comply with the requirements of subsection (2) in relation to the original decision does not affect the validity of the original decision.

AAT review

- (9) Applications may be made to the Administrative Appeals Tribunal for review of:
- (a) if the Director-General made the original decision—the original decision; or
 - (b) a decision made under subsection (7) on internal review of the original decision.

Part 4—Compliance and enforcement

Division 1—Simplified outline of this Part

39 Simplified outline of this Part

This Part sets out the powers that an inspector may exercise to monitor and ensure compliance, and investigate non-compliance, with this Act. Inspectors also have powers to investigate nuclear safety incidents.

Inspectors' powers include entering monitoring areas and investigation areas, conducting searches, operating equipment, and securing or seizing evidence. Some of the inspectors' powers may only be exercised with a warrant or consent.

Inspectors also have powers to give directions, improvement notices and prohibition notices, and to make requirements of persons.

An inspector may be assisted by other persons, called "persons assisting", who may exercise the same powers as the inspector.

The Regulatory Powers Act provides for the enforcement of civil penalty provisions of this Act.

Division 2—Monitoring

40 Entry, and exercise of powers, for monitoring purposes

- (1) An inspector may, at any time, enter a monitoring area, and exercise the monitoring powers, for the purposes of:
 - (a) determining whether this Act has been, or is being, complied with; or
 - (b) determining whether information provided under, or for the purposes of, this Act is correct; or
 - (c) investigating a nuclear safety incident if, at the time the inspector enters the monitoring area or exercises a monitoring power (other than under subsection 42(1)) in relation to the monitoring area, the inspector does not reasonably suspect that the incident involves a contravention of an offence provision, or a civil penalty provision, of this Act.

Note 1: A reference in this Part to entering a monitoring area includes a reference to boarding an Australian submarine or another vessel (see section 93).

Note 2: The *monitoring powers* are set out in section 41 and subsection 42(1).

Entry with or without consent

- (2) An inspector may enter a monitoring area under subsection (1) with or without the consent of any relevant person in relation to the monitoring area.

Note: For the definition of *relevant person* in relation to a monitoring area, see subsection 5(1).

Entry without a warrant

- (3) To avoid doubt, an inspector may enter a monitoring area, and exercise monitoring powers, in accordance with subsection (1) without a warrant.

41 Monitoring powers

General monitoring powers

- (1) The following are the **monitoring powers** that an inspector may exercise in relation to a monitoring area under section 40:
 - (a) the power to search the monitoring area and any thing in the monitoring area;
 - (b) the power to examine or observe any activity conducted in the monitoring area;
 - (c) the power to inspect, examine, take measurements of or conduct tests on any thing in the monitoring area;
 - (d) the power to make any still or moving image or any recording (including a sound recording) of the monitoring area, or of any person, conversation or any thing in the monitoring area;
 - (e) the power to inspect any document in the monitoring area;
 - (f) the power to take extracts from, or make copies of, any such document;
 - (g) the power to take into the monitoring area such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the monitoring area;
 - (h) the powers set out in subsections (2) and (3) and subsection 42(1).

Powers relating to operating equipment

- (2) The **monitoring powers** include the power to:
 - (a) operate equipment in the monitoring area; and
 - (b) use a device that is in the monitoring area and can be used with the equipment or is associated with it;to determine whether the equipment or the device contains information relevant to a purpose referred to in paragraph 40(1)(a), (b) or (c).
- (3) If information referred to in subsection (2) is found in the exercise of the power under that subsection, the **monitoring powers** include the following powers:

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- (a) the power to operate equipment in the monitoring area to put the information in documentary form and remove the documents from the monitoring area;
 - (b) the power to operate equipment in the monitoring area to transfer the information to a device that:
 - (i) is brought into the monitoring area for the exercise of the power; or
 - (ii) is in the monitoring area and the use of which for that purpose has been agreed in writing by a relevant person in relation to the monitoring area;and remove the device from the monitoring area.
- (4) An inspector may operate equipment as mentioned in subsection (2) or (3) only if the inspector reasonably believes that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to equipment, see section 96.

42 Securing evidence

Power to secure evidence

- (1) The **monitoring powers** include the power to secure a thing for up to 72 hours if:
- (a) the thing is found during the exercise of a monitoring power under section 41; and
 - (b) an inspector reasonably believes that:
 - (i) a provision of this Act (including an offence provision, or a civil penalty provision, of this Act) has been contravened with respect to the thing; or
 - (ii) the thing affords evidence of the contravention of a provision referred to in subparagraph (i); or
 - (iii) the thing is intended to be used for the purpose of contravening a provision referred to in subparagraph (i); or
 - (iv) the thing affords evidence that information provided under, or for the purposes of, this Act is not correct; or

- (v) the thing affords evidence in relation to an incident referred to in paragraph 40(1)(c); and
- (c) the inspector reasonably believes that it is necessary:
 - (i) to secure the thing in order to prevent it from being concealed, lost or destroyed during the period; and
 - (ii) to secure the thing without a warrant because it is not practicable to obtain a warrant or the circumstances are serious and urgent.

Note 1: It may be necessary to secure a thing in order to prevent it from being concealed, lost or destroyed while a warrant to seize the thing is sought.

Note 2: The period for which a thing may be secured may be extended (see section 44).

- (2) The thing may be secured by locking it up, placing a guard or any other means.

Reporting exercise of power

- (3) If an inspector exercises a power under this section, the inspector must give the Director-General a report describing:
 - (a) the exercise of the power; and
 - (b) the grounds for the inspector's belief under paragraph (1)(c).
- (4) A report under subsection (3) must be given as soon as practicable, but no later than 28 days, after the exercise of the power.

43 Additional powers in relation to evidential material

- (1) This section applies if:
 - (a) a thing is found during the exercise of a monitoring power under section 41; and
 - (b) an inspector reasonably believes that:
 - (i) the thing is evidential material; and
 - (ii) any of the powers under subsection (2) needs to be exercised without a warrant because it is not practicable to obtain a warrant or the circumstances are serious and urgent.

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- (2) The inspector may exercise any of the following powers:
- (a) the power to take a sample of the thing and remove the sample from the monitoring area;
 - (b) if the inspector is reasonably satisfied that securing the thing under section 42 is not sufficient in the circumstances—the power to seize the thing.
- (3) However, if the thing is equipment or a device that has been operated under subsection 41(2), the inspector may seize the thing under paragraph (2)(b) only if:
- (a) it is not practicable to put all the evidential material the thing contains in documentary form as mentioned in paragraph 41(3)(a) or to transfer all the evidential material as mentioned in paragraph 41(3)(b); or
 - (b) possession of the equipment or device by a relevant person in relation to the monitoring area could constitute an offence against a law of the Commonwealth, a State or a Territory.

Additional provisions applying to seizure of thing

- (4) Subdivision D of Division 3 (General provisions relating to seizure) applies in relation to the seizure of a thing under this section as if a reference in that Subdivision to “this Division” were a reference to this section.

Reporting exercise of powers

- (5) If an inspector exercises a power under this section, the inspector must give the Director-General a report describing:
- (a) the exercise of the power; and
 - (b) the grounds for the inspector’s belief under subparagraph (1)(b)(ii).
- (6) A report under subsection (5) must be given as soon as practicable, but no later than 28 days, after the exercise of the power.

44 Extension of period for securing a thing

Application for extension

- (1) An inspector may apply to an issuing officer for an extension of the 72-hour period referred to in subsection 42(1) if the inspector reasonably believes that the thing needs to be secured for longer than that period.
- (2) Before making the application, the inspector must give notice, to a relevant person in relation to the monitoring area where the thing was found, of the inspector's intention to apply for an extension. A relevant person in relation to the monitoring area is entitled to be heard in relation to that application.

Granting the extension

- (3) The issuing officer may, by order, grant an extension of the period if the issuing officer is satisfied, by information on oath or affirmation, that it is necessary:
 - (a) to secure the thing in order to prevent it from being concealed, lost or destroyed during the period; and
 - (b) to secure the thing because the circumstances are serious and urgent.
- (4) However, the issuing officer must not grant the extension unless the inspector or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the extension is being sought.
- (5) The order extending the period must:
 - (a) describe the thing to which the order relates; and
 - (b) state the period for which the extension is granted; and
 - (c) state that the order is made under this section; and
 - (d) state that the inspector (or a person assisting the inspector) is authorised to secure the thing for that period.
- (6) The period may be extended more than once.

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45 Notification and announcement of entry

- (1) An inspector may enter a monitoring area under section 40 without prior notice to any person.
- (2) Before entering the monitoring area, the inspector must:
 - (a) announce that the inspector is authorised to enter the monitoring area under section 40; and
 - (b) show the inspector's identity card to a relevant person in relation to the monitoring area; and
 - (c) give the relevant person an opportunity to allow entry to the monitoring area.

Note: For the definition of *relevant person* in relation to a monitoring area, see subsection 5(1).

- (3) However, an inspector is not required to comply with subsection (2) if the inspector reasonably believes that immediate entry to the monitoring area is required to ensure the safety of an individual.
- (4) If:
 - (a) an inspector does not comply with subsection (2) because of subsection (3); and
 - (b) a relevant person in relation to the monitoring area is present in the monitoring area;the inspector must show the inspector's identity card to the relevant person as soon as practicable after entering the monitoring area.

46 Entering certain premises for access to monitoring area

- (1) An inspector may enter any premises (other than premises used as a residence) to gain access to a monitoring area for the purposes of section 40.
- (2) Subsection (1) does not authorise an inspector to enter premises unless the inspector has shown the inspector's identity card if required by the occupier of the premises.
- (3) However, an inspector is not required to comply with subsection (2) if the inspector reasonably believes that immediate

entry to the premises is required to ensure the safety of an individual.

- (4) If:
- (a) an inspector does not comply with subsection (2) because of subsection (3); and
 - (b) the occupier of the premises is present at the premises; the inspector must show the inspector's identity card to the occupier as soon as practicable after entering the premises.
- (5) To avoid doubt, an inspector may not enter premises under this section if the premises is a monitoring area.

Division 3—Investigation

Subdivision A—Investigation powers

47 Entering investigation area by consent or under a warrant

- (1) If an inspector reasonably suspects that there may be evidential material in an investigation area, the inspector may:
 - (a) enter the investigation area; and
 - (b) exercise the investigation powers.

Note 1: A reference in this Part to entering an investigation area includes a reference to boarding an Australian submarine or another vessel (see section 93).

Note 2: The *investigation powers* are set out in section 48 and subsections 49(2) and 52(2).

- (2) However, an inspector is not authorised to enter the investigation area unless:
 - (a) a relevant person in relation to the investigation area has consented to the entry; or
 - (b) the entry is made under an investigation warrant.

Note 1: For the definition of *relevant person* in relation to an investigation area, see subsection 5(1).

Note 2: If entry to the investigation area is with the consent of a relevant person in relation to the investigation area, the inspector must leave the investigation area if the consent ceases to have effect (see section 53).

48 Investigation powers

General investigation powers

- (1) The following are the *investigation powers* that an inspector may exercise in relation to an investigation area under section 47:
 - (a) if entry to the investigation area is with the consent of a relevant person in relation to the investigation area—the power to search the investigation area and any thing in the

- investigation area for the evidential material the inspector reasonably suspects may be in the investigation area;
- (b) if entry to the investigation area is under an investigation warrant:
 - (i) the power to search the investigation area and any thing in the investigation area for the kind of evidential material specified in the warrant; and
 - (ii) the power to seize evidential material of that kind if the inspector finds it in the investigation area;
 - (c) the power to inspect, examine, take measurements of or conduct tests on evidential material referred to in paragraph (a) or (b);
 - (d) the power to make any still or moving image or any recording (including a sound recording) of the investigation area, of any person or conversation in the investigation area, or of evidential material referred to in paragraph (a) or (b);
 - (e) the power to take into the investigation area such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the investigation area;
 - (f) the powers set out in subsections (2) and (3), 49(2) and 52(2).

Powers relating to operating equipment

- (2) The **investigation powers** include the power to:
 - (a) operate equipment in the investigation area; and
 - (b) use a device that is in the investigation area and can be used with the equipment or is associated with it;to determine whether the equipment or the device is or contains evidential material.
- (3) The **investigation powers** include the following powers in relation to evidential material found in the exercise of the power under subsection (2):
 - (a) if entry to the investigation area is under an investigation warrant—the power to seize the equipment and the device referred to in that subsection;

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- (b) the power to operate equipment in the investigation area to put the evidential material in documentary form and remove the documents from the investigation area;
 - (c) the power to operate equipment in the investigation area to transfer the evidential material to a device that:
 - (i) is brought into the investigation area for the exercise of the power; or
 - (ii) is in the investigation area and the use of which for that purpose has been agreed in writing by a relevant person in relation to the investigation area;and remove the device from the investigation area.
- (4) An inspector may operate equipment as mentioned in subsection (2) or (3) only if the inspector reasonably believes that the operation of the equipment can be carried out without damage to the equipment.
- Note: For compensation for damage to equipment, see section 96.
- (5) An inspector may seize equipment or a device as mentioned in paragraph (3)(a) only if:
- (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (3)(b) or to transfer the evidential material as mentioned in paragraph (3)(c); or
 - (b) possession of the equipment or the device by a relevant person in relation to the investigation area could constitute an offence against a law of the Commonwealth, a State or a Territory.

49 Securing equipment to obtain expert assistance

- (1) This section applies if an inspector enters an investigation area under an investigation warrant to search for evidential material.

Securing equipment

- (2) The **investigation powers** include the power to secure any equipment that is in the investigation area if the inspector reasonably suspects that:

- (a) there is evidential material of the kind specified in the warrant in the investigation area; and
- (b) the evidential material may be accessible by operating the equipment; and
- (c) expert assistance is required to operate the equipment; and
- (d) the evidential material may be destroyed, altered or otherwise interfered with, if the inspector does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

Note: See section 51 for the offence relating to interfering with the securing of, or secured, equipment.

- (3) The inspector must give notice to a relevant person in relation to the investigation area of:
 - (a) the inspector's intention to secure the equipment; and
 - (b) the fact that the equipment may be secured for up to 72 hours.

Period equipment may be secured

- (4) The equipment may be secured until the earlier of the following happens:
 - (a) the 72-hour period ends;
 - (b) the equipment has been operated by the expert.

Note 1: The period for which equipment may be secured may be extended (see section 50).

Note 2: For compensation for damage to equipment, see section 96.

50 Extension of period for securing equipment

Application for extension

- (1) An inspector may apply to an issuing officer for an extension of the 72-hour period referred to in paragraph 49(3)(b) if the inspector reasonably believes that the equipment needs to be secured for longer than that period.

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- (2) Before making the application, the inspector must give notice to a relevant person in relation to the investigation area where the equipment was found, of the inspector's intention to apply for an extension. A relevant person in relation to the investigation area is entitled to be heard in relation to that application.

Granting the extension

- (3) The issuing officer may, by order, grant an extension of the period if the issuing officer is satisfied, by information on oath or affirmation, that it is necessary to secure the equipment in order to prevent evidential material from being destroyed, altered or otherwise interfered with.
- (4) However, the issuing officer must not grant the extension unless the inspector or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the extension is being sought.

Content of order

- (5) The order extending the period must:
- (a) describe the equipment to which the order relates; and
 - (b) state the period for which the extension is granted; and
 - (c) state that the order is made under this section; and
 - (d) state that the inspector (or a person assisting the inspector) is authorised to secure the equipment for that period.
- (6) The period may be extended more than once.

51 Offence for interfering with securing of, or secured, equipment

A person commits an offence of strict liability if:

- (a) an inspector is securing, or has secured, equipment under section 49; and
- (b) the person interferes with the securing of the equipment, or the secured equipment; and
- (c) if the equipment has been secured—the period for which the equipment is secured has not ended.

Penalty: 60 penalty units.

52 Seizing other evidential material

- (1) This section applies if an inspector enters an investigation area under an investigation warrant to search for evidential material.
- (2) The *investigation powers* include seizing a thing that is not evidential material of the kind specified in the warrant if:
 - (a) in the course of searching for the kind of evidential material specified in the warrant, the inspector finds the thing; and
 - (b) the inspector reasonably believes that:
 - (i) the thing is evidential material of another kind; and
 - (ii) it is necessary to seize the thing in order to prevent its concealment, loss or destruction.

Subdivision B—Obligations and incidental powers of inspectors

53 Consent

- (1) Before obtaining the consent of a relevant person in relation to an investigation area for the purposes of paragraph 47(2)(a), an inspector must inform the relevant person that the person may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an inspector entered an investigation area because of the consent of a relevant person in relation to the investigation area, the inspector, and any person assisting the inspector, must leave the investigation area if the consent ceases to have effect.
- (6) If:

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- (a) an inspector enters an investigation area because of the consent of a relevant person in relation to the investigation area; and
 - (b) the inspector has not shown that person, or another relevant person in relation to the investigation area, the inspector's identity card before entering the investigation area;
- the inspector must do so on, or as soon as is reasonably practicable after, entering the investigation area.

54 Announcement before entry under warrant

- (1) Before entering an investigation area under an investigation warrant, an inspector must:
 - (a) announce that the inspector is authorised to enter the investigation area under section 47; and
 - (b) show the inspector's identity card to a relevant person in relation to the investigation area; and
 - (c) give the relevant person an opportunity to allow entry to the investigation area.
- (2) However, an inspector is not required to comply with subsection (1) if the inspector reasonably believes that immediate entry to the investigation area is required:
 - (a) to ensure the safety of an individual; or
 - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
 - (a) an inspector does not comply with subsection (1) because of subsection (2); and
 - (b) a relevant person in relation to the investigation area is present in the investigation area;the inspector must show the inspector's identity card to the relevant person as soon as practicable after entering the investigation area.

55 Inspector to be in possession of warrant

An inspector executing an investigation warrant must be in possession of:

- (a) the warrant issued by the issuing officer under section 68, or a copy of the warrant as so issued; or
- (b) the form of warrant completed under subsection 69(6), or a copy of the form as so completed.

56 Details of warrant etc. to be given to relevant person in relation to investigation area

- (1) An inspector must comply with subsection (2) if:
 - (a) an investigation warrant is being executed in relation to an investigation area; and
 - (b) a relevant person in relation to the investigation area is present in the investigation area.
- (2) The inspector executing the warrant must, as soon as practicable:
 - (a) do one of the following:
 - (i) if the warrant was issued under section 68—make a copy of the warrant available to a relevant person referred to in paragraph (1)(b) (which need not include the signature of the issuing officer who issued it);
 - (ii) if the warrant was signed under section 69—make a copy of the form of warrant completed under subsection 69(6) available to a relevant person referred to in paragraph (1)(b); and
 - (b) inform a relevant person referred to in paragraph (1)(b), in writing, of the rights of the relevant person under Subdivision C.

57 Completing execution after temporary cessation

- (1) This section applies if an inspector, and all persons assisting, who are executing an investigation warrant in relation to an investigation area temporarily cease its execution and leave the investigation area.
- (2) The inspector, and persons assisting, may complete the execution of the warrant if:
 - (a) the warrant is still in force; and

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- (b) the inspector and persons assisting are absent from the investigation area:
 - (i) for not more than 1 hour; or
 - (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by an issuing officer under subsection (5); or
 - (iii) for a longer period if a relevant person in relation to the investigation area consents in writing.

Application for extension in emergency situation

- (3) An inspector, or person assisting, may apply to an issuing officer for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
 - (a) there is an emergency situation; and
 - (b) the inspector or person assisting reasonably believes that the inspector and the persons assisting will not be able to return to the investigation area within that period.
- (4) If it is practicable to do so, before making the application, the inspector or person assisting must give notice to a relevant person in relation to the investigation area of the intention to apply for an extension.

Extension in emergency situation

- (5) An issuing officer may extend the period during which the inspector and persons assisting may be away from the investigation area if:
 - (a) an application is made under subsection (3); and
 - (b) the issuing officer is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
 - (c) the extension would not result in the period ending after the warrant ceases to be in force.

58 Completing execution of warrant stopped by court order

An inspector, and any persons assisting, may complete the execution of a warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

59 Using force in executing a warrant

In executing an investigation warrant, an inspector may use such force against things as is necessary and reasonable in the circumstances.

Note: Persons assisting an inspector in exercising powers under this Division may also use such force against things (see subsection 88(3)).

60 Entering certain premises for access to investigation area

- (1) An inspector may enter any premises (other than premises used as a residence) to gain access to an investigation area for the purposes of section 47.
- (2) Subsection (1) does not authorise an inspector to enter premises unless the inspector has shown the inspector's identity card if required by the occupier of the premises.
- (3) However, an inspector is not required to comply with subsection (2) if the inspector reasonably believes that immediate entry to the premises is required to ensure the safety of an individual.
- (4) If:
 - (a) an inspector does not comply with subsection (2) because of subsection (3); and
 - (b) the occupier of the premises is present at the premises; the inspector must show the inspector's identity card to the occupier as soon as practicable after entering the premises.

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- (5) To avoid doubt, an inspector may not enter premises under this section if the premises is an investigation area.

Subdivision C—Rights of relevant person in relation to investigation area

61 Right to observe execution of warrant

- (1) A relevant person in relation to an investigation area to which an investigation warrant relates is entitled to observe the execution of the investigation warrant if the relevant person is present in the investigation area while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the relevant person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the investigation area at the same time.

Subdivision D—General provisions relating to seizure

62 Copies of seized things to be provided

- (1) This section applies if:
- (a) an investigation warrant is being executed in relation to an investigation area; and
 - (b) an inspector seizes one or more of the following from the investigation area under this Division:
 - (i) a document, film, computer file or other thing that can be readily copied;
 - (ii) a storage device, the information in which can be readily copied.
- (2) A relevant person in relation to the investigation area may request the inspector to give a copy of the thing or the information to the person.
- (3) The inspector must comply with the request as soon as practicable after the seizure.

- (4) However, the inspector is not required to comply with the request if possession of the document, film, computer file, thing or information by the relevant person in relation to the investigation area could constitute an offence against a law of the Commonwealth.

63 Receipts for seized things

- (1) An inspector must provide a receipt for a thing that is seized under this Division.
- (2) One receipt may cover 2 or more things seized.

64 Return of seized things

- (1) An inspector must take reasonable steps to return a thing seized under this Division when the earliest of the following happens:
- (a) the reason for the thing's seizure no longer exists;
 - (b) it is decided that the thing is not to be used in evidence;
 - (c) the period of 60 days after the thing's seizure ends.

Note: Taking reasonable steps to return a thing to a person may include advising the person that the thing can be collected by the person.

Exceptions

- (2) Subsection (1):
- (a) is subject to any contrary order of a court; and
 - (b) does not apply if the thing:
 - (i) is forfeited or forfeitable to the Commonwealth; or
 - (ii) is the subject of a dispute as to ownership.
- (3) An inspector is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and those proceedings (and any appeal from those proceedings) have not been completed; or
 - (b) the thing may continue to be retained because of an order under section 65; or

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- (c) the Commonwealth, the Regulator, the Director-General or 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, dispose of or otherwise deal with the thing.

Return of thing

- (4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

65 Issuing officer may permit a seized thing to be retained

- (1) An inspector may apply to an issuing officer for an order permitting the retention of a thing seized under this Division for a further period if proceedings in respect of which the thing may afford evidence have not commenced before the end of:
 - (a) 60 days after the seizure; or
 - (b) a period previously specified in an order of an issuing officer under this section.
- (2) 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.
- (3) Any person notified under paragraph (2)(b) is entitled to be heard in relation to the application.

Order to retain thing

- (4) The issuing officer may order that the thing may continue to be retained for a period specified in the order if the issuing officer is satisfied that it is necessary for the thing to continue to be retained:
 - (a) for the purposes of an investigation as to whether an offence provision, or a civil penalty provision, of this Act has been contravened; or

- (b) to enable evidence of a contravention mentioned in paragraph (a) to be secured for the purposes of a prosecution or an action to obtain a civil penalty order.
- (5) The period specified must not exceed 3 years.

66 Disposal of things seized

- (1) An inspector may dispose of a thing seized under this Division if:
- (a) the inspector has taken reasonable steps to return the thing to a person; and
 - (b) either:
 - (i) the inspector has been unable to locate the person; or
 - (ii) the inspector has contacted the person but the person has refused to take possession of the thing or has not taken possession of it within 3 months after the contact was made.
- (2) The inspector may dispose of the thing in such manner as the inspector thinks appropriate.

67 Compensation for acquisition of property

- (1) If the operation of section 66 would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person other than the Commonwealth and otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
- (a) the Federal Court of Australia; or
 - (b) the Federal Circuit and Family Court of Australia (Division 2); or
 - (c) a Supreme Court of a State or Territory;
- for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Subdivision E—Investigation warrants

68 Investigation warrants

Application for warrant

- (1) An inspector may apply to an issuing officer for a warrant under this section in relation to an investigation area.

Issue of warrant

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in the investigation area.
- (3) However, the issuing officer must not issue the warrant unless the inspector or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
 - (a) state the offence provision or offence provisions, or civil penalty provision or civil penalty provisions, of this Act to which the warrant relates; and
 - (b) describe the investigation area to which the warrant relates; and
 - (c) state that the warrant is issued under this Subdivision; and
 - (d) specify the kinds of evidential material to be searched for under the warrant; and
 - (e) state that evidential material of the kind specified may be seized under the warrant; and
 - (f) state that the person executing the warrant may seize any other thing found in the course of executing the warrant if the

person reasonably believes that the thing is evidential material of a kind not specified in the warrant; and

- (g) name one or more inspectors; and
- (h) authorise the inspectors named in the warrant:
 - (i) to enter the investigation area; and
 - (ii) to exercise the powers set out in this Division in relation to the investigation area; and
- (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (j) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

69 Investigation warrants by telephone, fax etc.

Application for warrant

- (1) An inspector may apply to an issuing officer by telephone, fax or other electronic means for a warrant under section 68 in relation to an investigation area:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The issuing officer:
 - (a) may require communication by voice to the extent that it is practicable in the circumstances; and
 - (b) may make a recording of the whole or any part of any such communication by voice.
- (3) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in subsection 68(2) in relation to the investigation area that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Issuing officer may complete and sign warrant

- (4) The issuing officer may complete and sign the same warrant that would have been issued under section 68 if, after considering the

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terms of the information and receiving such further information (if any) that the issuing officer requires, the issuing officer is satisfied that:

- (a) the warrant should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (5) After completing and signing the warrant, the issuing officer must inform the inspector, by telephone, fax or other electronic means, of:
- (a) the terms of the warrant; and
 - (b) the day on which, and the time at which, the warrant was signed.

Obligations on inspector

- (6) The inspector must then do the following:
- (a) complete a form of warrant in the same terms as the warrant completed and signed by the issuing officer;
 - (b) state on the form the following:
 - (i) the name of the issuing officer;
 - (ii) the day on which, and the time at which, the warrant was signed;
 - (c) send the following to the issuing officer:
 - (i) the form of warrant completed by the inspector;
 - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (7) The inspector must comply with paragraph (6)(c) by the end of the day after the earlier of the following:
- (a) the day on which the warrant ceases to be in force;
 - (b) the day on which the warrant is executed.

Issuing officer to attach documents together

- (8) The issuing officer must attach the documents provided under paragraph (6)(c) to the warrant signed by the issuing officer.

70 Authority of warrant

- (1) A form of warrant duly completed under subsection 69(6) is authority for the same powers as are authorised by the warrant signed by the issuing officer under subsection 69(4).
- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a warrant under section 69 if:
 - (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
 - (b) the warrant signed by the issuing officer authorising the exercise of the power is not produced in evidence.

71 Offence relating to warrants by telephone, fax etc.

An inspector must not:

- (a) state in a document that purports to be a form of warrant under section 69 the name of an issuing officer unless that issuing officer signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the issuing officer under that section; 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 inspector knows departs in a material particular from the terms of a warrant signed by an issuing officer under that section; or
- (d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section if the inspector knows that no warrant in the terms of the form of warrant has been completed and signed by an issuing officer; or
- (e) give to an issuing officer a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Part 4 Compliance and enforcement
Division 3 Investigation

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Penalty: Imprisonment for 2 years.

Division 4—Civil penalty provisions

72 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Director-General is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a Supreme Court of a State or Territory.

Application

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act:
- (a) applies within and outside Australia; and
 - (b) extends to the external Territories.

Note: See sections 129 and 131 in relation to the application of civil penalties to the Commonwealth.

73 Requirement for person to assist with applications for civil penalty orders

- (1) A person commits an offence if:
 - (a) the Director-General requires, in writing, the person to give all reasonable assistance in connection with an application for a civil penalty order; and
 - (b) the person fails to comply with the requirement.

Penalty: 10 penalty units.

- (2) A requirement under subsection (1) is not a legislative instrument.
- (3) The Director-General may require a person to assist under subsection (1) only if:
 - (a) it appears to the Director-General that the person is unlikely to have:
 - (i) contravened the civil penalty provision to which the application relates; or
 - (ii) committed an offence constituted by the same, or substantially the same, conduct as the conduct to which the application relates; and
 - (b) the Director-General suspects or believes that the person can give information relevant to the application.
- (4) The Director-General cannot require a person to assist under subsection (1) if the person is or has been a lawyer for the person suspected of contravening the civil penalty provision to which the application relates.
- (5) A relevant court (within the meaning of 72(3)) may order a person to comply with a requirement under subsection (1) in a specified way. Only the Director-General may apply to the court for an order under this subsection.
- (6) For the purposes of this section, it does not matter whether the application for the civil penalty order has actually been made.

Note: Subsection (1) does not abrogate or affect the law relating to legal professional privilege or the privilege against self-incrimination.

74 Civil double jeopardy

A relevant court (within the meaning of 72(3)) must not make a civil penalty order against a person for contravention of a civil penalty provision of this Act if an order has been made against the person under:

- (a) a civil penalty provision of another law of the Commonwealth; or
- (b) a civil penalty provision (however described) of a law of a State or a Territory;

in relation to conduct that is substantially the same as the conduct constituting the contravention.

Division 5—Directions, notices and other requirements

Subdivision A—Directions and other notices

75 Inspector may give directions

Giving directions

- (1) This section applies if an inspector reasonably believes that:
 - (a) a person has contravened, is contravening, or is likely to contravene, a provision (the *relevant provision*) of this Act; and
 - (b) it is necessary to exercise powers under this section in order to protect the health and safety of people or to protect the environment; and
 - (c) it is desirable in the public interest for the inspector to exercise powers under this section.
- (2) The inspector may give the person a direction requiring the person, within the period specified in the direction, to take such steps as are reasonable in the circumstances for the person to comply with the relevant provision.
- (3) The direction:
 - (a) must be in writing; or
 - (b) if the inspector believes there is an urgent need to protect the health and safety of people or to protect the environment—may be given orally, but must be confirmed by written notice given to the person as soon as practicable after being given orally.
- (4) The period specified in the direction under subsection (2) must be reasonable having regard to the circumstances.

Notification by inspector about steps taken or not taken

- (5) The direction ceases to have effect when an inspector notifies the person that the inspector is satisfied that the person has taken the steps specified in the direction.

- (6) If an inspector is satisfied that the person has not taken the steps specified in the direction, the inspector must inform the person accordingly.

Strict liability offence

- (7) A person commits an offence of strict liability if:
- (a) the person is given a direction under subsection (2); and
 - (b) the person does not take the steps specified in the direction within the period specified in the direction.

Penalty: 60 penalty units.

Fault-based offence

- (8) A person commits an offence if:
- (a) the person is given a direction under subsection (2); and
 - (b) the person engages in conduct that results in the person failing to take the steps specified in the direction within the period specified in the direction; and
 - (c) the person knows that the conduct will have that result.

Penalty: 222 penalty units.

Instruments are not legislative instruments

- (9) The following are not legislative instruments:
- (a) a direction under subsection (2);
 - (b) a notification under subsection (5) (if given in writing) of the matter referred to in that subsection;
 - (c) a notice under subsection (6) (if given in writing) informing a person of a matter referred to in that subsection.

76 Inspector to arrange for steps to be taken

- (1) If:
- (a) a person is given a direction under subsection 75(2); and
 - (b) the person does not take the steps specified in the direction within the period specified in the direction;
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the inspector may arrange for those steps to be taken.

- (2) If the Regulator incurs costs because of arrangements made by the inspector under subsection (1), the person is liable to pay to the Regulator an amount equal to the costs, and the amount may be recovered by the Regulator as a debt due to the Regulator in:
 - (a) the Federal Court of Australia; or
 - (b) the Federal Circuit and Family Court of Australia (Division 2); or
 - (c) a Supreme Court of a State or Territory.
- (3) A reference in subsection (2) to the Regulator is a reference to the Regulator on behalf of the Commonwealth.

77 Inspector may give improvement notices

Giving improvement notices

- (1) An inspector may give a person a notice (an **improvement notice**) if the inspector reasonably believes that the person:
 - (a) is contravening, or is likely to contravene, a provision of this Act; or
 - (b) has contravened a provision of this Act and is likely to contravene that provision again.
- (2) The improvement notice must be in writing and include the following:
 - (a) the date on which the notice is given;
 - (b) the name of the person to whom the notice is given;
 - (c) a statement that the person giving the notice is an inspector appointed under this Act;
 - (d) the name and contact details of the inspector;
 - (e) brief details of the contravention of the provision of this Act that the inspector believes is occurring or likely to occur, including the place, date and time (if known) of the contravention;
 - (f) the reasons for the inspector's belief;

- (g) a statement that the person is required to take the action necessary to prevent any further contravention, or to prevent the likely contravention, as the case may be;
 - (h) the period within which the person is to take the action.
- (3) The period specified for the purposes of paragraph (2)(h):
- (a) must be reasonable having regard to the circumstances; and
 - (b) may, before the end of the specified period, be extended, in writing, by the inspector.
- (4) The improvement notice may:
- (a) specify action that the person is to take, or is not to take, during the period specified in the notice (including as extended under paragraph (3)(b)); and
 - (b) specify action that may be taken to satisfy an inspector that adequate action has been taken to prevent any further contravention, or to prevent the likely contravention, as the case may be.

Notification by inspector about adequacy of action taken

- (5) The improvement notice ceases to have effect when an inspector notifies the person that the inspector is satisfied that the person has taken adequate action to prevent any further contravention, or to prevent the likely contravention, as the case may be.
- (6) If an inspector is satisfied that action taken by the person is not adequate to prevent any further contravention, or to prevent the likely contravention, as the case may be, the inspector must inform the person accordingly.

Strict liability offence

- (7) A person commits an offence of strict liability if:
- (a) the person is given an improvement notice under subsection (1); and
 - (b) the person fails to comply with the improvement notice within the period specified in the notice (including as extended under paragraph (3)(b)).

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Penalty: 60 penalty units.

Fault-based offence

- (8) A person commits an offence if:
- (a) the person is given an improvement notice under subsection (1); and
 - (b) the person engages in conduct that results in the person failing to comply with the improvement notice within the period specified in the notice (including as extended under paragraph (3)(b)); and
 - (c) the person knows that the conduct will have that result.

Penalty: 222 penalty units.

Exception

- (9) Subsections (7) and (8) do not apply if the person did not have control over the matter in relation to which the improvement notice was not complied with.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

Instruments are not legislative instruments

- (10) The following are not legislative instruments:
- (a) an improvement notice under subsection (1);
 - (b) a notification under subsection (5) (if given in writing) of the matter referred to in that subsection;
 - (c) a notice under subsection (6) (if given in writing) informing a person of a matter referred to in that subsection.

78 Inspector may give prohibition notices

Giving prohibition notices

- (1) This section applies if an inspector reasonably believes that:
- (a) either:
 - (i) a person is contravening, or is likely to contravene, a provision of this Act; or

- (ii) a person has contravened a provision of this Act and is likely to contravene that provision again; and
- (b) either of the following apply:
 - (i) an activity is occurring in relation to a regulated activity that involves or will involve a risk to the health and safety of a person or a serious risk to the environment;
 - (ii) an activity may occur in relation to a regulated activity that, if it occurs, will involve a risk to the health and safety of a person or a serious risk to the environment.
- (2) The inspector may give a notice (a **prohibition notice**), in writing, to either of the following persons (the **notice recipient**):
 - (a) a person authorised by a licence to conduct the regulated activity;
 - (b) if the regulated activity is being conducted in a monitoring area or investigation area—a relevant person in relation to the monitoring area or investigation area.
- (3) The prohibition notice must include the following:
 - (a) the date on which the notice is given;
 - (b) the name of the notice recipient;
 - (c) a statement that the person giving the notice is an inspector appointed under this Act;
 - (d) the name and contact details of the inspector;
 - (e) brief details of the contravention of the provision of this Act that the inspector believes is occurring or likely to occur, including the place, date and time (if known) of the contravention;
 - (f) details of the activity the inspector believes is occurring, or may occur, that involves or will involve a risk to the health and safety of a person or a serious risk to the environment;
 - (g) the reasons for the inspector's belief;
 - (h) one of the following:
 - (i) a direction that the notice recipient must ensure that the activity is not engaged in;
 - (ii) a direction that the notice recipient must ensure that the activity is not engaged in in a specified manner;

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- (iii) a direction that the notice recipient must ensure that the activity is engaged in in a specified manner.
- (4) The prohibition notice may specify action that may be taken to satisfy an inspector that adequate action has been taken to:
 - (a) prevent any further contravention, or to prevent the likely contravention, as the case may be; and
 - (b) remove the risk referred to in paragraph (3)(f).

Notification by inspector about adequacy of action taken

- (5) The prohibition notice ceases to have effect when an inspector notifies the notice recipient that the inspector is satisfied that the notice recipient has taken adequate action to:
 - (a) prevent any further contravention, or to prevent the likely contravention, as the case may be; and
 - (b) remove the risk referred to in paragraph (3)(f).
- (6) If an inspector is satisfied that action taken by the notice recipient is not adequate to:
 - (a) prevent any further contravention, or to prevent the likely contravention, as the case may be; or
 - (b) remove the risk referred to in paragraph (3)(f);the inspector must inform the notice recipient accordingly.

Strict liability offence

- (7) A person commits an offence of strict liability if:
 - (a) the person is given a prohibition notice under subsection (2); and
 - (b) the person fails to comply with the prohibition notice.

Penalty: 60 penalty units.

Fault-based offence

- (8) A person commits an offence if:
 - (a) the person is given a prohibition notice under subsection (2); and

- (b) the person engages in conduct that results in the person failing to comply with the prohibition notice; and
- (c) the person knows that the conduct will have that result.

Penalty: Imprisonment for 7 years.

Exception

- (9) Subsections (7) and (8) do not apply if the person did not have control over the matter in relation to which the prohibition notice was not complied with.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

Instruments are not legislative instruments

- (10) The following are not legislative instruments:
 - (a) a prohibition notice under subsection (2);
 - (b) a notification under subsection (5) (if given in writing) of the matter referred to in that subsection;
 - (c) a notice under subsection (6) (if given in writing) informing a notice recipient of a matter referred to in that subsection.

79 Copy of direction or notice to be displayed

- (1) If a person is given:
 - (a) a direction under section 75; or
 - (b) an improvement notice; or
 - (c) a prohibition notice;the person must cause a copy of the direction or notice to be displayed in a prominent place until the direction or notice ceases to have effect.

Strict liability offence

- (2) A person commits an offence of strict liability if:
 - (a) the person is given a direction or notice referred to in paragraph (1)(a), (b) or (c); and

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- (b) the person fails to display a copy of the direction or notice in accordance with subsection (1).

Penalty for contravention of this subsection: 10 penalty units.

80 Offence for tampering with or removing a direction or notice

A person commits an offence of strict liability if the person:

- (a) tampers with a copy of a direction or notice while it is displayed under section 79; or
- (b) removes a copy of a direction or notice that has been displayed under section 79 before the direction or notice has ceased to have effect.

Penalty: 60 penalty units.

Subdivision B—Other requirements and offences

81 Requirement to facilitate entry to Australian submarine

Requirement to facilitate entry

- (1) An inspector may require a person to take reasonable steps to facilitate the inspector:
 - (a) entering a monitoring area under section 40 that is an Australian submarine; or
 - (b) entering an investigation area under section 47 that is an Australian submarine.

Note: A reference in this Part to entering a monitoring area or an investigation area includes a reference to boarding an Australian submarine (see section 93).

- (2) To avoid doubt, subsection (1) applies regardless of whether the Australian submarine is stationary or underway.
- (3) For the purposes of subsection (1):
 - (a) the requirement may be made by any reasonable means; and
 - (b) the requirement is made whether or not the commanding officer of the submarine understands or is aware of the requirement.

Offence

- (4) A person commits an offence of strict liability if:
- (a) a requirement is made of the person under subsection (1); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 60 penalty units.

82 Power to make requirement of a person

- (1) An inspector may, in connection with exercising a power under Division 2 or 3 in relation to a monitoring area or an investigation area, make a requirement of a person in the area.

Note: See section 83 for offences relating to a contravention of a requirement under this subsection.

- (2) Without limiting subsection (1), an inspector may require:
- (a) a person in the monitoring area or investigation area to show, or demonstrate the operation of, any equipment or machinery in the monitoring area or investigation area; or
 - (b) a relevant person in relation to the monitoring area or investigation area to provide the inspector, or a person assisting the inspector, with all reasonable facilities and assistance for the effective exercise of the inspector's powers or the powers of the person assisting.
- (3) This section does not apply to the following:
- (a) a requirement to facilitate entry to an Australian submarine (which is dealt with by section 81);
 - (b) a requirement to answer a question or produce a document (which is dealt with by section 84).

83 Offences for contravention of requirement made of a person

Strict liability offence

- (1) A person commits an offence of strict liability if:
- (a) a requirement is made of a person under subsection 82(1); and
 - (b) the person fails to comply with the requirement.
-

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Penalty: 60 penalty units.

Fault-based offence

- (2) A person commits an offence if:
- (a) a requirement is made of the person under subsection 82(1); and
 - (b) the person fails to comply with the requirement.

Penalty: 222 penalty units.

84 Asking questions and seeking production of documents

- (1) This section applies if an inspector:
- (a) enters a monitoring area under section 40; or
 - (b) enters an investigation area under section 47.

Requirement to answer questions or produce documents

- (2) The inspector may require a person in the monitoring area or investigation area to:
- (a) answer any questions; and
 - (b) produce any document (whether or not the document is in the area at the time the inspector makes the requirement of the person);
- relating to:
- (c) if paragraph (1)(a) applies—a purpose referred to in paragraph 40(1)(a), (b) or (c); or
 - (d) if paragraph (1)(b) applies—evidential material.
- (3) Before making a requirement of a person under subsection (2), the inspector must:
- (a) show the person the inspector's identity card; and
 - (b) explain to the person that failure to comply with the requirement is an offence under this section; and
 - (c) explain to the person the effect of sections 97 and 98.

Note: Sections 97 and 98 deal with legal professional privilege, the privilege against self-incrimination and penalty privilege.

Offence

- (4) A person commits an offence of strict liability if:
- (a) the person is required to answer a question or produce a document under subsection (2); and
 - (b) the person fails to answer the question or produce the document.

Penalty: 60 penalty units.

Exception

- (5) Subsection (4) does not apply to a person if:
- (a) the person does not possess:
 - (i) the information required to answer the question; or
 - (ii) the document; and
 - (b) the person has taken all reasonable steps available to the person to obtain the information or document and has been unable to do so.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

85 Offence for ordering or coercing a person to not answer question or produce document

A person commits an offence of strict liability if:

- (a) another person is required to answer a question or produce a document under subsection 84(2); and
- (b) the first-mentioned person orders or coerces the other person not to answer the question or produce the document.

Note: The offence of incitement may also apply (see section 11.4 of the *Criminal Code*).

Penalty: 60 penalty units.

Division 6—Australian Naval Nuclear Power Safety Inspectors

86 Appointment of inspectors

- (1) The Director-General may, by written instrument, appoint an individual to be an Australian Naval Nuclear Power Safety Inspector (an *inspector*) for the purposes of exercising all, or specified, powers of an inspector under this Part.

Note: An inspector appointed under this section is a member of the Regulator (see section 101).

- (2) An individual must not be appointed as an inspector unless the Director-General is satisfied that the individual:
- (a) has the competence, technical expertise and relevant experience to properly exercise the powers of an inspector; and
 - (b) will be able to properly exercise the powers of an inspector having regard to the security of naval nuclear propulsion information.
- (3) The instrument of appointment may specify:
- (a) the terms and conditions of the inspector's appointment; and
 - (b) the powers under this Part that the inspector may exercise.
- (4) In exercising powers as an inspector, an inspector must comply with any written directions of the Director-General.

Note: See sections 104 and 120 in relation to the independence of:

- (a) the Regulator; and
- (b) members of the Regulator who are also members of the Australian Defence Force.

- (5) The Director-General must keep a record of appointments made under subsection (1).
- (6) The following are not legislative instruments:
- (a) a direction made under subsection (4);
 - (b) a record kept under subsection (5).

87 Identity cards for inspectors

- (1) The Director-General must issue an identity card to an inspector.

Note: As the Director-General is also an inspector, the Director-General must also have an identity card.

- (2) The identity card must:
- (a) be in the approved form; and
 - (b) contain a photograph that is no more than 5 years old of the inspector.
- (3) An inspector must display the inspector's identity card at all times when exercising powers under this Part as an inspector.

Strict liability offence

- (4) A person commits an offence of strict liability if:
- (a) the person has been issued with an identity card under subsection (1); and
 - (b) the person ceases to be an inspector; and
 - (c) the person does not return the identity card to the Director-General within 7 days after ceasing to be an inspector.

Note: If a person ceases to be the Director-General and, as a result, ceases to be an inspector, the person will need to return the identity card to the person next occupying (including acting in) the position of Director-General.

Penalty: 10 penalty units.

Exception

- (5) Subsection (4) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

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88 Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) An inspector may be assisted by other persons in exercising powers under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the inspector.

Powers of a person assisting

- (2) A person assisting the inspector in relation to a monitoring area or investigation area:
 - (a) may enter the area; and
 - (b) may exercise the powers under this Part that the inspector is appointed to exercise; and
 - (c) must do so in accordance with a direction given by the inspector to the person assisting.
- (3) In executing an investigation warrant under Division 3, a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.
- (4) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

Immunities etc.

- (6) To avoid doubt, a person assisting an inspector is covered by paragraph 121(b) (immunity from criminal and civil proceedings).

89 Offence for false representation as an inspector

A person commits an offence of strict liability if:

- (a) the person makes a representation that the person is an inspector; and
- (b) the representation is false.

Note: The offence of impersonation of an official by a non-official, or the offence of impersonation of an official by another official, may also apply (see sections 148.1 and 148.2 of the *Criminal Code*).

Penalty: 60 penalty units.

90 Offence for impersonating an inspector

A person commits an offence of strict liability if the person impersonates another person in that other person's capacity as an inspector.

Note: The offence of impersonation of an official by a non-official, or the offence of impersonation of an official by another official, may also apply (see sections 148.1 and 148.2 of the *Criminal Code*).

Penalty: 60 penalty units.

92 Inspector to have regard to nuclear safety and security

In exercising powers, or considering whether to exercise powers, under this Part, an inspector must have regard to nuclear safety and security.

Division 7—Other matters relating to compliance and enforcement

93 References to entering monitoring area or investigation area

A reference in this Part to entering a monitoring area or an investigation area includes a reference to the following:

- (a) accessing the area;
- (b) if the area is an Australian submarine or another vessel—boarding the submarine or vessel.

94 References to equipment

A reference in this Part to equipment includes a reference to the following:

- (a) electronic equipment;
- (b) NNP equipment or plant.

95 Issuing officers

- (1) A Judge of any of the following courts is an *issuing officer* for the purposes of this Act:
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2);
 - (c) a Supreme Court of a State or Territory.
 - (2) A power conferred on an issuing officer by this Part is conferred on the issuing officer:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.
 - (3) The issuing officer need not accept the power conferred.
 - (4) An issuing officer exercising a power conferred by this Part has the same protection and immunity as if the issuing officer were exercising the power:
 - (a) as the court of which the issuing officer is a member; or
-

- (b) as a member of the court of which the issuing officer is a member.

96 Compensation for damage to equipment

- (1) This section applies if:
 - (a) as a result of equipment being operated as mentioned in Division 2 or 3 in relation to a monitoring area or investigation area:
 - (i) damage is caused to the equipment; or
 - (ii) any data recorded on the equipment is damaged (including by erasure of data or addition of other data); or
 - (iii) any programs associated with the use of the equipment, or with the use of any data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment; and
 - (c) the owner of the equipment, or the user of the data or programs, is not the Commonwealth.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in:
 - (a) the Federal Court of Australia; or
 - (b) the Federal Circuit and Family Court of Australia (Division 2); or
 - (c) a Supreme Court of a State or Territory;for such reasonable amount of compensation as the court determines.

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- (4) In determining the amount of compensation payable, regard is to be had to whether any relevant persons in relation to the monitoring area or investigation area, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

97 Legal professional privilege

- (1) Nothing in this Part affects the right of a person to refuse to answer a question, give information or produce a document, on the ground that:
- (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
 - (b) the document would be privileged from being produced on the ground of legal professional privilege.
- (2) The fact that this section is included in this Part does not imply that legal professional privilege is abrogated in any other Act.

98 Privilege against self-incrimination and penalty privilege

- (1) An individual is not excused from answering a question, giving information or producing a document under this Part on the ground that doing so might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (2) However:
- (a) the answer or information given or document produced; and
 - (b) the giving of the answer or information or the production of the document; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the answer or information or the production of the document;
- is not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against

section 137.1 or 137.2 of the *Criminal Code* that relates to this Part.

- (3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to answering a question, giving information or producing a document, under this Part, the individual is not excused from answering the question, giving the information or producing the document under this Part on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Part 5—The Australian Naval Nuclear Power Safety Regulator

Division 1—Simplified outline of this Part

99 Simplified outline of this Part

This Part establishes the Australian Naval Nuclear Power Safety Regulator.

The Regulator has various functions relating to regulated activities, such as monitoring that persons are conducting regulated activities in compliance with this Act and taking action if they are not (see section 102 for a full list of functions).

The Regulator consists of the Director-General, the Deputy Director-General, the staff, other persons assisting the Regulator, and the inspectors. These people are members of the Regulator and they assist the Regulator in the performance of its functions.

The Director-General is the head of the Regulator and is responsible for its administration and performance of functions (see section 107 for the Director-General's functions).

Division 2—The Regulator

100 Establishment of the Regulator

- (1) The Australian Naval Nuclear Power Safety Regulator is established.
- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) the Regulator is a listed entity; and
 - (b) the Director-General is the accountable authority of the Regulator; and
 - (c) the members of the Regulator, other than persons covered by paragraph 119(1)(d), are officials of the Regulator; and
 - (d) the purposes of the Regulator include:
 - (i) the functions of the Regulator referred to in section 102; and
 - (ii) the functions of the Director-General referred to in section 107; and
 - (iii) the functions of inspectors under Part 4.

101 Composition of the Regulator

- (1) The Regulator consists of:
 - (a) the Director-General; and
 - (b) the Deputy Director-General; and
 - (c) the staff; and
 - (d) persons whose services are made available under section 119; and
 - (e) the inspectors.
- (2) Each of the persons referred to in subsection (1) is a *member* of the Regulator.

102 Functions of the Regulator

- (1) The Regulator has the following functions:
-

Section 103

- (a) to promote nuclear safety in relation to regulated activities;
- (b) to promote, monitor and enforce compliance with this Act;
- (c) any other functions conferred on the Regulator under this Act or any other Commonwealth law;
- (d) to do anything incidental or conducive to the performance of any of the above functions.

Paragraphs (a) to (d) do not limit each other.

Note: For the purposes of paragraph (c), an example of a function conferred on the Regulator under this Act is the function of consulting and cooperating with others (see section 103).

- (2) The Regulator has power to do all things necessary or convenient to be done for or in connection with the performance of the Regulator's functions.

103 The Regulator may consult or cooperate with others

- (1) The Regulator may consult or cooperate with any person or body (whether inside or outside Australia) if it is necessary for, or conducive to, the performance of the Regulator's functions.
- (2) The Regulator may consult or cooperate with any of the following bodies (whether inside or outside Australia):
 - (a) a Commonwealth entity or Commonwealth company;
 - (b) a government body, or authority, of a foreign country;
 - (c) an international organisation, or a body or authority of an international organisation;if it is necessary for, or conducive to, the performance of that body's functions.

104 Independence of the Regulator

Subject to this Act and any other laws of the Commonwealth, the Regulator:

- (a) has complete discretion in the performance of its functions under this Act; and
- (b) is not subject to direction by any person in relation to the performance of those functions.

Note: The Minister may give directions to the Regulator in limited circumstances (see section 105).

105 Ministerial directions to the Regulator

- (1) If the Minister is satisfied that it is necessary to do so in the interests of national security and to deal with an emergency, the Minister may give directions of a specific nature to the Regulator about the performance of the Regulator's functions under this Act.
- (2) The Regulator must comply with a direction under subsection (1).
- (3) A direction under subsection (1) must be given to the Director-General on behalf of the Regulator.
- (4) A direction under subsection (1) need not be in writing. If it is not in writing, then the Minister and the Director-General must each, as soon as practicable:
 - (a) make a written record of it; and
 - (b) sign the record; and
 - (c) in the case of a Minister—cause the record to be given to the Director-General.However, a failure to comply with paragraph (b) or (c) does not affect the validity of the direction.
- (5) If the Minister gives a direction under subsection (1), the Minister must table, in each House of the Parliament, a statement that a direction under this section was given to the Regulator.
- (6) A statement under subsection (5) must be tabled:
 - (a) if practicable—within 28 calendar days after the day the Minister gives the direction; or
 - (b) otherwise—on the next sitting day of that House after the end of that period.
- (7) The following are not legislative instruments:
 - (a) a direction under subsection (1);
 - (b) a statement under subsection (5).

Division 3—The Director-General and the Deputy Director-General

Subdivision A—The Director-General

106 The Director-General

There is to be a Director-General of the Australian Naval Nuclear Power Safety Regulator.

Note: For provisions relating to the Director-General's appointment, see sections 109 to 117.

107 Functions of the Director-General

- (1) The functions of the Director-General are:
- (a) to manage the administration of the Regulator; and
 - (b) to ensure the proper, efficient and effective performance of the Regulator's functions; and
 - (c) to determine objectives, strategies and policies to be followed by the Regulator in the performance of its functions; and
 - (d) to ensure that the Regulator complies with any directions given by the Minister under subsection 105(1); and
 - (e) to ensure that the Regulator's functions are performed having regard to the security of naval nuclear propulsion information; and
 - (f) any other functions conferred on the Director-General under this Act or any other Commonwealth law; and
 - (g) to do anything incidental or conducive to the performance of any of the above functions.

Paragraphs (a) to (g) do not limit each other.

Note: For the purposes of paragraph (f), an example of a function conferred on the Director-General under this Act is the function of appointing inspectors (see section 86).

- (2) The Director-General has power to do all things necessary or convenient to be done for or in connection with the performance of the Director-General's functions.

Subdivision B—The Deputy Director-General

108 The Deputy Director-General

There is to be a Deputy Director-General of the Australian Naval Nuclear Power Safety Regulator.

Note: For provisions relating to the Deputy Director-General's appointment, see sections 109 to 117.

Subdivision C—Appointment of the Director-General and the Deputy Director-General

109 Appointment

Appointment by the Governor-General

- (1) The Director-General and Deputy Director-General are to be appointed by the Governor-General, by written instrument, on the nomination of the Minister.

Qualification for appointment

- (2) A person must not be appointed as the Director-General or Deputy Director-General unless the Minister is satisfied that the person has the competence, independence, technical expertise and relevant experience to properly discharge the functions of the office.
- (3) A person must not be appointed as the Director-General or the Deputy Director-General if, at any time during the period of 12 months ending at the start of the proposed period of appointment, the person was a defence staff member.
- (3A) A person cannot hold an appointment as the Director-General or the Deputy Director-General at any time when the person is a defence staff member.

Basis of appointment

- (4) The Director-General and Deputy Director-General are to be appointed on a full-time basis.

Section 110

Period of appointment

- (5) The Director-General and Deputy Director-General hold office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (6) The Director-General and Deputy Director-General may be reappointed for a further period or periods.
- (7) However, the Director-General must not hold office as Director-General for a total of more than 10 years.

110 Acting appointments

Acting Director-General

- (1) The Deputy Director-General must act as the Director-General:
 - (a) during a vacancy in the office of the Director-General (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Director-General:
 - (i) is absent from duty; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to persons acting as the Director-General, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Acting Deputy Director-General

- (2) The Minister may, by written instrument, appoint a person to act as the Deputy Director-General:
 - (a) during a vacancy in the office of the Deputy Director-General (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Director-General:
 - (i) is absent from duty; or

- (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

111 Terms and conditions

The Director-General and Deputy Director-General hold office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined in writing by the Governor-General.

112 Remuneration and allowances

- (1) The Director-General and Deputy Director-General are 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 Director-General and Deputy Director-General are to be paid the remuneration that is prescribed by the regulations.
- (2) The Director-General and Deputy Director-General are to be paid the allowances (if any) that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

113 Leave of absence

- (1) The Director-General and Deputy Director-General have the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director-General and Deputy Director-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

Section 114

114 Other paid or unpaid work or activities

Paid work

- (1) The Director-General and Deputy Director-General must not engage in paid work outside the duties of their office without the Minister's approval.
- (2) ***Paid work*** means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

Unpaid work and other activities

- (3) The Director-General and Deputy Director-General must not engage in unpaid work, or other activity, outside the duties of their office that conflicts, or could conflict, with the proper performance of their functions without the Minister's approval.

115 Disclosure of interests

- (1) A disclosure by the Director-General or Deputy Director-General under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made under the *Public Governance, Performance and Accountability Act 2013* for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Director-General or Deputy Director-General is taken not to have complied with section 29 of that Act if the Director-General or Deputy Director-General does not comply with subsection (1) of this section.

116 Resignation

- (1) The Director-General and Deputy Director-General may resign their appointment by giving the Governor-General a written resignation.

- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

117 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Director-General or Deputy Director-General (the *relevant person*):
- (a) for misbehaviour; or
 - (b) if the relevant person is unable to perform the duties of the relevant person's office because of physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the relevant person if:
- (a) the relevant person:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the relevant person's creditors; or
 - (iv) makes an assignment of the relevant person's remuneration for the benefit of the relevant person's creditors; or
 - (v) is absent from duty, except on leave, for 14 consecutive days or for 28 days in any period of 12 months; or
 - (b) the relevant person fails to comply with subsection 114(1) (which deals with engaging in outside paid work without the Minister's approval); or
 - (c) the relevant person fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made under that Act for the purposes of that section.
- (3) The Governor-General may terminate the appointment of the relevant person if the relevant person fails to comply with subsection 114(3) (which deals with engaging in outside unpaid work or other activity without the Minister's approval).
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Division 4—Other members of the Regulator

118 Staff

- (1) The staff of the Regulator must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Director-General and the APS employees assisting the Director-General together constitute a Statutory Agency; and
 - (b) the Director-General is the Head of that Statutory Agency.

119 Persons assisting the Regulator

- (1) The Regulator may be assisted by:
 - (a) members of the Australian Defence Force whose services are made available to the Regulator in connection with the performance of any of the Regulator's functions; and
 - (b) members or special members of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*) whose services are made available to the Regulator in connection with the performance of any of the Regulator's functions; and
 - (c) officers or employees of another Commonwealth entity, or a Commonwealth company, whose services are made available to the Regulator in connection with the performance of any of the Regulator's functions; and
 - (d) persons whose services are made available under arrangements made under subsection (2).
- (2) The Director-General may, on behalf of the Commonwealth, make an arrangement with the appropriate authority or officer of:
 - (a) a government body, or an authority, of a State or Territory; or
 - (b) a government body, or an authority, of a foreign country; or
 - (c) an international organisation;under which the government body, authority or organisation makes officers or employees available to the Regulator to perform

services in connection with the performance of any of the Regulator's functions.

- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State, Territory, foreign country or organisation with respect to the services of a person to whom the arrangement relates.
- (4) When performing services for the Regulator under this section, a person is subject to the directions of the Director-General.

Division 5—Independence, immunities and protection of members of the Regulator

120 Independence from ADF chain of command

- (1) This section applies if:
 - (a) a member of the Regulator is also a member of the Australian Defence Force; and
 - (b) by reason of being a member of the Australian Defence Force, the member would, apart from this section, be subject to the command, direction or instruction (an *ADF command*) given by another person in connection with the Australian Defence Force.
- (2) The member is not subject to any ADF command in relation to the performance of the member's functions under this Act.

Note: This section will not apply to the Director-General or Deputy Director-General because they cannot be members of the Australian Defence Force (see subsection 109(3)).

121 Immunity from criminal and civil proceedings

None of the following is liable to an action, suit or proceeding, whether civil or criminal, for or in relation to an act done, or omitted to be done, in good faith in the performance, or the purported performance, of a function under this Act:

- (a) a member of the Regulator;
- (b) any other person acting under the direction or authority of a member of the Regulator.

121A Offence for obstructing, hindering, intimidating or resisting a member of the Regulator, etc.

A person commits an offence of strict liability if the person obstructs, hinders, intimidates or resists any of the following in the performance of their functions or the exercise of their powers under this Act:

- (a) a member of the Regulator;
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(b) a person assisting an inspector.

Note: The offence of obstructing a Commonwealth public official may also apply (see section 149.1 of the Criminal Code).

Penalty: 60 penalty units.

Division 6—Reporting

122 Annual report

The annual report prepared for the Regulator and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a reporting period must also include any matter prescribed by the regulations.

123 Reporting to the Minister

- (1) The Director-General must give the Minister a report in relation to any matter prescribed by the regulations for a period prescribed by the regulations.

Note: The Director-General is also under a duty to keep the Minister informed about certain matters (see section 19 of the *Public Governance, Performance and Accountability Act 2013*).

- (2) Subsection (1) is subject to any Commonwealth law that prohibits disclosure of particular information.
- (3) If the Director-General gives the Minister a report under subsection (1), the Minister may give a copy of the whole or any part of the report to the Minister or Ministers administering the following Acts:
 - (a) the *Australian Nuclear Science and Technology Organisation Act 1987*;
 - (b) the *Australian Radiation Protection and Nuclear Safety Act 1998*.

123A Reporting certain nuclear safety incidents

- (1) This section applies in relation to a nuclear safety incident that results in:
 - (a) the death of, serious injury to, or serious illness in, an individual; or
 - (b) a serious environmental incident.

- (2) If the Director-General becomes aware that a nuclear safety incident has occurred, the Director-General must notify the Minister as soon as possible about the incident.
- (3) The Director-General must also cause a report about the incident to be tabled in each House of the Parliament no later than 3 sitting days after the Director-General becomes aware of the incident.
- (4) The notification under subsection (2), and the report under subsection (3), must include the details of any actions that have been taken by the Regulator or a licence holder in response to the incident.
- (5) A report under subsection (3) is not required to include information if, in the opinion of the Director-General, the inclusion of the information may prejudice the security or defence of the Commonwealth.

Part 6 Other matters

Division 1 Simplified outline of this Part

Section 124

Part 6—Other matters

Division 1—Simplified outline of this Part

124 Simplified outline of this Part

This Part deals with a collection of miscellaneous matters, such as:

- (a) the application of this Act outside Australia; and
- (b) the liability of the Commonwealth to be prosecuted for an offence against this Act or to be subject to proceedings for contravening a civil penalty provision; and
- (c) the interaction between this Act and the *Australian Radiation Protection and Nuclear Safety Act 1998*, the *Nuclear Non-Proliferation (Safeguards) Act 1987* and workplace health and safety laws; and
- (d) the interaction between this Act and State and Territory laws, and international agreements etc.; and
- (da) the establishment of a Ministerial advisory committee; and
- (e) the delegations, regulations and other instruments that can be made under this Act.

Division 2—Application of this Act

Subdivision A—General

125 Extraterritorial application

This Act applies within and outside Australia.

126 Extension to external Territories

This Act extends to the external Territories.

Subdivision B—Application of this Act to the Crown in right of the Commonwealth

127 This Act binds the Crown

- (1) This Act binds the Crown in right of the Commonwealth. However, it does not bind the Crown in right of a State, of the Australian Capital Territory, or of the Northern Territory.
- (2) The Crown in right of the Commonwealth is liable:
 - (a) to be prosecuted for an offence against this Act; or
 - (b) to be subject to civil proceedings for a contravention of a civil penalty provision of this Act.

128 Offences and the Commonwealth

- (1) If the Commonwealth commits an offence against this Act, the penalty to be imposed on the Commonwealth is the penalty applicable to a body corporate.
- (2) For the purposes of this Act, any conduct engaged in on behalf of the Commonwealth by a person who is an employee, agent or officer of the Commonwealth acting within the actual or apparent scope of the person's employment or authority, is conduct also engaged in by the Commonwealth.

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- (3) If an offence against this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the Commonwealth for that offence to prove that the person referred to in subsection (2) had the relevant knowledge, intention or recklessness.
- (4) If mistake of fact is relevant to determining liability for an offence against this Act, it is sufficient in proceedings against the Commonwealth for that offence if the person referred to in subsection (2) made that mistake of fact.

129 Civil penalty provisions and the Commonwealth

- (1) If the Commonwealth contravenes a civil penalty provision of this Act, the monetary penalty to be imposed on the Commonwealth is the penalty applicable to a body corporate.
- (2) For the purposes of a civil penalty provision, any conduct engaged in on behalf of the Commonwealth by a person who is an employee, agent or officer of the Commonwealth acting within the actual or apparent scope of the person's employment or authority, is conduct also engaged in by the Commonwealth.

130 Representative for the Commonwealth in proceedings

- (1) If proceedings are brought against the Commonwealth for an offence or contravention of a civil penalty provision of this Act, the Minister may be specified in any document initiating, or relating to, the proceedings.
- (2) The Minister in relation to an offence or civil penalty provision is entitled to act in proceedings against the Commonwealth for the offence or provision and, subject to any relevant rules of court, the procedural rights and obligations of the Commonwealth as the accused or defendant in the proceedings are conferred or imposed on the Minister.

131 Liability of the Commonwealth to pay criminal or civil penalties

- (1) This section applies if:
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- (a) the Commonwealth has committed an offence against this Act and would be liable to pay a criminal penalty; or
 - (b) the Commonwealth has contravened a civil penalty provision of this Act and would be liable to pay a civil penalty.
- (2) The Commonwealth is not liable to pay a criminal or civil penalty under this Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a penalty.
 - (3) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (2) and, in particular, may give directions in relation to the transfer of money from an account operated by the Department to another account operated by the Commonwealth.
 - (4) Directions under subsection (3) have effect, and must be complied with, despite any other Commonwealth law.

Subdivision C—Interaction with other laws

132 The *Australian Radiation Protection and Nuclear Safety Act 1998*

The *Australian Radiation Protection and Nuclear Safety Act 1998* does not apply in relation to regulated activities.

133 The *Nuclear Non-Proliferation (Safeguards) Act 1987*

- (1) This Act does not 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 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 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.

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- (3) Part 4 of this Act (which deals with compliance and enforcement) is not to be taken to excuse an inspector from complying with sections 23, 25, 25A, 26 and 26A of the *Nuclear Non-Proliferation (Safeguards) Act 1987*.

Note: The *Nuclear Non-Proliferation (Safeguards) Act 1987* sets out defences that apply to offences against the sections of that Act that are mentioned in this subsection.

134 Operation of workplace health and safety laws

- (1) This Act does not exclude the operation of any of the following laws (a *workplace health and safety law*):
- (a) the *Work Health and Safety Act 2011*;
 - (b) a corresponding WHS law (within the meaning of that Act).
- (2) Subsections (3), (4) and (5) do not apply to a provision of a workplace health and safety law that is capable of concurrent operation with this Act.
- (3) A provision of this Act does not:
- (a) prohibit the doing of an act; or
 - (b) impose a civil or criminal liability for doing an act;
- if the doing of that act is specifically authorised or required, by or under, a provision of a workplace health and safety law.
- (4) A provision of this Act does not:
- (a) require the doing of an act; or
 - (b) impose a civil or criminal liability for not doing an act;
- if the doing of that act is specifically prohibited by or under a provision of a workplace health and safety law.
- (5) A provision of this Act does not operate to the extent necessary to ensure that no inconsistency (including operational inconsistency) arises between:
- (a) a provision of this Act; and
 - (b) a provision of a workplace health and safety law that would, but for this subsection, be inconsistent with the provision of this Act.

135 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 a regulated activity.

Subdivision D—Interaction with international agreements etc.

136 Functions to be performed having regard to prescribed international agreements

If this Act confers a function on a person, the person must have regard to Australia's obligations under any international agreement prescribed by the regulations in performing that function.

137 Application of Act to certain foreign persons

This Act does not apply to a person conducting a regulated activity if:

- (a) the person is a member of the military or government of a foreign country; and
- (b) there is an agreement or arrangement between Australia and that foreign country that applies in relation to the regulated activity; and
- (c) the agreement or arrangement is in force at the time the person is conducting the regulated activity.

Subdivision E—General rules about offences and civil penalty provisions

138 Geographical jurisdiction for offences

Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to all offences against this Act.

139 Physical elements of offences

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct rule provision*) commits an offence.
- (2) For the purposes of applying Chapter 2 of the Criminal Code to the offence, the physical elements of the offence include those set out in the conduct rule provision.

Note: Chapter 2 of the Criminal Code sets out general principles of criminal responsibility.

140 Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

Division 2A—Advisory committee

140A Establishment of advisory committee

- (1) The advisory committee is established.
- (2) The function of the advisory committee is to advise the Minister in relation to the following matters:
 - (a) the operation of this Act, having regard to the objects set out in section 6;
 - (b) the suitability and efficiency of the measures specified in this Act, or adopted under or for the purposes of this Act, to ensure the independence of the Director-General, the Deputy Director-General and members of the Regulator;
 - (c) the performance of the functions of the Regulator, the Director-General and the Deputy Director-General;
 - (d) the suitability of any arrangements or requirements specified in this Act, or adopted under or for the purposes of this Act, for ensuring nuclear safety;
 - (e) the nature and efficacy of the Regulator's consultation and cooperation with other persons or bodies;
 - (f) such other matters as the Minister directs.
- (3) The advisory committee consists of such persons as the Minister from time to time appoints to the committee by written instrument.
- (4) The Minister may give the advisory committee written directions as to:
 - (a) the way in which the committee is to carry out its functions; and
 - (b) the procedures to be followed in relation to meetings.
- (5) A member of the advisory committee is to be paid such remuneration and allowances (if any) as the Minister determines in writing.
- (6) The office of member of the advisory committee is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

Division 3—Delegations

141 Delegation by the Minister

- (1) The Minister may, by instrument in writing, delegate the Minister's functions under this Act to another Minister.
- (2) In performing functions under a delegation, the delegate must comply with any directions of the Minister.

142 Delegation by the Director-General

- (1) The Director-General may, by instrument in writing, delegate any of the Director-General's functions (other than those under section 72, 73, 105, 107, 123 or 144) to:
 - (a) the Deputy Director-General; or
 - (b) a person who:
 - (i) is an SES employee or an acting SES employee, or holds or is acting in a position that is equivalent to a position occupied by an SES employee, in the Regulator; and
 - (ii) is not a member of the Australian Defence Force.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In exercising functions under a delegation, the delegate must comply with any directions of the Director-General.

Division 4—Regulations and other instruments

143 Regulations

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

Prescribing area to be a designated zone

- (2) Before the Governor-General makes or amends regulations for the purposes of paragraph 10(2)(c) prescribing an area to be a designated zone, the Minister must:
 - (a) cause to be published on the Department's website a notice:
 - (i) setting out the boundary of the area proposed to be prescribed to be a designated zone; and
 - (ii) inviting persons to make submissions to the Minister about the boundary of the area proposed within the period specified in the notice; and
 - (b) consider any submissions received within the period specified in the notice.

144 Exemptions

Exempting a person from a provision or condition

- (1) The Regulator may, in writing, exempt a specified person from:
 - (a) the application of subsection 19(1), or another provision of this Act prescribed by the regulations, in relation to a regulated activity; or
 - (b) the application of a specified licence condition.

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

- (2) An exemption may be granted:

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- (a) on application by a person in accordance with the regulations; or
 - (b) on the initiative of the Regulator.
- (3) An exemption is subject to any conditions specified in the instrument of exemption.
- (4) The Regulator must not grant an exemption, or impose conditions under subsection (3), unless the Regulator is satisfied that the exemption, taken together with the conditions to which it is subject, will not jeopardise the nuclear safety of a regulated activity.
- (5) The functions of the Regulator under this section may only be performed by the Director-General.

AAT review

- (6) Applications may be made to the Administrative Appeals Tribunal for review of:
- (a) a decision to refuse to grant an exemption under subsection (1); or
 - (b) a decision to impose a condition under subsection (3); or
 - (c) a decision to vary or revoke an exemption under subsection (1), including by varying or revoking a condition imposed under subsection (3).

Instruments are not legislative instruments

- (7) The following are not legislation instruments:
- (a) an exemption granted under subsection (1);
 - (b) a condition imposed under subsection (3).

145 Regulator to give notice before varying or revoking exemption

- (1) This section applies if:
- (a) the Regulator is proposing to vary or revoke an exemption in relation to a specified person under subsection 144(1), including by varying or revoking a condition imposed under subsection 144(3); and

- (b) the person did not apply to the Regulator under subsection 144(2)(a) for the variation or revocation.
- (2) The Regulator must, before taking the action:
 - (a) give the person a notice, in writing, inviting the person to show cause, within a reasonable period specified in the notice, why the action should not be taken; and
 - (b) consider any representations the person makes to the Regulator within that period.
- (3) A notice given under subsection (2) is not a legislative instrument.

146 Approved forms

The Director-General may, in writing, approve one or more forms for the purposes of a provision of this Act that provides for something to be done in an approved form.

*[Minister's second reading speech made in—
House of Representatives on 16 November 2023
Senate on 16 September 2024]*

(138/23)
