

Restrictions on entry or exit of firms or persons and restrictions on the conduct of activities and advantages to some firms or persons through exemptions

Licensing and registration¹

The legislation attempts to provide, in the broadest possible terms, that unless exempted, no person is to deal with² any radioactive substance or ionizing radiation apparatus unless that person is licensed. Only the Commonwealth, WA and Tasmania regulate the dealing with non-ionizing radiation apparatus or equipment. All other States, and the NT have the power to regulate non-ionizing radiation but do not do so. The ACT cannot regulate non-ionising radiation as non-ionising radiation is not defined in its Act.

Owners of sealed radioactive sources and certain radiation apparatus must, unless exempted, register the source and/or apparatus. The occupier of premises on which an unsealed radioactive source is used or kept (unless the occupier is exempted) also requires registration.³

Generally, a person who is licensed must be a “fit and proper” person and must have appropriate knowledge of the applicable principles and practices of radiation protection. Applicants may also be required to demonstrate that there is a net benefit from their proposed activity and that they have made or will make reasonably adequate arrangements to prevent radiation hazards and that they will not give any unauthorised person access to the material or apparatus.

A licence or registration may be subject to any condition that is reasonable and necessary for the protection of persons handling the material or apparatus or persons employed to work at licensed or registered premises. The conditions may be varied at any time.

An authority or agency may suspend or cancel⁴ the licence or registration if,

it was obtained improperly; or

the holder has contravened a condition in the licence or any part of a relevant Act; or

¹ Due processes are in place to ensure that a licensee or holder of a registration is informed of the grounds on which a licence or registration will be refused, cancelled, suspended, amended, or made conditional and the manner and time limits for any appeal against the decision to suspend or cancel. Where an authority decides to suspend or cancel a licence or registration, it may take effect immediately or in some cases may have no effect until the period given to appeal has expired or unless and until the decision to suspend or cancel is confirmed.

² The words “deal with” includes selling, handling, installing, servicing or repairing, maintaining, operating, hiring out, manufacturing, owning, possessing, purchasing, using, permitting use of, giving away, storing, transporting and disposing. The legislation does not deal with all of these activities consistently and some of these activities may not be expressly covered by some of the legislation.

In SA, no one may sell, install or maintain any ionising radiation apparatus or radioactive substances without serving appropriate notices on the authority for certain specified activities. Such persons are also required to provide their prospective buyers with information on registration or licensing requirements.

In WA a seller of any radioactive substance, irradiating apparatus or electronic product must require the buyer to prove that he has a licence or exemption and must notify the Radiological Council of the buyer’s particulars and his or her relevant licence or exemption details. A buyer who buys any radioactive substance or irradiating apparatus or electronic product from outside WA for use in WA and which is required to be registered in WA shall notify the Radiological Council and apply for the relevant licence, registration or exemption.

In Victoria, no one who deals with ionising radiation apparatus in any way can offer such an apparatus for sale unless the authority has approved that apparatus.

³ In WA the owner of any irradiating apparatus or electronic product needs to obtain a registration for not just the apparatus or product but also the premises or any part of any premises in which any radioactive substance is manufactured, used or stored or in which any irradiating apparatus or electronic equipment is used or operated or which is likely to be affected by the passage of waste from, or otherwise by the use, of any radioactive substance, irradiating apparatus or electronic produce.

⁴ In South Australia the authority may give directions on the use or occupation of premises and the use, handling and storage or radioactive substances or radiation apparatus during the period of suspension or after the cancellation of a registration. Such directions may include directions for the forfeiture or disposal of the sources or apparatus.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

the holder has been convicted of an offence under the Act or regulation; or
the holder has ceased to hold a qualification on the basis on which it was granted; or
the holder has ceased working as a consulting radiation expert (NSW only);
the holder has altered or modified a registered apparatus without approval; or
it is necessary in the interests of the safety of members of the public.

There are provisions for minimum and/or maximum terms for which a licence or registration may be granted or renewed. Generally a temporary licence is not to exceed three months duration and other licences and registrations are for periods ranging from between one to five years, but some jurisdictions do not specify a maximum duration.

The Australian Radiation Protection and Nuclear Safety Act 1998 (Cth) does not exclude the operation of the Nuclear Non-Proliferation (Safeguards) Act 1987. Thus, for example, a person required by the 1998 Act to hold a licence who is also required by the 1987 Act to hold a permit in respect of the same thing must satisfy the requirements of both Acts in so far as they are capable of being satisfied concurrently.

The ARPANS Act applies only to Commonwealth entities.⁵ However, it also applies to contractors whose conduct and activities⁶ would require a licence if the contractor acts for a Commonwealth entity under a contract with a Commonwealth entity.

Under Section 83 of the ARPANS Act, the Commonwealth may, in its regulations, prescribe a law of a State or Territory, or one or more of its provisions. The prescribed law or provisions of a State or Territory will not apply in relation to persons, apparatus, material or facilities that may otherwise be required to be licensed or registered under State/Territory laws.⁷

Exemptions

Provisions are in place to grant (or revoke) exemptions. Exemptions may be granted upon the application of certain persons, may be prescribed in regulations or gazetted. Generally exemptions may be granted for:

Certain radioactive substances and radiation apparatus prescribed or described in terms of the type of substances, apparatus or equipment or in terms of the maximum exposure levels.

The possession or use of relevant radioactive material or irradiating apparatus by a person who is undergoing a diagnostic procedure or is receiving therapeutic treatment.

The possession or use of relevant radioactive material by the keeper of an animal in connection with any treatment to that animal.

The use of radioactive material or irradiating apparatus by a radiation safety officer.

A prescribed officer of an agency or a person acting under his or her directions or any person or class of persons.

The possession of radioactive material by a person involved only in the transportation of radioactive material or irradiating apparatus.

⁵ A Commonwealth entity includes a body corporate established for a public purpose by or under an Act, a company in which either the Commonwealth or a body corporate holds the controlling interest, and an employee of a Commonwealth entity.

⁶ In the case of nuclear installations or prescribed radiation facilities, such activities include preparing a site, construction, having possession or control, operation, de-commissioning, disposal or abandoning the facilities.

⁷ ARPANSA has to-date not exercised this power.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

Any person acting under the supervision or direction of a licence holder in the manner specified in the licence and/or in the manner prescribed in regulations.

Specific provisions relating to occupational licensing, registration or exemptions

The Commonwealth

The Chief Executive Officer of the Australian Radiation Protection and Nuclear Safety Agency may accredit persons with technical expertise for the purposes of the ARPANS Act 1998.

New South Wales

The following persons are exempt from the licensing requirements of the Act in relation to the use of radioactive substances and ionizing radiation apparatus:

A medical registrar at a hospital training in nuclear medicine, diagnostic radiology, radiation oncology, ophthalmology, dermatology, and rheumatology or in a medical discipline which uses fluoroscopy.

A student in medical radiation technology and is a trainee technologist in nuclear medicine, diagnostic radiology or radiation oncology.

An assistant industrial radiographer.

An undergraduate student who is undertaking coursework or research and a post-graduate student who is undertaking research or higher studies.

A medical officer or registered nurse in a hospital required by that hospital to inject radiopharmaceuticals (only if a person who is the holder of a licence and is able to inject the radiopharmaceuticals is not readily available at the hospital).

A person who holds a licence under the NSW Act may give approvals for the persons mentioned above if the licence allows that person to do so. Even so, a qualified person⁸ must supervise each person who is given an approval.

A person must not carry out any of the activities of a consulting radiation expert unless the person is accredited and complies with any condition in the accreditation. Regulations prescribe the type of activities that a consulting radiation expert may engage in.

Australian Capital Territory

Any person under the direction and supervision of the holder of a licence that authorises the use of specified radioactive material or irradiating apparatus is exempt from licensing requirements in respect of the specified radioactive material or irradiating apparatus

Northern Territory

The NT Act does not apply to any person lawfully possessing, using or operating irradiating apparatus in accordance with the Radiographers Act 1976⁹ in relation to that apparatus.

⁸ A “qualified person” is a person who is the holder of a licence which allows the person to provide supervision with respect to a particular radioactive substance or item of radiation apparatus.

⁹ An NCP review of this Act has been done and a final report was published in May 2000. The key recommendation was that the Radiographers Act 1976 is repealed and radiographers no longer be a registered profession. The review also recommended that the practising certificate, permit and inspectorial powers of the Radiographers Registration Board be transferred to the licensing and inspectorial powers under the Radiation (Safety Control) Act 1978 and any specific criteria for licensing ionising radiographic equipment be incorporated into subsidiary legislation under the 1978 Act.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

Tasmania

Regulation 22(m) of the Radiation Control Regulations 1994 exempts a person from the licensing requirements under the Radiation Control Act 1977 if a radioactive material administered to a person for diagnostic or therapeutic purposes is done so in accordance with:

- the instructions of a medical practitioner with appropriate training in the administration of radioactive material for diagnostic or therapeutic purposes; and
- any guideline of the National Health and Medical Research Council on administering radioactive material to a person for diagnostic or therapeutic purposes.

The Radiographers Registration Act 1971 and Radiographers Regulations 1973 regulate the registration of radiographers and the practice of radiography in Tasmania. The Tasmanian Radiographers Registration Board administers the provisions of these Acts and regulations.¹⁰

South Australia

A medical practitioner, dentist, chiropractor, dental therapist, nuclear medicine specialist, radiation oncologist, dermatologist, chiropodist, ophthalmologist, physiotherapist or oral surgeon registered under the appropriate SA legislation may authorise exposure to ionizing radiation for diagnostic or therapeutic purposes.

Qualifications (including registration under the relevant Act or regulation) that will satisfy the authority for the issue of a licence to operate ionizing radiation equipment are prescribed for:

- The practice of diagnostic radiography
- Diagnostic radiography in the practice of radiology.
- Diagnostic radiography (except fluoroscopy or tomography) in the practice of medicine.
- Diagnostic radiography in the practice of chiropractic.
- Diagnostic radiography in the practice of dentistry.
- Diagnostic radiography in the practice of veterinary science.
- The practice of radiation oncology.
- The practice of radiation therapy.

Any irradiation of human beings for the purposes of research cannot be conducted without first obtaining the approval of the proper authority.

The following persons are not required to hold licences to operate ionising radiation apparatus provided an appropriately licensed person supervises their work:

- operators of any enclosed X-ray analysis apparatus.
- operators of an industrial radiographic apparatus in a fully protected enclosure.

The following persons are not required to hold licences to use radioactive substances provided an appropriately licensed person supervises their work:

- users of unsealed substances in type C premises.
- users of sealed sources contained in radiation gauges.

¹⁰ The Tasmanian Radiographers Registration Board reported in its 1998-99 Annual Report that it conducted a review of the Radiographers Registration Act 1971 and a draft Bill was distributed for comment. The draft Bill enables the registration of Medical Radiation Technologists according to their profession, that is, Diagnostic Radiography, Radiation Therapy and Nuclear Medicine Technology.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

users of sealed sources located in a fully protected enclosure for the purpose of industrial radiography.

The following persons are exempt from licensing requirements to use or handle radioactive substances or to operate radiation apparatus:

A person undertaking a course of study in any Teaching Hospital, Institute, College of Advanced Education or University, provided the operation of apparatus or use of sealed sources is supervised by a person who holds an appropriate licence.

A person not usually resident in SA who operates ionizing radiation apparatus or uses sealed sources in SA to maintain, service, repair or install, provided that person holds an appropriate licence in his usual place of residence.

A person who comes from interstate to operate apparatus for the purposes of therapeutic or diagnostic radiography for a period not exceeding six weeks in any calendar year, provided that person holds any one of the prescribed qualifications set out in the South Australia's regulations.

Registered nurses, who operate a dual energy X-ray absorptiometry apparatus only for forearm bone densitometry at a specific centre, provided a person who holds an appropriate licence supervises the operation.

A person operating a blood and transplant irradiator at a specified hospital, provided the person is supervised by a designated radiation safety officer.

A person using sealed sources contained in an X-ray Fluorescence or X-ray density profile meter or similar instrument, provided the the person is supervised by an appropriately licensed person.

Victoria¹¹

Under the Health Act 1958, the authority may issue an operator licence to the following persons in respect of that person's profession or occupation.

radiologist, radiation oncologist, nuclear medicine specialist, registered medical practitioner, dentist, chiropractor, dermatologist, ophthalmologist, cardiologist, paramedic, radiation apparatus tester, radiation apparatus service technician, a medical or scientific researcher whose work involves irradiation of human volunteers, veterinarian, industrial radiographer, radiation consultant, dental therapist, dental hygienist, borehole logger, portable moisture/density meter operator, any other approved category or medical specialist not mentioned above

The following persons do not need to hold an operator licence in relation to the use or operation of ionizing radiation apparatus or radioactive substances if they are appropriately supervised by the holder of an operator licence or are registered by the Medical Radiation Technologists Board of Victoria.

A medical registrar at a hospital who is training in nuclear medicine, diagnostic radiology, radiation oncology, or in a medical discipline that uses fluoroscopy.

A student in radiography or nuclear medicine technology training in medical imaging technology, radiation therapy technology or nuclear medicine technology.

¹¹ A Discussion Paper on the Review of Victoria's Health Act 1958 (incorporating the NCP review) was released in November 1988. Chapter 6 of that paper is on radiation safety and it examines the issue of occupational licensing and registration in detail. It is available at <http://www.dhs.vic.gov.au/phb/9810098/> and comments on the issues raised in that paper may also be provided to this joint review.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

A person who is provisionally registered by the Medical Radiation Technologists Board of Victoria.

An assistant industrial radiographer.

An undergraduate student undertaking course work or research.

A postgraduate student undertaking research or higher studies.

Regulations also exempt two categories of persons from the need to hold an operator licence. They are as follows:

An employee of a licensed employer for the period of employment and for the purpose for which the licence was issued.

A person, who uses, stores or possesses a registered apparatus or registered radioactive substance in relation to that apparatus or substance.

However, these two exemptions do not apply to persons whose professions or occupations are described in the first paragraph above or who are registered with the Medical Radiation Technologists Board of Victoria. These persons will need an operator licence.

Under Section 108AL of the Health Act 1958, the Medical Radiation Technologists Board of Victoria may register persons to practice in radiography or nuclear medicine technology as medical imaging technologists, radiation therapy technologists or nuclear medicine technologists. A person who is registered under Section 108AL to practice in radiography or nuclear medicine technology is exempt from the requirement to hold a licence under the Health Act 1958.

Under the 1958 Act, the Governor in Council may make regulations¹² on (among others),

the training examination and registration of medical imaging technologists, radiation therapy technologists or nuclear medicine technologists;

defining the practice of radiography and nuclear medicine technology;

granting of provisional registration subject to conditions, limitations or restrictions;

providing for the Board to hold inquiries into the conduct or capacity of persons registered by the Board and to enable the Board to impose conditions, limitation or restrictions on registration or cancel or suspend the registration;

prohibiting a person not registered by the Board from practising as or from using the name or title (or any other name or title implying the same or implying that the person is registered with the Board or qualified to practise) of a medical imaging technologist, radiation therapy technologist or nuclear medicine technologist.

Western Australia

Regulations prohibit the employment of a person under the age of 16 as a radiation worker.¹³

It is not necessary for a medical, dental or veterinary practitioner to hold a licence under the Radiation Safety Act 1975 for the purpose of requesting the holder of a licence to undertake any diagnosis or therapy.¹⁴

¹² See the Health (Medical Radiation Technologists) Regulations 1996. An NCP review of these regulations was done before these regulations were promulgated.

¹³ This is based on a recommendation in National Health and Medical Research Council Series 39.

¹⁴ This referral privilege was extended to physiotherapists and podiatrists in 1999 by amendment to WA's regulations. The Radiological Council of WA has recommended to its Minister to extend the referral privileges so that chiropractors can also refer patients to radiologists at approved hospitals and radiology practices for a specified range of plain X-ray examinations. Detailed provisions also exist in WA's Radiation Safety (General) Regulations for the exemption from

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

No one can administer or authorise the administration of any radioactive substance or radiation to any person, or use for the purpose of diagnosis or therapy, any radioactive substance, irradiating apparatus or electronic product on any other person unless,

The first person was a medical practitioner, dentist, chiropractor or physiotherapist registered as such under the laws of WA and engaged in his or her professional practice and held a relevant licence under the Radiation Safety Act 1975; or

The first person was acting lawfully under the direction and supervision of a person to whom paragraph (a) above applies; or

The first person held an exemption granted under the Radiation Safety Act 1975.

WA's Radiation Safety (Qualifications) Regulations 1980-1999 stipulates that a person shall not engage in the use of irradiating apparatus for chiropractic radiography or industrial radiography or engage in the use of radioactive substances for industrial radiography or veterinary therapy or the installation or repair of X-ray apparatus or equipment incorporating radioactive substances unless,

that person has passed an examination in radiation safety conducted by or on behalf of the Radiological Council of WA; or

that person possesses an approved qualification in radiation safety; or

that person has been exempted from the requirements mentioned above.

In addition, the Radiological Council of WA may also require a person to pass an approved examination where the person applies for a licence for the operation or use of radioactive substances, irradiating apparatus or electronic products for one or more of the following purposes:

dental diagnosis, medical diagnosis by the use of radiography, fluoroscopy or radioactive substances, medical therapy, chiropractic diagnosis by radiography, veterinary diagnosis by radiography, veterinary therapy, industrial, radioactive luminous devices, research and other purposes approved by the Radiological Council of WA.

Where the Council requires a person to pass an approved course the syllabus of the course shall be as stipulated in the Radiation Safety (Qualifications) Regulations 1980-1999.

Strict and prescriptive technical standards for products or services or restrictions to the quality, level or location of goods and services.

Dose limits and maximum exposure levels: The dose limits or maximum permitted exposure levels to ionizing radiation are prescribed in detail in the regulations. Any voluntary exposure to radiation for scientific or research purposes may be subject to approved guidelines.

Alteration, modification or change in information: A registered apparatus or the location, installation or shielding of a registered apparatus may not be altered or modified (in some cases this is qualified with the words, "in a material way") without the consent of the relevant authority. Any change in information that was supplied to an authority for the grant or renewal of a licence or registration or exemption must be notified to the authority, which may then amend the licence, exemption or registration or treat the matter as a new application.

Storage and disposal: Only registered or approved premises can be used to store radioactive material or radiation apparatus. A person may be required to ensure that he or she does not dispose of any radioactive substance in breach of any specific provision in an Act or regulation or without

certain requirements or for the imposition of conditions in respect of the practice of dentists, radiographers, physiotherapists, podiatrists, licensed radiologists, radiation therapists, X-ray operators, radiation oncologists, chiropractors, veterinary surgeons and medical and dental practitioners training for certain qualifications.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

the consent of an authority or agency. Such consent may be given in the form of a licence or permit either generally or in a particular case and may be subject to conditions. A person may be required to maintain a detailed record for a prescribed period of time of all radioactive substances disposed of or discharged from the premises.

Transport

The transportation of any radioactive substance or prescribed radiation apparatus or equipment is to be in accordance with the prescribed procedures in an Act or regulation or in accordance with approved guidelines referenced in the Act or regulation.

All jurisdictions apply the Code of Practice for the Safe Transport of Radioactive Substances 1990 with modifications and some of them have in addition enacted certain provisions in their regulations on the safe transport of radioactive material and radiation apparatus.

The Australian Capital Territory prescribes the procedures and requirements of the Code in its Act. The Northern Territory has the power to gazette any existing code of safe transport and this power has been exercised to gazette the 1990 Code. Both the ACT and the NT have provisions in their legislation to exempt a person from the requirements of the legislation for the transport of radioactive substances or radiation apparatus.

There is no uniform requirement among the jurisdictions for licensing of a person or entity or the exemption from a requirement to hold a licence to engage solely in the transport of radioactive substances or radiation apparatus or equipment.

Powers of inspection: There are provisions for the enforcement of regulatory controls through the appointment and assignment of inspectors or authorised officers with wide ranging powers, duties and obligations¹⁵ both in routine and emergency situations to ensure that all prescribed rules and standards are being complied with. The powers enable the inspectors or authorised persons to,

Enter, search and inspect (without a search warrant in some circumstances).

Require any person to answer questions or produce books, records or documents.

Make copies or take extracts or photographs.

Carry out examinations, tests, calibrations and inquiries or direct the same.

Remove and take samples. Seize and remove anything (but receipts may have to be provided and, unless forfeited to the Crown, anything seized will have to be returned).

Make directions requiring certain actions or compliance with certain steps or prohibitions within or during a specified period of time.

Dangerous situations: An authority or agency may deal with dangerous or potentially dangerous situations by directing persons to take certain actions or refrain from doing something, directing the seizure, removal, disposal or treatment of radiation apparatus or radioactive substances or anything affected or contaminated by them and giving any other direction or taking any other appropriate action to avoid, remove or alleviate the actual or threatened danger.

Rules and guidelines for radiation workers: Radiation workers may be required by legislation to ensure that they use in a proper manner all apparatus, instruments, devices, clothing, shields and accessories supplied and to observe all proper procedures laid down by a radiation safety officer.

¹⁵ In South Australia an authorised officer shall not, without the consent of the Minister, have any proprietary or pecuniary interest in a business, corporation or trust, that engages in or has an interest in any activity regulated by the relevant radiation protection legislation or act as an agent for a person or entity with such proprietary or pecuniary interest.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

In some cases radiation workers are also required to ensure that they comply with all relevant requirements prescribed in their jurisdiction's relevant radiation protection Act and regulations.

Regulations: All the Acts have provisions stating that the Governor in Council may make regulations not inconsistent with an Act with respect to any matter in the Act. Generally the Act allows for regulations to prescribe anything that is required, permitted, necessary or convenient to be prescribed for carrying out or giving effect to the Act. Matters that may be regulated are provided for in the Acts as non-exhaustive lists. Generally all the regulations are highly prescriptive. In many cases there are also references to standards, guidelines and codes of practices issued by the authority or agency administering the legislation, other government bodies, statutory authorities or agencies and international bodies and organisations.

Restrictions on advertising and promotional activities.

In WA, regulations prohibit any licensee or the holder of an exemption, permit or registration from referring to that fact in any advertisement or advertising material. The permission of the Radiological Council is required to state or imply in any advertisement or advertising material that any dealing with radioactive substances, irradiating apparatus or electronic products is approved.

Compliance requirements that may confer significant costs on businesses.

Licences and registrations: Applications for (or the renewal of) licences, registrations or exemptions or transfers of registration are required to be made on prescribed forms with all necessary information. Further information, including statutory declarations on the truth of any information furnished, may be required. Fees are payable for a licence, registration, accreditation or exemption either at the time of application or upon the approval for the same. The amount of fees varies from jurisdiction to jurisdiction. Annual fees are also payable where the licences or registrations are issued for more than a year.¹⁶ In addition to registration requirements, owners of sealed radioactive substances and certain radiation apparatus or occupiers of premises on which unsealed radioactive substances are used or kept may need to ensure that any person using the registered substances or apparatus is also licensed.

¹⁶ The Northern Territory's regulation provides that no fee is payable by a person in the service of the Territory or an authority of the Territory if the application is made in the course of the person's service to the Territory or authority.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

Duty to inform: All employees, radiation workers or other persons working in registered premises or with registered radiation substances or equipment who may be exposed to radiation are required to be kept fully informed of all possible radiation hazards. They must also be fully informed of all safety arrangements, safe working rules and instructions and the steps to be taken to minimise the likelihood of such hazards. They must also be informed of the name of the radiation safety officer to whom each employee should refer to in connection with any radiation safety matter.

Duty to ensure compliance: In some cases an employer or licensee is required to take all reasonable steps to ensure that every person under his or her supervision or control complies with all requirements of the relevant Acts or regulations.

Safety manual or safe working rules: An employer may be directed by an authority or agency to prepare or adopt a radiation safety manual or safe working rules and to submit a copy of the same for approval within a prescribed period of time. Upon approval, the manual or rules must be readily available to all employees who may be exposed to radiation and the employer must take all reasonable steps to ensure compliance with the established procedures. Employers may be required to comply with specific guidelines or directions in the preparation of the manual or rules.

Personal monitoring: Employers may be required to ensure that their occupationally exposed employees are issued with personal monitoring devices and trained in their use in accordance with prescribed rules. An employee who has been issued with a monitoring device must use the device.

Area monitoring: An employer or licensee may be directed to take certain actions to monitor levels of radiation on specified premises and this may involve the requirement to use approved monitoring devices. An employer or licensee may also be directed to ensure that concentrations of radioactive material in the air and potable water in licensed premises do not exceed certain prescribed limits.

Record and Maintenance of monitoring devices: Employers may be required to check, maintain and calibrate all monitoring devices in accordance with approved guidelines. In such cases, records are to be kept of the date on which the device was acquired, each occasion when the device was repaired and details of the repairs and the date of the last calibration.

Dose limits or exposure levels: An employer, licensee or holder of a registration may be required to take all reasonable steps to ensure that any worker or person on licensed or registered premises does not receive a radiation dose or is exposed to radiation levels in excess of prescribed maximum levels. Any suspicion that a worker or person has received an excessive dose or has been exposed to radiation levels beyond the prescribed maximum must be reported immediately to the relevant authority. The same reporting requirements may apply to any person or radiation worker and in such cases the obligation is to report the matter to the employer, licensee or registration holder.

Keeping of records: Employers, licensees or registered owners or occupiers may be required to keep a register with a record of sealed and unsealed radioactive substances and radiation apparatus that has come into their possession describing the use to which those radioactive materials or apparatus are put and any change in that use. Employers may also be required to keep records of all radiation workers and in some cases notify the relevant authority of the details of all radiation workers who are employed or leave the employment of the employer. Employers, licensees or holders

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

of registrations may be required to keep full records of all tests and calibrations carried out on all their radiation apparatus and equipment. Records may have to be maintained for certain prescribed minimum periods of time and in such cases no record may be destroyed or disposed of unless it is done in accordance with provisions in the relevant legislation.

Personal exposure record: An employer may be required to ensure that for each personal monitoring device that is issued, a record of information is kept of the amount of radiation that the person carrying the device has been exposed to and the results of any tests carried out. Such records may have to be given to the relevant committee or council and/or employee at the end of his or her employment. If the employer knows that the person is taking up another job that will expose the person to radiation, the records may have to be given to the next employer. In some cases, legislation compels a radiation worker to provide a prospective employer with a written statement of any previous employment undertaken as a radiation worker.

Faults or defects: An employer, on becoming aware that a fault may exist in any radiation apparatus, may be required to investigate the fault and, if necessary, remove, replace or repair the faulty apparatus, and must inform all persons who may have been exposed to excessive quantities of radiation from that apparatus.

Physical security: Employers or licensees may be required to ensure that they use all possible means, including warning or cautionary signs or lights, to prohibit the access of unauthorised persons to all parts of licensed premises in which they may be subject to ionizing radiation.

Display of warning signs and certificates: There are provisions that require the conspicuous display of prescribed warning signs in the immediate vicinity of any radiation apparatus or radioactive substance. In some jurisdictions registration certificates are to be conspicuously displayed at a prominent position or near the apparatus for which the certificate has been issued.

Fire, loss or theft: Any fire, loss or theft of radioactive substance or radiation apparatus required to be registered must be reported to the authority either immediately or within a prescribed period of time and employers or licensees may be required to comply with instructions to minimise any harm to the safety or health of persons or the environment.

Radiation incidents, accidents or emergencies:¹⁷ All employers have a duty to report (to the authority and any radiation worker who may be affected) and investigate any radiation incident, accident or emergency either immediately or within a prescribed period of time after becoming aware of the incident, accident or emergency. In some cases,¹⁸ radiation workers who are involved in radiation incidents or accidents are required to report the event to their employers. An employer may be required to maintain a record of all radiation accidents with prescribed details.

¹⁷ Each jurisdiction has defined what constitutes a radiation incident, accident or emergency in its legislation. The definitions vary from jurisdiction to jurisdiction and in some cases, for example in WA, the regulations describe such situations as “abnormal or unplanned radiation exposures”. In South Australia, an employer is required to prepare in advance of any operation a contingency plan for every kind of operation to be carried out in respect of the use, handling, storage or disposal of any radioactive substance

¹⁸ For example, in South Australia.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

Decontamination and acquisition of premises: An authority may cause to be undertaken or facilitate the undertaking of the decontamination, removal or disposal of premises contaminated by radioactivity. Regulations prescribe the levels of activity that constitute contamination.

Medical examinations: An employer, licensee, radiation worker or radiation safety officer may be compelled to submit to a medical examination at their own cost (or at the cost of the employer) and a person so required shall not refuse to attend a medical examination without reasonable excuse.

Actual or risk of exposure in excess of prescribed limits: Where a radiation worker has been exposed or is at the risk of being exposed to radiation in excess of the relevant dose limits or permitted exposure levels, an authority may direct the employer to not require the worker to perform any work involving exposure to radiation for such periods as the authority determines.

Radiation Safety Officers or Committees:

An employer or licensee may be required to appoint a radiation safety officer or a radiation safety committee or both for a workplace or licensed premises. The authority may stipulate the qualifications of the radiation safety officer and direct the functions of the officer or the committee.

In some cases the duties of a radiation safety officer are prescribed in detail in the legislation, and this includes following prescribed rules on the maximum permissible levels of radiation exposure or dose limits, keeping strict records, ensuring safe working practices and making periodic reports.

Where the appointment of a radiation safety officer is required by legislation and such an officer is not appointed or is absent from the licensed premises, the Act or regulation may deem the licensee to be the radiation safety officer (see, for example, Section 34(3) of the ACT Act).

An employer may also be required to ensure that any other person or committee does not perform the functions of the radiation safety officer or committee. In some cases the details of the radiation safety officer so appointed, his or her contact details and every report or recommendation made by the radiation safety officer must also be forwarded to the relevant authority or agency.

Liability: An employer can be held responsible for the actions of his or her employee even if the employee contravened any provision without the employer's authority or contrary to the employer's orders or instructions. However, in such a situation, the employer may resort to any available statutory defence such as establishing that he or she had no knowledge of the contravention or could not have prevented the contravention through due diligence.¹⁹

Offences by corporations: A director or person managing a corporation that commits an offence may be held personally liable if the director or person knowingly authorised or permitted the contravention. This provision can operate in addition to any action taken against the corporation.

¹⁹ In WA, an employee or agent of another person acting under a direction or order is also liable unless he or she can show that the action was without the knowledge of any contravention or he or she had no reasonable means of knowing that his or her action was in contravention of legislation.

Attachment 2 – The Potential Restrictions – Extract from the Issues Paper

Increased penalty for causing serious harm: Committing an offence while knowing that the action or omission was likely to cause serious harm to a person, animal or thing or the environment can in some cases attract a penalty far higher than the usual penalties imposed for those offences.

Recovery of costs and restoration of damaged property: The costs incurred by an authority in taking action to deal with a dangerous situation or the act or omission of a person in contravention of a provision may be recovered from that person as a debt.²⁰

²⁰ In the Northern Territory, the authority may also require a person who has caused damage to any property due to the spillage, escape, disposal or negligent handling of a radioactive substances or radiation apparatus to restore any land or building, repair any other property or repay the cost of doing the same to the authority.