

1998

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Australian Radiation Protection and
Nuclear Safety Bill 1998**

No. , 1998

(Health and Aged Care)

**A Bill for an Act to regulate activities involving
radiation, and for related purposes**

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1 **A Bill for an Act to regulate activities involving**
2 **radiation, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

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

Section 2

1 **2 Commencement**

2 (1) Subject to subsection (2), this Act commences on a day to be fixed
3 by Proclamation.

4 (2) If this Act does not commence under subsection (1) within 6
5 months after the day on which this Act receives the Royal Assent,
6 it commences on the first day after the end of that period.

7 **3 Object of Act**

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

11 **4 Act binds the Crown**

12 (1) This Act binds the Crown in each of its capacities.

13 (2) Nothing in this Act renders the Crown liable to be prosecuted for
14 an offence.

15 **5 External Territories**

16 This Act extends to every external Territory.

17 **6 Extraterritorial operation**

18 This Act applies within and outside Australia.

19 **7 Act not to prejudice Australia's defence**

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

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

17 **8 Act not to prejudice national security**

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

Section 9

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

8 **9 Operation of Act**

- 9 (1) It is the intention of the Parliament that this Act is not to exclude
- 10 the operation of the *Nuclear Non-Proliferation (Safeguards) Act*
- 11 1987, to the extent that the *Nuclear Non-Proliferation*
- 12 (*Safeguards) Act 1987* is capable of operating concurrently with
- 13 this Act.

14 Example: A controlled person may be required by this Act to hold a licence, and

15 by the *Nuclear Non-Proliferation (Safeguards) Act 1987* to hold a

16 permit, in respect of the same thing. The controlled person must

17 satisfy the requirements of both Acts in so far as they are capable of

18 being satisfied concurrently.

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

23 **10 Application of Act to Commonwealth contractors**

- 24 (1) This Act applies to a Commonwealth contractor, in respect of
- 25 conduct referred to in subsection 29(1) that is engaged in by the
- 26 Commonwealth contractor, only if, and in so far as, the conduct is
- 27 engaged in:
- 28 (a) for or on behalf of a Commonwealth entity; and
- 29 (b) under or for the purposes of a contract with the
- 30 Commonwealth entity.

Section 11

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

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

11 Offences

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

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

- 16 (2) A maximum penalty that is specified:
17 (a) at the foot of a section of this Act (other than a section that is
18 divided into subsections); or
19 (b) at the foot of a subsection of this Act;
20 indicates that a person who contravenes the section or subsection is
21 guilty of an offence against the section or subsection that is
22 punishable, on conviction, by a penalty up to that maximum.

1

2 **Part 2—Definitions**

3

4 **12 Definitions**

5

In this Act, unless the contrary intention appears:

6

annual charge means charge imposed by the Licence Charges Act.

7

8

CEO or **Chief Executive Officer** means the CEO referred to in section 13.

9

10

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

11

12

13

Note: Section 10 limits the circumstances in which the provisions of this Act apply to Commonwealth contractors.

14

15

Commonwealth entity means any of the following:

16

(a) the Commonwealth;

17

(b) a body corporate established for a public purpose by or under an Act;

18

19

(c) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:

20

21

22

(i) the Commonwealth;

23

(ii) a body covered by paragraph (b);

24

(d) an employee of a person or body covered by any of the above paragraphs.

25

26

controlled apparatus means any of the following:

27

(a) an apparatus that produces ionizing radiation when energised or that would, if assembled or repaired, be capable of producing ionizing radiation when energised;

28

29

Section 12

1 (b) an apparatus that produces ionizing radiation because it
2 contains radioactive material;

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

5 ***controlled facility*** means:

6 (a) a nuclear installation; or

7 (b) a prescribed radiation facility.

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

11 ***controlled person*** means any of the following:

12 (a) a Commonwealth entity;

13 (b) a Commonwealth contractor;

14 (c) a person in the capacity of an employee of a Commonwealth
15 contractor;

16 (d) a person in a prescribed Commonwealth place.

17 ***Council*** means the Radiation Health and Safety Advisory Council
18 established by section 18.

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

21 (a) possess, or have control of, the apparatus or material;

22 (b) use or operate the apparatus, or use the material;

23 (c) dispose of the apparatus or material.

24 ***evidential material*** means any of the following:

25 (a) any thing with respect to which an offence against this Act or
26 the regulations has been committed or is suspected, on
27 reasonable grounds, to have been committed;

28 (b) any thing as to which there are reasonable grounds for
29 suspecting that it will afford evidence as to the commission
30 of any such offence;

Section 12

1 (c) any thing as to which there are reasonable grounds for
2 suspecting that it is intended to be used for the purpose of
3 committing any such offence.

4 **facility licence** means a licence issued under section 31.

5 **inspector** means a person appointed as an inspector under section
6 61.

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

11 **licence** means a source licence or a facility licence.

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

14 **modifications** includes omissions, additions and substitutions.

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

17 **nuclear installation** means any of the following:

- 18 (a) a nuclear fuel fabrication plant;
19 (b) a nuclear reactor (including critical and subcritical
20 assemblies);
21 (c) a research reactor;
22 (d) a nuclear power plant;
23 (e) a fuel storage facility;
24 (f) an enrichment plant;
25 (g) a reprocessing facility.

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

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

Section 12

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

3 ***premises*** includes the following:

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

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

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

12 ***radiation*** means ionizing radiation or non-ionizing radiation.

13 ***radiation control officer*** means a person who:

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

18 ***seize*** includes secure against interference.

19 ***source licence*** means a licence issued under section 32.

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

Section 13

1

2 **Part 3—The CEO of ARPANSA**

3

4 **13 The CEO (or Chief Executive Officer) of ARPANSA**

5 There is to be a CEO of ARPANSA.

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

9 **14 Functions of the CEO**

10 (1) The CEO has the following functions:

- 11 (a) to promote uniformity of radiation protection and nuclear
12 safety policy and practices across jurisdictions of the
13 Commonwealth, the States and the Territories;
- 14 (b) to provide advice on radiation protection, nuclear safety and
15 related issues;
- 16 (c) to undertake research in relation to radiation protection,
17 nuclear safety and medical exposures to radiation;
- 18 (d) to provide services relating to radiation protection, nuclear
19 safety and medical exposures to radiation;
- 20 (e) to accredit persons with technical expertise for the purposes
21 of this Act;
- 22 (f) such other functions as are conferred by this Act, the
23 regulations or any other law.

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

27 **15 Minister's directions to CEO**

28 (1) If the Minister is satisfied that it is in the public interest to do so,
29 the Minister must, by notice in writing, give directions to the CEO

Section 16

- 1 with respect to the performance of the CEO's functions or the
2 exercise of the CEO's powers.
- 3 (2) The CEO must comply with the directions.
- 4 (3) Within 15 sitting days of issuing a notice to the CEO under this
5 section, the Minister must cause a copy of the notice to be tabled in
6 each House of the Parliament.

7 **16 Delegation by Minister**

- 8 (1) The Minister may, by instrument in writing, delegate the
9 Minister's powers under section 7, 8 or 43 to the CEO.
- 10 (2) The Minister may, by instrument in writing, delegate the
11 Minister's powers under section 39 to any of the following:
12 (a) the CEO;
13 (b) the Secretary to the Department;
14 (c) a person holding, or performing the duties of, a Senior
15 Executive Service office, or equivalent, in the Department.
- 16 (3) In exercising powers or functions under a delegation, the delegate
17 must comply with any directions of the Minister.
18

19 **17 Delegation by CEO**

- 20 (1) The CEO may, by instrument in writing, delegate any of the
21 CEO's powers or functions to a person holding, or performing the
22 duties of:
23 (a) a Senior Executive Service office, or equivalent, in the
24 Department;
25 (b) a Senior Officer Grade A, B or C, or equivalent, in the
26 Department.
- 27 (2) In exercising powers or functions under a delegation, the delegate
28 must comply with any directions of the CEO.

Section 18

1

2

Part 4—The Radiation Health and Safety Advisory Council

3

4

5

18 Radiation Health and Safety Advisory Council

6

The Radiation Health and Safety Advisory Council is established.

7

19 Functions of the Council

8

The Council has the following functions:

9

(a) to identify emerging issues relating to radiation protection and nuclear safety and to advise the CEO on them;

10

11

(b) to examine matters of major concern to the community in relation to radiation protection and nuclear safety and to advise the CEO on them;

12

13

14

(c) to advise the CEO on the adoption of recommendations, policies, codes and standards in relation to radiation protection and nuclear safety;

15

16

17

(d) to advise the CEO, at the CEO's request, on other matters relating to radiation protection and nuclear safety;

18

19

(e) to advise the CEO on such other matters relating to radiation protection and nuclear safety as the Council considers appropriate.

20

21

22

20 Membership of the Council

23

(1) The Council consists of the following members:

24

(a) the CEO;

25

(b) 2 radiation control officers;

26

(c) a person to represent the interests of the general public;

27

(d) up to 8 other members.

28

(2) Each member, other than the CEO, is to be appointed by the Minister by written instrument.

29

- 1 (3) Before appointing a member, the Minister must consult the CEO in
2 relation to the appointment.
- 3 (4) The Minister must not appoint a person as a member unless the
4 Minister is satisfied that the person has expertise relevant to, or
5 knowledge of, radiation protection or nuclear safety.
- 6 (5) The Minister must appoint a member to be the Chair of the
7 Council.
- 8 (6) Each member, including the Chair, holds office on a part-time
9 basis.

10 **21 Radiation Health Committee**

11 The Radiation Health Committee is established.

12 **22 Functions of the Radiation Health Committee**

- 13 (1) The Radiation Health Committee has the following functions:
14 (a) to advise the CEO and the Council on matters relating to
15 radiation protection;
16 (b) to develop policies and to prepare draft publications for the
17 promotion of uniform national standards of radiation
18 protection;
19 (c) to formulate draft national policies, codes and standards in
20 relation to radiation protection for consideration by the
21 Commonwealth, the States and the Territories.
- 22 (2) The Committee's functions are to be performed only on the request
23 of the CEO or the Council.

24 **23 Membership of the Radiation Health Committee**

- 25 (1) The Radiation Health Committee consists of the following
26 members:
27 (a) a representative of each State and Territory, each of whom
28 must be a radiation control officer;
-

Section 24

- 1 (b) the CEO;
2 (c) a representative of the Nuclear Safety Committee;
3 (d) a person to represent the interests of the general public;
4 (e) up to 2 other members.
- 5 (2) Each member, other than the CEO, is to be appointed by the CEO
6 by written instrument.
- 7 (3) Before appointing a member, the CEO must consult the Council in
8 relation to the appointment.
- 9 (4) The CEO must not appoint a person as a member unless the CEO
10 is satisfied that the person has expertise relevant to, or knowledge
11 of, radiation protection or radiation health.
- 12 (5) The CEO must appoint a member to be the Chair of the
13 Committee.
- 14 (6) Each member, including the Chair, holds office on a part-time
15 basis.

16 **24 Nuclear Safety Committee**

17 The Nuclear Safety Committee is established.

18 **25 Functions of the Nuclear Safety Committee**

- 19 (1) The Nuclear Safety Committee has the following functions:
20 (a) to advise the CEO and the Council on matters relating to
21 nuclear safety and the safety of controlled facilities;
22 (b) to review and assess the effectiveness of standards, codes,
23 practices and procedures in relation to the safety of
24 controlled facilities;
25 (c) to develop detailed policies and to prepare draft publications
26 for the promotion of uniform national standards in relation to
27 the safety of controlled facilities.

- 1 (2) The Committee's functions are to be performed only on the request
2 of the CEO or the Council.

3 **26 Membership of the Nuclear Safety Committee**

- 4 (1) The Nuclear Safety Committee consists of the following members:
5 (a) the CEO;
6 (b) a person to represent the interests of the general public;
7 (c) a representative of the Radiation Health Committee;
8 (d) a person to represent the local government or the local
9 administration of an area affected by a matter related to the
10 safety of a controlled facility;
11 (e) up to 8 other members.
- 12 (2) Each member, other than the CEO, is to be appointed by the CEO
13 by written instrument.
- 14 (3) Before appointing a member, the CEO must consult the Council in
15 relation to the appointment.
- 16 (4) The CEO must not appoint a person as a member unless the CEO
17 is satisfied that the person has expertise in, or knowledge of:
18 (a) nuclear safety; or
19 (b) other industrial or safety-related regulation; or
20 (c) a related area.
- 21 (5) The CEO must appoint a member to be the Chair of the
22 Committee.
- 23 (6) Each member, including the Chair, holds office on a part-time
24 basis.

25 **27 Remuneration**

- 26 (1) A member of the Council, the Radiation Health Committee or the
27 Nuclear Safety Committee is to be paid the remuneration that is
28 determined by the Remuneration Tribunal. If no determination of

Section 28

1 that remuneration by the Tribunal is in operation, the member is to
2 be paid the remuneration that is prescribed.

3 (2) A member referred to in subsection (1) is to be paid the allowances
4 that are prescribed.

5 (3) This section has effect subject to the *Remuneration Tribunal Act*
6 1973.

7 **28 Regulations**

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

- 11 (a) the term of appointment of members;
12 (b) resignation of members;
13 (c) disclosure of interests by members;
14 (d) procedural matters.

1

2 **Part 5—Regulation of controlled material,**
3 **controlled apparatus and controlled**
4 **facilities**

5 **Division 1—Prohibitions**

6 **29 Construction, operation etc. of nuclear installations or prescribed**
7 **radiation facilities**

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

18 Maximum penalty: 2,000 penalty units.

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

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

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

25 **30 Possession etc. of controlled material or controlled apparatus**

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

Section 30

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

4 Maximum penalty: 2,000 penalty units.

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

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

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

1

2 **Division 2—Licences**

3 **31 Issue of facility licence**

4 (1) The CEO may issue a licence to a controlled person that authorises
5 persons to do some or all of the things referred to in subsection
6 29(1).

7 (2) A licence issued to the Commonwealth may be issued in the name
8 of a Department of State.

9 (3) In deciding whether to issue a licence under subsection (1), the
10 CEO must take into account the matters (if any) specified in the
11 regulations.

12 **32 Issue of source licence**

13 (1) The CEO may issue a licence to a controlled person that authorises
14 persons to deal with a controlled apparatus or a controlled material.

15 (2) A licence issued to the Commonwealth may be issued in the name
16 of a Department of State.

17 (3) In deciding whether to issue a licence under subsection (1), the
18 CEO must take into account the matters (if any) specified in the
19 regulations.

20 **33 Application fees**

21 An application for a licence must:

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

25 **34 Licence conditions**

26 (1) A licence is subject to the following conditions:

Section 35

- 1 (a) the conditions set out in this section;
2 (b) the conditions prescribed by the regulations;
3 (c) conditions imposed by the CEO at the time of issuing the
4 licence;
5 (d) any conditions imposed by the CEO under subsection 35(2)
6 after the licence is issued.
- 7 (2) Licence conditions may include conditions that are specific to
8 particular apparatus or material, including apparatus or material
9 that may, at a time after the licence is issued, come into the
10 possession or control of persons covered by the licence.
- 11 (3) A facility licence is subject to the condition that any person
12 authorised by the licence to prepare a site for a controlled facility
13 or to construct, have possession or control of, operate,
14 de-commission, dispose of or abandon a controlled facility must:
15 (a) at any time when the person has possession or control of
16 such a site or facility—allow the CEO, or a person authorised
17 by the CEO, to enter and inspect the site or facility at
18 reasonable times; and
19 (b) comply with any requirements specified in the regulations in
20 relation to such an inspection.
- 21 (4) A source licence is subject to the condition that any person
22 authorised by the licence to deal with a controlled apparatus or
23 controlled material must:
24 (a) at any time when the person has possession or control of
25 such apparatus or material—allow the CEO, or a person
26 authorised by the CEO, to inspect the apparatus or material at
27 reasonable times; and
28 (b) comply with any requirements specified in the regulations in
29 relation to such an inspection.

35 Amendment of licence

- 30
31 (1) The CEO may, at any time, by notice in writing given to the
32 licence holder, amend a licence.
-

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

11 **36 Period of licence**

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

13 **37 Cancellation and suspension of licence**

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

24 **38 Surrender of licence**

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

Section 39

1 **39 Review of licence decisions**

2 (1) An eligible person in relation to a licence decision may request that
3 the Minister reconsider the licence decision.

4 (2) The request must be:

5 (a) in writing; and

6 (b) given to Minister within 90 days of the making of the licence
7 decision.

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

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

12 (4) The Minister is taken to have confirmed the licence decision under
13 subsection (3) if the Minister does not give written notice of the
14 Minister's decision under that subsection within 60 days of the
15 request.

16 (5) Applications may be made to the Administrative Appeals Tribunal
17 for review of a decision of the Minister under subsection (3) to
18 confirm, vary or set aside the licence decision.

19 (6) For the purposes of this section:

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

21 (a) to refuse to grant a licence;

22 (b) to impose conditions on a licence;

23 (c) to suspend a licence;

24 (d) to cancel a licence;

25 (e) to amend a licence;

26 (f) not to approve the surrender of a licence.

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

28 (a) in relation to a decision to refuse to grant a licence—the
29 person who applied for the licence; and

30 (b) in relation to any other licence decision—the licence holder.

1

2 **Division 3—Enforcement**

3 **40 CEO may give directions to controlled persons**

4

(1) This section applies if:

5

(a) the CEO believes, on reasonable grounds, that a controlled person is not complying with the Act or regulations in respect of a thing; and

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7

8

(b) the CEO believes that it is necessary to exercise powers under this section in order to protect the health and safety of people or to avoid damage to the environment.

9

10

11

(2) The CEO may give written directions to a controlled person

12

requiring the controlled person to take such steps in relation to the thing as the CEO considers appropriate.

13

14

(3) The controlled person must take the steps specified in the notice within the time specified in the notice.

15

16

Maximum penalty: 30 penalty units.

17

(4) If the person does not take the steps specified in the notice within the time specified in the notice, the CEO may arrange for those steps to be taken.

18

19

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(5) If the Commonwealth incurs costs because of arrangements made by the CEO under subsection (4), the person is liable to pay to the Commonwealth an amount equal to the costs and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.

21

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24

25 **41 Review of decisions to give directions**

26

(1) A controlled person to whom a direction is given under section 40 may request that the Minister reconsider the decision to give the direction.

27

28

29

(2) The request must be:

Section 42

- 1 (a) in writing; and
2 (b) given to Minister within 90 days of the giving of the
3 direction.
- 4 (3) The Minister must reconsider the decision and confirm, vary or set
5 aside the decision.
- 6 Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires
7 the person to be notified of the person's review rights.
- 8 (4) The Minister is taken to have confirmed the decision under
9 subsection (3) if the Minister does not give written notice of the
10 Minister's decision under that subsection within 60 days of the
11 request.
- 12 (5) Applications may be made to the Administrative Appeals Tribunal
13 for review of a decision of the Minister under subsection (3) to
14 confirm, vary or set aside the decision.

42 Injunctions

- 16 (1) If a person has engaged, is engaging, or is proposing to engage in
17 any conduct that is or would be an offence against this Act or the
18 regulations, the Federal Court of Australia (the *Court*) may, on the
19 application of the CEO, grant an injunction restraining the person
20 from engaging in the conduct.
- 21 (2) If:
22 (a) a person has refused or failed, is refusing or failing, or is
23 proposing to refuse or fail, to do a thing; and
24 (b) the refusal or failure is, or would be, an offence against this
25 Act;
26 the Court may, on the application of the CEO, grant an injunction
27 requiring the person to do the thing.
- 28 (3) The power of the Court to grant an injunction may be exercised:
29 (a) whether or not it appears to the Court that the person intends
30 to engage, or to continue to engage, in conduct of that kind;
31 and

Section 43

- 1 (b) whether or not the person has previously engaged in conduct
2 of that kind.
- 3 (4) The Court may discharge or vary an injunction granted under this
4 section.
- 5 (5) The Court may grant an interim injunction pending the
6 determination of an application under subsection (1).
- 7 (6) The powers granted by this section are in addition to, and not in
8 derogation of, any other powers of the Court.

9 **43 Forfeiture**

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

1

2 **Part 6—Administrative matters**

3 **Division 1—Appointment, conditions etc. of CEO**

4 **44 Appointment of CEO**

5 (1) The CEO is to be appointed by the Governor-General for a term of
6 up to 5 years.

7 (2) The CEO holds office on a full-time basis.

8 **45 Remuneration and allowances**

9 (1) The CEO is to be paid the remuneration that is determined by the
10 Remuneration Tribunal. However, if no determination of that
11 remuneration by the Tribunal is in operation, the CEO is to be paid
12 the remuneration that is prescribed by the regulations.

13 (2) The CEO is to be paid such allowances as are prescribed by the
14 regulations.

15 (3) This section has effect subject to the *Remuneration Tribunal Act*
16 *1973*.

17 **46 Outside employment**

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

20 **47 Recreation leave etc.**

21 (1) Subject to section 87E of the *Public Service Act 1922*, the CEO has
22 such recreation leave entitlements as are determined by the
23 Remuneration Tribunal.

24 (2) The Minister may grant the CEO other leave of absence on such
25 terms and conditions as the Minister determines. The terms and

1 conditions may include terms and conditions relating to
2 remuneration.

3 **48 Resignation**

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

6 **49 Disclosure of interests**

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

10 **50 Termination of appointment**

- 11 (1) The Governor-General may terminate the appointment of the CEO
12 for physical or mental incapacity, misbehaviour, incompetence or
13 inefficiency.
- 14 (2) The Governor-General must terminate the appointment of the CEO
15 if the CEO does any of the following:
- 16 (a) is absent from duty (except on leave of absence) for 14
17 consecutive days, or for 28 days in any period of 12 months;
 - 18 (b) becomes bankrupt;
 - 19 (c) applies to take the benefit of any law for the relief of
20 bankrupt or insolvent debtors;
 - 21 (d) compounds with his or her creditors;
 - 22 (e) assigns his or her remuneration for the benefit of his or her
23 creditors;
 - 24 (f) contravenes section 49, without a reasonable excuse;
 - 25 (g) engages in paid employment outside the duties of the office,
26 without the Minister's written approval.
- 27 (3) If the CEO is:
- 28 (a) an eligible employee for the purposes of the *Superannuation*
29 *Act 1976*; or
-

Section 51

- 1 (b) a member of the superannuation scheme established by deed
2 under the *Superannuation Act 1990*;
3 the Governor-General may, with the consent of the CEO, retire the
4 CEO from office on the ground of physical or mental incapacity.
- 5 (4) For the purposes of the *Superannuation Act 1976*, the CEO is
6 taken to have been retired from office on the ground of invalidity
7 if:
8 (a) the CEO is removed or retired from office on the ground of
9 physical or mental incapacity; and
10 (b) the Commonwealth Superannuation Board of Trustees No. 2
11 gives a certificate under section 54C of the *Superannuation*
12 *Act 1976*.
- 13 (5) For the purposes of the *Superannuation Act 1990*, the CEO is
14 taken to have been retired from office on the ground of invalidity
15 if:
16 (a) the CEO is removed or retired from office on the ground of
17 physical or mental incapacity; and
18 (b) the Commonwealth Superannuation Board of Trustees No. 1
19 gives a certificate under section 13 of the *Superannuation*
20 *Act 1990*.

51 Other terms and conditions of appointment

21
22 The CEO holds office on such terms and conditions (if any) in
23 respect of matters not provided for by this Act as are determined
24 by the Governor-General in writing.

52 Acting appointment

- 25
26 (1) The Minister may appoint a person to act as CEO:
27 (a) if there is a vacancy in the office of CEO, whether or not an
28 appointment has previously been made to the office; or
29 (b) during any period, or during all periods, when the CEO is
30 absent from duty or from Australia or is, for any reason,
31 unable to perform the duties of the office.
-

Section 52

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

Section 53

1

2 **Division 2—Money**

3 **53 CEO may charge for services**

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

6 **54 Notional payments by the Commonwealth**

7 (1) The purpose of this section is to ensure that fees and charges under
8 this Act and the regulations, and charges under the Licence
9 Charges Act, are notionally payable by the Commonwealth (or
10 parts of the Commonwealth).

11 (2) The Minister for Finance and Administration may give written
12 directions for the purposes of this section, including directions
13 relating to the transfer of amounts within, or between, accounts
14 operated by the Commonwealth.

15 **55 ARPANSA Reserve**

16 (1) This subsection establishes a reserve called the ARPANSA
17 Reserve.

18 (2) The Reserve is a component of the Reserved Money Fund.

19 (3) The following amounts must be transferred to the Reserve from the
20 Consolidated Revenue Fund:

21 (a) money appropriated by the Parliament for the purposes of the
22 Reserve;

23 (b) amounts equal to amounts received by the Commonwealth
24 under the Licence Charges Act;

25 (c) amounts equal to fees received by the Commonwealth under
26 section 33;

27 (d) amounts equal to amounts received by the Commonwealth in
28 connection with the performance of the CEO's functions
29 under this Act or the regulations;

Section 56

- 1 (e) amounts equal to interest received by the Commonwealth
2 from the investment of money from the Reserve;
3 (f) amounts equal to money received by the Commonwealth in
4 relation to property paid for with money from the Reserve;
5 (g) amounts recovered by the Commonwealth under subsection
6 40(5), to the extent that they are referable to costs paid out of
7 the Reserve;
8 (h) amounts equal to amounts of any gifts given or bequests
9 made for the purposes of the Reserve.
- 10 (4) The purposes of the Reserve are to make payments:
11 (a) to further the object of this Act (as set out in section 3); and
12 (b) otherwise in connection with the performance of the CEO's
13 functions under this Act or the regulations.

14 **56 Amounts recoverable as debts**

- 15 The following amounts may be recovered in a court of competent
16 jurisdiction as debts due to the Commonwealth:
17 (a) amounts payable to the Commonwealth under the Licence
18 Charges Act;
19 (b) fees payable to the Commonwealth under section 33;
20 (c) amounts payable to the Commonwealth in connection with
21 the performance of the CEO's functions.

Section 57

1

2 **Division 3—Miscellaneous**

3 **57 Staff assisting the CEO**

4 The staff necessary to assist the CEO are to be persons appointed or
5 employed under the *Public Service Act 1922* and made available for the
6 purpose by the Secretary to the Department.

7 **58 Annual report**

8 (1) As soon as practicable after the end of each financial year, the
9 CEO must prepare and give to the Minister a report on the
10 operations of the CEO during that year.

11 (2) The report must include details of directions given by the Minister
12 during the financial year under section 15.

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

16 **59 Quarterly reports**

17 (1) As soon as practicable after the end of each quarter, the CEO must
18 prepare and give to the Minister a report on the operations of the
19 CEO during that quarter.

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

23 (3) In this section:

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

1 **60 Reports to Parliament**

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

4 (2) The CEO must give a copy of the report to the Minister.

Section 61

1

2 **Part 7—Powers of inspection etc.**

3

4 **61 Appointment of inspectors**

5

(1) The CEO may, by instrument in writing, appoint any of the following persons as an inspector:

6

7

(a) a person who is appointed or employed by the Commonwealth;

8

9

(b) a person who is appointed or employed by a State or Territory.

10

11

(2) In exercising powers or performing functions as an inspector, an inspector must comply with any directions of the CEO.

12

13

(3) The CEO must issue an identity card to an inspector, in the form prescribed by the regulations. The identity card must contain a recent photograph of the inspector.

14

15

16

(4) If a person to whom an identity card has been issued ceases to be an inspector, the person must immediately return the identity card to the CEO.

17

18

19

Maximum penalty: 1 penalty unit.

20

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

21

22 **62 Powers available to inspectors for monitoring compliance**

23

(1) For the purpose of finding out whether this Act or the regulations have been complied with, an inspector may:

24

25

(a) enter any premises; and

26

(b) exercise the powers set out in subsection 66(1).

27

(2) An inspector is not authorised to enter premises under subsection (1) unless:

28

Section 63

- 1 (a) the occupier of the premises has consented to the entry; or
2 (b) the entry is made under a warrant issued under section 76.

63 Inspector must produce identity card on request

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

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

64 Powers available to inspectors for dealing with hazardous situations

12 (1) This section applies if an inspector has reasonable grounds for
13 suspecting that:

- 14 (a) there may be on any premises a particular thing (the
15 *hazardous thing*) in respect of which this Act or the
16 regulations have not been complied with; and
17 (b) it is necessary in the interests of public health to exercise
18 powers under this section in order to avoid an imminent risk
19 of death, serious illness, serious injury or serious damage to
20 the environment.

21 (2) The inspector may do any of the following:

- 22 (a) enter the premises;
23 (b) search the premises for the hazardous thing;
24 (c) seize the hazardous thing, if the inspector finds it on the
25 premises;
26 (d) if the inspector has reasonable grounds for suspecting that a
27 controlled person has not complied with this Act or the
28 regulations in respect of the hazardous thing—require the
29 controlled person to take such steps that the inspector
30 considers necessary.

Section 65

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

5 **65 Searches and seizures related to offences**

- 6 (1) This section applies if an inspector has reasonable grounds for
7 suspecting that there may be evidential material (the *suspected*
8 *material*) on any premises.

- 9 (2) The inspector may:

- 10 (a) enter the premises, with the consent of the occupier or under
11 a warrant issued under section 77; and
12 (b) exercise the powers set out in subsection (3) and subsection
13 66(1); and
14 (c) seize the suspected material, if the inspector finds it on the
15 premises.

- 16 (3) If:

- 17 (a) in the course of searching, in accordance with a warrant, for
18 a particular thing, an inspector finds another thing that the
19 inspector believes on reasonable grounds to be evidential
20 material; and
21 (b) the inspector believes, on reasonable grounds, that it is
22 necessary to seize that other thing in order to prevent its
23 concealment, loss or destruction, or its use in committing,
24 continuing or repeating an offence against this Act or the
25 regulations;

26 the warrant is taken to authorise the inspector to seize that other
27 thing.

28 **66 General powers of inspectors in relation to premises**

- 29 (1) The powers an inspector may exercise under paragraphs 62(1)(b)
30 and 65(2)(b) are as follows:

- 31 (a) to search the premises and any thing on the premises;
-

Section 67

- 1 (b) to inspect, examine, take measurements of, or conduct tests
2 (including by the taking of samples) concerning, any thing
3 on the premises that relates to controlled material, controlled
4 apparatus or a controlled facility;
- 5 (c) to take photographs (including video recordings), take audio
6 recordings or make sketches of the premises or any thing on
7 the premises;
- 8 (d) if the inspector was only authorised to enter the premises
9 because the occupier of the premises consented to the
10 entry—to require the occupier to:
- 11 (i) answer any questions put by the inspector; and
12 (ii) produce any book, record or document requested by the
13 inspector;
- 14 (e) if the inspector was authorised to enter the premises by a
15 warrant under section 76 or 77—to require any person in or
16 on the premises to:
- 17 (i) answer any questions put by the inspector; and
18 (ii) produce any book, record or document requested by the
19 inspector;
- 20 (f) to inspect any book, record or document on the premises;
- 21 (g) to take extracts from or make copies of any such book,
22 record or document;
- 23 (h) to take onto the premises such equipment and materials as
24 the inspector requires for the purpose of exercising powers in
25 relation to the premises.

26 (2) A person must not refuse or fail to comply with a requirement
27 under paragraph (1)(e).

28 Maximum penalty: 30 penalty units.

29 **67 Details of warrant to be given to occupier etc.**

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

Section 68

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

3 (2) The inspector must identify himself or herself to that person.

4 (3) The copy of the warrant referred to in subsection (1) need not
5 include the signature of the magistrate who issued the warrant.

6 **68 Announcement before entry**

7 (1) An inspector must, before entering the premises under a warrant:

8 (a) announce that he or she is authorised to enter the premises;
9 and

10 (b) give any person at the premises an opportunity to allow entry
11 to the premises.

12 (2) An inspector is not required to comply with subsection (1) if he or
13 she believes on reasonable grounds that immediate entry to the
14 premises is required:

15 (a) to ensure the safety of a person; or

16 (b) to prevent serious damage to the environment; or

17 (c) to ensure that the effective execution of the warrant is not
18 frustrated.

19 **69 Use of electronic equipment at premises**

20 (1) The inspector may operate electronic equipment at the premises to
21 see whether evidential material is accessible by doing so if he or
22 she believes on reasonable grounds that the operation of the
23 equipment can be carried out without damage to the equipment.

24 (2) If the inspector, after operating the equipment, finds that evidential
25 material is accessible by doing so, he or she may:

26 (a) seize the equipment and any disk, tape or other associated
27 device; or

28 (b) if the material can, by using facilities at the premises, be put
29 in documentary form—operate the facilities to put the

Section 69

- 1 material in that form and seize the documents so produced;
2 or
- 3 (c) if the material can be transferred to a disk, tape or other
4 storage device that:
- 5 (i) is brought to the premises; or
6 (ii) is at the premises and the use of which for the purpose
7 has been agreed to in writing by the occupier of the
8 premises;
- 9 operate the equipment or other facilities to copy the material
10 to the storage device and take the storage device from the
11 premises.
- 12 (3) An inspector may seize equipment under paragraph (2)(a) only if:
- 13 (a) it is not practicable to put the material in documentary form
14 as mentioned in paragraph (2)(b) or to copy the material as
15 mentioned in paragraph (2)(c); or
16 (b) possession by the occupier of the equipment could constitute
17 an offence.
- 18 (4) If the inspector believes on reasonable grounds that:
- 19 (a) evidential material may be accessible by operating electronic
20 equipment at the premises; and
21 (b) expert assistance is required to operate the equipment; and
22 (c) if he or she does not take action under this subsection, the
23 material may be destroyed, altered or otherwise interfered
24 with;
- 25 he or she may do whatever is necessary to secure the equipment,
26 whether by locking it up, placing a guard or otherwise.
- 27 (5) The inspector must give notice to the occupier of the premises of
28 his or her intention to secure equipment and of the fact that the
29 equipment may be secured for up to 24 hours.
- 30 (6) The equipment may be secured:
- 31 (a) for a period not exceeding 24 hours; or
32 (b) until the equipment has been operated by the expert;
-

Section 70

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

8 **70 Compensation for damage to electronic equipment**

- 9 (1) The owner of equipment is entitled to compensation for damage to
10 the equipment if:
- 11 (a) the damage was caused to equipment as a result of it being
12 operated as mentioned in section 69; and
- 13 (b) the damage was caused as a result of:
- 14 (i) insufficient care being exercised in selecting the person
15 who was to operate the equipment; or
- 16 (ii) insufficient care being exercised by the person
17 operating the equipment.
- 18 (2) Compensation is payable out of money appropriated by the
19 Parliament for the purpose.
- 20 (3) In determining the amount of compensation payable, regard is to
21 be had to whether the occupier of the premises and his or her
22 employees and agents, if they were available at the time, had
23 provided any warning or guidance as to the operation of the
24 equipment that was appropriate in the circumstances.

25 **71 Copies of seized things to be provided**

- 26 (1) Subject to subsection (2), if an inspector seizes, under a warrant
27 relating to premises:
- 28 (a) a document, film, computer file or other thing that can be
29 readily copied; or

Section 72

- 1 (b) a storage device the information in which can be readily
2 copied;
3 the inspector must, if requested to do so by the occupier of the
4 premises or another person who apparently represents the occupier
5 and who is present when the warrant is executed, give a copy of
6 the thing or the information to that person as soon as practicable
7 after the seizure.
- 8 (2) Subsection (1) does not apply if:
9 (a) the thing that has been seized was seized under paragraph
10 69(2)(b) or (c); or
11 (b) possession by the occupier of the document, film, computer
12 file, thing or information could constitute an offence.

72 Occupier entitled to be present during search

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

73 Receipts for things seized under warrant

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

Section 74

1 **74 Retention of seized things**

- 2 (1) Subject to any contrary order of a court, if an inspector seizes a
3 thing under this Part, an inspector must return it if:
4 (a) the reason for its seizure no longer exists or it is decided that
5 it is not to be used in evidence; or
6 (b) the period of 60 days after its seizure ends;
7 whichever first occurs, unless the thing is forfeited or forfeitable to
8 the Commonwealth.
- 9 (2) At the end of the 60 days specified in subsection (1), an inspector
10 must take reasonable steps to return the thing to the person from
11 whom it was seized, unless:
12 (a) proceedings in respect of which the thing may afford
13 evidence were instituted before the end of the 60 days and
14 have not been completed (including an appeal to a court in
15 relation to those proceedings); or
16 (b) an inspector may retain the thing because of an order under
17 section 75; or
18 (c) to return the thing could cause an imminent risk of death,
19 serious illness, serious injury or serious damage to the
20 environment; or
21 (d) an inspector is otherwise authorised (by a law, or an order of
22 a court, of the Commonwealth or of a State or Territory) to
23 retain, destroy or dispose of the thing.
- 24 (3) The thing may be returned under subsection (2) either
25 unconditionally or on such terms and conditions as the CEO sees
26 fit.

27 **75 Magistrate may permit a thing to be retained**

- 28 (1) An inspector may apply to a magistrate for an order that he or she
29 may retain the thing for a further period if:
30 (a) before the end of 60 days after the seizure; or
31 (b) before the end of a period previously specified in an order of
32 a magistrate under this section;
-

Section 76

- 1 proceedings in respect of which the thing may afford evidence
2 have not commenced.
- 3 (2) If the magistrate is satisfied that it is necessary for an inspector to
4 continue to retain the thing:
5 (a) for the purposes of an investigation as to whether an offence
6 against this Act has been committed; or
7 (b) to enable evidence of an offence against this Act to be
8 secured for the purposes of a prosecution;
9 the magistrate may order that an inspector may retain the thing for
10 a period (not being a period exceeding 3 years) specified in the
11 order.
- 12 (3) Before making the application, the inspector must:
13 (a) take reasonable steps to discover who has an interest in the
14 retention of the thing; and
15 (b) if it is practicable to do so, notify each person whom the
16 inspector believes to have such an interest of the proposed
17 application.

76 Monitoring warrants

- 18
- 19 (1) An inspector may apply to a magistrate for a warrant under this
20 section in relation to premises.
- 21 (2) Subject to subsection (3), the magistrate may issue the warrant if
22 the magistrate is satisfied, by information on oath, that it is
23 reasonably necessary that one or more inspectors should have
24 access to the premises for the purposes of finding out whether this
25 Act or the regulations have been complied with.
- 26 (3) The magistrate must not issue the warrant unless the inspector or
27 some other person has given to the magistrate, either orally or by
28 affidavit, such further information (if any) as the magistrate
29 requires concerning the grounds on which the issue of the warrant
30 is being sought.
- 31 (4) The warrant must:
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Section 77

- 1 (a) authorise one or more inspectors (whether or not named in
2 the warrant), with such assistance and by such force as is
3 necessary and reasonable:
4 (i) to enter the premises; and
5 (ii) to exercise the powers set out in subsection 66(1) in
6 relation to the premises; and
7 (b) state whether the entry is authorised to be made at any time
8 of the day or night or during specified hours of the day or
9 night; and
10 (c) specify the day (not more than 6 months after the issue of the
11 warrant) on which the warrant ceases to have effect; and
12 (d) state the purpose for which the warrant is issued.

13 **77 Offence related warrants**

- 14 (1) An inspector may apply to a magistrate for a warrant under this
15 section in relation to premises.
- 16 (2) Subject to subsection (3), the magistrate may issue the warrant if
17 the magistrate is satisfied, by information on oath, that there are
18 reasonable grounds for suspecting that there is, or there may be
19 within the next 72 hours, in or on the premises evidential material.
- 20 (3) The magistrate must not issue the warrant unless the inspector or
21 some other person has given to the magistrate, either orally or by
22 affidavit, such further information (if any) as the magistrate
23 requires concerning the grounds on which the issue of the warrant
24 is being sought.
- 25 (4) The warrant must:
26 (a) name one or more inspectors; and
27 (b) authorise the persons so named, with such assistance and by
28 such force as is necessary and reasonable:
29 (i) to enter the premises; and
30 (ii) to exercise the powers set out in subsections 65(3) and
31 66(1); and
32 (iii) to seize the evidential material; and
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Section 78

- 1 (c) state whether the entry is authorised to be made at any time
2 of the day or night or during specified hours of the day or
3 night; and
4 (d) specify the day (not more than one week after the issue of the
5 warrant) on which the warrant ceases to have effect; and
6 (e) state the purpose for which the warrant is issued.

78 Offence related warrants by telephone

- 8 (1) If, in an urgent case, an inspector considers it necessary to do so,
9 the person may apply to a magistrate by telephone for a warrant
10 under section 77 in relation to premises.
- 11 (2) Before applying for the warrant, the person must prepare an
12 information of the kind mentioned in subsection 77(2) in relation
13 to the premises that sets out the grounds on which the warrant is
14 sought.
- 15 (3) If it is necessary to do so, the person may apply for the warrant
16 before the information is sworn.
- 17 (4) If the magistrate is satisfied:
18 (a) after having considered the terms of the information; and
19 (b) after having received such further information (if any) as the
20 magistrate requires concerning the grounds on which the
21 issue of the warrant is being sought;
22 that there are reasonable grounds for issuing the warrant, the
23 magistrate may complete and sign the same warrant that the
24 magistrate would issue under section 77 if the application had been
25 made under that section.
- 26 (5) If the magistrate completes and signs the warrant:
27 (a) the magistrate must:
28 (i) tell the inspector what the terms of the warrant are; and
29 (ii) tell the inspector the day on which and the time at
30 which the warrant was signed; and

Section 78

- 1 (iii) tell the inspector the day (not more than one week after
2 the magistrate completes and signs the warrant) on
3 which the warrant ceases to have effect; and
4 (iv) record on the warrant the reasons for granting the
5 warrant; and
6 (b) the inspector must:
7 (i) complete a form of warrant in the same terms as the
8 warrant completed and signed by the magistrate; and
9 (ii) write on the form the name of the magistrate and the
10 day on which and the time at which the warrant was
11 signed.
- 12 (6) The inspector must also, not later than the day after the day of
13 expiry or execution of the warrant, whichever is the earlier, send to
14 the magistrate:
15 (a) the form of warrant completed by the person; and
16 (b) the information referred to in subsection (2), which must
17 have been duly sworn.
- 18 (7) When the magistrate receives those documents, the magistrate
19 must:
20 (a) attach them to the warrant that the magistrate completed and
21 signed; and
22 (b) deal with them in the way in which the magistrate would
23 have dealt with the information if the application had been
24 made under section 77.
- 25 (8) A form of warrant duly completed under subsection (5) is authority
26 for any entry, search, seizure or other exercise of a power that the
27 warrant signed by the magistrate authorises.
- 28 (9) If:
29 (a) it is material, in any proceedings, for a court to be satisfied
30 that an exercise of a power was authorised by this section;
31 and
32 (b) the warrant signed by the magistrate authorising the exercise
33 of the power is not produced in evidence;
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Section 79

1 the court must assume, unless the contrary is proved, that the
2 exercise of the power was not authorised by such a warrant.

3 (10) A reference in this Part to a warrant under section 77 includes a
4 reference to a warrant signed by a magistrate under this section.

79 Offences relating to warrants

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

9 Maximum penalty: Imprisonment for 2 years.

10 (2) A person must not:

11 (a) state in a document that purports to be a form of warrant
12 under section 78 the name of a magistrate unless that
13 magistrate issued the warrant; or

14 (b) state on a form of warrant under that section a matter that, to
15 the person's knowledge, departs in a material particular from
16 the form authorised by the magistrate; or

17 (c) purport to execute, or present to another person, a document
18 that purports to be a form of warrant under that section that
19 the first-mentioned person knows:

20 (i) has not been approved by a magistrate under that
21 section; or

22 (ii) to depart in a material particular from the terms
23 authorised by a magistrate under that section; or

24 (d) give to a magistrate a form of warrant under that section that
25 is not the form of warrant that the person purported to
26 execute.

27 Maximum penalty: Imprisonment for 2 years.

80 Part does not limit power to impose licence conditions

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

Section 81

1 **81 Operation of *Nuclear Non-Proliferation (Safeguards) Act 1987***

2 (1) This Part is not to be taken to excuse an inspector from complying
3 with sections 23, 25 and 26 of the *Nuclear Non-Proliferation*
4 *(Safeguards) Act 1987*.

5 (2) In particular, the exercise of powers by an inspector under this Part
6 is not taken to be a reasonable excuse for the purposes of those
7 sections.

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Part 8—Miscellaneous2
3**82 Operation of State and Territory laws**

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

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83 Powers to be exercised in accordance with international agreements

(1) Where this Act confers a power, discretion, duty or function on a person, the exercise of the power or discretion or the performance of the duty or function is authorised by this Act only to the extent that the exercise or performance is not inconsistent with Australia's obligations under the relevant international agreements.

(2) Where this Act confers a power or discretion on a person, the person must have regard to Australia's obligations under the relevant international agreements in exercising that power or discretion.

(3) For the purposes of this section, an agreement is a *relevant international agreement* if:

(a) immediately before the commencement of this Act, it was a relevant international agreement for the purposes of section 70 of the *Nuclear Non-Proliferation (Safeguards) Act 1987*;
or

(b) it is an international agreement prescribed by the regulations.

Section 84

1 **84 Regulations**

- 2 (1) The Governor-General may make regulations prescribing matters:
3 (a) required or permitted by this Act to be prescribed; or
4 (b) necessary or convenient to be prescribed for carrying out or
5 giving effect to this Act.
- 6 (2) Without limiting subsection (1), the regulations may:
7 (a) require specified standards to be observed, practices and
8 procedures to be followed and measures to be taken by
9 controlled persons in relation to activities relating to
10 controlled facilities, and in relation to dealings with
11 controlled apparatus or controlled material; and
12 (b) regulate, restrict or prohibit any act of a controlled person in
13 relation to such activities or dealings; and
14 (c) require the keeping of records, the giving of information and
15 the notification of specified occurrences by controlled
16 persons in relation to such activities or dealings; and
17 (d) provide for the establishment of committees to advise the
18 CEO on matters relating to radiation or nuclear safety; and
19 (e) provide for matters relating to the payment of annual charge,
20 including the time and manner of payment, pro-rating and
21 refunds; and
22 (f) prescribe fees in respect of matters under this Act or the
23 regulations; and
24 (g) prescribe penalties of not more than 50 penalty units for
25 offences against the regulations.