

Western Australia

Nuclear Activities Regulation Act 1978

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CONTENTS

1.	Short title	1
2.	Object	1
3.	Crown bound	1
4.	Interpretation	1
5.	Relation to other laws	3
6.	Formulation of codes of practice	4
7.	Administration of regulations	5
8.	Inspectors	6
9.	Special situations	6
10.	Secrecy	8
11.	Report to Parliament	8
12.	Regulations	8
	Notes	
	Compilation table	12

Nuclear Activities Regulation Act 1978

An Act to make provision with respect to the regulation and control of nuclear activities, for the formulation and adoption of codes of practice in relation thereto, and for incidental and other purposes.

1. Short title

This Act may be cited as the *Nuclear Activities Regulation Act 1978*¹.

2. Object

The object of this Act is to make provision for protecting the health and safety of the people of the State, and the environment, from possible harmful effects associated with nuclear activities.

3. Crown bound

- (1) The possession, storage, use, handling or disposal of, or other dealing with, any prescribed substance by the Minister or any other Minister charged with the administration of any regulations made under this Act or a person authorised by the Minister or that other Minister in the performance of that person's duties under this or any other Act is not unlawful.
- (2) Except as provided in subsection (1), this Act binds the Crown.

4. Interpretation

In this Act unless the contrary intention appears —

Commonwealth law means the *Environment Protection (Nuclear Codes) Act 1978* of the Parliament of the Commonwealth and any Act amending or in substitution for that Act;

inspector means an inspector or authorised officer designated as an inspector pursuant to section 8;

mineral includes any substance obtained or obtainable from the earth by underground or surface working;

nuclear activities includes —

- (a) the mining (whether by underground or surface working) or recovery of any prescribed substance or any mineral containing a prescribed substance;
- (b) the production of any prescribed substance;
- (c) the milling, refining, treatment, processing, re-processing, fabrication, enrichment of —
 - (i) any prescribed substance; or
 - (ii) any mineral, or other matter, that contains a prescribed substance;
- (d) the use of any substance, mineral or matter referred to in paragraph (c)(i) or (ii) of this interpretation in the production of nuclear energy;
- (e) the construction, operation or decommissioning of a mine, plant, facility, structure, apparatus or equipment used in, or in association or connection with, any operation or activity referred to in paragraphs (a), (b), (c) or (d) of this interpretation; and
- (f) any operation or activity connected or associated with or incidental to any operation or activity referred to in paragraphs (a), (b), (c), (d) or (e) of this interpretation including the use, storage, handling, transportation, possession, acquisition, abandonment or disposal of —
 - (i) any prescribed substance; or

- (ii) any mineral, or other matter, that contains a prescribed substance,

for or in connection with such an activity;

nuclear energy means any form of energy released in the course of nuclear fission, nuclear fusion or other nuclear transmutation;

Order means Order in Council published in the *Government Gazette*;

prescribed substance means —

- (a) radium, uranium, thorium, or any other substance declared by the regulations to be capable of being used for the production of nuclear energy or to be a radioactive substance; and
- (b) any derivative or compound of a substance to which paragraph (a) of this interpretation applies;

section means a section of this Act;

subsection means a subsection of the section wherein that term is used.

5. Relation to other laws

- (1) Subject to subsection (2) where any provision of this Act relating to the protection of the health or safety of persons or the environment from possible harmful effects associated with a nuclear activity is inconsistent with any provision of another Act or any regulation made under another Act the provisions of this Act prevail to the extent of the inconsistency.
- (2) This Act does not affect the operation of the *Nuclear Waste Storage and Transportation (Prohibition) Act 1999* and nothing in this Act authorises the doing of anything that is prohibited by that Act.

[Section 5 amended by No. 54 of 1999 s. 10(1); No. 2 of 2004 s. 13(2).]

6. Formulation of codes of practice

- (1) The Minister may, from time to time, arrange for the formulation of —
 - (a) proposed codes of practice for regulating or controlling nuclear activities in the State (including codes of practice to replace existing codes of practice adopted pursuant to this Act); and
 - (b) proposed variations of codes of practice adopted pursuant to this Act.
- (2) Where the Minister —
 - (a) proposes to formulate a proposed code of practice or proposed variation of a code of practice under subsection (1); or
 - (b) proposes to recommend to the Governor the making, variation or revocation of any regulation under this Act,

the Minister shall consult with the appropriate Minister administering any Act or any regulations made under this or any other Act that may be affected by the proposal and may make available, or arrange to make available, for public comment, proposed codes of practice or proposed regulations, as the case may be, and any proposed variation thereof.
- (3) For the purpose of giving effect to the objects of this Act the Minister may consult with and co-operate with any appropriate Minister of the Commonwealth or of another State or a Territory of the Commonwealth.
- (4) Subject to subsection (5), where a code of practice in relation to a nuclear activity is given effect under the Commonwealth law any regulations made under this Act in relation to that nuclear activity may adopt the code of practice given effect under the Commonwealth law.
- (5) Where the Minister is satisfied that a code of practice given effect under the Commonwealth law does not have regard to

special conditions or does not make adequate provision in relation to a particular nuclear activity the Minister may recommend to the Governor that the regulations adopting the code of practice given effect under the Commonwealth law include such provisions varying or modifying the code of practice so given effect as are specified in the regulations and the regulations shall have effect accordingly.

- (6) A code of practice may —
- (a) specify standards to be observed, practices and procedures to be followed and measures (including measures for and in relation to the restoration of the environment from the effects of nuclear activities) to be taken with respect to nuclear activities;
 - (b) recommend practices and procedures that may be followed, and measures that may be taken, to further the achievement of standards referred to in paragraph (a).

7. Administration of regulations

- (1) The Governor shall by Order direct that any regulations made under this Act shall be administered by such Minister as is specified in the Order.
- (2) An Order made pursuant to subsection (1) may be varied or cancelled by a subsequent Order.
- (3) No proceedings for an offence against any regulation made under this Act shall be commenced without the consent of the Minister charged pursuant to subsection (1) with the administration of the particular regulation against which the offence is alleged to have been committed, otherwise proceedings for an offence against this Act shall be commenced only with the consent of the Minister charged with the administration of this Act.
- (4) The Minister charged with the administration of any regulations made under this Act shall, before he gives his consent pursuant to subsection (3) to the commencement of any legal

proceedings, consult with the Minister charged with the administration of this Act in respect of his intention to give such consent.

8. Inspectors

- (1) The Minister charged with the administration of any regulations made under this Act may designate any person appointed to be an inspector or an authorised officer under any Act administered by that Minister to be an inspector for the purposes of this Act.
- (2) Subject to this Act, every person designated an inspector pursuant to subsection (1) has for the purposes of this Act all the powers and authorities conferred on him by the Act under which he is appointed to be an inspector or an authorised officer and is, in exercising any such powers and authorities for the purposes of this Act —
 - (a) subject to the duties, obligations and liabilities imposed on him by; and
 - (b) protected from liability to the extent specified in, the Act under which he is appointed to be an inspector or an authorised officer.
- (3) Subject to this Act, a person, with respect to whom an inspector exercises, or is about to exercise, any power or authority conferred on the inspector for the purposes of this Act by or under the Act under which the inspector or authorised officer is appointed, is subject to the same duties, obligations, requirements and liabilities as are imposed or may be imposed on such a person by or under the Act under which the inspector or authorised officer is appointed.

9. Special situations

- (1) Where the Minister is satisfied that —
 - (a) the health or safety of persons, or the environment, is likely to be harmed by a situation resulting from a nuclear activity; and

- (b) the laws of the State (other than this section) do not make provision, or do not make adequate provision, for protecting the health or safety of persons likely to be affected by that situation, or for protecting the environment in so far as it is likely to be affected by that situation,

he may in writing, give such directions and take such action, as subject to subsection (2) he considers necessary to control and eliminate hazards associated with the situation.

- (2) Any direction given under subsection (1) may specify terms and conditions to which the authority given by the direction is to be subject.
- (3) Subject to subsection (4), any direction given under subsection (1) unless earlier revoked remains in force until the expiration of the period of 14 days after the date of the direction.
- (4) The Governor may, if he is satisfied that it is necessary to do so, by Order, direct that a direction given under subsection (1) shall remain in force for such further period as is specified in the Order, not being a period extending 6 months after the date of the direction under subsection (1) and may in the Order give such further directions as he thinks are necessary to control and eliminate the situation for which a direction was given by the Minister pursuant to that subsection.
- (5) Any costs or expenses incurred by the Minister with respect to controlling or eliminating a special situation referred to in subsection (1) may be recovered by the Minister in a court of competent jurisdiction from any person whose act or omission caused the special situation.
- (6) Section 36 of the *Interpretation Act 1918*² applies to every Order made by the Governor pursuant to this section as though the Order were a regulation.

s. 10

- (7) A person who fails to comply with any direction given under this section or hinders or obstructs the taking of any action in pursuance of such a direction, commits an offence.

Penalty: \$1 000.

[Section 9 amended by No. 50 of 2003 s. 81(2).]

10. Secrecy

A person who discloses any information that has been furnished to him or obtained by him under this Act, or in connection with the execution of this Act, commits an offence unless the disclosure is made —

- (a) with the consent of the person carrying on or operating the business to which that information relates; or
- (b) for the purpose of giving effect to the objects of this Act and in the performance of a duty under this Act.

Penalty: A fine not exceeding \$2 000 or imprisonment for 12 months, or both such fine and imprisonment.

11. Report to Parliament

The Minister shall, at least annually, cause a report relating to the administration of this Act to be prepared and shall as soon as practicable after receiving the report cause copies of the report to be laid before both Houses of Parliament.

12. Regulations

- (1) The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and without derogating from the generality of the foregoing —

- (a) prohibiting the doing of an act or thing absolutely;
- (b) prohibiting the doing of an act or thing except in pursuance of a licence, permit or authority, or in

- accordance with an approval, granted, issued or given under the regulations;
- (c) making provision for and in relation to the terms and conditions to which a licence, permit, authority or approval granted, issued or given under the regulations is to be subject;
 - (d) making special provision for and in relation to the protection of the health and safety, and the training, examination and certification, of persons, who because of their work or professional activity, are involved in nuclear activities;
 - (e) making provision for and in relation to the granting of exemptions, either unconditionally or subject to conditions, from the provisions of the regulations;
 - (f) providing for the recovery of costs and expenses, and fixing the fees to be paid, in respect of any matters under this Act;
 - (g) empowering the Minister administering the regulations or other persons to give directions to particular persons for the purposes of the regulations;
 - (h) empowering the Minister administering the regulations to make provision by written direction with respect to any matter with respect to which provision can be made by the regulations;
 - (i) subject to this Act, adopting, either wholly or in part or with modifications and either specifically or by reference, any code formulated under a Commonwealth law, this Act or any other Act; and
 - (j) prescribing the manner in which notices, directions or instructions under the regulations may be given or in which documents may be served.
- (2) Offences against the regulations may be prosecuted —
- (a) on indictment; or

- (b) if the accused and the prosecutor consent and the court is satisfied that it is proper to do so — summarily.
- (3) The regulations may, in respect of offences against the regulations —
 - (a) provide for a penalty —
 - (i) upon summary conviction — of a fine not exceeding \$2 000, or imprisonment for a period not exceeding one year, or both, and, in the case of a continuing offence, for a further fine not exceeding \$2 000 for each day after the first day on which the offence is found to have been committed during which the offence is found to have continued; and
 - (ii) upon conviction otherwise than summarily — of a fine not exceeding \$50 000, or imprisonment for a period not exceeding 5 years, or both, and, in the case of a continuing offence, for a further fine not exceeding \$50 000 for each day after the first day on which the offence is found to have been committed during which the offence is found to have continued;
 - and
 - (b) provide that, in the case of an offence constituted by a failure to do an act within a specified period or not later than a specified time, a person convicted of the offence is guilty of a separate and further offence against the regulations in respect of each day after the day of the conviction during which the failure to do that act continues (notwithstanding that that period has expired or that time has passed) and is punishable in respect of each such separate and further offence —
 - (i) upon summary conviction — by a fine not exceeding \$2 000; and

- (ii) upon conviction otherwise than summarily — by a fine not exceeding \$50 000.
- (4) Section 36 of the *Interpretation Act 1918*² applies to any direction given pursuant to regulations made under subsection (1)(h) as though the direction were a regulation.
- (5) For the purposes of subsections (2) and (3), a contravention of, or failure to comply with, a direction given under the regulations shall be deemed to be an offence against the regulations.

[Section 12 amended by No. 84 of 2004 s. 82.]

Notes

- ¹ This is a compilation of the *Nuclear Activities Regulation Act 1978* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Nuclear Activities Regulation Act 1978</i>	104 of 1978	30 Nov 1978	30 Nov 1978
<i>Nuclear Waste Storage (Prohibition) Act 1999</i> s. 10(1)	54 of 1999	7 Dec 1999	7 Dec 1999 (see s. 2)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 81	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Nuclear Waste Storage (Prohibition) Amendment Act 2004</i> s. 13	2 of 2004	1 Apr 2004	1 Apr 2004 (see s. 2)
Reprint 1: The Nuclear Activities Regulation Act 1978 as at 27 Aug 2004 (includes amendments listed above)			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

- ² Repealed by the *Interpretation Act 1984*.