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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*As passed by both Houses*

**Australian Naval Nuclear Power Safety  
Bill 2024**

**No.     , 2024**

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



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1 **A Bill for an Act to regulate activities relating to**  
2 **conventionally-armed, nuclear-powered**  
3 **submarines to ensure the nuclear safety of those**  
4 **activities, and for related purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Introduction**

7 **Division 1—Preliminary**

8 **1 Short title**

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

**Section 2**

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1 **2 Commencement**

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

6

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the first day of the first calendar month to start after the end of that period.	

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

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

13 **3 Simplified outline of this Act**

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

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

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

Section 3

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

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

There are nuclear safety duties that apply to people when they conduct regulated activities. For example, they must ensure nuclear safety, and must be authorised by a licence, when conducting those activities. There are additional nuclear safety duties that apply to licence holders (such as the duty to establish, implement and maintain a nuclear safety management system and report nuclear safety incidents) as well as other persons authorised under a licence (such as the duty to implement and comply with the nuclear safety management system and comply with licence conditions). A person who breaches a nuclear safety duty may be subject to civil or criminal penalties. Part 2 deals with nuclear safety duties.

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

**Part 1** Introduction  
**Division 1** Preliminary

**Section 3**

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

1 **Division 2—Defined terms**

2 **Subdivision A—Simplified outline of this Division**

3 **4 Simplified outline of this Division**

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

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

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

10 **Subdivision B—The Dictionary**

11 **5 The Dictionary**

12 (1) In this Act:

13 *approved form* means a form approved under section 146.

14 *AUKUS submarine*: see subsection 7(1).

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

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

21 *Australian naval nuclear power safety licence*: see section 27.

22 *Australian submarine*: see subsection 7(2).

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

**Section 5**

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

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

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

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

11 ***Commonwealth contractor***: see subsection 29(2).

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

14 ***Commonwealth officer*** means:

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

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

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

28 ***defence staff member*** means any of the following:

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



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

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

12 ***designated zone***: see subsection 10(2).

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

16 ***engage in conduct*** means:

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

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

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

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

32 ***facility activity***: see section 11.

Section 5

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- 1                    **Finance Minister** means the Minister administering the *Public*  
2                    *Governance, Performance and Accountability Act 2013*.
- 3                    **foreign naval or government vessel** means any of the following:  
4                    (a) a warship or other vessel that:  
5                           (i) is operated for naval or military purposes by a foreign  
6                           country; and  
7                           (ii) is under the command of a member of the armed forces  
8                           of the foreign country; and  
9                           (iii) bears external marks of nationality; and  
10                           (iv) is manned by seafarers under armed forces discipline  
11                           (however described);  
12                    (b) a vessel that is used by a foreign country, for the time being,  
13                           on government non-commercial service as a naval auxiliary;  
14                    (c) a vessel used by a foreign country, for the time being, for  
15                           customs or law enforcement purposes.
- 16                    **function** includes power, obligation or duty.
- 17                    **identity card**, in relation to an inspector, means a card issued to the  
18                    inspector under section 87.
- 19                    **improvement notice**: see subsection 77(1).
- 20                    **inspector** means an Australian Naval Nuclear Power Safety  
21                    Inspector.
- 22                    **investigation area** means any of the following (including while it  
23                    is not complete):  
24                    (a) an Australian submarine;  
25                    (b) a designated zone;  
26                    (c) an NNP facility or other premises within a designated zone;  
27                    (d) any other premises;  
28                    but does not include a foreign naval or government vessel.
- 29                    Note:        An investigation area may not be complete because, for example, it is  
30                           being constructed or disposed of.
- 31                    **investigation powers**: see section 48 and subsections 49(2) and  
32                    52(2).

- 1            **investigation warrant** means:
- 2            (a) a warrant issued by an issuing officer under section 68; or
- 3            (b) a warrant signed by an issuing officer under section 69.
- 4            **ionising radiation**: see subsection 15(3).
- 5            **issuing officer**: see subsection 95(1).
- 6            **licence**: means an Australian naval nuclear power safety licence.
- 7            **material activity**: see section 14.
- 8            **member** of the Regulator: see subsection 101(2).
- 9            **monitoring area** means any of the following (including while it is
- 10           not complete):
- 11           (a) an Australian submarine;
- 12           (b) a designated zone;
- 13           (c) an NNP facility or other premises within a designated zone;
- 14           but does not include a foreign naval or government vessel.
- 15           Note:        A monitoring area may not be complete because, for example, it is
- 16                      being constructed or disposed of.
- 17           **monitoring powers**: see section 41 and subsection 42(1).
- 18           **NNP equipment or plant**: see subsection 15(2).
- 19           **NNP facility**: see section 12.
- 20           **NNP material**: see subsection 15(1).
- 21           **non-corporate Commonwealth entity** has the same meaning as in
- 22           paragraph 11(b) of the *Public Governance, Performance and*
- 23           *Accountability Act 2013*.
- 24           **non-ionising radiation**: see subsection 15(4).
- 25           **nuclear safety** includes:
- 26           (a) in all cases—protecting the health and safety of people, and
- 27                      the environment, from the harmful effects of ionising
- 28                      radiation and non-ionising radiation; and

**Section 5**

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

9 ***nuclear safety incident***: see subsection 21(2).

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

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

16 Note: See also section 140.

17 ***Osborne designated zone***: see subsection 10(4).

18 ***paid work***: see subsection 114(2).

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

20 ***premises*** includes the following:

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

27 ***prohibition notice***: see subsection 78(2).

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

30 ***reasonably practicable***: see subsection (2).

1                    **regulated activity**: see section 9.

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

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

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

- 8                    (a) if the area is an Australian submarine or another vessel—the  
9                    commanding officer of the submarine or master of the vessel,  
10                    or an individual who apparently represents the commanding  
11                    officer or master;
- 12                    (b) if the area is an aircraft—the pilot in command, a crew  
13                    member, or the operator, of the aircraft, or an individual who  
14                    apparently represents the pilot in command or the operator of  
15                    the aircraft;
- 16                    (c) otherwise—any owner or occupier of the area, or an  
17                    individual who apparently represents an owner or occupier of  
18                    the area.

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

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

23                    **Stirling designated zone**: see subsection 10(3).

24                    **submarine activity**: see section 13.

25                    **this Act** includes instruments made under this Act.

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

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

**Part 1** Introduction

**Division 2** Defined terms

**Section 5**

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- 1 (a) the likelihood of the hazard or risk concerned eventuating;  
2 and  
3 (b) the degree of harm that might result from the hazard or risk  
4 concerned eventuating; and  
5 (c) what the person concerned knows, or ought reasonably to  
6 know, about:  
7 (i) the hazard or the risk concerned; and  
8 (ii) ways of eliminating or minimising the hazard or risk  
9 concerned; and  
10 (d) the availability and suitability of ways to eliminate or  
11 minimise the hazard or risk concerned; and  
12 (e) after assessing the extent of the hazard or risk concerned and  
13 the available ways of eliminating or minimising the hazard or  
14 risk concerned, the cost associated with available ways of  
15 eliminating or minimising the hazard or risk concerned,  
16 including whether the cost is grossly disproportionate to the  
17 hazard or risk concerned.

1 **Division 3—Core provisions**

2 **Subdivision A—Objects of this Act**

3 **6 Objects of this Act**

4 The objects of this Act are:

- 5 (a) to promote the nuclear safety of activities relating to AUKUS  
6 submarines; and  
7 (b) to promote public confidence and trust in relation to the  
8 nuclear safety of Australia’s nuclear-powered submarine  
9 enterprise; and  
10 (c) to promote the defence and interests of Australia; and  
11 (d) to support the AUKUS partnership.

12 **7 What are AUKUS submarines?**

13 (1) An *AUKUS submarine* is:

- 14 (a) an Australian submarine; or  
15 (b) a UK/US submarine;

16 and includes such a submarine that is not complete (for example,  
17 because it is being constructed).

18 (2) An *Australian submarine* is a conventionally-armed,  
19 nuclear-powered submarine operated, or under construction or  
20 being disposed of in Australia, for naval or military purposes by  
21 Australia.

22 (3) An *UK/US submarine* is a conventionally-armed, nuclear-powered  
23 submarine operated, or under construction in Australia, for naval or  
24 military purposes by the United Kingdom or the United States of  
25 America.

26 **8 Regulating persons when they conduct regulated activities**

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

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1 Note 1: Regulated activities are activities that relate to AUKUS submarines.  
2 For what is a regulated activity, see sections 9 to 15.

3 Note 2: People who conduct regulated activities must comply with nuclear  
4 safety duties (see Part 2 for those duties). A person who breaches a  
5 nuclear safety duty may be subject to civil or criminal penalties (Part 2  
6 also deals with penalties for breaches).

7 **8A Prohibition on storage and disposal of spent nuclear fuel that is**  
8 **not from an Australian submarine**

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

16 **8B Prohibition on certain kinds of construction, etc.**

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

28 **Subdivision B—Regulated activities**

29 **9 What are regulated activities?**

30 There are 3 types of *regulated activity*:



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

## 4 **10 Regulated activities and designated zones**

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

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

- 10 (2) Each of the following is a *designated zone*:

- 11 (a) the Stirling designated zone;
- 12 (b) the Osborne designated zone;
- 13 (c) any other area in Australia that is prescribed by the
- 14 regulations to be a designated zone.

- 15 (3) The *Stirling designated zone* is the area known as HMAS *Stirling*
- 16 at Garden Island in Western Australia, as described by the
- 17 regulations.

- 18 (4) The *Osborne designated zone* is the area known as Osborne Naval
- 19 Shipyard in South Australia, as described by the regulations.

## 20 **Subdivision C—Facility activities (first type of regulated**

### 21 **activity)**

## 22 **11 What are facility activities?**

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

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

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

3 **12 What are NNP facilities?**

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

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

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

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

20 **13 What are submarine activities?**

21 Each of the following is a *submarine activity*:

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

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

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

3 **14 What are material activities?**

4 (1) Each of the following is a *material activity*:

- 5 (a) having possession or control of NNP material or NNP  
6 equipment or plant in a designated zone or an Australian  
7 submarine;
- 8 (b) using NNP material in a designated zone or an Australian  
9 submarine;
- 10 (c) using or operating NNP equipment or plant in a designated  
11 zone or an Australian submarine;
- 12 (d) maintaining, storing or disposing of NNP material or NNP  
13 equipment or plant in a designated zone or an Australian  
14 submarine.

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

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

20 **15 What are NNP material and NNP equipment or plant?**

21 (1) *NNP material* (short for naval nuclear propulsion material) means  
22 any natural or artificial material (whether in solid or liquid form, or  
23 in the form of a gas or vapour) that:

- 24 (a) emits ionising radiation spontaneously; and  
25 (b) is from, or for use on, an AUKUS submarine.

26 (2) *NNP equipment or plant* (short for naval nuclear propulsion  
27 equipment or plant) means any equipment or plant from, or for use  
28 on, an AUKUS submarine, that:

- 29 (a) produces ionising radiation when energised or that would, if  
30 assembled or repaired, be capable of producing ionising  
31 radiation when energised; or  
32 (b) produces ionising radiation because it contains radioactive  
33 material; or

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

11 **Subdivision F—The Regulator**

12 **16 The Regulator**

- 13 For the purposes of achieving the objects of this Act, this Act:  
14 (a) establishes the Australian Naval Nuclear Power Safety  
15 Regulator; and  
16 (b) confers functions on the Regulator in relation to regulated  
17 activities (such as promoting, monitoring and enforcing  
18 compliance with this Act); and  
19 (c) ensures the independence of the Regulator.
- 20 Note: Part 5 deals with the Regulator.

1 **Part 2—Ensuring nuclear safety when conducting**  
2 **regulated activities**

3 **Division 1—Simplified outline of this Part**

4 **17 Simplified outline of this Part**

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

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

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

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

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

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1 **Division 2—Nuclear safety duties**

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

4 **18 General nuclear safety duty**

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

8 *Civil penalty provisions*

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

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

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

18 Civil penalty: 10,000 penalty units.

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

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

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

31 Civil penalty: 20,000 penalty units.

1 *Offences*

- 2 (4) A person commits an offence if:  
3 (a) the person engages in conduct; and  
4 (b) the conduct is a regulated activity; and  
5 (c) the conduct results in a contravention of subsection (1).

6 *Penalty:*

- 7 (a) for an individual—imprisonment for 12 years or 700 penalty  
8 units, or both; or  
9 (b) for a body corporate—28,000 penalty units.

- 10 (5) A person commits an offence if:  
11 (a) the person engages in conduct; and  
12 (b) the conduct is a regulated activity; and  
13 (c) the conduct results in a contravention of subsection (1); and  
14 (d) a nuclear safety incident occurs; and  
15 (e) the person is reckless, or negligent, as to whether the conduct  
16 would cause or contribute to the nuclear safety incident.

17 *Penalty:*

- 18 (a) for an individual—imprisonment for 25 years or 1,400  
19 penalty units, or both; or  
20 (b) for a body corporate—57,500 penalty units.

- 21 (6) Strict liability applies to paragraphs (4)(b) and (5)(b) and (d).

22 **19 Duty to be authorised by a licence**

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

26 *Civil penalty provision*

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

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

**Part 2** Ensuring nuclear safety when conducting regulated activities

**Division 2** Nuclear safety duties

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

5 Civil penalty: 5,000 penalty units.

6 *Offence*

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

12 *Penalty:*

- 13 (a) for an individual—imprisonment for 6 years or 350 penalty  
14 units, or both; or  
15 (b) for a body corporate—14,000 penalty units.

- 16 (4) Strict liability applies to paragraphs (3)(b) and (c).

17 *Exception*

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

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

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



1 **Subdivision B—Nuclear safety duties applying to licence**  
2 **holders**

3 **20 Duty on licence holders—nuclear safety management systems**

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

9 *Civil penalty provision*

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

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

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

19 Civil penalty: 5,000 penalty units.

20 *Offence*

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

25 *Penalty:*

- 26 (a) for an individual—imprisonment for 6 years or 350 penalty  
27 units, or both; or  
28 (b) for a body corporate—14,000 penalty units.

- 29 (4) Strict liability applies to paragraph (3)(a).

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1 **21 Duty on licence holders—reporting nuclear safety incidents**

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

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

- 8 (2) An incident is a *nuclear safety incident* if:

9 (a) it relates to nuclear safety; and

10 (b) it:

11 (i) results in, or could have resulted in, the death of, serious  
12 injury to, or serious illness in, an individual; or

13 (ii) results in, or could have resulted in, a serious  
14 environmental incident; or

15 (iii) is of a kind prescribed by the regulations.

- 16 (3) The report under subsection (1):

17 (a) must be given to the Regulator immediately after the person  
18 becomes aware of the incident; and

19 (b) must be in writing, or may be given orally but must be  
20 confirmed by written notice given to the Regulator as soon as  
21 practicable after being given orally; and

22 (c) must be in the approved form (if any); and

23 (d) must contain the information (if any) prescribed by the  
24 regulations; and

25 (e) must be given to the Regulator in the manner (if any)  
26 prescribed by the regulations.

27 *Civil penalty provision*

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

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

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

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

3 Civil penalty: 5,000 penalty units.

4 *Offence*

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

9 Penalty:

- 10 (a) for an individual—imprisonment for 6 years or 350 penalty  
11 units, or both; or  
12 (b) for a body corporate—14,000 penalty units.

13 (6) Strict liability applies to paragraphs (5)(a) and (c).

14 **22 Duty on licence holders—competence and supervision**

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

22 *Civil penalty provision*

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

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

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

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1 Civil penalty: 5,000 penalty units.

2 *Offence*

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

7 Penalty:

- 8 (a) for an individual—imprisonment for 6 years or 350 penalty  
9 units, or both; or  
10 (b) for a body corporate—14,000 penalty units.

11 (4) Strict liability applies to paragraph (3)(a).

12 **23 Duty on licence holders—complying with licence conditions**

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

15 *Civil penalty provision*

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

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

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

25 Civil penalty: 5,000 penalty units.

26 *Offence*

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

1 Penalty:

2 (a) for an individual—imprisonment for 6 years or 350 penalty  
3 units, or both; or

4 (b) for a body corporate—14,000 penalty units.

5 (4) Strict liability applies to paragraphs (3)(a) and (c).

6 *Exception*

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

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

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

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

18 **24 Duty on authorised persons—nuclear safety management systems**

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

23 *Civil penalty provision*

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

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

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

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1 Civil penalty: 2,500 penalty units.

2 *Offence*

3 (3) A person commits an offence if:

4 (a) the person is authorised to conduct a regulated activity under  
5 a licence; and

6 (b) the person engages in conduct; and

7 (c) the conduct contravenes subsection (1).

8 Penalty:

9 (a) for an individual—imprisonment for 3 years or 175 penalty  
10 units, or both; or

11 (b) for a body corporate—7,000 penalty units.

12 (4) Strict liability applies to paragraph (3)(a).

13 **25 Duty on authorised persons—complying with licence conditions**

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

17 *Civil penalty provision*

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

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

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

27 Civil penalty: 2,500 penalty units.

28 *Offence*

29 (3) A person commits an offence if:

30 (a) a person is authorised by a licence; and

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

3 Penalty:

- 4 (a) for an individual—imprisonment for 3 years or 175 penalty  
5 units, or both; or  
6 (b) for a body corporate—7,000 penalty units.

7 (4) Strict liability applies to paragraphs (3)(a) and (c).

8 *Exception*

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

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

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

1 **Part 3—Australian naval nuclear power safety**  
2 **licences**

3 **Division 1—Simplified outline of this Part**

4 **26 Simplified outline of this Part**

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

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

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

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



1 **Division 2—Australian naval nuclear power safety licences**

2 **27 Australian naval nuclear power safety licences**

3 An *Australian naval nuclear power safety licence* authorises:

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

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

9 **28 Who may apply for a licence?**

10 A Commonwealth-related person may apply for a licence.

11 **29 Who are Commonwealth-related persons?**

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

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

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

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

23 **30 Requirements of the application**

24 (1) An application for a licence must:

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

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- 1 (c) specify the period of the licence; and  
2 (d) for a licence to authorise a facility activity—specify the  
3 designated zone, and the area within that zone, in which the  
4 facility activity may be conducted under the licence; and  
5 (e) for a licence to authorise a submarine activity:  
6 (i) for a submarine activity referred to in paragraph 13(a)—  
7 specify the designated zone, and the area within that  
8 zone, in which the submarine activity may be conducted  
9 under the licence; or  
10 (ii) for any other submarine activity—specify the Australian  
11 submarine in relation to which the submarine activity  
12 may be conducted under the licence; and  
13 (f) for a licence to authorise a material activity—specify:  
14 (i) the designated zone or Australian submarine; and  
15 (ii) the area within that zone or submarine;  
16 in which the material activity may be conducted under the  
17 licence; and  
18 (g) for an application made by the Commonwealth—specify the  
19 non-corporate Commonwealth entity or Commonwealth  
20 officer who is making the application on behalf of the  
21 Commonwealth; and  
22 (h) be in writing; and  
23 (i) be in the approved form (if any); and  
24 (j) contain the information (if any) prescribed by the regulations;  
25 and  
26 (k) be accompanied by the documents (if any) prescribed by the  
27 regulations; and  
28 (l) be given to the Regulator in the manner (if any) prescribed  
29 by the regulations.
- 30 (2) To avoid doubt, the application may relate to:  
31 (a) one or more regulated activities; and  
32 (b) one or more designated zones, or areas of designated zones;  
33 and  
34 (c) one or more AUKUS submarines.

1 **30A Regulator may require further information**

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

15 **31 Issuing licences**

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

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

8 **32 Licence conditions**

- 9 (1) A licence is subject to all of the following conditions:  
10 (a) the condition set out in subsection (2);  
11 (b) the conditions prescribed by the regulations;  
12 (c) conditions specified by the Regulator in the licence at the  
13 time of issuing the licence;  
14 (d) any conditions specified by the Regulator under  
15 subsection 34(2) after the licence is issued.
- 16 (2) A licence is subject to the condition that the licence holder must  
17 take all reasonably practicable steps to prevent:  
18 (a) breaches of the licence conditions that apply to the licence  
19 holder (other than this condition); and  
20 (b) breaches of any licence conditions that apply to persons  
21 authorised to conduct regulated activities under the licence.
- 22 (3) A condition may be prescribed or specified for the purposes of  
23 paragraph (1)(b) or (c) only if the condition is necessary to ensure  
24 nuclear safety.
- 25 (4) Without limiting the conditions that may be prescribed or specified  
26 for the purposes of paragraph (1)(b) or (c), conditions about the  
27 following matters may be prescribed or specified for the purposes  
28 of those paragraphs:  
29 (a) nuclear safety management systems;  
30 (b) nuclear safety incident reporting;  
31 (c) the expertise, training and supervision of authorised persons;  
32 (d) plans or arrangements about any of the following:  
33 (i) nuclear safety;

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

24 **33 Period of licences**

- 25 (1) A licence may be issued:
- 26 (a) for an indefinite period; or
- 27 (b) for a period specified in the licence.
- 28 (2) A licence continues in force until:
- 29 (a) it is cancelled or surrendered; or
- 30 (b) if the licence was issued for a specified period—the end of  
31 that period (or that period as extended under  
32 paragraph 34(2)(d)), unless earlier cancelled or surrendered.

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

3 **34 Varying licences**

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

21 **35 Suspending or cancelling licences**

22 *Discretionary power to suspend or cancel licence*

- 23 (1) The Regulator may, by notice in writing given to the licence  
24 holder, suspend or cancel a licence if:  
25 (a) a condition of the licence has been breached, whether by the  
26 licence holder or by a person authorised by the licence; or  
27 (b) the Regulator believes on reasonable grounds that the licence  
28 holder, or a person authorised by the licence, has:  
29 (i) committed an offence against this Act; or  
30 (ii) contravened a civil penalty provision of this Act; or  
31 (c) the licence was obtained improperly.

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

4 *Requirement to suspend licence*

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

12 *Special provisions for suspending licences*

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

29 *Instruments are not legislative instruments*

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

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1     **36 Regulator to give notice before varying, suspending or cancelling**  
2     **licences**

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

18     **37 Surrendering licences**

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

21     **38 Review of licence decisions**

22           *Decisions which may be reviewed*

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

27           *Internal review*

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



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

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

4           *AAT review*

5           (9) Applications may be made to the Administrative Appeals Tribunal  
6           for review of:

7               (a) if the Director-General made the original decision—the  
8               original decision; or

9               (b) a decision made under subsection (7) on internal review of  
10              the original decision.

1 **Part 4—Compliance and enforcement**

2 **Division 1—Simplified outline of this Part**

3 **39 Simplified outline of this Part**

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

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

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

15 An inspector may be assisted by other persons, called “persons  
16 assisting”, who may exercise the same powers as the inspector.

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

1 **Division 2—Monitoring**

2 **40 Entry, and exercise of powers, for monitoring purposes**

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

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

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

20 *Entry with or without consent*

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

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

26 *Entry without a warrant*

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

1 **41 Monitoring powers**

2 *General monitoring powers*

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

23 *Powers relating to operating equipment*

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

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- 1 (a) the power to operate equipment in the monitoring area to put  
2 the information in documentary form and remove the  
3 documents from the monitoring area;
- 4 (b) the power to operate equipment in the monitoring area to  
5 transfer the information to a device that:
- 6 (i) is brought into the monitoring area for the exercise of  
7 the power; or
- 8 (ii) is in the monitoring area and the use of which for that  
9 purpose has been agreed in writing by a relevant person  
10 in relation to the monitoring area;
- 11 and remove the device from the monitoring area.

- 12 (4) An inspector may operate equipment as mentioned in  
13 subsection (2) or (3) only if the inspector reasonably believes that  
14 the operation of the equipment can be carried out without damage  
15 to the equipment.

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

17 **42 Securing evidence**

18 *Power to secure evidence*

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

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

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

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

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

16 *Reporting exercise of power*

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

23 **43 Additional powers in relation to evidential material**

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

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

17 *Additional provisions applying to seizure of thing*

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

22 *Reporting exercise of powers*

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



1 **44 Extension of period for securing a thing**

2 *Application for extension*

- 3 (1) An inspector may apply to an issuing officer for an extension of the  
4 72-hour period referred to in subsection 42(1) if the inspector  
5 reasonably believes that the thing needs to be secured for longer  
6 than that period.
- 7 (2) Before making the application, the inspector must give notice, to a  
8 relevant person in relation to the monitoring area where the thing  
9 was found, of the inspector's intention to apply for an extension. A  
10 relevant person in relation to the monitoring area is entitled to be  
11 heard in relation to that application.

12 *Granting the extension*

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

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1       **45 Notification and announcement of entry**

2               (1) An inspector may enter a monitoring area under section 40 without  
3               prior notice to any person.

4               (2) Before entering the monitoring area, the inspector must:

5                     (a) announce that the inspector is authorised to enter the  
6                     monitoring area under section 40; and

7                     (b) show the inspector's identity card to a relevant person in  
8                     relation to the monitoring area; and

9                     (c) give the relevant person an opportunity to allow entry to the  
10                    monitoring area.

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

13               (3) However, an inspector is not required to comply with  
14               subsection (2) if the inspector reasonably believes that immediate  
15               entry to the monitoring area is required to ensure the safety of an  
16               individual.

17               (4) If:

18                     (a) an inspector does not comply with subsection (2) because of  
19                     subsection (3); and

20                     (b) a relevant person in relation to the monitoring area is present  
21                     in the monitoring area;

22               the inspector must show the inspector's identity card to the relevant  
23               person as soon as practicable after entering the monitoring area.

24       **46 Entering certain premises for access to monitoring area**

25               (1) An inspector may enter any premises (other than premises used as  
26               a residence) to gain access to a monitoring area for the purposes of  
27               section 40.

28               (2) Subsection (1) does not authorise an inspector to enter premises  
29               unless the inspector has shown the inspector's identity card if  
30               required by the occupier of the premises.

31               (3) However, an inspector is not required to comply with  
32               subsection (2) if the inspector reasonably believes that immediate

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

1 **Division 3—Investigation**

2 **Subdivision A—Investigation powers**

3 **47 Entering investigation area by consent or under a warrant**

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

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

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

- 13 (2) However, an inspector is not authorised to enter the investigation  
14 area unless:

- 15 (a) a relevant person in relation to the investigation area has  
16 consented to the entry; or  
17 (b) the entry is made under an investigation warrant.

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

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

24 **48 Investigation powers**

25 *General investigation powers*

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

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

21 *Powers relating to operating equipment*

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

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- 1 (b) the power to operate equipment in the investigation area to  
2 put the evidential material in documentary form and remove  
3 the documents from the investigation area;  
4 (c) the power to operate equipment in the investigation area to  
5 transfer the evidential material to a device that:  
6 (i) is brought into the investigation area for the exercise of  
7 the power; or  
8 (ii) is in the investigation area and the use of which for that  
9 purpose has been agreed in writing by a relevant person  
10 in relation to the investigation area;  
11 and remove the device from the investigation area.

- 12 (4) An inspector may operate equipment as mentioned in  
13 subsection (2) or (3) only if the inspector reasonably believes that  
14 the operation of the equipment can be carried out without damage  
15 to the equipment.

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

- 17 (5) An inspector may seize equipment or a device as mentioned in  
18 paragraph (3)(a) only if:  
19 (a) it is not practicable to put the evidential material in  
20 documentary form as mentioned in paragraph (3)(b) or to  
21 transfer the evidential material as mentioned in  
22 paragraph (3)(c); or  
23 (b) possession of the equipment or the device by a relevant  
24 person in relation to the investigation area could constitute an  
25 offence against a law of the Commonwealth, a State or a  
26 Territory.

27 **49 Securing equipment to obtain expert assistance**

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

30 *Securing equipment*

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

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

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

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

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

18 *Period equipment may be secured*

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

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

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

## 26 **50 Extension of period for securing equipment**

27 *Application for extension*

- 28 (1) An inspector may apply to an issuing officer for an extension of the  
29 72-hour period referred to in paragraph 49(3)(b) if the inspector  
30 reasonably believes that the equipment needs to be secured for  
31 longer than that period.

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

6 *Granting the extension*

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

17 *Content of order*

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

25 **51 Offence for interfering with securing of, or secured, equipment**

26 A person commits an offence of strict liability if:

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



1                   Penalty: 60 penalty units.

2                   **52 Seizing other evidential material**

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

13                   **Subdivision B—Obligations and incidental powers of inspectors**

14                   **53 Consent**

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

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

9 **54 Announcement before entry under warrant**

- 10 (1) Before entering an investigation area under an investigation  
11 warrant, an inspector must:  
12 (a) announce that the inspector is authorised to enter the  
13 investigation area under section 47; and  
14 (b) show the inspector's identity card to a relevant person in  
15 relation to the investigation area; and  
16 (c) give the relevant person an opportunity to allow entry to the  
17 investigation area.  
18 (2) However, an inspector is not required to comply with  
19 subsection (1) if the inspector reasonably believes that immediate  
20 entry to the investigation area is required:  
21 (a) to ensure the safety of an individual; or  
22 (b) to ensure that the effective execution of the warrant is not  
23 frustrated.  
24 (3) If:  
25 (a) an inspector does not comply with subsection (1) because of  
26 subsection (2); and  
27 (b) a relevant person in relation to the investigation area is  
28 present in the investigation area;  
29 the inspector must show the inspector's identity card to the relevant  
30 person as soon as practicable after entering the investigation area.

31 **55 Inspector to be in possession of warrant**

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

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

5 **56 Details of warrant etc. to be given to relevant person in relation**  
6 **to investigation area**

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

25 **57 Completing execution after temporary cessation**

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

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

9 *Application for extension in emergency situation*

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

21 *Extension in emergency situation*

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

1       **58 Completing execution of warrant stopped by court order**

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

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

8       **59 Using force in executing a warrant**

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

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

15       **60 Entering certain premises for access to investigation area**

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

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

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

5 **61 Right to observe execution of warrant**

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

14 **Subdivision D—General provisions relating to seizure**

15 **62 Copies of seized things to be provided**

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

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

6 **63 Receipts for seized things**

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

10 **64 Return of seized things**

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

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

18 *Exceptions*

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

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- 1 (c) the Commonwealth, the Regulator, the Director-General or  
2 an inspector is otherwise authorised (by a law, or an order of  
3 a court, of the Commonwealth or of a State or Territory) to  
4 retain, destroy, dispose of or otherwise deal with the thing.

5 *Return of thing*

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

9 **65 Issuing officer may permit a seized thing to be retained**

- 10 (1) An inspector may apply to an issuing officer for an order  
11 permitting the retention of a thing seized under this Division for a  
12 further period if proceedings in respect of which the thing may  
13 afford evidence have not commenced before the end of:  
14 (a) 60 days after the seizure; or  
15 (b) a period previously specified in an order of an issuing officer  
16 under this section.
- 17 (2) Before making the application, the inspector must:  
18 (a) take reasonable steps to discover who has an interest in the  
19 retention of the thing; and  
20 (b) if it is practicable to do so, notify each person whom the  
21 inspector believes to have such an interest of the proposed  
22 application.
- 23 (3) Any person notified under paragraph (2)(b) is entitled to be heard  
24 in relation to the application.

25 *Order to retain thing*

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



1 (b) to enable evidence of a contravention mentioned in  
2 paragraph (a) to be secured for the purposes of a prosecution  
3 or an action to obtain a civil penalty order.

4 (5) The period specified must not exceed 3 years.

## 5 **66 Disposal of things seized**

6 (1) An inspector may dispose of a thing seized under this Division if:

7 (a) the inspector has taken reasonable steps to return the thing to  
8 a person; and

9 (b) either:

10 (i) the inspector has been unable to locate the person; or

11 (ii) the inspector has contacted the person but the person  
12 has refused to take possession of the thing or has not  
13 taken possession of it within 3 months after the contact  
14 was made.

15 (2) The inspector may dispose of the thing in such manner as the  
16 inspector thinks appropriate.

## 17 **67 Compensation for acquisition of property**

18 (1) If the operation of section 66 would result in an acquisition of  
19 property (within the meaning of paragraph 51(xxxi) of the  
20 Constitution) from a person other than the Commonwealth and  
21 otherwise than on just terms (within the meaning of that  
22 paragraph), the Commonwealth is liable to pay a reasonable  
23 amount of compensation to the person.

24 (2) If the Commonwealth and the person do not agree on the amount  
25 of the compensation, the person may institute proceedings in:

26 (a) the Federal Court of Australia; or

27 (b) the Federal Circuit and Family Court of Australia  
28 (Division 2); or

29 (c) a Supreme Court of a State or Territory;

30 for the recovery from the Commonwealth of such reasonable  
31 amount of compensation as the court determines.

1 **Subdivision E—Investigation warrants**

2 **68 Investigation warrants**

3 *Application for warrant*

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

6 *Issue of warrant*

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

17 *Content of warrant*

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

- 1 person reasonably believes that the thing is evidential  
2 material of a kind not specified in the warrant; and  
3 (g) name one or more inspectors; and  
4 (h) authorise the inspectors named in the warrant:  
5 (i) to enter the investigation area; and  
6 (ii) to exercise the powers set out in this Division in relation  
7 to the investigation area; and  
8 (i) state whether entry is authorised to be made at any time of  
9 the day or during specified hours of the day; and  
10 (j) specify the day (not more than 1 week after the issue of the  
11 warrant) on which the warrant ceases to be in force.

12 **69 Investigation warrants by telephone, fax etc.**

13 *Application for warrant*

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

30 *Issuing officer may complete and sign warrant*

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

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

- 4 (a) the warrant should be issued urgently; or  
5 (b) the delay that would occur if an application were made in  
6 person would frustrate the effective execution of the warrant.

7 (5) After completing and signing the warrant, the issuing officer must  
8 inform the inspector, by telephone, fax or other electronic means,  
9 of:

- 10 (a) the terms of the warrant; and  
11 (b) the day on which, and the time at which, the warrant was  
12 signed.

13 *Obligations on inspector*

14 (6) The inspector must then do the following:  
15 (a) complete a form of warrant in the same terms as the warrant  
16 completed and signed by the issuing officer;

- 17 (b) state on the form the following:  
18 (i) the name of the issuing officer;  
19 (ii) the day on which, and the time at which, the warrant  
20 was signed;

- 21 (c) send the following to the issuing officer:  
22 (i) the form of warrant completed by the inspector;  
23 (ii) the information referred to in subsection (3), which  
24 must have been duly sworn or affirmed.

25 (7) The inspector must comply with paragraph (6)(c) by the end of the  
26 day after the earlier of the following:

- 27 (a) the day on which the warrant ceases to be in force;  
28 (b) the day on which the warrant is executed.

29 *Issuing officer to attach documents together*

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

1 **70 Authority of warrant**

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

13 **71 Offence relating to warrants by telephone, fax etc.**

14 An inspector must not:

- 15 (a) state in a document that purports to be a form of warrant  
16 under section 69 the name of an issuing officer unless that  
17 issuing officer signed the warrant; or
- 18 (b) state on a form of warrant under that section a matter that, to  
19 the inspector's knowledge, departs in a material particular  
20 from the terms of the warrant signed by the issuing officer  
21 under that section; or
- 22 (c) purport to execute, or present to another person, a document  
23 that purports to be a form of warrant under that section that  
24 the inspector knows departs in a material particular from the  
25 terms of a warrant signed by an issuing officer under that  
26 section; or
- 27 (d) purport to execute, or present to another person, a document  
28 that purports to be a form of warrant under that section if the  
29 inspector knows that no warrant in the terms of the form of  
30 warrant has been completed and signed by an issuing officer;  
31 or
- 32 (e) give to an issuing officer a form of warrant under that section  
33 that is not the form of warrant that the inspector purported to  
34 execute.

**Part 4** Compliance and enforcement

**Division 3** Investigation

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Penalty: Imprisonment for 2 years.

1 **Division 4—Civil penalty provisions**

2 **72 Civil penalty provisions**

3 *Enforceable civil penalty provisions*

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

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

9 *Authorised applicant*

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

13 *Relevant court*

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

21 *Application*

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

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

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1 **73 Requirement for person to assist with applications for civil**  
2 **penalty orders**

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

8 Penalty: 10 penalty units.

- 9 (2) A requirement under subsection (1) is not a legislative instrument.

- 10 (3) The Director-General may require a person to assist under  
11 subsection (1) only if:

12 (a) it appears to the Director-General that the person is unlikely  
13 to have:

14 (i) contravened the civil penalty provision to which the  
15 application relates; or

16 (ii) committed an offence constituted by the same, or  
17 substantially the same, conduct as the conduct to which  
18 the application relates; and

19 (b) the Director-General suspects or believes that the person can  
20 give information relevant to the application.

- 21 (4) The Director-General cannot require a person to assist under  
22 subsection (1) if the person is or has been a lawyer for the person  
23 suspected of contravening the civil penalty provision to which the  
24 application relates.

- 25 (5) A relevant court (within the meaning of 72(3)) may order a person  
26 to comply with a requirement under subsection (1) in a specified  
27 way. Only the Director-General may apply to the court for an order  
28 under this subsection.

- 29 (6) For the purposes of this section, it does not matter whether the  
30 application for the civil penalty order has actually been made.

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



1 **74 Civil double jeopardy**

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

6 (a) a civil penalty provision of another law of the  
7 Commonwealth; or

8 (b) a civil penalty provision (however described) of a law of a  
9 State or a Territory;

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

1 **Division 5—Directions, notices and other requirements**

2 **Subdivision A—Directions and other notices**

3 **75 Inspector may give directions**

4 *Giving directions*

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

27 *Notification by inspector about steps taken or not taken*

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

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

4 *Strict liability offence*

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

9 Penalty: 60 penalty units.

10 *Fault-based offence*

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

17 Penalty: 222 penalty units.

18 *Instruments are not legislative instruments*

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

25 **76 Inspector to arrange for steps to be taken**

- 26 (1) If:  
27 (a) a person is given a direction under subsection 75(2); and  
28 (b) the person does not take the steps specified in the direction  
29 within the period specified in the direction;

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

12 **77 Inspector may give improvement notices**

13 *Giving improvement notices*

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

- 1 (g) a statement that the person is required to take the action  
2 necessary to prevent any further contravention, or to prevent  
3 the likely contravention, as the case may be;  
4 (h) the period within which the person is to take the action.

- 5 (3) The period specified for the purposes of paragraph (2)(h):  
6 (a) must be reasonable having regard to the circumstances; and  
7 (b) may, before the end of the specified period, be extended, in  
8 writing, by the inspector.

- 9 (4) The improvement notice may:  
10 (a) specify action that the person is to take, or is not to take,  
11 during the period specified in the notice (including as  
12 extended under paragraph (3)(b)); and  
13 (b) specify action that may be taken to satisfy an inspector that  
14 adequate action has been taken to prevent any further  
15 contravention, or to prevent the likely contravention, as the  
16 case may be.

17 *Notification by inspector about adequacy of action taken*

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

26 *Strict liability offence*

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

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1                   Penalty: 60 penalty units.

2                   *Fault-based offence*

3                   (8) A person commits an offence if:

4                   (a) the person is given an improvement notice under  
5                   subsection (1); and

6                   (b) the person engages in conduct that results in the person  
7                   failing to comply with the improvement notice within the  
8                   period specified in the notice (including as extended under  
9                   paragraph (3)(b)); and

10                  (c) the person knows that the conduct will have that result.

11                  Penalty: 222 penalty units.

12                  *Exception*

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

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

18                  *Instruments are not legislative instruments*

19                  (10) The following are not legislative instruments:

20                  (a) an improvement notice under subsection (1);

21                  (b) a notification under subsection (5) (if given in writing) of the  
22                  matter referred to in that subsection;

23                  (c) a notice under subsection (6) (if given in writing) informing a  
24                  person of a matter referred to in that subsection.

25                  **78 Inspector may give prohibition notices**

26                  *Giving prohibition notices*

27                  (1) This section applies if an inspector reasonably believes that:

28                  (a) either:

29                       (i) a person is contravening, or is likely to contravene, a  
30                       provision of this Act; or

- 1 (ii) a person has contravened a provision of this Act and is  
2 likely to contravene that provision again; and  
3 (b) either of the following apply:  
4 (i) an activity is occurring in relation to a regulated activity  
5 that involves or will involve a risk to the health and  
6 safety of a person or a serious risk to the environment;  
7 (ii) an activity may occur in relation to a regulated activity  
8 that, if it occurs, will involve a risk to the health and  
9 safety of a person or a serious risk to the environment.
- 10 (2) The inspector may give a notice (a **prohibition notice**), in writing,  
11 to either of the following persons (the **notice recipient**):  
12 (a) a person authorised by a licence to conduct the regulated  
13 activity;  
14 (b) if the regulated activity is being conducted in a monitoring  
15 area or investigation area—a relevant person in relation to the  
16 monitoring area or investigation area.
- 17 (3) The prohibition notice must include the following:  
18 (a) the date on which the notice is given;  
19 (b) the name of the notice recipient;  
20 (c) a statement that the person giving the notice is an inspector  
21 appointed under this Act;  
22 (d) the name and contact details of the inspector;  
23 (e) brief details of the contravention of the provision of this Act  
24 that the inspector believes is occurring or likely to occur,  
25 including the place, date and time (if known) of the  
26 contravention;  
27 (f) details of the activity the inspector believes is occurring, or  
28 may occur, that involves or will involve a risk to the health  
29 and safety of a person or a serious risk to the environment;  
30 (g) the reasons for the inspector's belief;  
31 (h) one of the following:  
32 (i) a direction that the notice recipient must ensure that the  
33 activity is not engaged in;  
34 (ii) a direction that the notice recipient must ensure that the  
35 activity is not engaged in in a specified manner;

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1 (iii) a direction that the notice recipient must ensure that the  
2 activity is engaged in in a specified manner.

- 3 (4) The prohibition notice may specify action that may be taken to  
4 satisfy an inspector that adequate action has been taken to:  
5 (a) prevent any further contravention, or to prevent the likely  
6 contravention, as the case may be; and  
7 (b) remove the risk referred to in paragraph (3)(f).

8 *Notification by inspector about adequacy of action taken*

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

21 *Strict liability offence*

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

26 Penalty: 60 penalty units.

27 *Fault-based offence*

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



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

4 Penalty: Imprisonment for 7 years.

5 *Exception*

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

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

11 *Instruments are not legislative instruments*

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

18 **79 Copy of direction or notice to be displayed**

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

26 *Strict liability offence*

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

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

3 Penalty for contravention of this subsection: 10 penalty units.

4 **80 Offence for tampering with or removing a direction or notice**

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

6 (a) tampers with a copy of a direction or notice while it is  
7 displayed under section 79; or

8 (b) removes a copy of a direction or notice that has been  
9 displayed under section 79 before the direction or notice has  
10 ceased to have effect.

11 Penalty: 60 penalty units.

12 **Subdivision B—Other requirements and offences**

13 **81 Requirement to facilitate entry to Australian submarine**

14 *Requirement to facilitate entry*

15 (1) An inspector may require a person to take reasonable steps to  
16 facilitate the inspector:

17 (a) entering a monitoring area under section 40 that is an  
18 Australian submarine; or

19 (b) entering an investigation area under section 47 that is an  
20 Australian submarine.

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

24 (2) To avoid doubt, subsection (1) applies regardless of whether the  
25 Australian submarine is stationary or underway.

26 (3) For the purposes of subsection (1):

27 (a) the requirement may be made by any reasonable means; and

28 (b) the requirement is made whether or not the commanding  
29 officer of the submarine understands or is aware of the  
30 requirement.

1 *Offence*

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

5 Penalty for contravention of this subsection: 60 penalty units.

6 **82 Power to make requirement of a person**

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

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

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

26 **83 Offences for contravention of requirement made of a person**

27 *Strict liability offence*

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

**Part 4** Compliance and enforcement

**Division 5** Directions, notices and other requirements

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1 Penalty: 60 penalty units.

2 *Fault-based offence*

3 (2) A person commits an offence if:

4 (a) a requirement is made of the person under subsection 82(1);  
5 and

6 (b) the person fails to comply with the requirement.

7 Penalty: 222 penalty units.

8 **84 Asking questions and seeking production of documents**

9 (1) This section applies if an inspector:

10 (a) enters a monitoring area under section 40; or

11 (b) enters an investigation area under section 47.

12 *Requirement to answer questions or produce documents*

13 (2) The inspector may require a person in the monitoring area or  
14 investigation area to:

15 (a) answer any questions; and

16 (b) produce any document (whether or not the document is in the  
17 area at the time the inspector makes the requirement of the  
18 person);

19 relating to:

20 (c) if paragraph (1)(a) applies—a purpose referred to in  
21 paragraph 40(1)(a), (b) or (c); or

22 (d) if paragraph (1)(b) applies—evidential material.

23 (3) Before making a requirement of a person under subsection (2), the  
24 inspector must:

25 (a) show the person the inspector's identity card; and

26 (b) explain to the person that failure to comply with the  
27 requirement is an offence under this section; and

28 (c) explain to the person the effect of sections 97 and 98.

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

1                    *Offence*

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

7                    Penalty: 60 penalty units.

8                    *Exception*

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

16                    Note:            A defendant bears an evidential burden in relation to the matters in

17                                subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

18                    **85 Offence for ordering or coercing a person to not answer question**

19                                **or produce document**

- 20                    A person commits an offence of strict liability if:
- 21                        (a) another person is required to answer a question or produce a
- 22                                document under subsection 84(2); and
- 23                        (b) the first-mentioned person orders or coerces the other person
- 24                                not to answer the question or produce the document.

25                    Note:            The offence of incitement may also apply (see section 11.4 of the

26                                *Criminal Code*).

27                    Penalty: 60 penalty units.

1           **Division 6—Australian Naval Nuclear Power Safety**  
2                           **Inspectors**

3           **86 Appointment of inspectors**

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

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

10                  (2) An individual must not be appointed as an inspector unless the  
11                  Director-General is satisfied that the individual:

12                   (a) has the competence, technical expertise and relevant  
13                   experience to properly exercise the powers of an inspector;  
14                   and

15                   (b) will be able to properly exercise the powers of an inspector  
16                   having regard to the security of naval nuclear propulsion  
17                   information.

18                  (3) The instrument of appointment may specify:

19                   (a) the terms and conditions of the inspector's appointment; and

20                   (b) the powers under this Part that the inspector may exercise.

21                  (4) In exercising powers as an inspector, an inspector must comply  
22                  with any written directions of the Director-General.

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

24                   (a) the Regulator; and

25                   (b) members of the Regulator who are also members of the  
26                   Australian Defence Force.

27                  (5) The Director-General must keep a record of appointments made  
28                  under subsection (1).

29                  (6) The following are not legislative instruments:

30                   (a) a direction made under subsection (4);

31                   (b) a record kept under subsection (5).

1 **87 Identity cards for inspectors**

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

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

5 (2) The identity card must:

6 (a) be in the approved form; and

7 (b) contain a photograph that is no more than 5 years old of the  
8 inspector.

9 (3) An inspector must display the inspector's identity card at all times  
10 when exercising powers under this Part as an inspector.

11 *Strict liability offence*

12 (4) A person commits an offence of strict liability if:

13 (a) the person has been issued with an identity card under  
14 subsection (1); and

15 (b) the person ceases to be an inspector; and

16 (c) the person does not return the identity card to the  
17 Director-General within 7 days after ceasing to be an  
18 inspector.

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

23 Penalty: 10 penalty units.

24 *Exception*

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

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

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1 **88 Persons assisting inspectors**

2 *Inspectors may be assisted by other persons*

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

6 *Powers of a person assisting*

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

22 *Immunities etc.*

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

25 **89 Offence for false representation as an inspector**

26 A person commits an offence of strict liability if:

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



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

4                    Penalty: 60 penalty units.

5                    **90 Offence for impersonating an inspector**

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

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

12                    Penalty: 60 penalty units.

13                    **92 Inspector to have regard to nuclear safety and security**

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

1 **Division 7—Other matters relating to compliance and**  
2 **enforcement**

3 **93 References to entering monitoring area or investigation area**

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

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

9 **94 References to equipment**

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

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

14 **95 Issuing officers**

15 (1) A Judge of any of the following courts is an *issuing officer* for the  
16 purposes of this Act:

- 17 (a) the Federal Court of Australia;  
18 (b) the Federal Circuit and Family Court of Australia  
19 (Division 2);  
20 (c) a Supreme Court of a State or Territory.

21 (2) A power conferred on an issuing officer by this Part is conferred on  
22 the issuing officer:

- 23 (a) in a personal capacity; and  
24 (b) not as a court or a member of a court.

25 (3) The issuing officer need not accept the power conferred.

26 (4) An issuing officer exercising a power conferred by this Part has the  
27 same protection and immunity as if the issuing officer were  
28 exercising the power:

- 29 (a) as the court of which the issuing officer is a member; or
-

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

### 3 **96 Compensation for damage to equipment**

- 4 (1) This section applies if:  
5 (a) as a result of equipment being operated as mentioned in  
6 Division 2 or 3 in relation to a monitoring area or  
7 investigation area:  
8 (i) damage is caused to the equipment; or  
9 (ii) any data recorded on the equipment is damaged  
10 (including by erasure of data or addition of other data);  
11 or  
12 (iii) any programs associated with the use of the equipment,  
13 or with the use of any data, are damaged or corrupted;  
14 and  
15 (b) the damage or corruption occurs because:  
16 (i) insufficient care was exercised in selecting the person  
17 who was to operate the equipment; or  
18 (ii) insufficient care was exercised by the person operating  
19 the equipment; and  
20 (c) the owner of the equipment, or the user of the data or  
21 programs, is not the Commonwealth.
- 22 (2) The Commonwealth must pay the owner of the equipment, or the  
23 user of the data or programs, such reasonable compensation for the  
24 damage or corruption as the Commonwealth and the owner or user  
25 agree on.
- 26 (3) However, if the owner or user and the Commonwealth fail to  
27 agree, the owner or user may institute proceedings in:  
28 (a) the Federal Court of Australia; or  
29 (b) the Federal Circuit and Family Court of Australia  
30 (Division 2); or  
31 (c) a Supreme Court of a State or Territory;  
32 for such reasonable amount of compensation as the court  
33 determines.

**Part 4** Compliance and enforcement

**Division 7** Other matters relating to compliance and enforcement

**Section 97**

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

6 **97 Legal professional privilege**

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

17 **98 Privilege against self-incrimination and penalty privilege**

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

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

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

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

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

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

1 **Part 5—The Australian Naval Nuclear Power**  
2 **Safety Regulator**

3 **Division 1—Simplified outline of this Part**

4 **99 Simplified outline of this Part**

5 This Part establishes the Australian Naval Nuclear Power Safety  
6 Regulator.

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

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

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

1 **Division 2—The Regulator**

2 **100 Establishment of the Regulator**

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

18 **101 Composition of the Regulator**

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

28 **102 Functions of the Regulator**

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

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

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

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

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

14 **103 The Regulator may consult or cooperate with others**

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

26 **104 Independence of the Regulator**

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

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



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

### 3 **105 Ministerial directions to the Regulator**

4 (1) If the Minister is satisfied that it is necessary to do so in the  
5 interests of national security and to deal with an emergency, the  
6 Minister may give directions of a specific nature to the Regulator  
7 about the performance of the Regulator's functions under this Act.

8 (2) The Regulator must comply with a direction under subsection (1).

9 (3) A direction under subsection (1) must be given to the  
10 Director-General on behalf of the Regulator.

11 (4) A direction under subsection (1) need not be in writing. If it is not  
12 in writing, then the Minister and the Director-General must each,  
13 as soon as practicable:

14 (a) make a written record of it; and

15 (b) sign the record; and

16 (c) in the case of a Minister—cause the record to be given to the  
17 Director-General.

18 However, a failure to comply with paragraph (b) or (c) does not  
19 affect the validity of the direction.

20 (5) If the Minister gives a direction under subsection (1), the Minister  
21 must table, in each House of the Parliament, a statement that a  
22 direction under this section was given to the Regulator.

23 (6) A statement under subsection (5) must be tabled:

24 (a) if practicable—within 28 calendar days after the day the  
25 Minister gives the direction; or

26 (b) otherwise—on the next sitting day of that House after the end  
27 of that period.

28 (7) The following are not legislative instruments:

29 (a) a direction under subsection (1);

30 (b) a statement under subsection (5).

1 **Division 3—The Director-General and the Deputy**  
2 **Director-General**

3 **Subdivision A—The Director-General**

4 **106 The Director-General**

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

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

9 **107 Functions of the Director-General**

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

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

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

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

1 **Subdivision B—The Deputy Director-General**

2 **108 The Deputy Director-General**

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

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

7 **Subdivision C—Appointment of the Director-General and the**  
8 **Deputy Director-General**

9 **109 Appointment**

10 *Appointment by the Governor-General*

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

14 *Qualification for appointment*

- 15 (2) A person must not be appointed as the Director-General or Deputy  
16 Director-General unless the Minister is satisfied that the person has  
17 the competence, independence, technical expertise and relevant  
18 experience to properly discharge the functions of the office.
- 19 (3) A person must not be appointed as the Director-General or the  
20 Deputy Director-General if, at any time during the period of 12  
21 months ending at the start of the proposed period of appointment,  
22 the person was a defence staff member.
- 23 (3A) A person cannot hold an appointment as the Director-General or  
24 the Deputy Director-General at any time when the person is a  
25 defence staff member.

26 *Basis of appointment*

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

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

9                                    **110 Acting appointments**

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

20                                   Note:         For rules that apply to persons acting as the Director-General, see

21                                                   sections 33AB and 33A of the *Acts Interpretation Act 1901*.

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

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

3 Note: For rules that apply to acting appointments, see sections 33AB and  
4 33A of the *Acts Interpretation Act 1901*.

### 5 **111 Terms and conditions**

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

### 10 **112 Remuneration and allowances**

11 (1) The Director-General and Deputy Director-General are to be paid  
12 the remuneration that is determined by the Remuneration Tribunal.  
13 If no determination of that remuneration by the Tribunal is in  
14 operation, the Director-General and Deputy Director-General are to  
15 be paid the remuneration that is prescribed by the regulations.

16 (2) The Director-General and Deputy Director-General are to be paid  
17 the allowances (if any) that are prescribed by the regulations.

18 (3) This section has effect subject to the *Remuneration Tribunal Act*  
19 *1973*.

### 20 **113 Leave of absence**

21 (1) The Director-General and Deputy Director-General have the  
22 recreation leave entitlements that are determined by the  
23 Remuneration Tribunal.

24 (2) The Minister may grant the Director-General and Deputy  
25 Director-General leave of absence, other than recreation leave, on  
26 the terms and conditions as to remuneration or otherwise that the  
27 Minister determines.

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1       **114 Other paid or unpaid work or activities**

2                       *Paid work*

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

8                       *Unpaid work and other activities*

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

13       **115 Disclosure of interests**

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

27       **116 Resignation**

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

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

#### 4 **117 Termination of appointment**

- 5 (1) The Governor-General may terminate the appointment of the  
6 Director-General or Deputy Director-General (the *relevant*  
7 *person*):  
8 (a) for misbehaviour; or  
9 (b) if the relevant person is unable to perform the duties of the  
10 relevant person's office because of physical or mental  
11 incapacity.
- 12 (2) The Governor-General must terminate the appointment of the  
13 relevant person if:  
14 (a) the relevant person:  
15 (i) becomes bankrupt; or  
16 (ii) applies to take the benefit of any law for the relief of  
17 bankrupt or insolvent debtors; or  
18 (iii) compounds with the relevant person's creditors; or  
19 (iv) makes an assignment of the relevant person's  
20 remuneration for the benefit of the relevant person's  
21 creditors; or  
22 (v) is absent from duty, except on leave, for 14 consecutive  
23 days or for 28 days in any period of 12 months; or  
24 (b) the relevant person fails to comply with subsection 114(1)  
25 (which deals with engaging in outside paid work without the  
26 Minister's approval); or  
27 (c) the relevant person fails, without reasonable excuse, to  
28 comply with section 29 of the *Public Governance,*  
29 *Performance and Accountability Act 2013* (which deals with  
30 the duty to disclose interests) or rules made under that Act  
31 for the purposes of that section.
- 32 (3) The Governor-General may terminate the appointment of the  
33 relevant person if the relevant person fails to comply with  
34 subsection 114(3) (which deals with engaging in outside unpaid  
35 work or other activity without the Minister's approval).

1 **Division 4—Other members of the Regulator**

2 **118 Staff**

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

9 **119 Persons assisting the Regulator**

- 10 (1) The Regulator may be assisted by:  
11 (a) members of the Australian Defence Force whose services are  
12 made available to the Regulator in connection with the  
13 performance of any of the Regulator's functions; and  
14 (b) members or special members of the Australian Federal Police  
15 (within the meaning of the *Australian Federal Police Act*  
16 *1979*) whose services are made available to the Regulator in  
17 connection with the performance of any of the Regulator's  
18 functions; and  
19 (c) officers or employees of another Commonwealth entity, or a  
20 Commonwealth company, whose services are made available  
21 to the Regulator in connection with the performance of any  
22 of the Regulator's functions; and  
23 (d) persons whose services are made available under  
24 arrangements made under subsection (2).
- 25 (2) The Director-General may, on behalf of the Commonwealth, make  
26 an arrangement with the appropriate authority or officer of:  
27 (a) a government body, or an authority, of a State or Territory; or  
28 (b) a government body, or an authority, of a foreign country; or  
29 (c) an international organisation;  
30 under which the government body, authority or organisation makes  
31 officers or employees available to the Regulator to perform



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- 1 services in connection with the performance of any of the  
2 Regulator's functions.
- 3 (3) An arrangement under subsection (2) may provide for the  
4 Commonwealth to reimburse a State, Territory, foreign country or  
5 organisation with respect to the services of a person to whom the  
6 arrangement relates.
- 7 (4) When performing services for the Regulator under this section, a  
8 person is subject to the directions of the Director-General.

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

3 **120 Independence from ADF chain of command**

4 (1) This section applies if:

5 (a) a member of the Regulator is also a member of the Australian  
6 Defence Force; and

7 (b) by reason of being a member of the Australian Defence  
8 Force, the member would, apart from this section, be subject  
9 to the command, direction or instruction (an *ADF command*)  
10 given by another person in connection with the Australian  
11 Defence Force.

12 (2) The member is not subject to any ADF command in relation to the  
13 performance of the member's functions under this Act.

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

17 **121 Immunity from criminal and civil proceedings**

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

22 (a) a member of the Regulator;

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

25 **121A Offence for obstructing, hindering, intimidating or resisting a**  
26 **member of the Regulator, etc.**

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

31 (a) a member of the Regulator;

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1 (b) a person assisting an inspector.

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

4 Penalty: 60 penalty units.

1 **Division 6—Reporting**

2 **122 Annual report**

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

7 **123 Reporting to the Minister**

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

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

14 (2) Subsection (1) is subject to any Commonwealth law that prohibits  
15 disclosure of particular information.

16 (3) If the Director-General gives the Minister a report under  
17 subsection (1), the Minister may give a copy of the whole or any  
18 part of the report to the Minister or Ministers administering the  
19 following Acts:

20 (a) the *Australian Nuclear Science and Technology Organisation*  
21 *Act 1987*;

22 (b) the *Australian Radiation Protection and Nuclear Safety Act*  
23 *1998*.

24 **123A Reporting certain nuclear safety incidents**

25 (1) This section applies in relation to a nuclear safety incident that  
26 results in:

27 (a) the death of, serious injury to, or serious illness in, an  
28 individual; or

29 (b) a serious environmental incident.

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

**Part 6** Other matters

**Division 1** Simplified outline of this Part

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1 **Part 6—Other matters**

2 **Division 1—Simplified outline of this Part**

3 **124 Simplified outline of this Part**

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

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

1 **Division 2—Application of this Act**

2 **Subdivision A—General**

3 **125 Extraterritorial application**

4 This Act applies within and outside Australia.

5 **126 Extension to external Territories**

6 This Act extends to the external Territories.

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

9 **127 This Act binds the Crown**

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

17 **128 Offences and the Commonwealth**

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

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

10 **129 Civil penalty provisions and the Commonwealth**

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

19 **130 Representative for the Commonwealth in proceedings**

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

30 **131 Liability of the Commonwealth to pay criminal or civil penalties**

- 31 (1) This section applies if:



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

15 **Subdivision C—Interaction with other laws**

16 **132 The Australian Radiation Protection and Nuclear Safety Act 1998**

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

19 **133 The Nuclear Non-Proliferation (Safeguards) Act 1987**

- 20 (1) This Act does not exclude the operation of the *Nuclear*  
21 *Non-Proliferation (Safeguards) Act 1987*, to the extent that the  
22 *Nuclear Non-Proliferation (Safeguards) Act 1987* is capable of  
23 operating concurrently with this Act.

24 Example: A person may be required by this Act to hold a licence, and by the  
25 *Nuclear Non-Proliferation (Safeguards) Act 1987* to hold a permit, in  
26 respect of the same thing. The person must satisfy the requirements of  
27 both Acts in so far as they are capable of being satisfied concurrently.

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

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

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

8 **134 Operation of workplace health and safety laws**

- 9 (1) This Act does not exclude the operation of any of the following  
10 laws (a *workplace health and safety law*):  
11 (a) the *Work Health and Safety Act 2011*;  
12 (b) a corresponding WHS law (within the meaning of that Act).
- 13 (2) Subsections (3), (4) and (5) do not apply to a provision of a  
14 workplace health and safety law that is capable of concurrent  
15 operation with this Act.
- 16 (3) A provision of this Act does not:  
17 (a) prohibit the doing of an act; or  
18 (b) impose a civil or criminal liability for doing an act;  
19 if the doing of that act is specifically authorised or required, by or  
20 under, a provision of a workplace health and safety law.
- 21 (4) A provision of this Act does not:  
22 (a) require the doing of an act; or  
23 (b) impose a civil or criminal liability for not doing an act;  
24 if the doing of that act is specifically prohibited by or under a  
25 provision of a workplace health and safety law.
- 26 (5) A provision of this Act does not operate to the extent necessary to  
27 ensure that no inconsistency (including operational inconsistency)  
28 arises between:  
29 (a) a provision of this Act; and  
30 (b) a provision of a workplace health and safety law that would,  
31 but for this subsection, be inconsistent with the provision of  
32 this Act.

1 **135 Operation of State and Territory laws**

2 If a law of a State or Territory, or one or more provisions of such a  
3 law, is prescribed by the regulations, that law or provision does not  
4 apply in relation to a regulated activity.

5 **Subdivision D—Interaction with international agreements etc.**

6 **136 Functions to be performed having regard to prescribed**  
7 **international agreements**

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

11 **137 Application of Act to certain foreign persons**

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

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

21 **Subdivision E—General rules about offences and civil penalty**  
22 **provisions**

23 **138 Geographical jurisdiction for offences**

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

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1 **139 Physical elements of offences**

2 (1) This section applies if a provision of this Act provides that a person  
3 contravening another provision of this Act (the *conduct rule*  
4 *provision*) commits an offence.

5 (2) For the purposes of applying Chapter 2 of the Criminal Code to the  
6 offence, the physical elements of the offence include those set out  
7 in the conduct rule provision.

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

10 **140 Contravening an offence provision or a civil penalty provision**

11 (1) This section applies if a provision of this Act provides that a person  
12 contravening another provision of this Act (the *conduct provision*)  
13 commits an offence or is liable to a civil penalty.

14 (2) For the purposes of this Act, and the Regulatory Powers Act to the  
15 extent that it relates to this Act, a reference to a contravention of an  
16 offence provision or a civil penalty provision includes a reference  
17 to a contravention of the conduct provision.

1 **Division 2A—Advisory committee**

2 **140A Establishment of advisory committee**

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

1 **Division 3—Delegations**

2 **141 Delegation by the Minister**

3 (1) The Minister may, by instrument in writing, delegate the Minister's  
4 functions under this Act to another Minister.

5 (2) In performing functions under a delegation, the delegate must  
6 comply with any directions of the Minister.

7 **142 Delegation by the Director-General**

8 (1) The Director-General may, by instrument in writing, delegate any  
9 of the Director-General's functions (other than those under  
10 section 72, 73, 105, 107, 123 or 144) to:

11 (a) the Deputy Director-General; or

12 (b) a person who:

13 (i) is an SES employee or an acting SES employee, or  
14 holds or is acting in a position that is equivalent to a  
15 position occupied by an SES employee, in the  
16 Regulator; and

17 (ii) is not a member of the Australian Defence Force.

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

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

1 **Division 4—Regulations and other instruments**

2 **143 Regulations**

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

8 *Prescribing area to be a designated zone*

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

20 **144 Exemptions**

21 *Exempting a person from a provision or condition*

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

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

- 29 (2) An exemption may be granted:

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

13 *AAT review*

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

22 *Instruments are not legislative instruments*

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

26 **145 Regulator to give notice before varying or revoking exemption**

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



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

10 **146 Approved forms**

11 The Director-General may, in writing, approve one or more forms  
12 for the purposes of a provision of this Act that provides for  
13 something to be done in an approved form.  
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(138/23)

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