

Radioactive Substances Act 1949

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An Act to Make Provision for the Control of Radioactive Substances and Irradiating Apparatus for the Purpose of Protecting the Health of Persons likely to be Exposed to Harmful Radiation.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1 Short Title and commencement.

- (1) This Act may be cited as the Radioactive Substances Act, 1949.
- (2) Subject to the provisions of this Act, this Act shall come into force on the thirtieth day of April, nineteen hundred and fifty.

2 Interpretation.

1936, No. 57 Ibid., Vol. V, p. 669

- (1) In this Act, unless the context otherwise requires,—
 - “Council” means the Radiological Advisory Council established under this Act:
 - “Dentist” means a dentist for the time being registered under the Dentists Act, 1936:
 - “Director-General” means the Director-General of Health under the Health Act, 1920:
 - “Irradiating apparatus” means any apparatus capable of producing ionizing radiations of any prescribed type, or capable of accelerating atomic particles under any prescribed conditions:

“Medical practitioner” means a person for the time being registered under the Medical Practitioners Act, 1914:

“Minister” means the Minister of Health:

“Prescribed” means prescribed by regulations under this Act:

“Radioactive substance” means any substance which consists of or contains more than the maximum prescribed concentration of any radioactive chemical element, whether natural or artificial:

“Radiologist” means a medical practitioner having special knowledge in the use or application of x-rays for the purpose of diagnosing any abnormal condition of the human body:

“Radiotherapist” means a medical practitioner having special knowledge in the use or application of x-rays or radioactive substances for the purpose of treating or alleviating any abnormal condition of the human body:

“Sale” includes supplying or otherwise dealing in or disposing of, whether by way of sale, loan, or gift; and includes barter; and also includes offering or attempting to sell, or receiving for sale, or exposing for sale, or having in possession for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale; and “sell”, “vendor”, and “purchaser” have corresponding meanings:

“Substance” means any natural or artificial substance, whether in solid or liquid form or in the form of gas or vapour; and includes any manufactured article or any article which has been subjected to any artificial treatment or process.

- (2) For the purposes of this Act, if any question arises as to whether any person has special knowledge in the use or application of x-rays or radioactive substances for the purpose of diagnosing, treating, or alleviating any abnormal condition of the human body, the question shall be decided by the Minister acting on the recommendation of the Radiological Advisory Council, and, subject to the provisions of section twenty-one of this Act, every decision so given by the Minister shall be final:

Provided that in making any recommendation under this subsection the Council shall act on the advice of an advisory committee appointed by it under this Act, of which not less than one-half of the members (exclusive of the Chairman) shall, in the case of a question relating to diagnosis, be radiologists, and shall, in the case of any other question, be radiotherapists.

- (3) Every recommendation made by the Council under the last preceding subsection shall be based on a consideration of the experience and qualifications of the person concerned. Every such person shall submit to the Council such evidence of his qualifications and experience as the Council may require, and the Council may, if it thinks fit, require him to verify his evidence by statutory declaration.

- (4) Before making an unfavourable recommendation under subsection two of this section, the advisory committee shall notify the person concerned of its intention so to do, and shall give him an opportunity of appearing before it and giving or adducing further evidence on the matter.

Radiological Advisory Council

3 Radiological Advisory Council.

- (1) There is hereby established for the purposes of this Act a Council to be known as the Radiological Advisory Council.
- (2) The Council shall consist of—
 - (a) The Director-General:
 - (b) A medical practitioner:
 - (c) Two persons, being radiologists or radio-therapists:
 - (d) A person to be appointed on the nomination of the Senate of the University of New Zealand, being a person having special knowledge in the use or application of radioactive substances:
 - (e) An officer of the Department of Scientific and Industrial Research, being a qualified physicist or chemist:
 - (f) One other person, being a qualified physicist.
- (3) The members of the Council, other than the Director-General, shall be appointed by the Governor-General, on the recommendation of the Minister of Health, for a period of five years, save that any such member may from time to time be reappointed, or may be at any time removed from office by the Governor-General for disability, insolvency, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister.
- (4) If any appointed member of the Council dies, or resigns, or is removed from office, the vacancy so created shall be filled by the appointment of some qualified person in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.
- (5) Unless he sooner vacates his office as provided in the last preceding subsection, every appointed member of the Council shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.
- (6) The powers of the Council shall not be affected by any vacancy in the membership thereof.

4 Chairman of Council.

- (1) The Director-General shall be the Chairman of the Council.

- (2) The Chairman shall preside at all meetings of the Council at which he is present. If at any meeting of the Council the Director-General is not present, the officer of the Department of Health authorized to attend the meeting in his stead pursuant to the next succeeding section shall act as the Chairman in respect of that meeting, and shall have and may exercise all the powers and functions of the Chairman for the purposes of that meeting.

5 Meetings of Council.

- (1) Meetings of the Council shall be held at such times and places as the Council or the Chairman may from time to time appoint.
- (2) At any meeting of the Council four members shall form a quorum.
- (3) Every question before the Council shall be determined by a majority of the votes of the members present at the meeting of the Council.
- (4) The Chairman shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.
- (5) In the absence from any meeting of the Council of the Director-General, he may appoint an officer of the Department of Health to attend the meeting in his stead. Every person so appointed by the Director-General shall be a medical practitioner. While any person is attending any meeting of the Council pursuant to this subsection he shall be deemed for all purposes to be a member of the Council. The fact that any person so attends shall be sufficient evidence of his authority so to do.
- (6) Except as expressly provided in this Act or in any regulations thereunder, the Council may regulate its procedure in such manner as it thinks fit.

6 Advisory and technical committees.

The Council may from time to time appoint such advisory or technical committees as it thinks fit to advise the Council on such matters within the scope of its functions as are referred to them by the Council. Any person may be appointed to be a member of any such committee, notwithstanding that he is not a member of the Council.

7 Allowances and travelling-expenses of members of Council and committees.

- (1) There shall be paid out of moneys appropriated by Parliament for the purpose to the members of the Council, or of any advisory or technical committee of the Council, who are not officers employed in the service of the Crown such remuneration by way of fees or allowances as may from time to time be prescribed by regulations under this Act.
- (2) There shall be paid out of moneys appropriated by Parliament for the purpose to the members of the Council or of any such committee as aforesaid such travelling expenses and allowances as may from time to time be prescribed by regulations under this Act.

8 Functions of Council.

The functions of the Council shall be to advise and make recommendations to the Minister in respect of—

- (a) Applications for licences under this Act which are referred to it by the Minister for its advice and recommendations thereon:
- (b) The exercise of any powers vested in the Minister by this Act:
- (c) Any regulations made or proposed to be made under this Act:
- (d) Any other matter to which this Act relates and which is referred to the Council by the Minister.

Radioactive Substances

9 Powers of Minister in relation to radioactive substances.

The Minister, on behalf of His Majesty, shall have power to manufacture or otherwise produce, buy or otherwise acquire, treat, store, transport, use, and dispose of any radioactive substance, and to do all such things as appear to the Minister to be necessary or expedient for the exercise of any such power as aforesaid.

10 Control of manufacture of and dealing with radioactive substances.

- (1) Except with the prior consent in writing of the Minister, no person other than the Minister shall—
 - (a) Manufacture or otherwise produce; or
 - (b) Sell; or
 - (c) Bring or cause to be brought or sent into New Zealand; or
 - (d) Take or send out of New Zealand—
any radioactive substance.
- (2) For the purposes of this section, any radioactive substance shall be deemed to have been brought into New Zealand when, in any manner whatsoever, it is brought or comes within the territorial limits of New Zealand from any place outside those limits:
Provided that where the destination of any radioactive substance brought or coming into New Zealand on any ship or aircraft is out of New Zealand, or where the substance is carried as part of the stores or equipment of any ship or aircraft, it shall not be deemed to have been brought into New Zealand for the purposes of this section unless it is removed in New Zealand from that ship or aircraft.
- (3) For the purposes of this section, any radioactive substance shall be deemed to have been sent out of New Zealand when it is placed upon any ship or aircraft for the purpose of being taken or carried to any place outside the territorial limits of New Zealand.

11 Control of use of radioactive substances.

- (1) Subject to such exemptions as may be prescribed, no person, other than the Minister, shall use any radioactive substance, unless that person is the holder of a licence for the time being in force under this Act authorizing him to do so.
- (2) No person shall administer any radioactive substance by way of treatment of a human being, unless he is a medical practitioner holding a licence for the time being in force under this Act authorizing him to do so, or is acting under the supervision or instructions of a medical practitioner holding such a licence as aforesaid.

*Irradiating Apparatus***12 Control of sale of irradiating apparatus.**

- (1) No person shall sell any irradiating apparatus to any person, unless at the time of the sale the purchaser produces to the vendor a licence for the time being in force under this Act authorizing him to use irradiating apparatus of the kind to which that irradiating apparatus belongs or evidence in writing that he is exempt from obtaining such a licence pursuant to regulations made under this Act.
- (2) Notice of every sale of irradiating apparatus shall forthwith be given to the Director-General by the person selling the apparatus, together with the name and address of the person to whom it was sold.

13 Control of use of irradiating apparatus.

Subject to such exemptions as may be prescribed, no person shall use any irradiating apparatus unless he is the holder of a licence for the time being in force under this Act authorizing him to use irradiating apparatus of the kind to which that apparatus belongs, or is a person acting under the supervision or instructions of a person holding such a licence as aforesaid.

*Licences***14 Minister may grant licences.**

- (1) On application in the prescribed manner by any person desiring to obtain a licence under this Act, the Minister may grant to the applicant a licence in the prescribed form, or may, if he thinks fit, refuse to grant a licence to the applicant.
- (2) Every application for a licence under this Act shall be made to the Director-General, and shall be accompanied by such information or particulars as may be prescribed or as the Minister in any case may require.
- (3) The Minister may, if he thinks fit, refer any such application to the Council for its recommendations thereon.

- (4) Every licence granted under this section shall, unless previously cancelled under this Act, or unless some earlier expiry date is specified therein, continue in force until the thirtieth day of April next following the date on which it was granted, but may from time to time be renewed pursuant to this Act.
- (5) Where any person has, at any time within three months after the commencement of this Act, duly applied for a licence under this section, he shall be deemed for the purposes of this Act, pending the notification to him of the Minister's decision on the application, to be the holder of a licence under this section in the terms of his application.
- (6) Subject to the provisions of section twenty-one of this Act, the decision of the Minister on any application under this section shall be final.

15 Conditions in licences.

- (1) Any licence granted under the last preceding section may be granted subject to such conditions, in addition to any conditions that may be prescribed in respect of licences generally, as the Minister thinks fit to impose. Any conditions so imposed by the Minister may at any time be varied, added to, or revoked by the Minister.
- (2) Without limiting the general powers conferred by the last preceding subsection, licences may be granted under the last preceding section subject to any of the following conditions:—
 - (a) Any licence required under section eleven of this Act may be restricted to radioactive substances of a specified kind or specified kinds, or may be restricted to specified diagnostic or therapeutic purposes, limited in their type and nature:
 - (b) Any licence to use irradiating apparatus may be restricted to a specified apparatus or to apparatus of a specified kind or specified kinds, or may be restricted to specified diagnostic or therapeutic purposes, limited in their type and nature.

16 Classification of licences.

- (1) Licences granted under this Act shall be classified as follows:—
 - (a) Licences for all purposes:
 - (b) Licences for diagnostic or therapeutic purposes:
 - (c) Licences for dental diagnostic purposes:
 - (d) Licences for industrial, experimental, testing, demonstration, veterinary, research, or other specified purposes.
- (2) Licences for all purposes may be granted only to radiologists or radiotherapists.
- (3) Licences for diagnostic purposes may be granted only to persons who, in the opinion of the Minister, have special knowledge in the use or application of

radioactive substances or x-rays for the purpose of diagnosing any abnormal condition of the human body.

- (4) Licences for therapeutic purposes may be granted only to medical practitioners who, in the opinion of the Minister, have sufficient experience in the treatment of the human body by means of radioactive substances or x-rays.
- (5) Licences for dental diagnostic purposes may be granted only to dentists or medical practitioners.
- (6) No person shall use any radioactive substance or irradiating apparatus for any purpose other than that specified in his licence in respect of that substance or apparatus.

17 Register of licences.

- (1) The Director-General shall keep or cause to be kept such registers of licences issued under this Act as may be prescribed.
- (2) The contents of every such register may be evidenced in any proceedings by a certificate under the hand of the Director-General, and every such certificate shall be *prima facie* evidence of the matters stated therein.
- (3) A certificate under the hand of the Director-General that on a date specified in the certificate the name of any person did or did not appear in any register as the holder of a licence or any specified class of licence under this Act shall, until the contrary is proved be sufficient evidence of the matters therein specified.

18 Cancellation or suspension of licences.

The Minister may, in his discretion, cancel or suspend for such period as he thinks fit any licence granted under this Act if the holder of the licence commits an offence against this Act or any regulations made under this Act or commits a breach of any of the conditions of his licence or if for any other reason the Minister considers it in the public interest to do so. Subject to the provisions of section twenty-one of this Act, every decision of the Minister under this section shall be final.

19 Renewal of licences.

- (1) On application being made to the Director-General in the prescribed manner, the Minister may grant to the applicant a renewal of any licence held by the applicant under this Act, or may, if he thinks fit, refuse to grant a renewal of the licence.
- (2) Sections fourteen, fifteen, and sixteen of this Act shall apply to every application for the renewal of a licence as if it were an application for a new licence.
- (3) In granting any renewal of a licence the Minister may endorse the existing licence or he may issue a new licence in lieu thereof, but every such new licence shall show on the face thereof that it is in renewal of a licence.

- (4) Every application under this section shall be made not later than the first day of April in any year, or within such further time as may be allowed by the Minister in any particular case.
- (5) The renewal of a licence shall, unless previously cancelled under this Act, or unless some earlier expiry date is fixed by the Minister, take effect from the expiry of the licence in renewal of which it is granted, but any such renewal may be granted in advance to take effect as aforesaid.
- (6) Where application for renewal of a licence is duly made under this section the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of.
- (7) Subject to the provisions of section twenty-one of this Act, every decision of the Minister on an application for renewal of a licence under this section shall be final.

20 Licensees to notify changes of address.

Every holder of a licence under this Act who at any time changes his address as appearing in the register of licences shall, within three months thereafter, send to the Director-General a notice of his new address, and the Director-General shall thereupon correct the entry in the register relating to that licensee accordingly.

Miscellaneous

21 Appeals.

- (1) Every person who is dissatisfied with any decision of the Minister under subsection two of section two, or section fourteen, or section fifteen, or section sixteen, or section eighteen, or section nineteen of this Act may, within one month after notice of the decision has been given to him by the Minister, give notice of appeal in the prescribed manner to the Director-General.
- (2) Upon receipt of the notice of appeal the Director-General shall forthwith take all steps necessary for the constitution of a Board of Appeal, consisting of a Magistrate and two assessors. The assessors shall be appointed in accordance with regulations under this Act to represent the Minister and the appellants respectively.
- (3) The Board of Appeal so constituted shall as soon as practicable hear the appeal, and may confirm the decision of the Minister, or may make such other order as the case may require.
- (4) On any appeal under this section the Board of Appeal may make such order with respect to the costs of the appeal as it considers just and equitable in the circumstances of the case.
- (5) On any appeal under this section the decision of the Board of Appeal shall be final and conclusive.

22 Entry and inspection

- (1) Any officer of the Department of Health authorized by the Minister to act under this section shall, on producing, if so required, a duly authenticated document showing his authority, have the right to enter at all reasonable hours any premises, vehicle, ship, or aircraft in which there is any radioactive substance or irradiating apparatus in respect of which a licence is for the time being in force under this Act or which is exempt from licensing under this Act, for the purpose of examining or testing that substance or examining or calibrating that apparatus, as the case may be.
- (2) If a Justice of the Peace is satisfied on oath by a person authorized as aforesaid that—
 - (a) Entry in exercise of the right conferred by the last preceding subsection has been refused; or
 - (b) There are reasonable grounds for suspecting that an offence under any of the provisions of this Act has been or is being committed in or in connection with any premises, vehicle, ship, or aircraft,—the Justice may, by warrant under his hand authorize any person named in the warrant together with any constable to enter and search any premises, vehicle, ship, or aircraft, if necessary by force.
- (3) Every warrant granted under this section shall continue in force until the purpose for which it was granted has been satisfied.

23 Taking of samples and testing of radioactive substances, and testing of irradiating apparatus.

Any person authorized by the Minister to act under the last preceding section may—

- (a) Take without payment such samples of any substance which he believes to be a radioactive substance as are necessary for the examination and testing thereof:
- (b) Examine and calibrate any irradiating apparatus or any apparatus which he believes to be an irradiating apparatus.

24 Delegation of Minister's powers.

- (1) The Minister may from time to time delegate to any officer of the Department of Health such of the powers conferred on him by this Act as he thinks fit, including the power of delegation conferred by this section.
- (2) Subject to any general or special directions given or conditions attached by the Minister, the person to whom any powers are so delegated may exercise those powers and with the same effect as if they had been directly conferred on him by this Act and not by delegation.

- (3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation unless and until the contrary is proved.
- (4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or specified offices.
- (5) Any delegation under this section may be at any time revoked, in whole or in part, by the Minister or by any person by whom it was made.
- (6) The delegation by the Minister or by any other person of any powers conferred on him by or by virtue of this Act shall not prevent the personal exercise of those powers by the Minister or by that person.

25 Return of radioactive substances held.

Every person who at the commencement of this Act has in his possession or control any radioactive substance shall, within one month after the commencement of this Act, make a return to the Director-General specifying the quantity of every type of radioactive substance so in his possession or control and setting out full particulars thereof. Every such person shall forthwith supply such further particulars in relation to any radioactive substance referred to in any such return as the Director-General from time to time requires.

26 Offences.

- (1) Every person commits an offence against this Act who—
 - (a) Without lawful excuse acts in contravention of or fails to comply in any respect with any provision of this Act or of any regulations under this Act:
 - (b) Wilfully obstructs any person exercising or attempting to exercise powers under section twenty-two of this Act:
 - (c) Discloses any information obtained by means of the exercise of powers under section twenty-two of this Act, being information with regard to any manufacturing process or trade secret, unless the disclosure was made in accordance with the directions of the Minister or for the purpose of proceedings for an offence against this Act or any report of those proceedings:
 - (d) For the purpose of obtaining, whether for himself or any other person, the grant of any licence under this Act, or for any other purpose in relation to this Act, makes any declaration or statement which to his knowledge is false in any particular, or utters, produces, or makes use of any such declaration or statement or any document containing the same, or knowingly utters, produces, or makes use of any document which is not genuine.

- (2) Every person who commits an offence against this Act shall be liable on summary conviction to a fine not exceeding one hundred pounds, and, where the offence is a continuing one, to a further fine not exceeding five pounds for every day or part of a day during which the offence continues.
- (3) All proceedings in respect of offences against this Act shall be heard before a Magistrate alone.

27 Forfeiture of radioactive substances or irradiating apparatus on conviction.

- (1) Where any person is convicted of any offence under this Act in relation to any radioactive substance, the Magistrate may, in addition to imposing any penalty under the last preceding section, order that all radioactive substances owned by that person and in respect of which the offence was committed shall be forfeited to His Majesty, and all such substances shall thereupon be deemed to be forfeited to His Majesty accordingly.
- (2) Where any person is convicted of any offence against section thirteen or subsection six of section sixteen of this Act, the Magistrate may, in addition to imposing any penalty under the last preceding section, order that the irradiating apparatus in respect of which the offence was committed shall be forfeited to His Majesty, and every such irradiating apparatus shall thereupon be deemed to be forfeited to His Majesty accordingly.
- (3) All radioactive substances and every irradiating apparatus forfeited under the provisions of either of the last two preceding subsections shall be sold or otherwise disposed of in such manner as the Minister directs.
- (4) From every order made by a Magistrate in accordance with this section there shall be a right of appeal to the Supreme Court, and in every such case the provisions of Part X of the Justices of the Peace Act, 1927, shall, with the necessary modifications, apply.

28 Application of fees, &c.

All fees and other moneys received under this Act shall be paid into the Public Account to the credit of the Consolidated Fund, and all expenses incurred in the administration of this Act or in the exercise by the Minister of any of the powers conferred by section nine of this Act shall be paid out of moneys to be from time to time appropriated by Parliament for the purpose.

29 Regulations.

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made under this section for all or any of the following purposes:—

- (a) Prescribing precautions to be taken to prevent injury being caused by ionizing radiations to the health of persons employed in places where radioactive substances are manufactured, produced, treated, stored, or used, or where irradiating apparatus is used, or of other persons likely to be exposed to harmful radiation:
- (b) Making provisions to secure that any radioactive waste products from any source whatever are disposed of safely:
- (c) Imposing requirements as to the erection or structural alteration of buildings in which any radioactive substance is manufactured, produced, treated, used, or stored, or where irradiating apparatus is used:
- (d) Prescribing precautions to be taken to prevent injury being caused by the transport of radioactive substances to the health of persons engaged therein and other persons, prescribing the method of packaging any radioactive substance, and prescribing the marks to be placed on the vessels or receptacles or transport containers containing any radioactive substance:
- (e) Prescribing the method of treatment or disposal of any package, container, or vessel that has been used to convey, hold, or store any radioactive substance:
- (f) Prescribing the manner in which and the conditions subject to which radioactive substances may be stored or used:
- (g) Prescribing the purposes for which any radioactive substance or irradiating apparatus may be used:
- (h) Prohibiting or restricting the use of any specified radioactive substance or of any specified radioactive substance containing more than a specified concentration of any radioactive chemical element:
- (i) Prohibiting or restricting the use of any specified type of irradiating apparatus:
- (j) Prescribing the maximum working hours of persons employed in the manufacture, production, treatment, storage, or use of radioactive substances or the use of irradiating apparatus, prescribing the minimum holidays to be taken by those persons, and providing for the medical examination of those persons:
- (k) Regulating the issue by medical practitioners of prescriptions containing any radioactive substance:
- (l) Regulating the dispensing and compounding of any prescription containing any radioactive substance:
- (m) Providing for the making of returns by owners of radioactive substances of the quantities and classes of radioactive substances held by them:
- (n) Providing for the keeping by purchasers of radioactive substances of records specifying the purposes to which those substances are put, and

for the inspection of those records, and for the making of returns of entries in those records:

- (o) Providing for the keeping of records of all applications of x-rays or radioactive substances for therapeutic purposes:
 - (p) Prescribing the forms of applications, licences, registers, notices and other documents required for the purposes of this Act, or authorizing the Director-General to prescribe such forms:
 - (q) Prescribing fees payable in respect of any application or licence under this Act:
 - (r) Providing for the appointment of assessors and regulating the conduct of appeals under section twenty-one of this Act:
- (3) All regulations made under this section shall be laid before Parliament within twenty-eight days after the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the commencement of the next ensuing session.

30 Saving of other Acts.

Nothing contained in this Act shall be so construed as to limit or in any way affect the provisions of any other Act.

31 Act to bind the Crown.

This Act shall bind the Crown.