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RADIATION HEALTH DECREE 2009
(DECREE NO. 41)

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GOVERNMENT OF FIJI

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 RADIATION HEALTH DECREE 2009
 (DECREE NO. 41 OF 2009)

IN exercise of the powers vested in me as Vice-President of the Republic of Fiji by virtue of the Office of the Vice-President and Succession Decree 2009 I hereby make the following Decree:

PART 1 — PRELIMINARY

Short title and commencement

- 1.—(1) This Decree may be cited as the Radiation Health Decree 2009.
- (2) This Decree comes into force on a date to be appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Decree, unless the context otherwise requires—

“accepted representations” means any representations made under section 81;

“accreditation certificate” is a certificate for the issue of which provision is made under Part 6;

“accredited person” means the holder of an accreditation certificate;

“amend” in relation to an assessment report, includes preparing another assessment report;

“appointed member” means a member of the Board appointed under paragraphs (e) and (f) of section 106(1);

“approval” means an approval to acquire a radiation source, approval to dispose of radioactive material or approval to relocate a radiation source, as the context requires;

“approved form” means a form which having been approved by the Board is prescribed in regulations;

“approved radiation safety and protection plan” in relation to radiation practice means a plan for which section 25 provides and which has been approved by the Board, and includes a plan which as been changed pursuant to section 26 or section 27;

“assessment” in relation to personal monitoring device, means—

- (a) the quantification of the radiation dose which the device has received during a particular period; and
- (b) the estimation of the radiation dose received by the person who wore the device during that period;

“assessment report” means a report required by section 17(3);

“Board” means the Radiation Health Board established by section 104;

“certificate of compliance” in respect of a radiation source or premises means a certificate of compliance issued by an accredited person for the source or premises in accordance with sections 15 to 19, and in respect of a radiation source includes—

- (a) for a sealed radioactive substance, a certificate of compliance relating to the sealing of the substance; and
- (b) for a sealed radioactive substance in a sealed source apparatus, a certificate of compliance for the apparatus;

“Chairperson” means the Chairperson of the Radiation Health Board as provided for by section 106(1)(a);

“conditional instrument” means an instrument of the kinds mentioned in section 45 which the Board has issued subject to conditions pursuant to section 73;

“Deputy Chairperson” means the deputy chairperson of the Radiation Health Board as provided by section 106(1)(b);

“dispose”, in respect of a radiation apparatus, means make the apparatus permanently inoperable as a radiation apparatus;

“dispose”, in respect of radioactive material, means—

- (a) release the material into the environment; or
- (b) release a thing containing the material into the environment;

“Fiji Society of Medical Imaging Technologists” means the body of that name established by the Medical Imaging Technologists Decree 2009;

“health practitioner” means—

- (a) a nurse, chiropractor, dental prosthetist, dental technician, dentist, medical practitioner, medical imaging technologist, nuclear medicine technologist, occupational therapist, optometrist, osteopath, pharmacist, physiotherapist, podiatrist, psychologist, medical radiation technologist, therapist or speech pathologist; or
- (b) any other person practising in a health-related field as may be prescribed in regulations;

“health risks”, in relation to any person, includes risks to the safety of any person;

“information notice”, in respect of a decision of the Radiation Health Board, means a written notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) if the decision is that an instrument be suspended or cancelled, a direction to the person to surrender the instrument to the Board within 7 days after receiving the notice;
- (d) if the decision is that the conditions of a conditional instrument be changed, a direction to the person to return the instrument to the Board within 7 days after receiving the notice;
- (e) if the decision is that an approved radiation safety and protection plan be changed, a direction to the person to return the following documents to the Board, within 14 days after receiving the notice—
 - (i) the plan, incorporating the change;
 - (ii) the person’s possession licence in which the plan is identified;

“inspector” means a person appointed as such under section 118(7);

“instrument” means a document of any of the kinds specified in section 45;

“ionising radiation” means electromagnetic or particulate radiation capable of producing ions, but does not include electromagnetic radiation of a wavelength greater than 100 nanometres;

“licence” means a possession licence, transport licence or use licence as provided for under Part 6, as the context requires;

“monitored person” means a person who is subject to personal monitoring pursuant to section 35;

“non-ionising radiation” means—

- (a) electromagnetic radiation of a wavelength greater than 100 nanometres; or
- (b) sonic radiation;

“occupier” in relation to any place includes a person who reasonably appears to be an occupier, or in charge, of the place;

“personal monitoring device” means a device designed to be worn by a person to monitor any radiation dose received by the person;

“personal monitoring record” means a record required to be kept under section 35(4);

“place” includes premises and vacant land;

“possess” in respect of a radiation source includes having the source under control in any place, whether or not another person has custody of the source;

“possession licence” means a licence to possess a radiation source for a radiation practice as required by section 9;

“premises” includes—

- (a) a building or other structure;
- (b) a part of a building or other structure;
- (c) land where a building or other structure is situated; or
- (d) a vehicle;

“prescribe” in relation to a therapeutic procedure, means issuing an order, in written or electronic form, for the intentional irradiation of a person for therapeutic purposes, which states—

- (a) particulars of the radiation source to be used; and
- (b) the amount, and method of delivery, of the radiation;

“proposed action” means a proposed action stated in a “show cause notice” issued by the Board under section 80;

“public place” means a place which is the public is entitled to use and which is open to the public or used by the public, whether or not on payment of money;

“radiation” means ionising radiation or non-ionising radiation;

“radiation apparatus” means—

- (a) an apparatus that, when energised, emits an amount of ionizing radiation during a particular period higher than the amount prescribed for the period by regulations;
- (b) an apparatus that would if assembled or repaired, and when energised, be capable of emitting an amount of ionising radiation during a particular period higher than the amount prescribed for the period by regulations;
- (c) an apparatus, prescribed by regulations, that when energized emits an amount of non-ionising radiation during a particular period higher than the amount prescribed for the period by regulations; or
- (d) an apparatus, prescribed by regulations, that would if assembled or repaired, and when energised, be capable of emitting an amount of non-ionising radiation during a particular period higher than the amount prescribed for the period in regulations;

“radiation dose” means the amount of energy from radiation received and absorbed by a person or thing exposed to the radiation;

“radiation hazard” means risks to the health or safety of any person arising from exposure to radiation;

“radiation safety officer certificate” means a certificate for the accreditation of a radiation safety officer issued in accordance with Part 6;

“radiation safety officer”, for a radiation practice, means a person appointed as a radiation safety officer for the practice in accordance with sections 32 and 33;

“radiation source” means—

- (a) a radioactive substance; or
- (b) a radiation apparatus;

“radioactive material” means material that spontaneously emits ionising radiation as a result of the radioactive decay of a radionuclide in it, but does not include a mineral within the meaning of the Mining Act (Cap. 146) situated within the boundaries of land the subject of a mining lease, mineral development licence or exploration permit within the meaning of that Act;

“radioactive substance” means radioactive material (whether or not it is sealed)—

- (a) containing more than the concentration or activity of a radionuclide prescribed by regulations; or
- (b) prescribed by regulations to be a radioactive substance;

“register” means any register kept under section 129;

“repealed Act” means the Ionising Radiations Act (Cap. 102);

“request”, with reference to a diagnostic procedure, means to make a request or issue an order, in written or electronic form, for the intentional irradiation of a person for diagnostic purposes, stating—

- (a) particulars of the radiation source to be used; and
- (b) particulars of the diagnostic information sought from the procedure;

“requirements” for the purposes of sections 17, 18 and 19, means the requirements for securing compliance with the relevant radiation safety standard referred to in section 17(3)(b);

“sealed radioactive substance” means a radioactive substance sealed in a way that—

- (a) minimises the possibility of its escape or dispersion; and
- (b) allows the emission or transmission of ionising radiation;

“sealed source apparatus” means equipment or a gauge, instrument or device incorporating a sealed radioactive substance, but does not include a container used solely for the transport or storage of a sealed radioactive substance;

“Secretary” means the Secretary of the Board appointed under section 111;

“serious environmental damage” means serious damage to the environment which is or is likely to constitute a hazard to the life or health of humans or animals;

“show cause notice” means a notice given under section 80;

“show cause period” means the period referred to in 80(2)(e);

“transport” in relation to a radioactive substance, does not include transporting the substance from a part of a premises to another part of the same premises;

“transport licence” means a licence to transport a radioactive substance as required under section 11 or 12;

“treated person” means a person to whom section 38(3) refers;

“use”, in relation to a radiation source, has the meaning given in section 5(1);

“use”, in relation to the carrying out of a radiation practice, has the meaning given in section 5(2);

“use licence” means a licence to use a radiation source to carry out a radiation practice as required under section 10;

“vehicle” means any means of carrying any thing or person by land, on, through or under water, or by air.

Object of the Decree

3. The Object of these Decree is to regulate sources of ionising radiation and harmful non-ionising radiation, to establish the radiation Health Board and provide its functions and Powers.

Extended meaning of “remain in possession” by possession licensee

4.—(1) For the purposes of this Decree, a possession licensee who allows another person to carry out a radiation practice with a radiation source in compliance with the licensee’s approved radiation safety and protection plan for the practice is taken to remain in possession of the source while the other person has the source for the purpose of the practice.

(2) For the purposes of subsection (1), a reference to a radiation source or radiation practice is a reference to the source or practice to which the licence relates.

(3) A possession licensee who allows another person to transport a radioactive substance to which the licence relates is taken to remain in possession of the substance while the other person has the substance for the purpose of the transportation.

Meaning of “use” in relation to a radiation source or carrying out a radiation practice

5.—(1) For the purposes of this Decree, “use” in relation to a radiation source, means actual use by an individual of radiation emitted from the source, and includes, for a radiation source that is a radioactive substance, administering the substance to, or injecting or implanting the substance into, an animal or person.

(2) For the purposes of this Decree, “use”, in relation to carrying out a radiation practice with a radiation source, means actual use by an individual of radiation emitted from the source to carry out the practice.

(3) For the purposes of subsections (1) and (2), it is immaterial whether the individual is using the radiation in the capacity of an agent or employee.

Meaning of “carry out” in relation to radiation practice

6.—(1) For the purposes of this Decree, “carry out”, in relation to a radiation practice, means the actual performance of the practice by an individual.

(2) For the purposes of subsection (1), it is immaterial whether the individual is carrying out the practice in the capacity of an agent or employee.

Meaning of “radiation practice”

7. For the purposes of this Decree, “radiation practice” means an activity in relation to a radiation source that may result, whether or not intentionally, in exposing anyone to radiation, and includes storing of a radioactive substance, but does not include the transport of a radioactive substance.

Decree binds the Government

8. This Decree binds the Government.

PART 2 — LICENCES

Requirement to have possession licence in respect of radiation source

9.—(1) A person must not possess a radiation source except under and in accordance with a possession licence.

(2) For the purposes of subsection (1), a person is not in possession of a radiation source by reason only that—

- (a) the person is being allowed by a possession licensee for the source—
 - (i) to carry out a radiation practice to which the licence relates with the source in compliance with the licensee’s approved radiation safety and protection plan for the practice; or
 - (ii) if the source is a radioactive substance, to transport the substance;
- (b) the person, or an animal kept by the person, has been injected with a radioactive substance, or a radioactive substance has been administered to or implanted in the person or animal, as part of a diagnostic or therapeutic procedure.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Requirement to have use licence in respect of radiation source

10.—(1) A person must not use a radiation source except under and in accordance with a use licence.

(2) Subsection (1) does not apply to a person if—

- (a) the person is using the source in the presence, and under the personal supervision, of a use licensee who is allowed, under the licence, to use the source to carry out a radiation practice; and
- (b) the use is for the purpose of –
 - (i) helping the licensee to carry out the practice, provided that the practice is a prescribed radiation practice; or
 - (ii) the person is undergoing training prescribed under regulations;
- (c) the person is registered and holds a current annual practising certificate under the Medical Imaging Technologists Decree 2009.

(3) In this section, “prescribed radiation practice” means a radiation practice, other than the carrying out of a diagnostic or therapeutic procedure involving the irradiation of another person, prescribed in regulations.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Requirement to have transport licence – transport by road

11.—(1) Subsection (2) applies if a radioactive substance is being transported by road in a vehicle.

(2) The person in charge of the vehicle must hold a transport licence to transport the substance.

(3) For the purposes of subsection (2), the person is not required to hold a transport licence if the person is helping a transport licensee to transport a radioactive substance to which the licence relates by road and the person is in the licensee's presence.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Requirement to have transport licence – transport otherwise than by road

12.—(1) A person must not transport a radioactive substance other than by road unless the person is the holder of a transport licence to transport the substance.

(2) Subsection (1) does not apply to a person who transports the substance merely as an employee.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

PART 3 — RADIATION SAFETY STANDARDS AND CERTIFICATE OF COMPLIANCE

Establishment of radiation safety standards

13.—(1) The Minister may establish, as prescribed in regulations, radiation safety standards in respect of —

- (a) radiation sources in relation to the carrying out of radiation practices;
- (b) the sealing of radioactive substances;
- (c) sealed source apparatus;
- (d) premises at which radiation sources are used to carry out radiation practices;
- (e) premises at which radioactive substances are stored.

(2) A radiation safety standard must state the day the standard expires.

(3) The stated day must not be more than 10 years after the standard is made.

(4) Where a radiation safety standard has been prescribed in accordance with subsection (1), the Minister shall issue a notice to the licensee setting out the terms of the standard.

(5) The notice required by subsection (4) must indicate the places where copies of the standard and the provisions of any documents ("the associated documents") applied, adopted or incorporated by the standard are available for inspection.

(6) A person may inspect the standard and any associated documents free of charge during normal business hours at any place indicated in the notice.

Obligations of possession licensee

14.—(1) A possession licensee who, by virtue of the licence, possesses a radiation source for a radiation practice must ensure the source is not used to carry out the practice unless—

- (a) the source complies with the relevant radiation safety standard; and
- (b) if the source is to be used to carry out the practice at premises, the premises comply with the relevant radiation safety standard.

(2) A possession licensee who, by virtue of the licence, possesses a radioactive substance must not store the substance, or allow the substance to be stored, on premises that do not comply with the relevant radiation safety standard.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

When possession licensee must obtain certificate of compliance

15.—(1) Subsection (2) applies in relation to a radiation source if there is a relevant radiation safety standard for the source.

(2) A possession licensee who, by virtue of the licence, possesses the source for a radiation practice must ensure the source is not used to carry out the practice unless, within the period prescribed by regulations before the day of use, the licensee has obtained a certificate of compliance for the source.

(3) Subsections (4) and (5) apply in relation to premises if there is a relevant radiation safety standard for the premises.

(4) A possession licensee who, by virtue of the licence, possesses a radiation source for a radiation practice must ensure the source is not used to carry out the practice at the premises unless, within the period prescribed by regulations before the day of use, the licensee has obtained a certificate of compliance for the premises.

(5) A possession licensee who, by virtue of the licence, possesses a radioactive substance must not store the substance, or allow the substance to be stored, at the premises unless, within the period prescribed by regulations before the day of storage, the licensee has obtained a certificate of compliance for the premises.

(6) A person who contravenes subsections (2), (4) or (5) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment 5 years.

Requirements regarding certificate of compliance

16.—(1) An accredited person may issue a certificate of compliance for—

- (a) a radiation source to be used to carry out a radiation practice;
- (b) the premises at which a radiation source is to be used to carry out a radiation practice; or
- (c) the premises at which a radioactive substance is to be stored.

(2) The certificate of compliance must state that the source or premises comply with the relevant radiation safety standard.

(3) For the purposes of this section, an accredited person must not issue a certificate of compliance for a radiation source or premises unless, under the person's accreditation certificate, the person is allowed to issue the certificate of compliance for the source or premises.

(4) Subsection (5) applies in relation to a radiation source or premises if there is a relevant radiation safety standard for the source or premises.

(5) An accredited person must not issue a certificate of compliance for the source or premises unless the person is satisfied the source or premises complies with the standard.

(6) A certificate of compliance must be in the approved form.

Assessment report

17.—(1) This section applies if an accredited person is acting on a request for a certificate of compliance for a radiation source or premises.

(2) The accredited person must assess whether the source or premises comply with the relevant radiation safety standard.

(3) The accredited person must prepare a report (an "assessment report"), for the source or premises, stating the following—

- (a) whether or not the source or premises comply with the relevant radiation safety standard;
- (b) if the source or premises does not comply with the relevant radiation safety standard, particulars of what needs to be done for the source or premises to comply with the standard (the "requirements").

(4) The assessment report must be in the approved form.

(5) If the report states requirements, the accredited person must, as soon as practicable, give a copy of the report to the person who requested the certificate of compliance.

(6) If the report does not state requirements, the accredited person must issue a certificate of compliance for the source or premises.

(7) The accredited person must give the Board a copy of the report referred to in subsection (6) as soon as practicable after the issue of the certificate of compliance, stating the date the certificate was issued.

(8) If the report states requirements and none of the requirements are complied with within 30 days after a copy of the report is given to the a person who requested the certificate of compliance, the accredited person must as soon as practicable give the Board a copy of the report.

(9) A person who contravenes subsection (7) or (8) commits an offence and is liable on conviction to a fine of \$100,000 and to imprisonment for 3 years.

Amendment of assessment report where all requirements complied with

18.—(1) This section applies if—

- (a) the assessment report states requirements; and
- (b) the accredited person is satisfied, within 30 days after giving a copy of the report to the person who requested the certificate of compliance, all the requirements have been complied with.

(2) The accredited person must—

- (a) amend the report to indicate all the requirements have been complied with; and
- (b) issue a certificate of compliance for the source or premises.

(3) The accredited person must give the Board a copy of the amended report as soon as practicable after the issue of the certificate of compliance, stating the date the certificate was issued.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Amendment of assessment report where only some requirements complied with

19.—(1) This section applies if—

- (a) the assessment report states requirements; and
- (b) the accredited person is satisfied, within 30 days after giving a copy of the report to the person who requested the certificate of compliance, that some, but not all, the requirements have been complied with.

(2) The accredited person must amend the report to indicate the requirements that have been complied with.

(3) The accredited person must give the Board a copy of the amended report as soon as practicable after the 30 day period has ended.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

PART 4 — ACQUISITION, SUPPLY AND RELOCATION OF SOURCES AND DISPOSAL OF RADIOACTIVE MATERIALS AND RADIATION APPARATUS

Acquisition of radiation sources restricted

20.—(1) A person must not acquire a radiation source, unless the person is a possession licensee for the source and the holder of an approval to acquire the source.

(2) For the purposes of subsection (1), a person does not acquire a radiation source merely because a possession licensee, by virtue of the licence, possesses the source for a radiation practice and the person is being allowed by the licensee—

- (a) to carry out the practice with the source in compliance with the licensee's approved radiation safety and protection plan for the practice; or
- (b) if the source is a radioactive substance, to transport the substance.

(3) For the purposes of subsection (1), a person does not acquire a radiation source merely because the person, or an animal kept by the person, has been injected with a radioactive substance, or a radioactive substance has been administered to or implanted in the person or animal, as part of a diagnostic or therapeutic procedure.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Supply of radiation sources restricted

21.—(1) A person must not supply a radiation source to another person, unless the other person is a possession licensee for the source and the holder of an approval to acquire the source.

(2) For the purposes of subsection (1), a possession licensee who, by virtue of the licence, possesses a radiation source for a radiation practice does not supply the source to another person merely because the other person is being allowed by the licensee—

- (a) to carry out the practice with the source in compliance with the licensee's approved radiation safety and protection plan for the practice; or
- (b) if the source is a radioactive substance, to transport the substance.

(3) For the purposes of subsection (1), a person (the first person) does not supply a radiation source to another person merely because the first person injects the other person, or an animal kept by the other person, with a radioactive substance, or a radioactive substance is administered to or implanted in the other person or animal by the first person, as part of a diagnostic or therapeutic procedure.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

(5) In this section—

“sell” includes give possession under a lease, exchange, hiring or other commercial arrangement;

“supply” in respect of a radiation source means to sell, give away or otherwise give possession of the source.

No relocation of radiation source without approval

22.—(1) A person must not relocate a radiation source from a place to another place, whether that place is within Fiji or outside Fiji, unless the person is a possession licensee for the source and the holder of an approval to relocate the source.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Disposal of radioactive material

23.—(1) A person must not dispose of radioactive material, unless—

- (a) concentration or activity of a radionuclide in the material is not more than the maximum concentration or activity prescribed under regulations; or
- (b) the person is the holder of an approval to dispose of the material and disposes of it as required under the approval.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Notification of disposal of radiation apparatus

24.—(1) A person who disposes of a radiation apparatus must give the Board written notice of the disposal within 7 days after the disposal.

(2) For the purposes of subsection (1), the notice must contain information adequate to identify the apparatus disposed of.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 2 months.

PART 5 — RADIATION SAFETY AND PROTECTION PLANS

*Division 1 — Radiation safety and protection plans**Nature and content of radiation safety and protection plan*

25.—(1) A radiation safety and protection plan, for a radiation practice, is a plan for the practice for which a possession licensee is allowed to possess a radiation source under the licence.

(2) The plan must state the following—

- (a) particulars of and an assessment of all the radiation hazards specific to the practice and source the licensee knows, or ought reasonably to know, exist or might arise;
- (b) the radiation safety and protection measures to deal with the hazards;
- (c) any other measures necessary to deal with the hazards;
- (d) how the licensee proposes to monitor and review the implementation and effectiveness of the measures;
- (e) the functions of the radiation safety officer to be appointed for the practice;
- (f) particulars of a training programme for persons carrying out the practice;
- (g) other particulars which may be prescribed by regulations.

(3) If a person, other than a person being irradiated as part of a diagnostic or therapeutic procedure, may receive from the carrying out of the practice a radiation dose higher than the radiation dose limit prescribed under a regulation, the plan must provide for—

- (a) the supply of a personal monitoring device to the person; and
- (b) the assessment of the device.

(4) The plan must be written in a way likely to be understood easily by persons who carry out the practice with the source.

(5) The plan must be dated and signed by the licensee.

(6) In this section, radiation safety and protection measures are measures, prescribed under [a] regulations, for preventing or minimising health risks to any person arising from exposure to radiation from the carrying out of a radiation practice.

Approval of radiation safety and protection plan

26.—(1) This section applies if the Board issues a possession licence.

(2) The Board is taken to have approved the radiation safety and protection plan identified in the licence.

(3) The Board must endorse the plan with the Board's written approval and give the endorsed plan to the possession licensee.

Changing of radiation safety and protection plan by Board

27.—(1) The Board may change a possession licensee's approved radiation safety and protection plan for a radiation practice if the Board considers it necessary or desirable to make the change.

(2) Before changing the plan, the Board must—

- (a) give a written notice to the licensee, stating—
 - (i) the particulars of the proposed change;
 - (ii) the day it is proposed the change is to take effect; and
 - (iii) that the licensee may make written submissions to the Board about the proposed change before a stated day; and
- (b) have regard to written submissions made to the Board by the licensee before the stated day.

(3) The stated day must not be earlier than 21 days after the notice is given to the licensee.

(4) If the Board decides to change the plan, the Board must immediately give the licensee an information notice about the decision.

(5) The change takes effect on the day stated for the change in the information notice and does not depend on—

- (a) the plan being amended to incorporate the change; or
- (b) the licence being amended to identify the amended plan.

(6) The day mentioned in subsection (5) must not be earlier than 35 days after the notice is given to the licensee.

Application for change in radiation safety and protection plan by possession licensee

28.—(1) A possession licensee may apply to the Board to change the licensee's approved radiation safety and protection plan for a radiation practice.

(2) The application must—

- (a) be in the approved form; and
- (b) be accompanied by the fee prescribed by regulations.

(3) In deciding whether to grant the application, the Board must have regard to the requirements for a radiation safety and protection plan stated in section 25.

(4) If the Board decides to grant the application, the Board must immediately give the licensee an information notice of the decision.

(5) The change takes effect on the day stated for the change in the notice and does not depend on—

- (a) the plan being amended to incorporate the change; or
- (b) the licence being amended to identify the amended plan.

(6) The day mentioned in subsection (5) must not be earlier than 35 days after the notice is given to the licensee.

(7) If the Board decides not to grant the application, the Board must immediately give the licensee an information notice about the decision.

(8) If the Board fails to decide the application within 90 days after its receipt, the failure is deemed to be a decision by the Board not to grant the application.

Recording change in radiation safety and protection plan

29.—(1) This section applies if a possession licensee receives an information notice under section 27(4) or 28(4), about a change to the licensee's approved radiation safety and protection plan for the radiation practice.

(2) Within 14 days after receiving the notice, the licensee must return the following documents to the Board—

- (a) the plan, incorporating the change;
- (b) the licensee's possession licence in which the plan is identified.

(3) On receiving the plan, incorporating the change, the Board must immediately endorse the plan with the Board's written approval and give the endorsed plan to the licensee.

(4) On receiving the licence, the Board must immediately amend the licence to identify the amended plan and give the amended licence to the licensee.

(5) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of 5,000 and to imprisonment for 12 months.

Obligations of possession licensee in relation to approved radiation safety and protection plan

30.—(1) This section applies to a possession licensee who, in accordance with the licence, possesses a radiation source for a radiation practice.

- (2) The licensee must take reasonable steps to ensure a person carrying out the practice with the source—
- (a) has always available for inspection a copy of the licensee’s approved radiation safety and protection plan for the practice; and
 - (b) has undergone the training programme mentioned in the plan.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Obligations of person carrying out radiation practice in relation to approved radiation safety and protection plan

31.—(1) This section applies if a possession licensee, in accordance with the licence, possesses a radiation source for a radiation practice.

- (2) A person must not carry out the practice with the source unless—
- (a) the person has available for inspection a copy of the approved radiation safety and protection plan for the practice; and
 - (b) the person has undergone the training program mentioned in the plan.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Division 2 — Radiation safety officers

Appointment of radiation safety officers

32.—(1) Subsection (2) applies to a possession licensee who, in accordance with the licence, possesses a radiation source for a radiation practice.

(2) The licensee must ensure that whenever the practice is being carried out a person has been appointed as, and is carrying out the functions of, a radiation safety officer for the practice.

(3) If the appointment of the radiation safety officer ends, the licensee does not contravene subsection (2) in relation to any period after the appointment has ended and before the start of a new appointment during which the practice continues to be carried out that may be reasonably necessary for the appointment to be made or take effect.

(4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for a term not exceeding 12 months.

Qualifications for appointment of radiation safety officer

33.—(1) Only person who holds a radiation safety officer certificate relevant to a radiation practice (“qualified person”) may be appointed as a radiation safety officer for the practice.

(2) Subject to subsection (1), a possession licensee who is a qualified person may appoint himself or herself as a radiation safety officer for a radiation practice.

(3) Despite subsection (1), a possession licensee who is not a qualified person may appoint himself or herself as a radiation safety officer for a radiation practice if the licensee is the holder of a qualification, relevant to the practice, prescribed by regulations.

Functions of radiation safety officer

34.—(1) This section applies if a possession licensee, in accordance with the licence, possesses a radiation source for a radiation practice.

(2) The licensee’s approved radiation safety and protection plan for the practice must state at least the following functions for a radiation safety officer appointed by the licensee for the practice—

- (a) to identify ways, consistent with the plan, of minimising the radiation doses received by persons from the source;

- (b) to provide, or arrange for the provision of, training about radiation hazards and safe working practices to—
 - (i) persons carrying out the practice;
 - (ii) the licensee’s employees and other persons working for the licensee who may be exposed to radiation emitted from the source; and
 - (iii) other persons prescribed by regulations;
- (c) to provide, or arrange for the provision of, training for the persons mentioned in paragraph (b) about precautions that need to be taken to ensure radiation doses received by the persons and other persons from the source, are—
 - (i) for ionising radiation—below the radiation dose limit prescribed under a regulation and as low as reasonably achievable; or
 - (ii) for non-ionising radiation, below the radiation dose limit prescribed by regulations and minimised as far as is practicable;
- (d) to identify whether the plan is being complied with;
- (e) to regularly review the plan to ensure its continued effectiveness;
- (f) to identify whether the relevant radiation safety standard for the source, or premises at which the practice is being carried out, is being complied with.

(3) If a radiation safety officer appointed for the practice is not also the possession licensee for the practice, the plan must also state the following functions for the officer—

- (a) to advise the licensee of the ways, identified under paragraph (a) of subsection (2), of minimising the radiation doses received by persons from the source;
- (b) to report to the licensee—
 - (i) any contravention of the plan or the relevant radiation safety standard identified under paragraph (d) or (f) of subsection (2); and
 - (ii) what action needs to be taken to ensure compliance with the plan or standard;
- (c) to advise the licensee of the results of a review under paragraph (e) of subsection (2) and make recommendations to the licensee about changes to the plan.

(4) For the purposes of section, employees of a possession licensee include any agent of the licensee and any employee of any such agent.

Division 3 – Radiation monitoring, procedures and reporting

Radiation monitoring – possession and use licensees

35.—(1) This section applies to the following persons—

- (a) a possession licensee who—
 - (i) in accordance with the licence, possesses a radiation source for a radiation practice; and
 - (ii) provides to another person (“the monitored person”) a personal monitoring device, as required by the licensee’s approved radiation safety and protection plan for the practice;
- (b) a possession licensee who, under the licensee’s approved radiation safety and protection plan for a radiation practice under the licence, is a person (also the monitored person) required to be provided with a personal monitoring device;
- (c) a use licensee (also the monitored person) who, as a condition of the licence, is required—
 - (i) to wear a personal monitoring device when using a radiation source to carry out a radiation practice under the licence; and
 - (ii) to have the device assessed from time to time.

(2) The licensee must, as soon as practicable after receiving the result of an assessment of the device under the plan or condition, give the Board written notice of the result.

(3) Without limiting subsection (2), the licensee is taken to comply with that subsection if the notice is given to the Board on the licensee's behalf by the person who conducted the assessment as soon as practicable after the assessment is carried out.

(4) The licensee must keep an up-to-date record for the monitored person ("personal monitoring record"), containing the following information—

- (a) the results of all the assessments;
- (b) other information prescribed by regulations.

(5) Without limiting the ways in which a possession licensee or use licensee may comply with subsection (6), a possession licensee or use licensee is taken to comply with subsection (4) if the personal monitoring record is kept on the licensee's behalf by another person under arrangements approved in writing by the Board.

(6) For the purposes of subsection (4), the personal monitoring record must be kept until the later of the following days—

- (a) the day that is 30 years after the day when the last assessment was conducted;
- (b) the day when the monitored person attains, or would have attained, the age of 75 years.

(7) The licensee must make the personal monitoring record available for inspection by the Board at any reasonable time.

(8) A person who contravenes subsection (2), (4) or (7) commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

Obligations about personal monitoring records – certain possession licensees

36.—(1) Subsections (2) and (3) apply to a possession licensee who—

- (a) in accordance with the licence, possesses a radiation source for a radiation practice; and
- (b) provides to another person a personal monitoring device, as required under the licensee's approved radiation safety and protection plan for the practice.

(2) The licensee must, as soon as practicable after receiving the result of an assessment of the device under the plan, take reasonable steps to make the person aware of the result.

(3) The licensee must allow the person to inspect, at any reasonable time, the personal monitoring record kept by the licensee for the person.

(4) Subsection (5) applies if the person stops being a person to whom the licensee is required to provide a personal monitoring device under the plan.

(5) If asked in writing by the person during the period for which a personal monitoring record is required to be kept by the licensee for the person, the licensee must as soon as practicable give the person a copy of the record.

(6) A person who contravenes subsection (2), (3) or (5) commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

Other obligations in relation to personal monitoring records

37.—(1) This section applies if—

- (a) a person stops being a licensee who is required to keep a personal monitoring record under section 39(4); and
- (b) immediately before the person stopped being a licensee of that type, the person was keeping a personal monitoring record under the subsection.

(2) A person to whom this section applies must as soon as practicable ask the Board for directions about the keeping of the record.

(3) The Board must give the person written directions about the keeping of the record.

(4) Without limiting subsection (3), a direction may require the person to give the record to another person.

(5) The directions given pursuant to subsection (2) are to ensure the record will continue to be kept until the later of the following days—

- (a) the day that is 30 years after the day when the last assessment of a personal monitoring device, mentioned in the record, was conducted;
- (b) the day when the person to whom the record relates attains, or would have attained, the age of 75 years.

(6) The person must comply with the written directions given to the person by the Board, unless the person has a reasonable excuse.

(7) A person who contravenes subsection (2) or (6) commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

Diagnostic or therapeutic procedures involving irradiation

38.—(1) A person (the first person) must not prescribe for another person a therapeutic procedure, or request for another person a diagnostic procedure, involving the irradiation of the other person, unless the first person is authorised (“an authorised person”) to do so by regulations.

(2) A use licensee who, in accordance with the licence, uses a radiation source to carry out a diagnostic or therapeutic procedure involving the irradiation of a person must not carry out the procedure unless the licensee reasonably believes the diagnostic procedure has been requested, or the therapeutic procedure has been prescribed, by an authorised person.

(3) A use licensee who, under the licence, uses a radiation source to carry out a diagnostic or therapeutic procedure involving the irradiation of a person (“the treated person”) must ensure that the treated person does not receive a radiation dose from the carrying out of the procedure in an amount, or a way, that does not comply with the request for the diagnostic procedure or prescription for the therapeutic procedure.

(4) Subsections (2) and (3) do not apply to a person who is an authorised person for the procedure.

(5) In addition to observing the other requirements of this section, the licensee must not, in carrying out the procedure with the source, allow another person involved in carrying out the procedure, other than the treated person, to receive a radiation dose higher than the radiation dose limit prescribed by regulations.

(6) A person who contravenes subsection (1), (2), (3) or (5) commits an offence and is liable on conviction to a fine of exceeding \$500,000 and to imprisonment for 5 years.

Causing radiation exposure above prescribed limit

39.—(1) This section applies if a possession licensee, in accordance with the licence, possesses a radiation source for a radiation practice.

(2) A person, in carrying out the practice with the source, must not cause another person to receive a radiation dose higher than the radiation dose limit prescribed by regulations.

(3) Subsection (2) does not apply if—

- (a) the other person receives the dose while being a treated person; or
- (b) the other person receives the dose while involved in carrying out a diagnostic or therapeutic procedure involving the irradiation of a person.

(4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Additional obligations of possession licensees

40.—(1) This section applies if a possession licensee, in accordance with the licence, possesses a radiation source for a radiation practice.

(2) The licensee must take reasonable steps to ensure any person’s health and safety are not adversely affected by exposure to radiation because of the carrying out of the practice with the source.

(3) Without limiting the ways in which a possession licensee may comply with subsection (2), a possession licensee is taken to comply with subsection (2) if at the relevant time—

- (a) the source complies with the relevant radiation safety standard;
- (b) if the practice is being carried out at premises, the premises comply with the relevant radiation safety standard; and
- (c) the licensee is complying with the licensee's approved radiation safety and protection plan for the practice.

(4) The licensee must also take reasonable steps to ensure another person does not use the source unless the person is allowed to do so under a use licence or otherwise under this Decree.

(5) Subsection (6) applies if the source is a radioactive substance.

(6) The licensee must take reasonable steps to ensure another person does not transport the substance unless the person is allowed to do so under a transport licence or otherwise under this Decree.

(7) A person who contravenes subsection (2), (4) or (6) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Additional obligation of persons carrying out radiation practices

41.—(1) This section applies if a possession licensee, in accordance with licence, possesses a radiation source for a radiation practice.

(2) A person carrying out the practice with the source must take reasonable steps to ensure any person's health and safety are not adversely affected by exposure to radiation because of the way the person carries out the practice.

(3) Without limiting the ways in which a person carrying out the practice with the source may comply with subsection (2), a person carrying out the practice with the source is taken to comply with subsection (2) if, at the relevant time, the person is complying with the licensee's approved radiation safety and protection plan for the practice.

(4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

Notification of dangerous events

42.—(1) This section applies—

- (a) if a possession licensee, in accordance with licence, possesses a radiation source for a radiation practice; and
- (b) any of the following events ("a dangerous event") happen—
 - (i) the source is, or appears to have been, lost or stolen;
 - (ii) there is a radiation incident in relation to the source, for which there are no remedial procedures stated in the licensee's approved radiation safety and protection plan for the practice being carried out with the source at the time;
 - (iii) equipment that uses, measures or controls radiation emitted from the source malfunctions with the result, or likely result, that there is, or will be, an unintended emission of the radiation or a person is, or will be, unintentionally exposed to the radiation.

(2) The licensee must give the Board notice, as required under subsections (3) and (4), of the dangerous event, unless the licensee has a reasonable excuse.

(3) The notice must—

- (a) be given immediately, orally or in writing; and
- (b) state particulars adequate to identify the source and its location.

(4) If the notice is given orally, the licensee must give the Board a written notice confirming the oral notice within 7 days after the dangerous event happens.

(5) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for a term not exceeding 12 months.

(6) In this section—

“radiation incident” means an incident adversely affecting, or likely to adversely affect, the health or safety of any person because of the emission of radiation;

“remedial procedures”, for a radiation incident, means procedures designed to minimise the radiation hazard arising from the incident.

False or misleading notices

43.—(1) A possession licensee must not give the Board a notice of a dangerous event under section 41 containing information which the licensee knows is false or misleading in a material particular.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Banning of certain radiation sources

44.—(1) A person must not possess, supply or use a radiation source that is prescribed by regulations to be a banned radiation source.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 5 years.

(3) In this section—

“sell” means sell by retail, wholesale or auction, and includes—

- (a) offer or agree to sell;
- (b) invite to treat or expose for sale;
- (c) cause or permit to be sold; and
- (d) supply under a lease, exchange, hiring or other commercial arrangement.

“supply” includes—

- (a) distribute, give or sell;
- (b) offer or agree to distribute or give;
- (c) cause or permit to be distributed or given; and
- (d) attempt to supply or do an act mentioned in paragraphs (a) to (c).

PART 6 — INSTRUMENTS

Division 1 — Preliminary and applications

Meaning of “instrument”

45. An instrument is—

- (a) a licence;
- (b) an accreditation certificate;
- (c) an approval;
- (d) a radiation safety officer certificate.

Who may apply for instruments

46.—(1) Any person may apply for the following instruments—

- (a) a possession licence;
- (b) a transport licence that allows the transport of a radioactive substance other than by road;
- (c) an approval to dispose.

- (2) An individual, and only an individual, may apply for the following instruments—
- (a) a use licence;
 - (b) a transport licence that allows the transport of a radioactive substance by road;
 - (c) an accreditation certificate;
 - (d) a radiation safety officer certificate.
- (3) A possession licensee, and only a possession licensee, may apply for the following instruments—
- (a) an approval to acquire;
 - (b) an approval to relocate.

(4) An application to which this section applies must be made on the appropriate form as prescribed by regulations.

Instrument issued jointly to more than one person

47. If an instrument is issued jointly to more than one person, a reference in this Decree to the holder of the instrument is a reference to each of the persons.

Procedural requirements for applications

- 48.—(1) An application for an instrument must—
- (a) be made to the Board; and
 - (b) be in the approved form; and
 - (c) be accompanied by—
 - (i) the fee prescribed by regulations; and
 - (ii) if the application is for a possession licence, the proposed radiation safety and protection plan for the radiation practice for which the applicant wants to possess a radiation source; and
 - (iii) if the application is for an approval to relocate, the written approval for the proposed relocation given by the regulatory authority responsible for preventing or minimising health risks to any person, in so far as exposure to radiation is concerned, in the locality to which the applicant proposes to relocate the radiation source concerned; and
 - (iv) any other documents which may be prescribed by regulations.
- (2) The Board must consider the application and either grant, or refuse to grant, the application.
- (3) The Board may grant the application only if the Board is satisfied the applicant is a suitable person to hold the instrument.

Different types of approval to acquire radiation source

49. An application for an approval to acquire a radiation source may be made for—
- (a) a single acquisition of a radiation source; or
 - (b) the periodic acquisition of an unsealed radioactive substance (“a continuing approval to acquire”).

Division 2 — Criteria for applications

Criteria for application — possession licences

50. In deciding whether an applicant for a possession licence is a suitable person to hold the licence, the Board may have regard to the following—

- (a) the radiation practice for which the applicant wants to possess the radiation source to which the application relates;
- (b) for an ionising radiation source, the justification of the practice;
- (c) the adequacy of the proposed radiation safety and protection plan for the practice, having regard to section 25;
- (d) the applicant’s ability to comply with a possession licensee’s obligations under sections 14, 15 and 17;

- (e) if the applicant has been convicted of an offence, including but not limited to an offence under this Decree or the repealed Act, the nature and the circumstances of the commission of the offence;
- (f) whether the applicant held an instrument under this Decree, or a similar instrument under the repealed Act, that was suspended or cancelled;
- (g) anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Criteria for applications – use licences

51. In deciding whether an applicant for a use licence is a suitable person to hold the licence, the Board may have regard to the following—

- (a) the qualifications, training, skills, competence, knowledge and experience of the applicant that are relevant to the radiation practice to which the application relates;
- (b) if the applicant is a person registered as a veterinary surgeon under the Veterinary Surgeons Act (Cap. 257) or a health practitioner, any conditions attaching to the applicant's registration, enrolment or accreditation as a veterinary surgeon or health practitioner limiting the applicant's ability to carry out the practice;
- (c) if the applicant has been convicted of an offence, including but not limited to an offence under this Decree or the repealed Act, the nature, and the circumstances of the commission, of the offence;
- (d) whether the applicant held an instrument under this Decree, or a similar instrument under the repealed Act, that was suspended or cancelled;
- (e) anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Criteria for applications – transport licences

52. In deciding whether an applicant for a transport licence is a suitable person to hold the licence, the Board may have regard to the following—

- (a) how the radioactive substance, to which the application relates, is to be transported by the applicant;
- (b) the amount of the substance the licensee is to transport at a time;
- (c) the applicant's competency in relation to the handling, packing, transportation, storage and delivery of the substance;
- (d) if the applicant has been convicted of an offence, including but not limited to an offence under this Decree or the repealed Act, the nature, and the circumstances of the commission, of the offence;
- (e) whether the applicant held an instrument under this Decree, or a similar instrument under the repealed Act, that was suspended or cancelled;
- (f) anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Criteria for applications – accreditation certificates

53. In deciding whether an applicant for an accreditation certificate is a suitable person to hold the certificate, the Board may have regard to the following—

- (a) the qualifications, training, skills, knowledge and experience of the applicant that are relevant to the applicant's competency to assess whether the type of radiation source or premises, to which the application relates, complies with the relevant radiation safety standard;
- (b) if the applicant has been convicted of an offence, including but not limited to an offence under this decree or the repealed Act, the nature, and the circumstances of the commission, of the offence;
- (c) whether the applicant held an accreditation certificate under this Decree, that was suspended or cancelled;
- (d) anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Criteria for applications – approval to acquire radiation source

54. In deciding whether an applicant for an approval to acquire a radiation source is a suitable person to hold the approval, the Board may have regard to the following—

- (a) the following particulars of the applicant’s possession licence—
 - (i) the radiation source the applicant is allowed to possess;
 - (ii) the radiation practice for which the applicant is allowed to possess the source;
 - (iii) the term of the licence;
 - (iv) any conditions of the licence;
- (b) the applicant’s reason for wanting to acquire the radiation source to which the application relates;
- (c) whether the application contains particulars adequate to identify the source;
- (d) the particulars, stated in the application, of how the applicant proposes to eventually dispose of, relocate, sell or give away the source;
- (e) whether the applicant held an approval to acquire a radiation source under this Decree, or a similar instrument under the repealed Act, that was suspended or cancelled;
- (f) anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Criteria for applications – approval to dispose of radioactive material

55. In deciding whether an applicant for an approval to dispose is a suitable person to hold the approval, the Board may have regard to the following—

- (a) the applicant’s reason for wanting to dispose of the radioactive material to which the application relates;
- (b) how the applicant proposes to dispose of the material;
- (c) whether the material can be dealt with in another way that is more conducive to ecological health or public amenity or safety;
- (d) whether the disposal would, or is likely to, result in another written law being contravened;
- (e) whether the applicant held an approval to dispose under this Decree that was suspended or cancelled;
- (f) anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

Criteria for applications – approval to relocate radiation source

56.—(1) In deciding whether an applicant for an approval to relocate a radiation source is a suitable person to hold the approval, the Board may have regard to the following—

- (a) the applicant’s reason for wanting to relocate the radiation source to which the application relates;
- (b) the ability of the applicant to comply with any international treaty about the movement of radiation sources;
- (c) if the purpose of the proposed relocation is the eventual disposal of the source, whether it can be dealt with in another way that is more conducive to ecological health or public amenity or safety;
- (d) whether the applicant held an approval to relocate under this Decree, or a similar instrument under the repealed Act, that was suspended or cancelled;
- (e) anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

(2) In this section—

“international treaty” means a treaty, dealing with the relocation of radiation sources, to which Fiji is a party;

“treaty” includes a convention, protocol, agreement or arrangement.

Criteria for applications – radiation safety officer certificates

57. In deciding whether an applicant for a radiation safety officer certificate is a suitable person to hold the certificate, the Board may have regard to the following—

- (a) the applicant's knowledge of the legislation, guidelines, codes of practice and standards relevant to the type of radiation practice to which the application relates;
- (b) the applicant's knowledge and skills in—
 - (i) measuring and monitoring radiation; and
 - (ii) interpreting radiation measurements; and
 - (iii) applying radiation safety standards;
- (c) the applicant's knowledge of the biological effects of radiation;
- (d) the applicant's competency to perform the functions of a radiation safety officer in relation to the type of practice;
- (e) if the applicant has been convicted of an offence, including but not limited to an offence under this decree or the repealed Act, the nature, and the circumstances of the commission, of the offence;
- (f) whether the applicant has held a radiation safety officer certificate under this Decree that was suspended or cancelled;
- (g) anything else relevant to the health and safety of any person, in so far as exposure to radiation is concerned.

*Division 3 – Decisions on applications**Inquiries into applications*

58.—(1) Before deciding the application, the Board—

- (a) may investigate the applicant; and
- (b) may, by written notice given to the applicant, require the applicant to give the Board, within a reasonable period of at least 30 days stated in the notice, further information or a document the Board reasonably requires to decide the application; and
- (c) if the application is for a use licence, transport licence allowing the transport of a radioactive substance by road, accreditation certificate or radiation safety officer certificate, may, by written notice given to the applicant, require the applicant to undergo a written, oral or practical examination within a reasonable period of at least 30 days stated in the notice.

(2) The purpose of an examination conducted pursuant to paragraph (c) of subsection (1) must be to assess—

- (a) in the case of an application for a use licence to use a radiation source to carry out a radiation practice—
 - (i) the applicant's competency to use the source to carry out the practice; and
 - (ii) the applicant's knowledge of issues relevant to the health and safety of any person, in so far as exposure to radiation is concerned;
- (b) in the case of an application for a transport licence allowing the transport of a radioactive substance by road—
 - (i) the applicant's competency in relation to the handling, packing, transportation, storage and delivery of the substance; and
 - (ii) the applicant's knowledge of issues relevant to the health and safety of any person, in so far as exposure to radiation is concerned;
- (c) in the case of an application for an accreditation certificate—
 - (i) for a type of radiation source, the applicant's competency to assess whether a radiation source of that type complies with the relevant radiation safety standard;
 - (ii) for a type of premises, the applicant's competency to assess whether premises of that type comply with the relevant radiation safety standard; and

- (iii) the applicant's knowledge of issues relevant to the health and safety of any person, in so far as exposure to radiation is concerned;
- (d) in the case of an application for a radiation safety officer certificate—
 - (i) the applicant's knowledge of the legislation, guidelines, codes of practice and standards relevant to the type of radiation practice to which the application relates; and
 - (ii) the applicant's knowledge and skills;
 - (iii) the applicant's knowledge of the biological effects of radiation; and
 - (iv) the applicant's competency to perform the functions of a radiation safety officer in relation to the type of practice; and
 - (v) the applicant's knowledge of issues relevant to the health and safety of any person, in so far as exposure to radiation is concerned.
- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant—
 - (a) does not comply with a notice under paragraph (b) of subsection (1); or
 - (b) does not undergo an examination required by paragraph (c) of subsection (1).

(4) A notice under paragraph (b) or (c) of subsection (1) must be given to the applicant within 90 days after the Board receives the application.

Decision to grant or refuse application

59.—(1) If the Board decides to grant the application the Board must immediately issue the instrument applied for to the applicant.

(2) If the Board decides to refuse to grant the application, the Board must immediately give the applicant an information notice about the decision.

Failure to decide application

60.—(1) Subject to subsections (2) and (3), if the Board fails to decide the application within 90 days after its receipt, the failure is taken to be a decision by the Board to refuse to grant the application.

(2) Subsection (3) applies if—

- (a) a person has made an application for an instrument; and
- (b) the Board has—
 - (i) required the applicant to give the Board further information or a document pursuant to paragraph (b) of section 62(1); or
 - (ii) required the applicant to undergo an examination pursuant to paragraph I of section 62(1).

(3) The Board is taken to have refused to grant the application if the Board does not decide the application by the later of the following days—

- (a) the day that is 90 days after the Board receives the further information or document;
- (b) the day that is 90 days after the Board receives the results of the examination.

Further consideration of applications for licences

61.—(1) This section applies if the Board considers it needs further time to make a decision on an application for a licence because of the complexity of the matters that need to be considered in deciding the application.

(2) The Board may at any time before the final consideration day give written notice to the applicant that—

- (a) because of the complexity of the matters that need to be considered in deciding the application, the Board needs further time to decide the application; and
- (b) the period within which the Board must decide the application is extended to a day (“the extended day”) that is 90 days after the final consideration day.

(3) The applicant and Board may also at any time before the final consideration day agree in writing on a day (“the agreed extended day”) by which the application is to be decided.

(4) The Board is taken to have refused to grant the application if the Board does not decide the application by the latest of the following days—

- (a) if the Board has given a notice to the applicant under subsection (2), the extended day;
- (b) if there is an agreement between the applicant and Board under subsection (3), the agreed extended day.

(5) In this section—

“final consideration day” means the later of the following days—

- (a) the day that is 90 days after receipt of the application;
- (b) if the Board has, pursuant to paragraph (b) of section 62(1), required the applicant to give the Board further information or a document, the day that is 90 days after the Board receives the further information or document;
- (c) if the Board has, pursuant to paragraph (c) of section 62(1), required the applicant to undergo an examination, the day that is 90 days after the Board receives the results of the examination.

Division 4 – Information, terms and conditions

Forms for instruments

62.—(1) An instrument must be in the approved form.

(2) The approved form must provide for the inclusion of the following—

- (a) the name of the holder of the instrument;
- (b) the term of the instrument;
- (c) any conditions of the instrument imposed by the Board.

Approved form – additional information for possession licences

63. In addition to the requirements specified by section 62, the approved form for a possession licence must—

- (a) provide for the inclusion of the following—
 - (i) particulars of the radiation source the licensee is allowed to possess;
 - (ii) the radiation practice for which the licensee is allowed to possess the source.
- (b) identify the approved radiation safety and protection plan for the practice.

Approved form – additional information for use licences

64. The approved form for a use licence must provide for the inclusion of the following—

- (a) particulars of the radiation source the licensee is allowed to use;
- (b) the radiation practice the licensee is allowed to carry out using the source.

Approved form – additional information for transport licences

65. In addition to the requirements specified by section 62, the approved form for a transport licence must provide for the inclusion of the following—

- (a) particulars of the radioactive substance the licensee is allowed to transport;
- (b) how the substance is to be transported;
- (c) the amount of the substance the licensee is allowed to transport at a time.

Approved form – additional information for accreditation certificates

66. In addition to the requirements specified by section 62, the approved form for an accreditation certificate must provide for the inclusion of particulars of the type of radiation source or premises for which the holder of the certificate is allowed to issue a certificate of compliance.

Approved form – additional information for approval to acquire radiation source

67. In addition to the requirements specified by section 62, the approved form for an approval to acquire must provide for the inclusion of particulars adequate to identify the radiation source allowed to be acquired under the approval.

Approved form – additional information for approval to dispose of radioactive material

68. In addition to the requirements specified by section 62, the approved form for an approval to dispose must identify—

- (a) the radioactive material the licensee is allowed to dispose of; and
- (b) the amount of the radioactive material the licensee is allowed to dispose of.

Approved form – additional information for approval to relocate radiation source

69. In addition to the requirements specified by section 62, the approved form for an approval to relocate must provide for the inclusion of the following—

- (a) particulars adequate to identify the radiation source allowed to be relocated under the approval;
- (b) the location to which the holder of the approval is allowed to relocate the source.

Additional information for radiation safety officer certificates

70. In addition to the requirements specified in section 62, the approved form for a radiation safety officer certificate must provide for the inclusion of particulars adequate to identify the type of radiation practice for which the holder of the certificate may perform the functions of a radiation safety officer.

Periods of validity of instruments

71.—(1) A licence remains in force for the period, not being more than 3 years, stated in the licence.

(2) An accreditation certificate remains in force for the period, being not more than 3 years, stated in the certificate.

(3) An approval remains in force for the period stated in the approval.

(4) In the case of an approval to acquire or an approval to relocate a radiation source, the period of approval must expire on or before the expiry of the period during which the possession licence relating to that radiation source remains in force.

(5) A radiation safety officer certificate remains in force for the period, being not more than 3 years, stated in the certificate.

Standard conditions for certain instruments

72.—(1) An approval to relocate a radiation source is subject to the condition that the holder of the approval must give the Board written notice of the relocation of the radiation source to which the approval relates within 7 days after the relocation happens.

(2) An approval to dispose of radioactive material is subject to the condition that the holder of the approval must give the Board written notice of the disposal of the radioactive material to which the approval relates within 7 days after the disposal happens.

(3) A possession or use licence is subject to the condition that the holder of the licence comply with any code, protocol, standard or document concerning the radiation practice to which the licence relates which may be prescribed by regulations.

(4) A transport licence is subject to the condition that the holder of the licence comply with any code, protocol, standard or document concerning the transport of radioactive substances to which the licence relates which may be prescribed by regulations.

Imposition of conditions on instrument by Board

73.—(1) The Board may issue an instrument on conditions the Board considers necessary or desirable to protect persons from health risks associated with exposure to radiation.

(2) If the Board decides to issue an instrument on conditions, the Board must immediately give the applicant an information notice about the decision.

Contravention of condition of instrument

74.—(1) A holder of an instrument must not contravene any condition of the instrument, including a condition referred to in sections 72 and 73.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

(3) The penalty may be imposed for a contravention under subsection (2) whether or not the instrument is cancelled or suspended because of the contravention.

*Division 5 — Renewal of instruments**Application of the Division*

75. This Division applies to every instrument of the kinds mentioned in section 45.

Applications for renewal

76.—(1) The holder of an instrument may apply to the Board for the renewal of the instrument within the period starting 60 days before the period of validity of the instrument expires.

(2) The application must —

- (a) be in the approved form; and
- (b) be accompanied by —
 - (i) the fee prescribed by regulations; and
 - (ii) documents prescribed by regulations.

(3) The Board must consider the application and renew, or refuse to renew, the instrument.

(4) In deciding whether to grant the application, the Board may have regard to the matters to which the Board may have regard in deciding whether a proposed holder of a renewable instrument is a suitable person to hold the instrument.

(5) If the Board decides to refuse to renew the instrument, the Board must immediately give the applicant an information notice about the decision.

(6) An instrument may be renewed by —

- (a) endorsing the existing instrument; or
- (b) cancelling the existing instrument and issuing another renewable instrument.

Inquiries into application for renewal

77.—(1) Before deciding an application for renewal of an instrument under section 76, the Board may, by written notice given to the applicant, require the applicant to give the Board, within a reasonable period of at least 30 days stated in the notice, further information or a document the Board reasonably considers is needed to decide the application.

(2) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with a requirement under subsection (1).

Instrument taken to continue in force while renewal application is considered

78.—(1) Where an application is made under section 76 to renew an instrument, the instrument is taken to continue in force from the day that it would, apart from this section, have expired until the application is decided under section 80 or taken to have been withdrawn under section 77(2).

(2) If the application for renewal is refused, the instrument continues in force until the information notice for the decision is given to the applicant.

- (3) Subsection (1) does not apply if the instrument is earlier suspended or cancelled.

Division 6 – Suspension and cancellation of instruments

Grounds for suspension or cancellation

79.—(1) Each of the following is a ground for suspending or cancelling an instrument—

- (a) the holder of the instrument is not, or is no longer, a suitable person to hold the instrument;
- (b) the holder has been convicted of an offence under this Decree;
- (c) the holder has contravened a provision of this Decree, a contravention of which is not an offence under this Decree;
- (d) the holder has contravened a condition of the instrument;
- (e) the instrument was issued because of a materially false or misleading representation or declaration.

(2) In deciding whether it may invoke the ground referred to in paragraph (a) of subsection (1), the Board may have regard to the matters to which the Board may have regard in deciding whether a proposed holder of an instrument is a suitable person to hold the instrument .

Show cause notice

80.—(1) If the Board believes a ground exists to suspend or cancel an instrument, the Board must give the holder of the instrument a written notice under this section (“a show cause notice”).

(2) The show cause notice must state the following—

- (a) the action (“the proposed action”) the Board proposes taking under this Division;
- (b) the grounds for the proposed action;
- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action is suspension of the instrument, the proposed suspension period;
- (e) an invitation to the holder to show within a stated period (“the show cause period”) why the proposed action should not be taken.

(3) The show cause period must be a period ending not less than 21 days after the show cause notice is given to the holder.

Representations about show cause notice

81.—(1) The holder of the instrument may make representations about the show cause notice to the Board in the show cause period.

(2) The Board must consider all written representations (“the accepted representations”) made under subsection (1).

Ending show cause process without further action

82.—(1) If, after considering the accepted representations for the show cause notice, it no longer believes a ground exists to suspend or cancel the instrument, the Board must not take any further action with respect to the notice.

(2) Notice that no further action is to be taken about the show cause notice must be given to the holder of the instrument by the Board.

Exercise of the power to suspend or cancel instrument

83.—(1) This section applies if—

- (a) after considering the accepted representations for the show cause notice, the Board—
 - (i) still believes a ground exists to suspend or cancel the instrument; and
 - (ii) believes suspension or cancellation of the instrument is warranted; or
- (b) there are no accepted representations for the show cause notice.

(2) The Board may—

- (a) if the proposed action stated in the show cause notice was to suspend the instrument for a stated period, suspend the instrument for not longer than the stated period; or

- (b) if the proposed action stated in the show cause notice was to cancel the instrument, either cancel the instrument or suspend it for a period.

(3) The Board must immediately give an information notice about a decision under subsection (2) to the holder of the instrument

- (4) A decision under subsection (2) takes effect on—
 - (a) the day the information notice is given to the holder; or
 - (b) if a later day of effect is stated in the information notice, the later day.

Return of cancelled instrument to Board

84.—(1) If the Board has cancelled an instrument and given an information notice about the decision to the holder of the instrument the holder must return the instrument to the Board within 7 days after receiving the information notice.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

(3) It is a defence for a person charged with an offence under subsection (2) to establish that there was a reasonable excuse for failing to comply with subsection (1).

Immediate suspension of licence or accreditation certificate pending formal cancellation procedure

85.—(1) If the Board believes that—

- (a) in respect of a licence—
 - (i) a ground exists to cancel the licence; and
 - (ii) it is necessary, in the interests of the health or safety of any person who may be exposed to radiation emitted from the radiation source to which the licence relates, to immediately suspend the licence until the formal cancellation procedure is completed; or
- (b) in respect of an accreditation certificate—
 - (i) a ground exists to cancel the certificate; and
 - (ii) it is necessary, in the interests of the health or safety of any person, to immediately suspend the authority of the holder of the certificate to issue certificates of compliance for radiation sources or premises until the formal cancellation procedure is completed.,

the Board may immediately suspend the licence or certificate.

(2) The Board must immediately give an information notice about a decision made under subsection (1) to the holder of the licence or certificate.

(3) The suspension takes effect immediately an information notice for the decision is given to the holder.

(4) If, within 14 days after the Board suspends the licence or certificate, the Board gives the information notice required by section 83(3), the suspension lasts until the first to happen of the following—

- (a) the Board cancels the suspension;
- (b) a decision to cancel the licence or certificate takes effect;
- (c) a decision is made not to cancel the licence or certificate.

(5) If the information notice required by section 83(3) in respect of the cancellation of an instrument is not given within the period mentioned in subsection (4), the suspension lapses at the end of the period, unless the Board has already cancelled the suspension.

Effect of suspension or cancellation of possession licence on approval to acquire radiation source

86.—(1) If the possession licence of the holder of an approval to acquire a radiation source is suspended, the approval is taken to be suspended for the period of the suspension.

(2) If the possession licence of the holder of an approval to acquire a radiation source is cancelled, the approval is taken to be cancelled.

Effect of suspension or cancellation of possession licence on approval to relocate radiation source

87.—(1) If the possession licence of the holder of an approval to relocate is suspended, the approval is taken to be suspended for the period of the suspension.

(2) If the possession licence of the holder of an approval to relocate is cancelled, the approval is taken to be cancelled.

Effect of suspension or cancellation of radiation safety officer certificate

88.— (1) If —

(a) a person is a radiation safety officer for a radiation practice; and

(b) the person's radiation safety officer certificate is suspended or cancelled by the Board, the person's appointment as a radiation safety officer for the practice is taken to be rescinded.

(2) A person to whom subsection (1) applies must as soon as practicable give written notice of the suspension or cancellation to the possession licensee who appointed the person as a radiation safety officer for the practice

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Notification of change in circumstances

89.—(1) This section and section 90 applies to every instrument of the kinds mentioned in section 45.

(2) The holder of an instrument must, within 14 days after the happening of a change in the holder's circumstances of a kind prescribed by regulations, give the Board written notice of the change and return the instrument to the Board.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Endorsement of change on instrument

90. If—

(a) a change in the holder's circumstances affects a particular stated in the instrument; and

(b) the Board is satisfied the change is accurate and does not affect the instrument in a way that makes it desirable that the instrument be suspended or cancelled,

the Board must note the change on the instrument and return it to the holder.

*Division 7 — Conditional instruments**Application of the Division*

91. This Division applies to every instrument of the kinds mentioned in section 45 where the Board has issued the instrument subject to conditions pursuant to section 73 ("conditional instrument").

Changing the conditions of a conditional instruments by Board

92.—(1) The Board may decide to change the conditions of a conditional instrument imposed if the Board considers it is necessary or desirable to make the change to protect persons from health risks associated with exposure to radiation.

(2) Before deciding to change the conditions, the Board must—

(a) give written notice to the holder of the instrument—

(i) of the particulars of the proposed change; and

(ii) that the holder may make written submissions to it not later than a date stated in the notice; and

(b) have regard to any written submissions made to it by the holder before that date.

(3) If the Board decides to change the conditions of a conditional instrument, the Board must immediately give the holder of the instrument an information notice about the decision.

(4) A decision to change the conditions of a conditional instrument takes effect when the information notice is given to the holder and does not depend on the instrument being amended to record the change or a replacement instrument being issued.

(5) The power of the Board under subsection (1) includes the power to add conditions to an instrument that was not previously subject to conditions.

Changing conditions of conditional instrument on application of holder

93.—(1) The holder of a conditional instrument may apply to the Board to change any of the conditions of the instrument previously attached to the instrument.

(2) The application must—

- (a) be in the approved form; and
- (b) be accompanied by the fee prescribed by regulations.

(3) In deciding whether to grant the application, the Board may have regard to the matters, so far as relevant to the application, to which the Board may have regard in deciding whether a proposed holder of a instrument is a suitable person to hold the instrument.

(4) If the Board decides to grant the application, the Board must immediately give the holder an information notice about the decision.

(5) The change of conditions takes effect when the notice is given to the holder and does not depend on the instrument being amended to record the change or a replacement instrument being issued.

(6) If the Board decides not to grant the application, the Board must immediately give the holder an information notice about the decision.

(7) If the Board fails to decide the application within 90 days after its receipt, the failure is taken to be a decision by the Board to refuse to grant the application.

Recording change of conditions

94.—(1) If a holder of a conditional instrument receives an information notice under section 91(3) or a notice under section 93(4) about a change to the conditions of the instrument the holder must return the instrument to the Board within 7 days after receiving the notice.

(2) On receiving the instrument, the Board must—

- (a) amend the instrument in an appropriate way and return the amended instrument to the holder; or
- (b) if the Board does not consider it practicable to amend the instrument it must issue another instrument incorporating the changed conditions to the holder to replace the instrument returned to the Board.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

(4) It is a defence for a person charged with an offence under subsection (3) to establish that there was a reasonable excuse for failing to comply with subsection (1).

Further consideration of applications under section 92

95.—(1) This section applies if the Board considers it needs further time to make a decision on an application under section 93 because of the complexity of the matters that need to be considered in deciding the application.

(2) The Board may at any time before the final consideration day give written notice to the applicant that—

- (a) because of the complexity of the matters that need to be considered in deciding the application, the Board needs further time to decide the application; and
- (b) the period within which the Board must decide the application is extended to a day (“the extended day”) that is 90 days after the final consideration day.

(3) The applicant and Board may also at any time before the final consideration day agree in writing on a day (“the agreed extended day”) by which the application is to be decided.

(4) The Board is taken to have refused to grant the application if the Board does not decide the application by the latest of the following days—

- (a) if the Board has given a notice to the applicant under subsection (2), the extended day;
- (b) if there is an agreement between the applicant and Board under subsection (3), the agreed extended day.

(5) In this section—

“final consideration day” means the day that is 90 days after receipt of the application.

Division 8 – Miscellaneous

Surrender of instruments

96.—(1) The holder of an instrument may surrender the instrument by written notice given to the Board.

(2) The surrender takes effect—

- (a) on the day the notice is given to the Board; or
- (b) if a later day of effect is stated in the notice, on the later day.

(3) The holder must return the instrument to the Board within 7 days after the day the surrender takes effect.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

(5) It is a defence for a person charged with an offence under subsection (4) to establish that there was a reasonable excuse for failing to comply with subsection (3).

Obligations on surrender of radiation safety officer certificate

97.—(1) Subsection (2) applies if—

- (a) a person surrenders the person’s radiation safety officer certificate under section 96; and
- (b) immediately before the surrender takes effect the person is a radiation safety officer for a radiation practice; and
- (c) at the time of surrender, the person is not also the possession licensee who, under the licence, possesses a radiation source for the practice.

(2) The person must as soon as practicable after the surrender takes effect give written notice of the surrender to the possession licensee who appointed the person as a radiation safety officer for the practice.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

Replacement of instrument

98.—(1) The holder of an instrument may apply to the Board for the replacement of the instrument if it has been lost, stolen, destroyed or damaged.

(2) The Board must consider the application and either grant, or refuse to grant, the application.

(3) The Board must grant the application if it is satisfied the instrument has been lost, stolen or destroyed, or damaged in a way which requires its replacement.

(4) If the Board grants the application, it must, on payment of the fee prescribed by regulations, issue another instrument to the applicant to replace the lost, stolen, destroyed or damaged instrument.

(5) If the Board refuses to grant the application, it must immediately give the applicant an information notice about the decision.

Transfer of instrument prohibited

99. No instrument may be transferred to another person.

False or misleading statements

100. A person who, in respect of an application made under this Part, states anything which the person knows is false or misleading in a material particular commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

PART 7— EMERGENCIES

Emergency powers

101.—(1) This section applies if the Board is satisfied on reasonable grounds—

- (a) there is at a place a radiation source; and
- (b) it is necessary to exercise powers under this section—
 - (i) to avoid or minimise an imminent risk of death of, serious illness of, or serious injury to, any person from radiation emitted from the source; or
 - (ii) to avoid imminent serious environmental harm from the source.

(2) The Board may, without a warrant or the consent of the occupier of the place, authorise a public officer or a police officer (an “authorised person”) to enter the place.

(3) The authorised person may in relation to the source—

- (a) direct a person at the place to take stated reasonable steps within a stated reasonable period in relation to the source; or
- (b) take such reasonable steps; or
- (c) authorise another person to take the reasonable steps.

(4) A direction made under paragraph (a) of subsection (3) may be given orally or by written notice.

(5) If a direction made under paragraph (a) of subsection (3) is given orally, the authorised person must as soon as practicable confirm the direction by written notice given to the person.

(6) When giving a direction under paragraph (a) of subsection (3), the authorised person must warn the person that it is an offence not to comply with the direction unless the person has a reasonable excuse for non-compliance.

(7) If the authorised person takes the steps required under subsection (3), the authorised person may also exercise any of the powers of an inspector.

(8) The authorised person may exercise the powers mentioned in subsections (2), (3)(b) and (7) (“the emergency powers”) with the assistance of any inspector or police officer, using such force as is necessary and reasonable in the circumstances.

(9) In exercising or attempting to exercise emergency powers, the authorised person must take all reasonable steps to ensure that the authorised person causes as little inconvenience to any person at the place, and does as little damage, as is practicable in the circumstances.

(10) This section does not limit any power an inspector has apart from this section.

(11) If the authorised person authorises a person to take steps under paragraph (c) of subsection (3)—

- (a) the person may exercise the powers mentioned in subsection (7); and
- (b) the inspector must inform the person—
 - (i) of the steps the person is authorised to take; and
 - (ii) of the person’s powers under this section.

Failure to comply with authorised person’s direction in emergency

102.—(1) A person to whom a direction is given under paragraph (a) of section 101(3) must comply with the direction.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$5,000 and to imprisonment for 12 months.

(3) It is a defence for a person charged with an offence under subsection (2) to establish that there was a reasonable excuse for failing to comply with subsection (1).

Notice of damage

103.—(1) This section applies if—

- (a) the authorised person damages property when exercising or purporting to exercise a power under this Decree; or
- (b) a person (“the other person”) acting under the direction or authority of the authorised person damages property.

(2) The authorised person must immediately give written notice of particulars of the damage to the person who appears to the authorised person to be the owner of the property.

(3) If the authorised person believes the damage was caused by a latent defect in the property or circumstances beyond the authorised person’s or other person’s control, the authorised person may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way at the place where the damage happened.

(5) This section does not apply to damage which the authorised person reasonably believes is trivial.

(6) In this section—

“owner”, in relation to property, includes the person in possession or control of it.

PART 8 — RADIATION HEALTH BOARD

Division 1 — Establishment, membership and functions

Establishment of Board

104. This section establishes the Radiation Health Board.

Functions of Board

105.—(1) The Board has the following functions—

- (a) examining, and making recommendations to the Minister about, the following—
 - (i) the operation and application of this Decree;
 - (ii) proposed amendments of this Decree;
 - (iii) radiation safety standards;
 - (iv) issues relating to radiation;
 - (v) research into radiation practices carried out, and the transport of radioactive materials, in the State;
- (b) overseeing the operation of any committees established under this Decree;
- (c) such other functions as may be assigned to it by any other written law.

(2) If requested by the Minister, the Board must give the Minister a written report about the performance of its functions.

Membership of Board

106.—(1) The Board consists of—

- (a) the Permanent Secretary of the Ministry responsible for Health who shall act as the Chairperson;
- (b) the Permanent Secretary of the Ministry responsible for the Health and Safety at Work Act or a senior officer of that Ministry nominated in writing by the Permanent Secretary who shall act as Deputy Chairperson;
- (c) the President of the Fiji Society of Medical Imaging Technologists;
- (d) the Director for Environment or a senior officer nominated in writing by the Director;

- (e) an academic in radiography nominated by the Fiji School of Medicine; and
- (f) two other members.

(2) The Minister shall appoint members under paragraphs (e) and (f) of subsection (1); and such members may be appointed for a term of not more than 3 years and shall be eligible for re-appointment.

(3) Any person appointed under paragraph (f) of subsection (1) must possess relevant qualifications, experience or expertise in the field of human diagnostic radiology, industrial uses of radiography or any other qualification, experience or expertise in the field of radiology or radiography which may be prescribed in regulations.

Disqualification from membership of Board

107.—(1) A person can not become, or continue as, an appointed member if the person—

- (a) is affected by bankruptcy; or
- (b) is convicted of an offence against this Decree

(2) For the purposes of paragraph (a) of subsection (1), a person is affected by bankruptcy if the person—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

(3) The Minister may revoke the appointment of an appointed member at any time.

Vacation of office

108. An appointed member is taken to have vacated office if the member—

- (a) resigns by signed notice of resignation given to the Minister; or
- (b) cannot continue as an appointed member by reason of section 106.

When notice of resignation takes effect

109. A notice of resignation given pursuant to paragraph (a) of section 108 takes effect when the notice is given to the Minister or, if a later time is stated in the notice, the later time.

Remuneration of members

110. A member is entitled to be paid such fees and allowances as are decided by the Higher Salaries Commission.

Division 2 — Business of the Board and committees

Secretary of the Board

111.—(1) There shall be a Secretary of the Board who must be a public officer and appointed by the Minister.

(2) Subject to this Decree, the Medical Imaging Technologists Decree 2009 and such directions as the Board may make from time to time, the Secretary is responsible for the administration of the affairs of the Board.

(3) The Secretary shall be in attendance at meetings of the Board and keep a record of its proceedings.

Conduct of business

112. Subject to this Division, the Board may conduct its business, including its meetings, in the way it considers appropriate.

Meetings

113. Meetings of the Board must be held at least once every 3 months and shall be convened by the Chairperson.

Quorum

114. A quorum for a meeting of the Board is 4 members.

Presiding at meetings

115.—(1) The Chairperson shall preside at all meetings of the Board at which the Chairperson is present.

(2) If the Chairperson is not present at a meeting of the Board, but the Deputy Chairperson is present, the Deputy Chairperson shall preside.

(3) If the Chairperson and Deputy Chairperson are both absent from a meeting of the Board or their offices are vacant, a member chosen by the members present shall preside.

Conduct of meetings

116.—(1) A question at a Board meeting is decided by a majority of the votes of the members present.

(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(3) The Board may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(4) A member who takes part in a Board meeting conducted in a manner permitted by subsection (3) is taken to be present at the meeting.

(5) A resolution is validly made by the Board, even if it is not passed at a Board meeting, if—

- (a) a majority of the Board members gives written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the Board.

Disclosure of interests by Board members

117.—(1) This section applies to a member (“the interested member”) if—

- (a) the interested member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the Board; and
- (b) the interest could conflict with the proper performance of the member’s duties about the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the interested member’s knowledge, the member must disclose the nature of the interest to a Board meeting.

(3) Unless the Board otherwise directs, the interested member must not—

- (a) be present when the Board considers the issue; or
- (b) take part in a decision of the Board about the issue.

(4) The interested member must not be present when the Board is considering whether to give a direction under subsection (3).

(5) If there is another member who must, under subsection (2), also disclose an interest in the issue, the other member must not—

- (a) be present when the Board is considering whether to give a direction under subsection (3) about the interested member; or
- (b) take part in making the decision about giving the direction.

(6) If—

- (a) because of this section, a member is not present at a Board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
- (b) there would be a quorum if the member were present,

the remaining members present are a quorum of the Board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

(7) A disclosure under subsection (2) must be recorded in the Board’s minutes.

Committees and appointment of inspectors

118.—(1) The Board may establish committees of the Board for effectively and efficiently performing its functions.

(2) The Board may appoint persons to be members of a committee.

(3) At least one of the members of a committee must be a Board member.

(4) The Board is to decide the terms of reference of a committee.

(5) The function of a committee is to advise and make recommendations to the Board about matters, within the scope of the Board's functions, referred by the Board to the committee.

(6) The Board may decide matters concerning a committee that are not provided for under this Decree including the way a committee must conduct its meetings.

(7) The Board may appoint any public officer, class of public officers, or any other person who is not a public officer, as an inspector for the purpose of this Decree.

Remuneration of committee members

119. A committee member is entitled to be paid such fees and allowances as are decided by Higher Salaries Commission.

*Division 3 – Appeals**Right of appeal and procedure for appealing*

120.—(1) A person who is aggrieved by a decision of the Board may appeal to the Minister against the decision.

(2) The notice of appeal must be filed within 28 days after the date the decision was made by the Board.

(3) The Minister may extend the period for filing the notice of appeal.

(4) The notice of appeal must state fully the grounds of the appeal.

(5) For the purposes of this Division, the Minister may exercise the power under section 31 of the Interpretation Act (Cap. 7) whereby the Minister may delegate to a fit and proper person the hearing of an appeal and of advising the Minister as to the decision to be made thereon.

Stay of operation of decisions

121.—(1) The Minister may direct a stay of the operation of the decision to secure the effectiveness of the appeal.

(2) The stay—

(a) may be given on conditions the Minister considers appropriate;

(b) operates for the period fixed by the Minister; and

(c) may be revoked or amended by the Minister.

(3) The period of the stay must not extend past the time when the Minister decides the appeal.

(4) The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

Hearing procedures

122.—(1) In deciding the appeal, the Minister—

(a) has the same powers as the Board; and

(b) is not bound by the strict rules of evidence.

(2) The appeal is by way of re-hearing.

Powers of Minister on appeal

123.—(1) In deciding the appeal, the Minister may—

(a) confirm the review decision;

- (b) amend the review decision;
- (c) substitute another decision for the review decision; or
- (d) set aside the review decision and return the issue to the Board with such directions as the Minister considers appropriate.

(2) If the Minister amends the review decision or substitutes another decision for the review decision, the amended or substituted decision is, for the purposes of this Decree, other than this Part, is to be taken to be the Board's decision.

PART 9 — MISCELLANEOUS

Limited exemption for radiation source

124.—(1) Subject to subsection (2), provision may be made in regulations to exempt a radiation source from all or any specified requirements of this Decree.

(2) An exemption must not be one that could reasonably be expected to pose any, or more than negligible, health risks to any person.

Protection of officials from personal liability

125. The following persons are not personally liable for an act done honestly and without negligence under this Decree—

- (a) the Minister;
- (b) a member of the Board or a committee of the Board; or
- (c) any other public officer or person required to exercise any function or power under this Decree.

Impersonation of accredited person

126. A person who pretends to be an accredited person commits an offence and is liable on conviction to a fine of \$50,000 and to a term of imprisonment for 2 years.

Delegation by Board

127.—(1) The Board may delegate any or all of the Board's powers under this Decree to an appropriately qualified public officer.

(2) In this section, "appropriately qualified" includes having the qualifications, experience or standing appropriate to exercise the powers of the Board.

Approval of forms

128. Where a provision of this Decree requires the use of an approved form, such form shall be prescribed in regulations after first having been approved by the Board.

Registers to be kept

129.—(1) The Board must keep a register of—

- (a) licensees;
- (b) accredited persons;
- (c) qualified persons who has attained a certificate in medical imaging science as mentioned in section 8 (3)(a) of the Medical Imaging Technology Decree 2009;
- (d) persons who have been granted approvals under sections 54, 55 and 56;
- (e) radiation safety officers.

(2) A register must contain such information as may be prescribed in regulations.

(3) A register may be kept in any form the Board considers appropriate.

Inspection of registers

130. The Board must—

- (a) keep every register open for inspection, free of charge, by members of the public during office hours on business days at the office of the Board;

- (b) allow a person to make copies of extracts from a register upon payment of such fee as may be prescribed in regulations.

Regulations

131.—(1) The Minister may make regulations to give effect to the provisions of this Decree, and in particular the following—

- (a) the setting of radiation dose limits;
- (b) accreditation certificates, radiation safety officer certificates, approvals and licences;
- (c) certificates of compliance for—
 - (i) radiation sources;
 - (ii) premises at which radioactive substances are stored; and
 - (iii) premises at which radiation sources are used to carry out radiation practices;
- (d) the disposal of—
 - (i) radiation sources or radioactive material;
 - (ii) containers that have been used for the transport or storage of radioactive material; and
 - (iii) apparatus that once contained a sealed radioactive substance;
- (e) the irradiation of persons for diagnostic and therapeutic purposes;
- (f) the way in which the concentration or activity of the radionuclide in radioactive material is to be decided;
- (g) to prescribe forms and fees, including the refunding of fees.
- (h) the keeping of registers required by this Decree;
- (i) the appointment of inspectors and providing for their functions and powers.
- (j) imposing a fine not exceeding \$50,000 or a term of imprisonment not exceeding 4 years, or both, for a contravention of a provision of regulations;
- (k) for any other purpose for which a provision of this Decree requires the making of regulations.

(2) For the definition “radioactive substance” in section 2, regulations may provide for different prescriptions of the concentration or activity of a radionuclide, having regard to the particular provision in which the term is used or is relevant.

Repeal and transitional provision

132.—(1) The Ionising Radiations Act (Cap.102) is hereby repealed.

(2) Subject to subsections (2) and (3), upon this Decree coming into force, a person who is in possession of or is using a radiation source and is required to be licensed by this Decree shall continue to be in possession or to use the radiation source as if the person has been licensed under this Decree.

(3) A person to whom subsection (2) applies shall apply for a possession licence or a use licence under the provisions of the Decree within 12 months from the date upon which this Decree comes into force.

(4) A licence issued under the repealed Act shall be deemed to be revoked upon the issue of a replacement licence in accordance with subsection (3) and in any event upon the expiration of 12 months from the date upon which this Decree comes into force.

GIVEN under my hand this 30th day of October 2009.

EPELI NAILATIKAU
Vice-President of the Republic of Fiji