



Queensland

Radiation Safety Amendment Regulation (No. 1) 2012

Explanatory Notes for SL 2012 No. 246

made under the

Radiation Safety Act 1999

General outline

Short title

Radiation Safety Amendment Regulation (No. 1) 2012.

Authorising law

Sections 36(3), 47, 51 and 215 of the *Radiation Safety Act 1999*.

Policy objectives and the reasons for them

The objective of the *Radiation Safety Act 1999* is to protect the people of Queensland, and the environment, from the harmful effects of particular sources of ionising and harmful non-ionising radiation, while recognising the beneficial uses of radiation.

In accordance with the object of the Act, the Amendment Regulation will provide greater protection from the harmful effects of ultraviolet radiation (UVR) used in commercial solariums by banning the possession of new commercial solariums in Queensland.

The *Radiation Safety Regulation 2010* is to be amended to restrict the cosmetic use of relevant solariums in commercial businesses under section

64A of the Regulation. Under the head of power in section 47 of the Act a person must not possess, supply or use a radiation source that is prescribed under a regulation to be a banned radiation source. The amendments to the Regulation, in combination with section 47 of the Act, will prevent any new possession licences being able to be issued once the ban comes into effect.

As currently required by the Act, an individual must hold a use licence in order to be able to operate a relevant solarium. It is important that individuals continue to be licensed until such time as there are no more commercial solaria in Queensland to ensure that the use of solaria is carried out in accordance with the radiation safety and protection measures under the legislation. As the number of solarium in Queensland diminishes so will the demand for use licences.

The legislation will allow existing possession licensees to continue to have lawful possession of a relevant solarium that they are currently allowed to possess under their licence until such time as they choose to relocate or dispose of the solarium in accordance with the requirements of the Act. It could take up to 10 or more years for a new solarium to become redundant. Consequently, should a possession licensee wish to relocate a solarium in their possession, they will be able to do so under existing provisions of the Act, for example to relocate to another jurisdiction that does not ban solaria. If a ban were to be imposed on supply, existing possession licensees would not be able to do so.

The Amendment Regulation does not provide for a ban to be imposed on the possession of a solarium used exclusively by a health practitioner to carry out a diagnostic or therapeutic procedure or a privately owned solarium (i.e. a solarium owned by an individual and is not used for a business). The possession, use and acquisition of solaria in these circumstances are not currently regulated by Queensland's radiation safety legislation.

The Amendment Regulation also provides for a number of additional amendments to be made to the Regulation.

Currently, section 10 requires all applications for an Act Instrument to be accompanied by two copies of prescribed documents which have been certified by a justice of the peace or a notary public. In order to reduce the regulatory burden on persons applying for particular Act Instruments (i.e. an application for approval, an accreditation certificate or a radiation safety officer certificate) the Amendment Regulation amends this section to limit

its application to individuals applying for a licence to possess, use or transport radiation sources.

The Amendment Regulation will also amend section 48 to ensure it accords with the requirements of the Act in relation to the security of radiation sources to be transported. Currently, the Regulation only makes reference to a 'possession licensee'. However, a possession licensee is not the only category of persons who is required to develop a transport security plan. This obligation may also fall on a transport licensee, or another person who is transporting two or more sources that have become a security enhanced source as a result of their aggregation.

Section 35 of the Act requires a possession licensee to ensure, whenever a radiation source in their possession is being used to carry out a radiation practice, that a person has been appointed as, and is carrying out the functions of, a radiation safety officer for the practice. However, the Act recognises that some possession licensees may have the necessary knowledge and experience to carry out the functions of a radiation safety officer, particularly for small, sole operator practices. In order to decrease the regulatory burden and costs on certain registered dentists, the Amendment Regulation expands the arrangements currently in place for dentists who hold general registration under the Health Practitioner Regulation National Law. Schedule 5 is to be amended to enable a registered dentist who holds a possession licence to appoint himself or herself as a radiation safety officer if the radiation source in his or her possession is a laser apparatus that is used to carry out dental therapeutic procedures.

The Amendment Regulation also makes minor amendments to Schedules 2 and 3.

Achievement of policy objectives

The policy objective of the Amendment Regulation will be achieved by:

- inserting new sections 64A and 79 to ban a commercial solarium other than the following:
 - a) a solarium used exclusively by a health practitioner to carry out a diagnostic or therapeutic procedure; or
 - b) a privately owned solarium which is defined as meaning a solarium owned by an individual for personal use and not for fee or reward; or

- c) a solarium in the possession of the holder of a possession licence, prior to 1 January 2013, while it remains in the possession of the licensee
- amending section 10, in order to reduce the regulatory burden on persons applying for particular Act Instruments so that it only applies to those individuals applying for a licence to possess, use or transport radiation sources
- amending section 48 to ensure it accords with the requirement of the Act in relation to the security of radiation sources to be transported
- amending schedule 5 to expand the circumstances under which a dentist who holds general registration under the Health Practitioner Regulation National Law may be able to appoint him or herself as a radiation safety officer
- making miscellaneous amendments to correct minor typographical and grammatical errors.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objective of the *Radiation Safety Act 1999*, which is to protect the public from the harmful effects of non-ionising UVR used in commercial tanning units.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other related legislation that aims to protect and promote public health, such as the *Public Health Act 2005*.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

There are three main types of skin cancer, basal cell carcinoma, squamous cell carcinoma and melanoma. Queensland has the highest rate of melanoma in Australia, and Australia and New Zealand have the highest rate in the world.

Melanoma accounts for the fourth highest burden of disease in Queensland in terms of potential years of life lost from disease and illness, behind lung cancer, heart attacks and breast cancer (ABS, Causes of Death, 2010). Although non-melanoma skin cancer (NMSC) accounts for only about 1 per cent of cancer deaths, it is a major public health concern because of its high incidence and subsequent impact on the health system. Because of its high incidence, NMSC incurred the highest health system expenditure of any cancer in Australia during the year 2000-01, estimated at \$264 million. The health system expenditure for melanoma was estimated at \$30 million. These costs represent 9.1 per cent and 1.0 per cent of total cancer expenditure respectively (AIHW, Health system expenditures on cancer and other neoplasms in Australia, 2011-01, May 2005).

The main policy objective of the Amendment Regulation is to amend the *Radiation Safety Regulation 2010* to provide greater protection from the harmful effects of UVR used in commercial solariums by banning the possession of new commercial solariums in Queensland. The above evidence indicates that the prevalence of skin cancers has a major impact on the community.

The Amendment Regulation will enable existing possession licensees to continue to have lawful possession of a relevant solarium that they are currently allowed to possess under their licence until such time as they choose to dispose of the relevant solarium in accordance with the requirements of the Act. It could take up to 10 or more years for a new solarium to become redundant.

For existing businesses, the prohibition on new entrants into the market may have a short-term positive impact on their business due to the restriction on competition that would result from the prohibition. However, in the medium term, existing businesses will be negatively affected by the prohibition, as they will be unable to replace existing solariums at the end of their useful asset life. A solarium that is well maintained and serviced as recommended by the manufacturer has an expected operational life in excess of 10 years. Businesses will need to seek alternative business opportunities during this period (for example to diversify into spray tanning). None of the amendments are expected to impose significant financial or other costs on government or other stakeholders.

This Amendment Regulation should assist in reducing future risks of Queenslanders developing skin cancer from solarium use. Any steps that can be taken to reduce the prevalence of solarium use will be beneficial to community health and health system costs.

Consistency with fundamental legislative principles

The amendments are consistent with Section 4 of the *Legislative Standards Act 1992*.

Consultation

Queensland Treasury and Trade and the Department of Premier and Cabinet were consulted regarding the proposed amendments.

There has been no specific consultation with Queensland stakeholders on the proposal.

Notes on provisions

Short Title

Clause 1 sets out the short title of the Regulation.

Commencement

Clause 2 specifies that sections 6, 7 and 8 commence on 1 January 2013. This is the date upon which the ban on the possession of any new commercial solaria in Queensland will take effect.

Regulation Amended

Clause 3 specifies that the regulation amends the *Radiation Safety Regulation 2010*.

Amendment of s 10 (Documents relating to proof of identity)

Clause 4 amends section 10 in order to reduce the regulatory burden on persons applying for particular Act Instruments.

Currently, section 10 requires all applications for an Act Instrument to be accompanied by two copies of prescribed documents that have been certified by a justice of the peace or a notary public. An Act Instrument is defined as meaning a licence; an accreditation certificate; an approval to acquire, dispose or relocate; or a radiation safety officer certificate.

It is intended that applications for a licence to possess, use or transport radiation sources will continue to be subject to the requirements of section 10 - that is, they must be accompanied by two copies of prescribed documents which have been certified by a justice of the peace or a notary public. However, section 10 will no longer apply to applications for an accreditation certificate; an approval to acquire, dispose or relocate; or a radiation safety officer certificate.

Amendment of s 48 (Security-related information about transport)

Clause 5 amends section 48 to replace the reference to a 'possession licensee'.

Under section 48, a transport security plan must specify how it is intended that security-related information is to be secured for each threat level decided by the National Threat Assessment Centre as being relevant at any given time. A threat level is an indicator of the likelihood and consequences of a person acquiring a security enhanced source for a malicious purpose, and may be classified as being from 'extreme' to 'negligible' (section 34).

At the time section 48 was incorporated into the Regulation, it was not identified that this clause only referred to a 'possession licensee'. As specified in the Act, a possession licensee is not the only category of persons who is required to develop a transport security plan. This obligation may also fall on a transport licensee, or another person who is transporting two or more sources that have become a security enhanced source as a result of their aggregation. Clause 5 corrects this omission.

Amendment of pt 11, hdg (Banned radiation practices)

Clause 6 amends the heading for part 11 as a consequence of the insertion of the new section 64A.

Insertion of new s 64A (Banned radiation sources for possession)

Clause 7 inserts new section 64A which prescribes a relevant solarium as a banned radiation source in relation to the possession of the relevant solarium. A relevant solarium is defined for the purposes of the Regulation

to mean a solarium other than a solarium used exclusively by a health practitioner to carry out a diagnostic or therapeutic procedure or a privately owned solarium. Privately owned, for a solarium, means owned by an individual and is not used for a business.

The possession of new commercial solaria in Queensland is to be banned in order to prevent the establishment of new commercial enterprises as well as the expansion of those businesses that currently exist across the State. Accordingly, the new section 64A also clarifies that a person must not apply for a possession licence for a relevant solarium and that the chief executive must not grant a possession licence for a relevant solarium.

Insertion of new s 97

Clause 8 inserts a transitional provision into the Act as a consequence of the new section 64A.

The new section 97 specifies that the ban imposed by new section 64A does not apply if a possession licensee, under the licence, possesses a relevant solarium immediately before the commencement of this section and continues to possess the relevant solarium. Existing businesses will continue to be subject to the requirements of the Act and Regulation, until such time as the solarium is relocated out of the State, or otherwise destroyed or disposed of.

Amendment sch 2 (Security categorisation of a radiation source or an aggregation of radiation sources)

Clause 9 amends item 1 in part 1 of schedule 2. Part 1 of schedule 2 sets out various classifications for security enhanced sources. At present, there is no security category for a radiation source if the activity ratio is equal to 1000. This was an oversight which occurred during the development of this aspect of the Regulation.

This oversight needs to be corrected to ensure that Queensland's legislation is consistent with *The Code of Practice for the Security of Radioactive Sources* published by the Australian Radiation Protection and Nuclear Safety Agency. The Code sets out the security requirements to be implemented by persons dealing with a radioactive source in order to decrease the likelihood of the unauthorised access to, or acquisition of, the radioactive source by persons with malicious intent.

Consequently, clause 9 amends item 1 to specify that the activity ratio for a source or aggregation of sources that are to be classified as a category 1 security enhanced source be changed from 'Greater than 1000' to 'equal to or greater than 1000'.

Amendment to sch 3 (Disposal of radioactive material - radionuclide concentrations)

Clause 10 amends schedule 3 to correct a typographical error in Item 63 to change 'Cobalt-5' to 'Cobalt - 56'.

Amendment of sch 5 (Qualifications)

Clause 11 amends Schedule 5, which sets out the details to give effect to the Regulation making head of power in section 36(3) of the Act.

The Act mandates that a possession licensee must ensure, whenever a radiation source in their possession is being used to carry out a radiation practice, that a person has been appointed as, and is carrying out the functions of, a radiation safety officer for the practice (section 35). The Act also sets out who may be appointed as a radiation safety officer but, in doing so, recognises that some possession licensees may have the necessary knowledge and experience to carry out the functions of a radiation safety officer (section 36).

Subsection 36(3) of the Act enables a possession licensee who does not hold a radiation safety officer qualification to 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 under a regulation.

It is intended that the arrangements specified under schedule 5 for a person who holds general registration as a dentist under the Health Practitioner Regulation National Law be expanded.

Currently, a registered dentist may appoint him or herself as a radiation safety officer under subsection 36(3) of the Act if they hold a possession licence for a radiation source that is used to carry intra- and extra- oral dental diagnostic radiography. Clause 11 expands these arrangements to enable a dentist to appoint him or herself as a radiation safety officer, if they hold a possession licence for a laser apparatus that is used to carry out dental therapeutic procedures.

This will decrease the regulatory burden and costs on certain registered dentists.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Queensland Health.

© State of Queensland 2012