

# Radiation Protection (Radiation Protection Series) Codes of Practice 2021

**Disallowable instrument DI2021–284**

made under the

***Radiation Protection Act 2006*, s 116 (Codes of Practice)**

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Radiation Protection (Radiation Protection Series) Codes of Practice 2021* (the Instrument) as presented to the Legislative Assembly. It has been prepared in order to assist the reader and it does not form part of the Instrument.

### Overview

The objective of the *Radiation Protection Act 2006* (the RPA) is to protect the health and safety of people, and to protect property and the environment, from the harmful effects of radiation. To help ensure that any use of radiation is limited, optimised and justified, the RPA incorporates regulatory principles and safe radiation exposure limits specified under the National Directory for Radiation Protection (NDRP)<sup>1</sup>.

In 2001, the Australian Health Ministers Council (AHMC) agreed that the Commonwealth of Australia and all States and Territories of Australia would implement the provisions of the NDRP, including any regulatory Codes of Practice subordinate to the NDRP, within their legislative frameworks. The objective of the NDRP is to provide an agreed framework for radiation safety together with clear regulatory statements to be adopted by the Commonwealth, States and Territories. The NDRP was first endorsed by the AHMC in July 2004. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) has responsibility for the NDRP.

Schedule 11 of the NDRP contains a series of regulatory codes of practice that are collectively known as the Radiation Protection Series. The Radiation Protection Series provides detailed safety information for specific business sectors that use radiation sources, e.g. medical, dental, veterinary science, mining and mineral processing, research, and security.

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<sup>1</sup> National Directory for Radiation Protection (June 2017). Radiation Protection Series Publication No. 6. Australian Radiation Protection and Nuclear Safety Agency. Australian Government.

In conjunction with the 2001 AHMC agreement, the NDRP obliges States and Territories to incorporate the Radiation Protection Series. The ACT's adoption of the NDRP and Radiation Protection Series directly supports the stated objective of the RPA. The NDRP and Radiation Protection Series also serve to inform conditions on an issued licence or registration, as well as related regulatory decisions such as professional disciplinary action, licence suspension, or enforcement action.

All States and Territories have input into the NDRP and Radiation Protection Series, including any update or revision through the Radiation Health Committee (RHC). The NDRP and Radiation Protection Series are subject to community and industry consultation as part of their development or update, and regulatory assessment by the Commonwealth Office for Best Practice Regulation (OBPR).

### **Approval of Codes of Practice**

Section 116 of the RPA allows the Minister to approve codes of practice or standards by disallowable instrument. Consistent with the 2001 AHMC agreement and section 5.1 of the NDRP, the codes of practice specified by Schedule 11 of the NDRP are approved by reference as a code of practice or standard for the RPA.

Since publication of the NDRP, several of the codes of practice referenced have been revised by ARPANSA, or superseded by more recent ARPANSA publications. Consistent with advice of the RHC, the latest approved codes of practice under the Radiation Protection Series are approved by the Minister as codes of practice under the RPA. Adoption of the latest codes of practice under the Radiation Protection Series ensures the latest radiation safety, security, and industry standards, as informed by international best practice, are recognised and adopted in the ACT.

The Instrument approves the latest 14 Codes of Practice and 2 Standards of the Radiation Protection Series as published by ARPANSA and endorsed by the RHC. The approved codes of practice are adopted from time and time and are freely available on the ARPANSA website <https://www.arpansa.gov.au/>.

### **Regulatory Impact Assessment**

In accordance with section 36 of the *Legislation Act 2001*, the preparation of a regulatory impact statement was not necessary for this Instrument because it provides for a matter that is part of a uniform scheme of legislation, or complementary with legislation of the Commonwealth, a State or New Zealand. A regulatory impact assessment and community consultation have also been undertaken with respect to each Code of Practice approved under section 116 of the RPA by the Commonwealth OBPR and ARPANSA respectively.

Non-compliance with an approved code of practice or standard is not a criminal offence. Compliance with an approved code of practice or standard will therefore be managed through existing administrative mechanisms such as imposition of licence conditions, professional disciplinary action, or referral to other government agencies such as WorkSafe or the Australian Health Practitioner Regulation Agency.

### **Human Rights Considerations**

Approval of the Radiation Protection Series does not directly engage the *Human Rights Act 2004* (HRA). However, should the Radiation Council reference relevant

aspects of the Radiation Protection Series as a condition of licence or registration, then that particular licence would inform existing strict liability offences for failure to comply with a condition of licence or registration. Strict liability offences are considered to engage the right to fair trial under the HRA.

The Radiation Protection Series' engagement with the HRA is limited and conditional on licensing and registration decisions under the RPA. The Radiation Protection Series documents are evidence-based codes of practice that are aimed at achieving legitimate safety aims in accordance with the 2001 AHMC agreement and align with the objective of the RPA. The absence of the Radiation Protection Series as approved reference documents would significantly diminish the ACT's ability in determining whether a person has complied with a safety duty and any related regulatory response for failure to comply with a safety duty. The ability to impose licence conditions associated with a strict liability offence is included as a legislative example within section 19 of RPA and has previously been considered compatible with the HRA as introduced by the Radiation Protection Bill 2006. On balance, any HRA engagement arising from approval of the Radiation Protection Series is considered to be reasonable and necessary to maintain public confidence, public safety and regulatory controls associated with ionising radiation.