



Nuclear Facilities Prohibition Act 2007

Current as at 3 July 2017

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Queensland

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Nuclear Facilities Prohibition Act 2007

**An Act to prohibit in Queensland particular nuclear facilities,
and for other purposes**

Part 1 Preliminary

1 Short title

This Act may be cited as the *Nuclear Facilities Prohibition Act 2007*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Purpose of Act and its achievement

- (1) The purpose of this Act is to help protect the health, safety and welfare of the people of Queensland.
- (2) The purpose is achieved primarily by prohibiting the construction and operation of particular nuclear reactors and other facilities in the nuclear fuel cycle.

4 Act binds all persons

- (1) This Act binds all persons including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

5 Relationship with other Acts or laws

- (1) This Act applies despite any other Act or law.
- (2) Nothing in this Act affects the operation of the *Radiation Safety Act 1999*.

6 Definitions

The dictionary in the schedule defines particular words used in this Act.

Part 2 Prohibition on particular nuclear facilities

7 Prohibition on constructing or operating particular nuclear facilities

- (1) A person must not construct or operate a nuclear facility.
Maximum penalty—1665 penalty units.

Note—

This provision is an executive liability provision—see section 22.

- (2) However, subsection (1) does not apply if the facility is for—
 - (a) the storage or disposal of radioactive waste material resulting from the use of nuclear material for research or medical purposes; or
 - (b) another purpose authorised under the *Radiation Safety Act 1999*; or
 - (c) the operation of a nuclear powered vessel.

8 No development approval or mining tenement for a nuclear facility

- (1) A development approval does not authorise the construction of a nuclear facility.
- (2) A mining tenement under the *Mineral Resources Act 1989* does not authorise the construction or operation of a nuclear facility.
- (3) Subsections (1) and (2) apply whether the approval or tenement was granted before or after the commencement.
- (4) In this section—

development approval means a development approval under the *Planning Act 2016* or a PDA development approval under the *Economic Development Act 2012*.

9 No generating authority for a nuclear reactor

- (1) A generating authority under the *Electricity Act 1994* does not authorise the connection, under that Act, of generating plant to a transmission grid or supply network if a nuclear reactor is used for, or in connection with, the plant.
- (2) Subsection (1) applies whether the authority was granted before or after the commencement.

Part 3 Enforcement

Division 1 Orders to enforce Act

10 Starting proceeding for order

- (1) A person may start a proceeding in the court—

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- (a) for an order (an *enforcement order*) to remedy or restrain the commission of an offence against this Act; or
 - (b) if the person has started a proceeding under this section for an enforcement order and the court has not decided the proceeding—for an order under section 11 (an *interim enforcement order*); or
 - (c) to cancel or change an order.
- (2) A proceeding for an enforcement order may be started whether or not a right of the applicant has been, or may be, infringed by, or because of, the commission of the offence.
- (3) If the chief executive is not a party to a proceeding for an enforcement order, the applicant must, within 7 days after starting the proceeding, give the chief executive notice of the proceeding.

Maximum penalty—20 penalty units.

- (4) The Minister or the chief executive may elect to be a party to the proceeding the subject of the notice by filing in the court a notice of election in the form approved by the chief executive.
- (5) In this section—
person includes a body of persons, whether incorporated or unincorporated.

11 Making interim enforcement order

- (1) The court may make an order pending a decision of a proceeding for an enforcement order if the court is satisfied it would be appropriate to make the order.
- (2) The court may make the order subject to conditions.
- (3) However, a condition can not require the applicant to give an undertaking about damages.

12 Making enforcement order

- (1) The court may make an enforcement order if the court is satisfied the relevant offence—
 - (a) is being, or has been, committed; or
 - (b) will be committed unless the enforcement order is made.
- (2) If the court is satisfied the offence is being or has been committed, it may make the order whether or not there has been a prosecution for the offence.

13 Effect of an order

- (1) An order may direct a party to the proceeding for the order—
 - (a) to stop an activity that constitutes, or will constitute, an offence against this Act; or
 - (b) not to start an activity that will constitute an offence against this Act; or
 - (c) to do anything required to stop committing an offence against this Act; or
 - (d) to return anything to a condition as close as practicable to the condition it was in immediately before an offence against this Act was committed; or
 - (e) to do anything to comply with this Act.
- (2) Without limiting the court's powers, an order may require the repair, demolition or removal of a building.
- (3) An order—
 - (a) may be in terms the court considers appropriate to secure compliance with this Act; and
 - (b) must state the time by which the order is to be complied with.
- (4) A person must not contravene an order.
Maximum penalty for subsection (4)—3000 penalty units or 2 years imprisonment.

Note—

This provision is an executive liability provision—see section 22.

14 Court's powers about orders

- (1) The court's power to make an order to stop, or not to start, an activity may be exercised—
 - (a) whether or not it appears to the court that the person against whom the order is made (the *relevant person*) intends to engage, or to continue to engage, in the activity; and
 - (b) whether or not the relevant person has previously engaged in an activity of the same type; and
 - (c) whether or not there is danger of substantial damage to the environment or the health, safety or welfare of anyone else if the relevant person engages, or continues to engage, in the activity.
- (2) The court's power to make an order to do anything may be exercised—
 - (a) whether or not it appears to the court that the relevant person intends to fail, or to continue to fail, to do the thing; and
 - (b) whether or not the relevant person has previously failed to do a thing of the same type; and
 - (c) whether or not there is danger of substantial damage to the environment or the health, safety or welfare of anyone else if the relevant person fails, or continues to fail, to do the thing.
- (3) The court may cancel or change an order.
- (4) The court's powers under this section are in addition to, and do not limit, its other powers.
- (5) In this section—

environment see the *Environmental Protection Act 1994*, section 8.

15 Effect of enforcement order requiring restoration or rehabilitation of land

- (1) This section applies if—
 - (a) the court makes an enforcement order directing a person (the *declared person*) to restore or rehabilitate land; and
 - (b) the declared person has an interest in the land; and
 - (c) the order states that this section applies to the land.
- (2) The applicant must, as soon as practicable after the making of the order, give the chief executive—
 - (a) a notice stating that the order has been made; and
 - (b) a copy of the order.

Maximum penalty—20 penalty units.

- (3) Subsection (4) applies if the declared person transfers to another person (the *transferee*), in any way, all or part of the declared person's interest in the land.
- (4) To the extent the transferred interest in the land is the subject of the order, on the transfer—
 - (a) a reference in the order to the declared person is taken to be a reference to the transferee; and
 - (b) the order is taken to have been made against the transferee on the transfer of the interest; and
 - (c) any outstanding liability, other than criminal liability, of the declared person becomes a liability of the transferee.
- (5) If it is not reasonably practical for the transferee to comply with the order within the period stated in it, the transferee may apply to the court, under section 10(1)(c), to extend the period.
- (6) To remove any doubt, it is declared that on the transfer of the interest, the declared person is not criminally liable for a contravention of the order that happens on or after the transfer of the interest.

- (7) Subsections (4) to (6) have effect for each successor in title to the transferee's interest in the same way the subsections had effect for the transferee.

16 Record of enforcement order requiring restoration or rehabilitation of land

- (1) As soon as practicable after receiving a notice under section 15(2), the chief executive must give the registrar notice of the making of the enforcement order the subject of the notice.
- (2) The registrar must keep records showing that the order has been made.
- (3) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land the subject of the order will show that the order has been made.

17 Application for removal of particulars of enforcement order from registrar's records

- (1) This section applies to a person who—
- (a) has an interest in land that is the subject of an enforcement order to which section 15 applies; and
- (b) wishes to have the particulars of the order removed from the registrar's records because—
- (i) the court has cancelled the order; or
- (ii) the order has been substantially complied with; or
- (iii) the person proposes alternative measures for ensuring the land is restored or rehabilitated.

Example of alternative measures—

a covenant registered under the *Land Title Act 1994*

- (2) The person may apply to the chief executive for the particulars of the order to be removed from the registrar's records (a ***removal application***).

- (3) The application must be written and accompanied by, according to the circumstances—
 - (a) evidence of the cancellation of the order; or
 - (b) the information or documents the person relies on to establish substantial compliance with the order; or
 - (c) details of the alternative measures proposed by the person to ensure the land will be restored or rehabilitated.

18 Dealing with removal application

- (1) If a person makes a removal application for an enforcement order in relation to land the subject of the order, the chief executive must, within 6 weeks after receiving the application—
 - (a) decide whether or not the chief executive is reasonably satisfied, according to the circumstances, that—
 - (i) the court has cancelled the order; or
 - (ii) the order has been substantially complied with; or
 - (iii) the alternative measures proposed by the person will ensure the land will be restored or rehabilitated; and
 - (b) either—
 - (i) approve the application, with or without conditions to be complied with before particulars of the order may be removed from the registrar's records; or
 - (ii) refuse to approve the application.
- (2) As soon as practicable after acting under subsection (1), the chief executive must—
 - (a) give the person an information notice; and
 - (b) if the chief executive approves the application without conditions—give notice of that fact to the registrar.

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- (3) If the chief executive approves the application with conditions and is reasonably satisfied they have been complied with, the chief executive must, as soon as practicable, give notice of that fact to the registrar.
- (4) As soon as practicable after receiving a notice under subsection (2)(b) or (3), the registrar must remove the particulars of the order from the registrar's records.
- (5) As soon as the particulars of the order have been removed from the registrar's records, the order is taken to have been complied with.
- (6) In this section—
information notice means a notice stating—
 - (a) the chief executive's decision under subsection (1), and the reasons for it; and
 - (b) if the decision is to refuse to approve the application or to approve it with conditions—
 - (i) that the person may appeal against the decision to the court within 28 days after the person receives the notice; and
 - (ii) how to appeal.

19 Appeal against refusal to approve removal or approval of removal with conditions

- (1) This section applies if—
 - (a) a person who has an interest in land that is the subject of an enforcement order makes a removal application for the order; and
 - (b) the chief executive decides to refuse to approve the application or to approve it with conditions.
- (2) The person may appeal against the decision to the court within 28 days after the person receives an information notice about the decision, under section 18(2)(a).

- (3) If the person appeals against the decision, the court may make any order it considers appropriate, including, for example, an order directing the registrar to remove the particulars of the order from the registrar's records.
- (5) As soon as the particulars of the order have been removed from the registrar's records, the order is taken to have been complied with.

19A How appeals under s 19 are started

- (1) An appeal under section 19 is started by lodging a written notice of appeal with the registrar of the court.
- (2) The notice of appeal must be in the approved form and succinctly state the grounds of the appeal.

Division 2 General procedural provision

20 Representative proceedings

- (1) A person (the *representative*) may start a proceeding for an order on behalf of an entity, with the entity's consent.
- (2) If the entity is an unincorporated body, the body's committee or other controlling or governing body must give the consent.
- (3) The representative is a party to the proceeding despite the proceeding having been started on behalf of the entity.
- (4) The entity is not a party to the proceeding.
- (5) The entity may contribute to, or pay, the legal costs incurred by the representative in relation to the proceeding.

Part 4 Miscellaneous provisions

21 Plebiscite if the Commonwealth takes steps for a prohibited nuclear facility

- (1) This section applies if the Minister is satisfied the government of the Commonwealth has taken, or is likely to, take any step supporting or allowing the construction of a prohibited nuclear facility in Queensland.
- (2) Without limiting subsection (1), the Minister may be satisfied as mentioned in subsection (1) if the Minister is satisfied the government of the Commonwealth—
 - (a) has taken, or is likely to take, steps to make or amend a law of the Commonwealth or to exercise any power under a law of the Commonwealth to facilitate the construction of a prohibited nuclear facility in Queensland; or
 - (b) adopts a policy position of supporting or allowing the construction of a prohibited nuclear facility in Queensland.
- (3) The Minister must take steps for the conduct of a plebiscite in Queensland to obtain the views of the people of Queensland about the construction of a prohibited nuclear facility in Queensland.
- (4) The Minister must take the steps required by subsection (3) at a time the Minister considers most advantageous to the health, safety and welfare of the people of Queensland.
- (5) In this section—

plebiscite includes a referendum under the *Referendums Act 1997* or a plebiscite under an Act.

prohibited nuclear facility means a nuclear facility for a purpose other than a purpose mentioned in section 7(2).

22 Liability of executive officer—particular offences committed by corporation

- (1) An executive officer of a corporation commits an offence if—
 - (a) the corporation commits an offence against an executive liability provision; and
 - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provision by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
 - (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
 - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
 - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
 - (a) the liability of the corporation for the offence against the executive liability provision; or
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.
- (5) In this section—

executive liability provision means either of the following provisions—

- section 7(1)
- section 13(4).

23 Indictable and summary offences

- (1) An offence against section 13(4) is a misdemeanour.
- (2) Any other offence against this Act is a summary offence.

24 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose a penalty for a contravention of a provision of a regulation of no more than 20 penalty units.

Schedule Dictionary

section 6

applicant means—

- (a) for a provision about a proceeding for an order—the person who started the proceeding; or
- (b) for a provision about an order—the person who started the proceeding for the order.

commencement means the commencement of the section in which it appears.

court means the Planning and Environment Court.

enforcement order see section 10(1)(a).

enriching, nuclear material, means any process by which the proportion of an isotope is increased in relation to the natural abundance of the isotope.

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

interim enforcement order see section 10(1)(b).

notice means a notice in writing.

nuclear facility means any of the following—

- (a) a facility for converting uranium ore into uranium hexafluoride or another chemical to enable its enrichment;
- (b) an isotope separation plant or other facility for enriching nuclear material;
- (c) a fabrication plant or other facility for transforming nuclear material into a form suitable for use as fuel in a nuclear reactor;

- (d) a nuclear reactor, whether or not designed for generating electricity;
- (e) a reprocessing plant or other facility for the chemical separation of fuel that has been irradiated in a nuclear reactor;
- (f) a separate storage installation for storing or disposing of nuclear material in the nuclear fuel cycle used in or resulting from a nuclear facility under paragraph (a), (b), (c), (d) or (e).

nuclear fuel cycle includes any process or step in the utilisation of material capable of undergoing nuclear fission, including its ultimate disposal.

nuclear material means a radioactive substance associated with the nuclear fuel cycle, including, for example, radioactive waste material.

nuclear reactor means a device designed to produce controlled nuclear fission.

order, without reference to any particular type of order, means an enforcement order or an interim enforcement order.

registrar means the registrar of titles under the *Land Title Act 1994* or another person responsible for keeping a register for dealings in land.

removal application see section 17(2).