

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 52

Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2011 (No. 1)

Section 6 of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998* (the Licence Charges Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Licence Charges Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Licence Charges Act.

The Regulations amend the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000* (the Principal Regulations) by increasing the annual licence charges levied by the Chief Executive Officer (CEO) of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) by 3.4 per cent.

The increase is to adjust ARPANSA's licence charges to recover increased labour costs and is in line with the Australian Bureau of Statistics headline Labour Price Index (excluding bonuses) as at 30 September 2010. The annual licence charges were last increased in May 2010.

Under the *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act), a Commonwealth entity, Commonwealth contractor or person in a prescribed Commonwealth place ("a controlled person"), is prohibited from undertaking certain conduct in relation to a 'controlled facility' unless that person is authorised to do so by a facility licence. The conduct that is prohibited is to prepare a site for; construct; possess and control; operate; or de-commission or dispose of or abandon a controlled facility. A controlled facility is defined as either a nuclear installation or a prescribed radiation facility.

The ARPANS Act also provides that a controlled person is prohibited from undertaking dealings with controlled material or controlled apparatus (collectively referred to as "sources") unless that person is authorised to do so by a source licence. To "deal with" a source includes to possess or control the source; use or operate the source or dispose of the source.

Subsection 32(1) of the ARPANS Act provides that the CEO of ARPANSA may issue a facility licence to a controlled person authorising that controlled person to undertake the otherwise prohibited action. Subsection 33(1) of the Act provides that the CEO of ARPANSA may issue a source licence to a controlled person authorising that controlled person to deal with a controlled apparatus or a controlled material.

Under the ARPANS Act a controlled person may apply for a facility or source licence. An application for a licence must be in a form approved by the CEO and accompanied by such fee as is prescribed in the *Australian Radiation Protection and Nuclear Safety Regulations 1999*.

The Licence Charges Act provides that the holder of facility or source licence, at any time during a financial year, is liable to pay a charge for the licence for that year. The amount of the charge for a year is such amount as is prescribed by the Principal Regulations.

The Regulations increase by 3.4 per cent the annual licence charges prescribed in regulations 4, 5 and 6 and listed in Schedules 1 (Facility licence annual charges – nuclear installations), 2 (Facility licence annual charges – prescribed radiation facilities) and 3 (Source licence annual charges) to the Principal Regulations.

Details of the Regulations are in the Attachment.

ARPANSA undertook a preliminary assessment of the impact on businesses or individuals of the increase. The findings of the assessment were sent to the Office of Best Practice Regulation (OBPR). The OBPR confirmed that the increase has little or no impact on businesses or individuals and therefore there is no need to submit a Regulatory Impact Statement or Business Cost Calculator report. (OBPR Reference 12027). No consultation was undertaken as it was deemed that the increase was machinery in nature under section 18 of the *Legislative Instruments Act 2003* and therefore consultation was unnecessary.

The Act does not specify any condition that needs to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 July 2011.

Details of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2011 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2011 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 July 2011.

Regulation 3 – Amendment of *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000*

This regulation provides that the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Schedule 1

Schedule 1 lists the annual licence charges for facility licences for nuclear installations. The amendments in item 1 increase the annual charges for each of the following things to be done under the licence as described below:

Item	Description	Fees
1.	Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt	\$20,948 to \$21,660
2.	Constructing a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt	\$52,369 to \$54,150
3.	Possessing or controlling a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of less than 1 megawatt	\$20,948 to \$21,660
4.	Operating a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) with maximum thermal power of less than 1 megawatt	\$104,738 to \$108,299

Item	Description	Fees
5.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and had maximum thermal power of less than 1 megawatt	\$52,369 to \$54,150
6.	Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of 1 megawatt or more	\$41,895 to \$43,319
7.	Constructing a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of 1 megawatt or more	\$104,738 to \$108,299
8.	Possessing or controlling a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of 1 megawatt or more	\$104,738 to \$108,299
9.	Operating a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies and with maximum thermal power of 1 megawatt or more	\$806,479 to \$833,899
10.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies); and had maximum thermal power of 1 megawatt or more	\$209,475 to \$216,597
11.	Preparing a site for a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	\$10,474 to \$10,830
12.	Constructing a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	\$20,948 to \$21,660
13.	Possessing or controlling a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	\$10,474 to \$10,830
14.	Operating a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	\$52,369 to \$54,150
15.	De-commissioning, disposing of or abandoning a controlled facility, being a plant that was used for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	\$20,948 to \$21,660
16.	Preparing a site for a controlled facility, being a nuclear waste storage or disposal facility that is designed to contain waste with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations	\$10,474 to \$10,830

Item	Description	Fees
17.	Constructing a controlled facility, being: a nuclear waste storage or disposal facility that is designed to contain waste with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations	\$20,948 to \$21,660
18.	Possessing or controlling a controlled facility, being: a nuclear waste storage or disposal facility with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations	\$10,474 to \$10,830
19.	Operating a controlled facility, being a nuclear waste storage or disposal facility with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations	\$52,369 to \$54,150
20.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear waste storage or disposal facility that formerly contained waste with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations.	\$20,948 to \$21,660
21.	Preparing a site for a controlled facility, being a facility to produce radioisotopes, containing a mixture of controlled materials, with an activity that is more than the activity level prescribed by regulation 11 of the ARPANS Regulations	\$20,948 to \$21,660
22.	Constructing a controlled facility, being a facility to produce radioisotopes, containing a mixture of controlled materials, with an activity that is more than the activity level prescribed by regulation 11 of the ARPANS Regulations	\$52,369 to \$54,150
23.	Possessing or controlling a controlled facility, being a facility to produce radioisotopes, containing a mixture of controlled materials, with an activity that is more than the activity level prescribed by regulation 11 of the ARPANS Regulations	\$20,948 to \$21,660
24.	Operating a controlled facility, being a facility to produce radioisotopes, containing a mixture of controlled materials, with an activity that is more than the activity level prescribed by regulation 11 of the ARPANS Regulations	\$83,790 to \$86,639
25.	De-commissioning, disposing of, or abandoning a controlled facility, being a facility that formerly produced radioisotopes, containing a mixture of controlled materials, with an activity that was more than the activity level prescribed by regulation 11 of the ARPANS Regulations	\$52,369 to \$54,150

Item [2] – Schedule 2, Part 1

Schedule 2, Part 1 lists the annual licence charges for facility licences for prescribed radiation facilities. The amendments in item 2 increase the annual licence charges for each kind of prescribed radiation facility as described below:

Item	Description	Fees
1.	Particle accelerator with a beam energy of more than 1 MeV	\$10,773 to \$11,139
2.	Particle accelerator capable of producing neutrons	\$10,773 to \$11,139

Item	Description	Fees
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	\$10,773 to \$11,139
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	\$10,773 to \$11,139
5.	Irradiator containing more than 10^{13} Bq of a controlled material and including shielding as an integral part of its construction, but the shielding does not prevent a person from being exposed to the source	\$10,773 to \$11,139
6.	Irradiator containing more than 10^{13} Bq of a controlled material and including shielding as an integral part of its construction, and with a source that is not inside the shielding during the operation of the irradiator	\$10,773 to \$11,139
7.	Facility for the production, processing, use, storage, management or disposal of sealed sources of controlled materials of activity in a quantity more than 10^9 times that mentioned in column 4 of Part 2 of Schedule 2 to the ARPANS Regulations	\$21,546 to \$22,279
8.	Facility for the production, processing, use, storage, management or disposal of unsealed sources of controlled materials of activity in a quantity more than 10^6 times that mentioned in column 4 of Part 2 of Schedule 2 to the ARPANS Regulations	\$21,546 to \$22,279
9.	Facility for the production, processing, use, storage, management or disposal of a mixture of controlled materials, the activity of which, worked out using the method set out in subregulation 6 (2) of the ARPANS Regulations, is more than the applicable level mentioned in that subregulation	\$21,546 to \$22,279

Item [3] – Schedule 2, Part 2

Schedule 2, Part 2 lists the annual licence charges for facility licences for certain activities relating to prescribed radiation facilities. The amendments in item 3 increase the annual licence charges for each of the following things to be done under the licence as described below:

Item	Description	Fees
1.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	\$35,910 to \$37,131
2.	Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	\$23,940 to \$24,754
3.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used for the mining, processing, use, storage, management or disposal of radioactive ores	\$35,910 to \$37,131
4.	Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used for the mining, processing, use, storage, management or disposal of radioactive ores	\$23,940 to \$24,754

Item [4] – Schedule 3, Part 2

For purposes of source licence annual charges, controlled material and controlled apparatus have been divided into three groups, namely Group 1, Group 2 and Group 3, in ascending order of risk to people and the environment. The three groups are listed in Schedule 3, Part 1. Schedule 3,

Part 2 lists source licence annual charges according to the number of controlled material or controlled apparatus from each group that are in the same location and which is covered by the same licence. The amendments in item 4 increase the annual licence charges for each group as described below:

Item	Description	Fees
1.	For less than 4 controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	\$599 to \$619 \$2,394 to \$2,475 \$7,182 to \$7,426
2.	For more than 3, but less than 11, controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	\$1,556 to \$1,609 \$4,788 to \$4,951 \$14,364 to \$14,852
3.	For 11 or more controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	\$2,993 to \$3,095 \$9,001 to \$9,307 \$26,334 to \$27,229

Item [5] – Schedule 3, Part 3

Schedule 3, Part 3 lists the annual licence charges for source licences held by three licence holders who pay a fixed amount regardless of the number of source licences held by them. The amendments in item 5 increase the annual licence charges for each licence holder as described below:

1.	Department of Defence	\$691,866 to \$715,389
2.	Australian Nuclear Science and Technology Organisation	\$230,782 to \$238,629
3.	Commonwealth Scientific and Industrial Research Organisation	\$230,782 to \$238,629